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# Congressional Record

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# Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Today's prayer will be offered by a guest Chaplain, the Reverend Dr. Charles E. Poole, First Baptist Church, in the city of Washington, DC.

We are pleased to have the reverend with us.

## PRAYER

The guest Chaplain, Dr. Charles E. Poole, pastor of First Baptist Church, Washington, DC, offered the following prayer:

Eternal and Almighty God, we give thanks for these, Your children, who gather in this place, day after day, to invest their best energies in shaping the life of the Nation.

We pray, O God, that You will bless the men and women who serve in this Senate. Give them wisdom and insight from beyond themselves. Give them the abiding patience that lasts longer than mere tolerance, the embracing perspective that sees larger than simple partisanship, and the enduring peace that goes deeper than outward circumstance. Hold each of them, and their families, in Your strong hands. Bless them, O God, with quiet spaces and restful moments in the midst of their very public lives in this very noisy world.

We pray in the quiet assurance that You are with us, and in the abiding hope that we will be with You. Amen.

## RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator COCHRAN from Mississippi, is recognized.

## WELCOME, DR. CHARLES E. POOLE

Mr. COCHRAN. Mr. President, it gives me a special pleasure this morning to welcome our guest Chaplain who has delivered the opening prayer, Dr. Charles E. Poole.

He is currently serving as pastor of the First Baptist Church of the city of Washington, DC, but he and his family will be moving soon to Mississippi where he has accepted the call to serve as pastor of my church, Northminster Baptist Church in Jackson, MS. We are delighted to have this very special person come to our State and serve in this way. We appreciate very much his being our guest Chaplain this morning and delivering such a fine prayer.

Dr. Poole earned his undergraduate degree from Mercer University in Macon, GA, and graduate degrees in divinity from the Southeastern Baptist Theological Seminary in Wake Forest, NC.

Before he became pastor of the First Baptist Church in Washington, he served for several years as the pastor of the First Baptist Church of Macon, GA. He was also on the board of trustees of Mercer University in Macon for 5 years. He is an outstanding clergyman who is well respected here in the Washington area. His sermons and other writings have been published and very favorably received.

He and his wife Marcia have two children, Joshua and Maria. We are looking forward to getting to know all of them better.

We thank him, on behalf of all Senators, for his contribution to today's session.

## SCHEDULE

Mr. COCHRAN. Mr. President, at the request of the majority leader, I am pleased to make the following announcement relating to the schedule of the Senate. For the information of all Senators, this morning the Senate will resume consideration of S. 949, the Taxpayer Relief Act of 1997. By previous consent, there will be 20 minutes for debate equally divided between Senator MURKOWSKI and Senator BUMPERS, with a vote occurring in relation to the Bumpers amendment at approximately 9:50 a.m. Following the vote on the Bumpers amendment, there will be 20 minutes of debate equally divided in the usual form with a vote on or in relation to the Dorgan amendment No. 517 regarding capital gains. Following that vote, there will be 10 minutes of debate equally divided in the usual form on the Dorgan motion to refer. The Senate then will proceed to a vote in relation to the DORGAN motion.

All other amendments offered last night and amendments offered during today's session will be subject to rollcall votes throughout the day as we make progress on the Taxpayer Relief Act. Therefore, Senators can anticipate numerous rollcall votes on this bill during today's session of the Senate.

## REVENUE RECONCILIATION ACT OF 1997

The PRESIDING OFFICER (Mr. COATS). Under the previous order, the clerk will report S. 949.

The assistant legislative clerk read as follows:

A bill (S. 949) to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

The Senate resumed consideration of the bill.

Pending:

A motion to waive the Congressional Budget Act with respect to consideration of Section 602 of the bill.

Dorgan motion to refer the bill to the Committee on the Budget, with instructions.

Dorgan Amendment No. 515, to authorize the Secretary of the Treasury to abate the accrual of interest on income tax underpayments by taxpayers located in Presidentially declared disaster areas if the Secretary extends the time for filing returns and payment of tax (and waives any penalties relating to the failure to so file or so pay) for such taxpayers.

Dorgan Amendment No. 516, to provide tax relief for taxpayers located in Presidentially declared disaster areas.

Dorgan Amendment No. 517, to impose a lifetime cap of $1,000,000 on capital gains reduction.

Bumpers Amendment No. 518, to repeal the depletion allowance available to certain hardrock mining companies.

Durbin Amendment No. 519, to increase the deduction for health insurance costs of self-employed individuals, and to increase the excise tax on tobacco products.

Roth Amendment No. 520, to provide for children's health insurance initiatives.

Jeffords Amendment No. 522, to provide for a trust fund for District of Columbia school renovations.

The PRESIDING OFFICER. Who yields time?

AMENDMENT NO. 518

Mr. BUMPERS. I yield 5 minutes to my coauthor of this amendment, Senator GREGG.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized to speak for up to 5 minutes.

Mr. GREGG. Mr. President, just to recap where we are, basically, the Senator from Arkansas has authored an amendment to end the ability to take the depletion allowance for mining companies for that part of their mining activity which occurs on public land.

Now, let's understand the facts here. A mining company comes along and it buys the right to mine on public land for the value of, I think, $2.50 an acre. For example, in 1995, ASARCO bought 349 acres for $1,745, which had 3 billion dollars' worth of assets on it. Public land, public land. And then a Danish company came along, and for $275 bought 110 acres, which had 1 billion dollars' worth of assets on it. Then a Canadian company came along and spent $9,000 for 1,800 acres which had 11 billion dollars' worth of assets on it.

That, in and of itself, is a bit of an affront to the American taxpayer. That is not what we are debating here. We are debating an even greater affront—an even greater affront—because after they bought this land for $2.50 an acre, they then go out and take a depletion allowance against that land. Now, it is not against the equipment they are using to mine the land. They can deduct that. They have a right to do that. No, it is a depletion allowance against land which is publicly owned, taxpayers' land. It is not their land. It is taxpayers' land which they bought for $2.50 an acre, and now they get to take a depletion allowance which costs $400 million over the next 5 years.

Excuse me, what dinner party am I at? Is the Mad Hatter here? Is the Queen of Hearts here? What is this? We have the taxpayers first subsidizing an $11 billion, a $1 billion, and a $3 billion asset purchase which flows to these companies, and then we have the taxpayers subsidizing a depletion allowance which flows to these mining companies. And what does the taxpayer get back for all of this? $2.50 an acre. It is corporate welfare, corporate pork. The term can be applied at a variety of different levels.

What it is, is wrong. It is wrong that the depletion allowance should be available for land which is public land that is purchased at these outrageously low prices. It doubles up the insult. It doubles up the insult to the American taxpayer.

I strongly support the initiative of the Senator from Arkansas. I cannot understand how anyone who would believe that the American taxpayer deserves some modicum of respect would not also support this proposal. It simply is an attempt to try to correct just a small sliver of what is a very significant and inappropriate affront to the American taxpayer. It is costing us a lot of money, money that we should not have to pay.

I heard somebody say, well, this is a tax increase. My goodness, how could you argue that? A tax increase? What we are doing is hammering the taxpayers, expecting the American taxpayer to pick up a depletion allowance on top of having already picked up a loss for having sold this property at a ridiculously low price in light of what the value of the asset being conveyed is. It is not a tax increase. What it is is an attack on the taxpayer. It should not occur any longer.

The Senator from Arkansas is right in his amendment. I am happy to join him.

I yield back the remainder of my time.

Mr. REID. Does the Senator from Alaska yield?

Mr. MURKOWSKI. I am happy to yield to my friend from Nevada 3 minutes.

Mr. REID. Mr. President, last evening we talked about the price of gold based upon a Wall Street Journal article earlier this year. Let me advise all my friends here in the U.S. Senate that last Friday gold hit a 4-year low, $336 an ounce, which basically means companies are laying people off and some companies are going out of business. That is a fact.

Mr. President, as I stated last night, this amendment is an ill-conceived and ill-advised attempt to circumvent congressional efforts to reform the current mining law.

The U.S. mining industry is in agreement that the mining law is due for some changes. Serious efforts to accomplish such a result have taken place over the last several years.

In 1990 and 1991, efforts were made here to have a patent moratorium. That failed. Following that, though, Senators DOMENICI and REID offered an alternative to a patent moratorium. We required payment of fair market value for the surface of the land. We said any land that was patented that was not used for mining purposes would revert to the Federal Government. We also required compliance with state reclamation laws. This was in an amendment offered here that passed this body by a vote of 52 to 44.

It went to the House, and they knew their argument that they use here every day, about the patents being offered for nothing, would be taken away. They rejected this good-faith effort of the U.S. Senate to reform the mining law. It was rejected in conference. We tried.

We came back later on, Mr. President, in 1993, and imposed a maintenance fee on unpatented claims of $100 per claim. The Government collected over $50 million in 1 year for that. It is not as if we have not sought change.

In the Senate and the House, in 1993, bills passed. They were killed in conference because it was not perfect. There is now in effect and has been since 1995 a moratorium on the issuance of further patents. The only ones that patents could be issued upon were those that were in the pipeline. That has been in effect since 1995. There has been reform of the mining law.

In 1995 and 1996, there was legislation offered to reform the law. We have run into roadblocks from people who want to kill the good because they want the perfect.

I suggest this amendment unfairly targets the Western mining industry. We have sought reform. There has been reform that has taken place. This amendment is an attempt to do mining law reform, and this is not the place or time for such an effort. It should go through the committee process that is led by the able chairman of the committee, the Senator from Alaska.

If this Congress wants to change the current mining law, then it should begin its efforts in the Energy and Natural Resources Committee and not in the reconciliation bill.

Mr. MURKOWSKI. I yield 1 minute to the Senator from Utah.

Mr. HATCH. Mr. President, I rise today to oppose the amendment by my colleagues, Senator BUMPERS and Senator GREGG. This amendment would repeal the percentage depletion allowance for mineral extraction. It would, however, only repeal this allowance for minerals extracted from any land obtained pursuant to the provisions of the mining law of 1872. This amendment is discriminatory and bad policy.

Minerals are not free for the taking or inexpensive to mine just because they are on land obtained from the 1872 mining law. In truth, significant capital is invested during the development of a mine. Capital costs often reach close to $400 million to develop a major mine.

In addition, there is a lot of time invested in the development of any mine, and it has increased even more in recent years. Just getting a permit for a new mine on Federal lands has increased from a 1-year time frame to 3 or 5 years over the last 4 years.

The rationale for the depletion allowance provisions in the Tax Code are not just targeted to mineral extraction. They are the same for oil and natural gas, coal, and metals extraction as well. This allowance recognizes the unique nature of resource extraction. It is designed to provide a practical method of measuring the decreasing value of a deposit as the materials are

extracted. It recognizes that the replacement cost of new mines are always higher in real terms. This allowance helps the mining industry to generate the capital needed to bring new mines into production.

Mr. President, mines mean jobs. They are not just vacuums sucking our minerals out of the land at a low cost. They are economic entities that extract valuable resources for circulation in the economy and provide millions of jobs for American citizens. These are direct jobs. But, mining produces essential raw materials for manufacturing in other industies. Think about the untold number of jobs that are indirectly linked to mining.

Moreover, jobs in the mining industry are not just minimum wage jobs, either, Mr. President. The Bureau of Labor Statistics tells us that the average mining wage is $45,270 per year. This is significantly higher than the average national wage of $27,845.

This amendment would have a severe effect on the mining industry. It means thousands of lost jobs. These jobs are high-paying jobs that raise the standard of living of millions of workers.

This amendment means a significant reduction in mining activities all over the Nation. This will have a corresponding effect on the tax base and economies of the areas dependent on a sound and viable mining industry.

The effects of this amendment will not only be felt in Western States, where mining is abundant, but will be felt across the Nation.

This amendment destroys more than just the economics of mining communities. It also harms the stewardship of our national mineral wealth. Companies will be encouraged to spend their scarce exploration and development funds in an atmosphere more favorable to them. The political and regulatory climates overseas already beckon to our mining companies. By making our tax climate so unfavorable for these mining companies, we are practically giving them the push they need to move overseas.

Make no mistake about it, this amendment will have an effect on our national production. Imports will replace the loss of domestic production, moving high-paying jobs and economic activity to other countries. This is not the way to ensure a stable economy in the United States.

Mr. President, let's put aside the fact that this is such bad tax policy. This amendment is an administrative nightmare. Most mining projects consist of land and rights obtained from a variety of sources. For example, a large open pit mining operation may include private property acquired through homestead laws, patented mining claims, unpatented claims, State lands, and 1872 mining law land. How is a company supposed to figure out where a mineral comes from?

This amendment would require mining companies to find some way of tracing the ore extracted just from the mining rights obtained from the 1872 mining law. This would often mean that the depletion allowance would apply to a shovel of ore from one location, but not to a shovel of identical ore from 10 feet away. This is ridiculous.

This amendment does not appear to be an attack on the percentage depletion allowance for mineral extraction. It is only targeted at a specific segment of this industry relating the 1872 mining law.

I do not disagree that this mining law should be debated and reformed. I do not agree that it should be reformed using a piecemeal approach through the Tax Code. If we are going to reform the 1872 mining law, let us do it in a thoughtful, comprehensive manner.

I urge my colleagues to join me in opposing this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. I yield 1 minute to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized for 1 minute.

Mr. CRAIG. Mr. President, several assertions have been made on the floor this morning that this is not a tax increase if we repeal this depletion allowance. It was also suggested that mining companies don't pay taxes. Wrong, wrong, and wrong again.

The average mining company pays 32 percent tax with minimum alternative. This would increase it to over 42 percent. I would like to inform the Senator from New Hampshire that mining companies invest about $400 million in each mining operation. He is raising taxes on mining companies that employ thousands of people, in one of the highest paid wage industries in the Nation. He is also attacking the very industrial base of our country. When you come from a State where you have to pledge not to raise taxes, I guess you can raise them if there is some political advantage to do so. That appears to be the case here this morning.

It is all politics, with no sensitivity toward the strength of the industrial base of this country and the opportunity to continue to provide strong high-paying jobs in the public land States of our Nation.

Mr. MURKOWSKI. Mr. President, I yield 2 minutes to the Senator from Nevada.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 minutes.

Mr. BRYAN. I thank the Chair. Mr. President, this is the wrong place and the wrong time to be considering an amendment of this nature. This would make a fundamental change in the tax law with respect to the percentage depletion for the recovery of mineral deposits, a provision that has been in the Tax Code for more than six decades. It would discriminate against only one type of mining activity—that which occurs on the public lands.

The proponents of this amendment really are debating today changes they want to seek in the mining law of 1872. I do not disagree that changes need to be made. We are prepared, in representing a State in which this is such an important industry, to provide for royalty provisions, fair market value of the surface, as well as reclamation efforts. The ore body itself is a wasting asset. So a depletion allowance for mineral recovery is analogous to depreciation permitted on the improvements on real property. So this is not some exotic provision in the Tax Code. It recognizes that the ore body itself will be exhausted in a finite period of time, and it seeks to provide that kind of tax coverage.

Finally, I want to point out, as my colleague from Utah pointed out, that this would be an administrative nightmare. At least one particular mining activity in my own State is derived at the source of title or possession of the land from six different sources. So you would have to identify where the minerals recovered are from six different sources in order to apply the provisions of the law.

I urge its rejection.

The PRESIDING OFFICER. Who yields time?

Mr. BUMPERS. Mr. President, I yield myself such time as I may use.

The PRESIDING OFFICER. The Senator from Arkansas has 5 minutes 45 seconds remaining.

Mr. BUMPERS. Mr. President, I have never heard so many stale arguments in my life. This is like saying we will give General Motors the steel to build cars if they will hire some people to do it. This is a simple question of giving the biggest mining companies in the world the taxpayer's resources. That is who we are talking about. This doesn't belong to the 10 Senators from the Western States. This gold and silver belongs to the taxpayers—the people I have heard talk about so many times on this tax bill, that ''we are going to give a tax cut to the long-suffering taxpayers'' and, at the same time, give away billions of dollars worth of gold, silver, platinum, and palladium that belongs to the taxpayers.

This amendment has nothing to do with the gold companies' depletion, even on private lands. It has nothing to do with depletion on State lands. It has to do with the lands they got from the U.S. Government for nothing. And we are paying them to take it. We are giving them a depletion allowance to mine gold that we gave them.

There is a lot more mining that goes on on private and State lands than goes on on Federal lands. They are not going offshore. They are not going broke. Here is the big ad by Barrick Mining Co. in the Mining World News: ''Developing Your Gold Property to its Full Potential.''

> Work with a new partner, Barrick Gold. You may not have dealt with us before, but you should know we are the world's most profitable gold producer.

And well they should be; they don't pay anything for it. This means $400

million to the taxpayers of this country over the next 5 years. They are perfectly willing to pay an 18 percent royalty on private lands. They are perfectly willing to pay 5 to 18 percent on State lands. They pay severance taxes, reclamation fees, and royalties to everybody under the shining Sun—except the taxpayers of the United States, who own it.

Let me say to my colleagues. Each one of you who are defending this proposition, let me ask you this: You go home and tell your friends, your supporters—I am not talking about the mining companies, I am talking about the taxpayers—I want you to tell the people back home that if you had 500 acres of land and had $18 billion or $11 billion worth of gold under it—or in the case of Stillwater Mining Co. in Montana, $38 billion worth of palladium and platinum on 2,000 acres—if you owned it, and I came to you and I said that I am going to relieve you of all these billions of dollars worth of gold, I will get rid of it for you, what would you pay me? We can't pay you for it. We are just going to get rid of the gold for you. You would say, get thee hence to the nearest psychiatrist for a saliva test. I cannot believe that, year after year, we listen to these stale arguments about how people are going offshore, and they create jobs. So does some small struggling businessman that hires 10 people in your State, but you don't give him all of his resources to produce something with.

Mr. President, it is time that this body stood up to its duty. This is not about the mining law. This is simply saying, in those narrow cases, where we gave them the land, and they are mining it and not paying a dime to the taxpayers of this country in any kind of a fee, we are saying, for God's sake, let's not pay them to take it. At least take the depletion allowance from them.

I reserve the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. MURKOWSKI. I yield myself the balance of the time on our side.

Mr. President, is there any question about whether this is a tax increase or not? Let's recognize what the Joint Tax Committee has said. They said it is a tax increase. It raises $686 million. If that isn't a tax increase, I don't know what is. What we have here, Mr. President, is not a new proposal, but a punitive proposal that was offered earlier this year and rejected by the Finance Committee, rejected by the House Ways and Means Committee, and it should be rejected by the full Senate.

When you strip away all the rhetoric, this issue boils down to whether or not we are going to place a $700 million tax increase on the domestic mining industry. This proposal, as it stands, will speed up the departure of the mining industry from our shores.

Let's look at this chart briefly. It shows what is happening with employment in the mining industry for metal, iron ore and copper. Let's look a little more closely at metal mining, which includes gold, silver, lead, and zinc from 1980 to 1995. In 1980 there were 98,000 jobs; by 1995 that had dropped to 51,000 jobs. In copper, it went from 30,000 jobs in 1980 to 15,000 in 1995. These numbers show what is happening to the mining industry in this country. What will happen if we place an additional $700 million in tax burden on them? They have to sell their gold, silver, copper, lead, and zinc at the world prevailing price, not the price in the United States. So where are the good-paying jobs going to go? They are going to go to Canada, Latin America, and Indonesia.

We pride ourselves on cutting taxes and yet this amendment would throw a $700 million tax increase at the American mining industry. That is what the Bumpers amendment would do. It adds $700 million to the cost of producing minerals in the United States. Every Member of this body can figure out for themselves what effect this would have on the American mining industry. If you can't produce your product for a profit, for the price that is offered, you are out of business, that is what happens.

Finally, Mr. President, let's make no mistake about it, this amendment is not about depletion on lands obtained under the Mining Act of 1872. The amendment is about the law itself. This is just an overt attempt to gain negotiating leverage on the industry. The U.S. mining industry agrees with Senator BUMPERS, as do I, that this law is long overdue for overhaul. Let's sit down with the administration and reform the 1872 mining law, but let's not impose a punitive $700 million tax on the industry merely to gain negotiating leverage at the bargaining table. As a consequence, I urge my colleagues to oppose this punitive tax and vote against waiving the Budget Act.

Mr. President, at the conclusion, I am going to raise a point of order that the amendment is not germane under section 305 (b)(2) of the Budget Act.

The PRESIDING OFFICER. The Senator from Alaska has 6 seconds. The Senator from Arkansas has 40 seconds.

Mr. MURKOWSKI. I yield back our time.

The PRESIDING OFFICER. The Senator from Alaska yields back his time.

Mr. BUMPERS. Mr. President, I ask unanimous consent that Senator AKAKA and Senator FEINGOLD be added as cosponsors of the amendment.

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

Mr. BUMPERS. Mr. President, this is the ninth year I have stood on this floor and tried to prick the conscience of the Members of this body about this last remaining egregious scam on the American people. Next year, when some of you are up for reelection, I expect you are going to see some 30-second spots on this. What is it your opponent will say? What is it that makes you want to give away billions and billions of dollars of the taxpayers' money and us get nothing in return? Why do you tell your Chamber of Commerce you will handle their money like it was your own? Anybody in this body would be disqualified from being a Senator if he answered the question I posed a moment ago, ''Yes, I will let them come and take gold off my property for nothing.'' Why, of course, you would not.

This is a very narrowly drafted amendment. It is crafted not to discriminate. It simply says that if you mine gold on private lands, fine, get a depletion. Oil companies, coal companies, and gas companies are entitled to a depletion. But when you give resources of the U.S. taxpayers away for nothing, and then allow them to take a 15 percent depletion, which is worth $400 million of the taxpayers' money, and you turn around here in this tax bill and say we are going to give it back to you, don't give it away in the first place. For God's sake, colleagues, do your duty.

I yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. MURKOWSKI. Mr. President, I raise a point of order that the amendment is not germane under section 305(b)(2) of the Budget Act.

Mr. GREGG. Mr. President, I move to waive the Budget Act and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO WAIVE THE BUDGET ACT

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

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

The yeas and nays resulted—yeas 36, nays 63, as follows:

[Rollcall Vote No. 131 Leg.]

YEAS—36

| | | |
|---|---|---|
| Akaka | Graham | Mikulski |
| Biden | Gregg | Moseley-Braun |
| Boxer | Harkin | Murray |
| Bumpers | Jeffords | Reed |
| Chafee | Kennedy | Robb |
| Coats | Kerrey | Rockefeller |
| Collins | Kerry | Sarbanes |
| Dodd | Kohl | Smith (NH) |
| Durbin | Lautenberg | Snowe |
| Feingold | Leahy | Torricelli |
| Feinstein | Levin | Wellstone |
| Glenn | Lieberman | Wyden |

NAYS—63

| | | |
|---|---|---|
| Abraham | Coverdell | Hatch |
| Allard | Craig | Helms |
| Ashcroft | D'Amato | Hollings |
| Baucus | Daschle | Hutchinson |
| Bennett | DeWine | Hutchison |
| Bingaman | Domenici | Inhofe |
| Bond | Dorgan | Inouye |
| Breaux | Enzi | Johnson |
| Brownback | Faircloth | Kempthorne |
| Bryan | Ford | Kyl |
| Burns | Frist | Landrieu |
| Byrd | Gorton | Lott |
| Campbell | Gramm | Lugar |
| Cleland | Grams | Mack |
| Cochran | Grassley | McCain |
| Conrad | Hagel | McConnell |

| | | |
|---|---|---|
| Moynihan | Santorum | Stevens |
| Murkowski | Sessions | Thomas |
| Nickles | Shelby | Thompson |
| Reid | Smith (OR) | Thurmond |
| Roth | Specter | Warner |

NOT VOTING—1

Roberts

The PRESIDING OFFICER. The Senate will be in order.

On this vote, the yeas are 36, the nays are 63. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to. The point of order is sustained. The amendment falls.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 517

The PRESIDING OFFICER. The pending issue, under the previous order, is amendment No. 517.

Mr. MOYNIHAN. Mr. President, may we have order.

The PRESIDING OFFICER. The Senate will be in order.

Under the previous order on amendment No. 517, time is 20 minutes under the control of the Senator—time is equally divided on the amendment of the Senator from North Dakota. No. 517 is the pending business. Who yields time?

Who yields time?

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. MOYNIHAN. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Is it the case that we have agreed to 20 minutes equally divided so that the time is automatically provided Senator DORGAN?

The PRESIDING OFFICER. The Senator is correct.

Mr. MOYNIHAN. I thank the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have offered an amendment that is relatively simple and it deals with the issue of capital gains. Capital gains, as most of us know, has long been a controversial issue here in the Congress.

Some will remember, if they relate back to the good old days of the Tax Code—I call the good old days those old days in which there were people in this country who would do things not because the market system suggested they should do them, but because the Tax Code provided incentives to do them. I do not think they were good old days, but there was created in this country an army of people whose lives were devoted to figuring out how you can convert ordinary income to capital gains and make money off the Tax Code, and how you can decide to build what the market system says you should not build but still make money because the Tax Code provides the incentives to build it.

Well, we got rid of that army of accountants and lawyers and others in the tax shelter industry with the 1986 Tax Reform Act.

The proposal for a capital gains tax preference in the bill that comes to the floor of the Senate has no limitation. I did not take Latin so I don't know if ''totus porcus'' means whole hog, but I certainly think the term applies to this capital gains tax proposal. You can convert unlimited amounts of ordinary income to capital gains and have the tax break that is imbedded in this bill forever.

I propose the following. If a capital gains tax break truly is proposed in order to help those families who save for their kids' college education, to help a small business, to help a family farm that might sell the business or the farm, then let us have at least some reasonable limitation on the capital gains tax benefit.

It is interesting; in this country we have two different philosophies of taxation. One says let us tax work. If you are on a payroll someplace and working, let us tax work. And nobody worries much about the consequence of that. Nobody worries about the impact of inflation on the wage and says let us index work salaries for inflation. Nobody says that.

If you work and you take a shower at the end of the day after you work because you worked hard and you sweat, you earned an honest wage, you pay a tax up here and nobody is running around this Chamber saying, gee, let's index that for inflation. Let's talk about a work gains index. Nobody talks about that.

But then others say let us tax work, but let us exempt investment. Somebody else is an investor, takes a shower in the morning, does not get dirty during the day, does not sweat, sits in a chair someplace and invests, we have all kinds of folks running around the Capitol saying, oh, we have to do something to provide incentives for people who get their income that way.

Let us tax the income from work and let us exempt the income from investments, that is what is at the root of this debate. Now, the question is, who gets what and who has what?

Here is a chart that describes very well why I have offered this amendment. The bulk of the capital gains go to those in the very upper income bracket. One-half of 1 percent of the taxpayers of this country have gains of $200,000 or more, and they get fully half of the capital gains that people get in this country. So when you say let us give a tax benefit through capital gains and have no limit on it, what you are saying is let us provide an enormous benefit to the upper income folks. Eighty-nine percent of the taxpayers that have capital gains have very small capital gains, under $10,000. And all of that in aggregate, 90 percent of the taxpayers have 15 percent of the dollar amount of the capital gains in this country.

So, to repeat, one-half of 1 percent of taxpayers get half of the Nation's capital gains, the bulk of the capital gains. And nine-tenths of the taxpayers get about one-sixth of the capital gains. It is clear that any attempt to give a tax break to capital gains income will disproportionately benefit folks in the very upper income bracket.

My proposal is very simple. It says let us limit the capital gains tax preference in this bill to $1 million in a taxpayer's lifetime, $1 million. We will give you a tax preference on capital gains for a million dollars. Isn't $1 million enough? Should there not be some limitation? Is there no end? Is there no bottom to this pot? Or do we just insist that somehow investment has greater merit than work and we will continue to fight and struggle to reward investment and penalize work by saying let us tax work and exempt investment.

This is a painfully simple amendment. I have offered it previously here in the Congress. I hope that as we now begin this effort to restore a capital gains preference, we at least will have the good sense to limit it.

So that is the amendment I have offered. I reserve the remainder of my time. I would like to respond to some of the comments that are made, but, Mr. President, this amendment will have a significant impact on the construction of a capital gains tax preference. I do not propose we abolish it. I propose instead we limit it to $1 million per taxpayer in the taxpayer's lifetime.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Delaware is recognized for 3 minutes.

(Mr. GREGG assumed the chair.)

Mr. ROTH. Mr. President, I rise in strong opposition to the amendment that is offered by my good friend and colleague from North Dakota, but I do first want to commend him for his perseverance on this issue. I know it is a matter of great interest to him, a matter that he feels very strongly about. As he said in yesterday's statement, he has been sponsoring this type of legislation for many years.

Mr. President, I must oppose this amendment for several reasons. First of all, let me point out that the principle purpose for reducing the capital gains tax is to encourage more investment. In this competitive world of today and in this global economy, it is critically important that we make the best utilization of the capital we have so that we are in a strong competitive position. A lower capital gains tax will encourage greater investment. It will encourage better utilization of our assets.

Why would we want to impose some kind of arbitrary limit that will have the effect of limiting investments? We

are trying to free up hundreds of millions, if not billions, of dollars to the best investment available to help ensure that we are creating in this country an environment of growth, jobs, and opportunity.

Let me just look at this matter from another point of view; from the standpoint of small business. I know my distinguished friend from North Dakota is, indeed, a friend of small business. The tax laws currently provide a 50 percent capital gains exclusion from investments in qualifying small business stock. Currently, the tax laws provide that an investor who has gained from qualifying small business stock can exclude up to $10 million of capital gains from a single investment—10 times more than the $1 million cap. I understand that in the Democratic substitute amendment that is ultimately going to be offered, it is provided that we should double this limit; this $10 million limit should become $20 million from a single investment. So the question I must ask my friends on the other side of the aisle who argue a $20 million capital gains exclusion is appropriate from a single small business investment yet, at the same time, argue to limit capital gains from all other investments to only $1 million over a taxpayer's lifetime—the two provisions are totally inconsistent, in my judgment they make no sense, and I hope the Senate will agree with my concern.

Let me make one further observation. This amendment also raises some very significant administrative problems. Under the amendment, individuals will have to keep track of all their investment gains, not for 1 year, not for 5 years or 10 years, but for decades—a tremendously burdensome matter. Think of how this amendment would affect the Internal Revenue Service. I doubt the IRS has adequate resources to administer the voluminous information that would have to be maintained if this amendment becomes law. It would be an administrative nightmare for the IRS to have to try to enforce this provision.

But let me go back to the first point which I think is most important, that the reason we are reducing the capital gains tax is to encourage more investment. To try to limit it to $1 million makes no sense and is in conflict with the basic purpose of the agreement that was reached by the Senate Finance Committee. It makes no sense. It is inconsistent with the provisions now contained in the law for small business stock, which can be excluded for up to $10 million of capital gains; and, as I already pointed out, it is proposed in the so-called Democratic substitute that this limit be doubled to $20 million.

So I oppose this legislation and hope the Senate agrees with this opposition.

Mr. President, at this time I am happy to yield 7 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Chair will advise the Senator from Delaware that he only has 2½ minutes remaining on the amendment, and the Senator from North Dakota has 4 minutes 42 seconds.

Mr. BENNETT. In that case, Mr. President, I ask I be recognized for 2½ minutes.

Mr. ROTH. Mr. President, I yielded myself, I think it was 3 minutes. Is it not normally the practice to advise the speaker when he has come to that?

The PRESIDING OFFICER. Regrettably, the Chair did not hear the reference to 3 minutes. We will restore the time if the Senator so desires.

Mr. DORGAN. Mr. President, the Senator did ask to be notified after 3 minutes. I have no objection to that.

Mr. ROTH. I thank the distinguished Senator from North Dakota for his courtesy. I yield such time as is remaining to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 7 minutes.

Mr. BENNETT. Mr. President, I have addressed this issue before and do not want to spend a great deal of time in repetition. But I think we should focus on what we are really talking about when we talk about capital gains tax. There are many who say, ''Well, the people who have a capital gain are wealthy and we are letting them off the hook if we do not tax that wealth.'' What we are really talking about, in accumulated capital, is where will that capital be deployed?

Recently there have been studies as to the number of millionaires in the United States and how they got their money. Overwhelmingly, the money comes from one of two sources: They inherit it or they start businesses. You do not become a millionaire by saving your wages. You become a millionaire by creating something in the form of a company and then seeing it grow. When you die your children inherit it, and then they fall into the first category. That has to do with death taxes.

But millionaires come from risk-taking, millionaires come from entrepreneurial activity. Where do jobs come from? They come from risk-taking, they come from entrepreneurial activity. As I have said here on the floor, in the real world as opposed to the classroom, millionaires who are the result of entrepreneurial activity have an itch to stay entrepreneurial. Once they have seen their investment become what they call on the market a mature investment, many, many times they want to move on. They want to take their money out of a mature investment and put it into another entrepreneurial activity. But the present level of capital gains taxation prevents them from doing that, at least psychologically.

Again, on the floor I have given examples of people who have seen their investment grow tremendously in a high-risk circumstance. They got the rewards that came from taking that risk and now they want to move on and take another risk, create more jobs and accumulate capital and wealth in this country. When they calculate what happens to them under the capital gains tax they say, ''I am not going to do it. I can't afford it.'' And they leave their money tied up in a mature investment, whereas the opportunity in an entrepreneurial investment is denied them by the capital gains tax.

There is one thing that they do, and I have seen this—indeed, if I may, Mr. President, I have done this myself, to my sorrow. With the entrepreneurial itch saying let's put some money in a new startup circumstance, but feeling that your own money is locked up because of the capital gains tax, the itch becomes so strong that you put money into the entrepreneurial activity anyway, only you borrow it. And now the entrepreneurial activity has to carry not only the responsibility of a fair return, but enough money to pay the interest.

I will not belabor it because I have given major speeches on this issue before. But I think the cap proposed by my friend from North Dakota, while well-intentioned, would in fact impede the flow of capital, it would move us in a direction that would ultimately redound to the disadvantage of the economy. I remind you once again, the Chairman of the Federal Reserve Board, who is concerned with watching money move around the economy and would like to see as much money as possible into entrepreneurial activity, has recommended to us that the ideal capital gains rate for this country should be zero. I am not bold enough to propose that on the floor because I know it would not pass. But I always remind people of that because that is the direction in which I think we ought to go.

For that reason I oppose this amendment.

The PRESIDING OFFICER. Who yields time? The Senator from North Dakota.

Mr. DORGAN. Mr. President, I was staying right with the Senator from Utah until he mentioned the Chairman of the Federal Reserve Board. In ancient Rome they used to have augurs, and the practice of augury was to read the flight of birds and the entrails of dead cattle in order to predict the future.

I have said perhaps the Fed could use some augurs, given their recent performance. They indicated that if unemployment ever fell below 6 percent we would have a brand new wave of inflation. Unemployment has been under 6 percent for 38 months and of course inflation is down, way down. But that is another subject for another day.

The folks at the top of the income structure in this country already have a 30-percent tax differential on capital gains. They pay 30 percent less on capital gains than ordinary income tax rates. My proposal to limit to $1 million for a lifetime the capital gains tax benefits in this bill will effectively relate to about 1 percent of the taxpayers.

I do not disagree with the comments by the Senator from Utah about the germ of an idea and the spark of interest to own a business and that is where success is developed and that is where millionaires come from. I do not disagree with that at all.

I would make this point, however. There are people out here working today who have that same instinct inside of wanting to own their own business and wanting to build a business. Their only stream of income is a wage, and they pay a higher tax on that wage than is being proposed for capital gains. Because of that higher tax they may not be able to accumulate the capital to invest in the business and become the entrepreneur and become successful and make a lot of money.

So my suggestion is this. We have other streams of income in this country which we measure for tax purposes. We have rents, we have salaries, we have capital gains, we have a range of interests, we have a range of incomes. And there are those who take out one stream of income, one kind of income called capital gains and say let's give a tax break to capital gains.

I am not opposed under any circumstance to a tax break for capital gains. We now have one, the 30 percent tax preference. What I oppose is a circumstance where the bulk of the tax preference goes to such a few in the population. I am saying we ought to do this differently, and I have felt that way for 10, 15 years. I think it would be good for the country to do it differently.

I say this finally. If we go back to the ''totus porcus'' approach for capital gains—buy a share of stock, hold it 6 months and 1 day and get a tax preference—go back to the broad approach, much of which is proposed here, we will resurrect the tax shelter industry, resurrect an army of people in the tax shelter industry, and we will rue the day we do it.

The tax shelter industry is to productive enterprise like professional wrestling is to the performing arts. I defy anyone to tell me one good thing that comes from the tax shelter industry in this country. We largely got rid of it in 1986 with the 1986 bill, and I am worried very much we create now a new set of circumstances to allow taxpayers of this country to hire the best minds in America, not for productive enterprise but to tell them how can they create, from their stream of income, capital gains by which they can make money off the Tax Code. That is my great concern. So I propose we limit the capital gains treatment for a taxpayer to $1 million during the taxpayer's lifetime.

Mr. BENNETT. Mr. President, will the Senator yield for a question? Does the time permit that?

Mr. DORGAN. How much time do I have?

The PRESIDING OFFICER. The Senator from North Dakota has 1 minute.

Mr. BENNETT. I shan't intrude further. I thank the Senator.

Mr. DORGAN. We will have an opportunity to discuss this further. I respect the views of the two Senators who spoke in opposition to this amendment. I would say we are talking in the outyears about $4 billion to $5 billion a year without my limitation. That $4 billion to $5 billion I would like to use to reduce taxes on wages to the extent we can.

The tax increases in this country have come from payroll taxes now. Two-thirds of the American workers pay more in payroll taxes than they do in income taxes, and I would have structured the tax bill completely differently than it is now structured. I would have addressed the issue of burgeoning payroll taxes which tries to be a clothes hanger on all of the acts of creating a job to say, ''By the way, we are going to hang all of these social obligations on the act of creating a job.''

I am very concerned about that in terms of the disincentive it gives to someone in business to create new jobs. I don't want to go far afield, but there is no social program we discuss in Congress that is as important or effective as a good job to cure what ails this country.

So this $1 million limitation makes good sense. I hope Members of the Senate will consider it and hope that we will have a chance to vote on it.

The PRESIDING OFFICER. The Senator's time has expired. The Senator from Delaware has 2 minutes and 55 seconds.

Mr. ROTH. Mr. President, I yield back the remainder of the time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 517. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 24, nays 75, as follows:

[Rollcall Vote No. 132 Leg.]

YEAS—24

| | | |
|---|---|---|
| Akaka | Ford | Levin |
| Boxer | Harkin | Mikulski |
| Byrd | Hollings | Murray |
| Conrad | Inouye | Reed |
| Daschle | Johnson | Robb |
| Dorgan | Kennedy | Rockefeller |
| Durbin | Lautenberg | Sarbanes |
| Feingold | Leahy | Wellstone |

NAYS—75

| | | |
|---|---|---|
| Abraham | Bryan | Craig |
| Allard | Bumpers | D'Amato |
| Ashcroft | Burns | DeWine |
| Baucus | Campbell | Dodd |
| Bennett | Chafee | Domenici |
| Biden | Cleland | Enzi |
| Bingaman | Coats | Faircloth |
| Bond | Cochran | Feinstein |
| Breaux | Collins | Frist |
| Brownback | Coverdell | Glenn |
| Gorton | Kerry | Roth |
| Graham | Kohl | Santorum |
| Gramm | Kyl | Sessions |
| Grams | Landrieu | Shelby |
| Grassley | Lieberman | Smith (NH) |
| Gregg | Lott | Smith (OR) |
| Hagel | Lugar | Snowe |
| Hatch | Mack | Specter |
| Helms | McCain | Stevens |
| Hutchinson | McConnell | Thomas |
| Hutchison | Moseley-Braun | Thompson |
| Inhofe | Moynihan | Thurmond |
| Jeffords | Murkowski | Torricelli |
| Kempthorne | Nickles | Warner |
| Kerrey | Reid | Wyden |

NOT VOTING—1

Roberts

The amendment (No. 517) was rejected.

Mr. ROTH. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York.

## VISIT TO THE SENATE BY THE PRIME MINISTER OF AUSTRALIA

Mr. MOYNIHAN. On behalf of the distinguished chairman of the Committee on Foreign Relations, Mr. HELMS, I ask unanimous consent that the Senate stand in recess for 3 minutes that we might greet our distinguished visitor, the Honorable John Howard, the Prime Minister of Australia.

[Applause.]

RECESS

There being no objection, the Senate, at 11:10 a.m., recessed until 11:14 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BURNS].

## REVENUE RECONCILIATION ACT OF 1997

The Senate continued with the consideration of the bill.

MOTION TO REFER

The PRESIDING OFFICER. The order of business is the motion made by the Senator from North Dakota, a motion to refer to the Budget Committee with instructions.

I believe 10 minutes of debate, equally divided, are in order, am I not correct?

Mr. MOYNIHAN. The Chair is always correct.

I yield 5 minutes to the Senator from North Dakota.

Mr. DORGAN. Mr. President, I will be brief. This motion is relatively simple.

My concern about where we are heading is this. I am concerned that we will decide to have balanced the budget and provided substantial tax cuts. And then, because the tax cuts are so backloaded, in the second 5 years our country will find itself back in a deficit.

I propose that we remedy that by having a trigger mechanism that would sunset the provisions of capital gains

and the IRA's in the following circumstances: First, if the estimated loss as a result of the tax cuts exceeds our current expectations; and second, if the Treasury Department says we are running a deficit in the previous fiscal year.

My point is very simple. If we begin to run a deficit, and if running a deficit is because the cost of these tax cuts exceeds what we now think it will be, I would like us to trigger them off so we can get the budget back in balance. I just do not want to get into a circumstance that we have found ourselves in previously. We do not want to think we will turn out all right, and find 7 years down the road a huge Federal deficit.

I point out that the tax cuts in this bill are fairly well backloaded, and the upper-income tax cuts, just as an example, $17.8 billion in 2002, the same tax cuts will cost nearly $100 billion in the year 2007. My fear is because the tax cuts are backloaded we could find ourselves in a circumstance where we are right back into a deficit.

Again, the two points are this: If the cost of the tax cuts significantly exceeds what we estimated them to be, and if we have had a deficit in the previous fiscal year, then my motion would trigger a repeal, temporary repeal, of four provisions of the tax cut dealing with capital gains and IRA's.

I reserve the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. At the appropriate time I will make a point of order against the motion to refer on two grounds.

Let me point out in the beginning that this is a matter that was not included in the budget agreement. It introduces a new aspect to the agreement that is not consistent with what we have discussed before.

I yield 2 minutes to the Senator from New Mexico.

Mr. DOMENICI. Mr. President, first of all, we discussed all of these issues in the very lengthy negotiation with the White House. Their packages in the past have been gifted by having the tax cuts be temporary. That is the way the President's budgets have been in the past. He finally came to the realization that that was not fair to the American taxpayers. So that concept was eliminated from the budget agreement. We are going to give taxpayers a tax cut, period.

But also the argument that is being made that this may somehow explode in the outyears, we have an agreement that for the first 10 years it will not exceed $250 billion. I understand the valuation of this package is that we have done that in this finance bill. It is only $247 billion over 10 years. That is the best we can do. We are right on the money.

I believe we ought to leave the agreement alone and leave this very good tax bill alone.

Mr. ROTH. I yield the remaining time to the Senator from Oklahoma.

The PRESIDING OFFICER. There are 3 minutes and 17 seconds remaining.

Mr. NICKLES. I urge my colleagues to vote no on this motion. This motion basically says if we do not meet the targets we will have automatic tax increases. You did not hear it the other way around—you did not hear if we do meet the targets, we will have automatic decreases.

The question is, are we spending too much, or are we taxing too little? The Senator from North Dakota obviously thinks if there is a deficit we need more taxes. We need to reach in and take more away from taxpayers. I disagree with that. That is the President's position.

As the Senator from New Mexico said, he had automatic tax increases in the outyears. We did not agree with that in the leadership package with the President. We said no, the tax cuts will be permanent. They will be real, and they are not stacked toward higher income. Despite what some of my colleagues said, 82 percent of tax cuts are directed towards families with children and for education. That is family friendly.

So I will just urge my colleagues, if we are going to have an automatic deficit reduction, make sure we meet the targets. Let's work on the spending side. Let's have something automatically that will reduce Government spending. I really do believe the problem is not that we are undertaxed. I really believe that the problem is we are overspent.

I urge my colleagues to vote no on this motion.

Mr. ROTH. Has all time been yielded back?

The PRESIDING OFFICER. All time has not been yielded back. The Senator from Delaware has 1 minute and 45 seconds and the Senator from North Dakota has 2 minutes, 54 seconds.

Mr. DORGAN. Mr. President, I say to the Senator from Oklahoma, I am not suggesting that we should increase taxes. I am saying to the extent that we now reduce taxes and reduce revenue, and to the extent that that helps cause another Federal deficit in the second 5 years because the cost of those tax cuts explodes, I say we should put an insurance or safety mechanism in this bill to prevent us from running a deficit again.

Now, I hope that we will have learned from the last decade. There is merit, and I compliment the Members of this Congress who care about the Federal deficit, there is merit in fiscal discipline in dealing with the deficit. I just urge if we have a circumstance where we can provide protection in the outyears against an exploding of the Federal deficit, again we try to do that.

I am somewhat concerned that the chairman will make a point of order against my motion. I understand that there will be a budget enforcement mechanism offered by the Senator from New Mexico. Will a point of order will be made against them? Enforcement mechanisms that provide protection against an explosion of the Federal deficit make great sense to me. That is the proposal that I offer with this trigger.

I reserve the balance of my time.

Mr. NICKLES. Mr. President, again, I just say that there are two sides to the question. We started some new spending programs. We have a program called Kid Care, and the agreement was for it to be $16 billion. It has grown already to $24 billion. Guess what? That additional $8 billion is only for 5 years. We do not even pretend it goes the next 5 years. So what about if that program explodes?

My point being, the motion of the Senator from North Dakota is if we do not meet deficit targets we have automatic tax increases, or we will tell people they can have capital gains for 5 years but not beyond, or tell people they can have an IRA this year, but not in the future?

I think we should restrain spending, not increase taxes. I urge my colleagues to vote no on this motion.

I yield the balance of my time.

Mr. DORGAN. Well, let us suppose that in 7, 8, or 9 years we see the deficit begin to explode on us. Is the Senator suggesting that we cut health care for kids, but that we retain tax cuts that are backloaded, that are six and eight times as large in the year 2007 than in the year 2002, and are for the largest income earners in this country? I would like to see us vote on that in the U.S. Senate.

My point is we are making deliberate decisions about the Tax Code here, some good decisions, some I think are not so good.

We need to think about the consequences of these decisions. This motion would help us do that. If the tax cuts exceed the expected amount and if we are also running a deficit in the outyears, four provisions of this tax cut bill would be temporarily suspended.

That is my motion to refer today. I hope the Senate would consider it favorably.

I yield back the balance of my time.

The PRESIDING OFFICER. All time has expired. The Senator from Delaware.

Mr. ROTH. Mr. President, I make a point of order against the motion to refer on two grounds. First, that it is not germane to the bill under section 305 of the budget, and second that the motion includes budget process matters not reported from the Budget Committee, in violation of section 306.

Mr. DORGAN. Mr. President, pursuant to Section 904(c) of the Congressional Budget Act, I move to waive Section 305(b) to Section 306 of that act with respect to my motion.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question is on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] and the Senator from New York [Mr. D'AMATO] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 34, nays 64, as follows:

[Rollcall Vote No. 133 Leg.]

YEAS—34

| | | |
|---|---|---|
| Akaka | Feinstein | Levin |
| Biden | Ford | Moseley-Braun |
| Bingaman | Glenn | Murray |
| Boxer | Harkin | Reed |
| Bumpers | Hollings | Reid |
| Byrd | Inouye | Robb |
| Conrad | Johnson | Sarbanes |
| Daschle | Kennedy | Torricelli |
| Dodd | Kerry | Wellstone |
| Dorgan | Kohl | Wyden |
| Durbin | Lautenberg | |
| Feingold | Leahy | |

NAYS—64

| | | |
|---|---|---|
| Abraham | Frist | McCain |
| Allard | Gorton | McConnell |
| Ashcroft | Graham | Mikulski |
| Baucus | Gramm | Moynihan |
| Bennett | Grams | Murkowski |
| Bond | Grassley | Nickles |
| Breaux | Gregg | Rockefeller |
| Brownback | Hagel | Roth |
| Bryan | Hatch | Santorum |
| Burns | Helms | Sessions |
| Campbell | Hutchinson | Shelby |
| Chafee | Hutchison | Smith (NH) |
| Cleland | Inhofe | Smith (OR) |
| Coats | Jeffords | Snowe |
| Cochran | Kempthorne | Specter |
| Collins | Kerrey | Stevens |
| Coverdell | Kyl | Thomas |
| Craig | Landrieu | Thompson |
| DeWine | Lieberman | Thurmond |
| Domenici | Lott | Warner |
| Enzi | Lugar | |
| Faircloth | Mack | |

NOT VOTING—2

D'Amato Roberts

The PRESIDING OFFICER. On this vote the yeas are 34, the nays are 64. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained on both grounds.

The motion to refer is not in order.

The Senator from New York.

Mr. MOYNIHAN. Mr. President, I move to reconsider the vote by which the motion was rejected.

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

The motion to lay on the table was agreed to.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## BALANCED BUDGET ACT OF 1997—EXTRANEOUS MATERIAL

Mr. ROTH. Mr. President, pursuant to section 313(b)(1)(c) of the Congressional Budget Act, I submit a list on behalf of the Committee on the Budget of the extraneous material in S. 947 the, Balanced Budget Act of 1997, as reported. I ask unanimous consent that the list be printed in the RECORD.

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

BALANCED BUDGET RECONCILIATION ACT OF 1997—EXTRANEOUS PROVISIONS

| Senate | |
|---|---|
| Provision | Comments/Violation |
| AGRICULTURE, NUTRITION, AND FORESTRY | |
| Sec. 1001 | Hardship waiver continues after 2002 which means title has a net cost. Byrd rule (b)(1)(E): Increases outlays or decreases revenues for a year after 2002 and the title results in a net increase in outlays or net decrease in revenues in that year. |
| BANKING, HOUSING, AND URBAN AFFAIRS | |
| | There are no extraneous provisions in this title. |
| COMMERCE, SCIENCE, AND TRANSPORTATION | |
| Sec. 3002 where it adds "(15)(A)(iii)" p. 110 lines 1–25, p.111 lines 1–4. | Report to Congress on digital TV conversion, Byrd rule (b)(1)(A). |
| ENERGY AND NATURAL RESOURCES | |
| Sec. 4001—first proviso | Funds resulting from the leasing or other use of a reserve facility on or after October 1, 2002 shall be available to the Secretary of Energy without further appropriation, for the purchase of petroleum products for the reserve. Byrd rule (b)(1)(A): Produces no change in outlays or revenues during the fiscal years covered by the reconciliation instructions. |
| FINANCE—DIRECT SPENDING | |
| Medicare: | |
| Sec. 5013 | Requires Secretary of HHS to study PACE Program. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5015(c) | HHS Study of Social HMO Integration into Medicare Choice. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5021 | Authorization of the Nation Bipartisan Commission on the Future of Medicare. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5022 | Authorization of the Medicare Payment Advisory Commission to replace the Prospective Payment Assessment Commission and the Physician Payment Review Commission. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5153(a) & (b) | Authorization and study of Rural Hospital Flexibility Program. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5156(c) and (d) | Reports related to telemedicine. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5217 | GAO fraud and abuse report date due amendment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5302 | Study on Payments for Long-Term Care Hospitals. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5364 | Study on Definition of Homebound. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5366 | Inclusion of Costs of Service in Explanation of Benefits. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5521(c) | Study and Report on Clinical Lab Payments. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Medicaid: | |
| Sec. 5701(b) | Reports on Medicaid Managed Care. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5711(b) | Study and Report on the Boren Amendment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Welfare: | |
| Sec. 5821 | Evaluations of Welfare to Work program and Report to Congress. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5823 | Clarification of states ability to sanction an individual receiving TANF for noncompliance. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| Sec. 5871 | Sense of the Senate regarding the correction of Cost Living Adjustment. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| GOVERNMENTAL AFFAIRS | |
| | There are no extraneous provisions in this title. |
| LABOR AND HUMAN RESOURCES | |
| Sec. 7001(a)(4) | Allows guarantee agencies to use earnings from excess guarantee agency reserves placed in restricted accounts for limited purposes. Byrd rule (b)(1)(A): Produces no change in outlays or revenues. |
| VETERANS' AFFAIRS | |
| | There are extraneous provisions in this title. |

## REVENUE RECONCILIATION ACT OF 1997

The Senate continued with the consideration of the bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. DASCHLE. Mr. President, prior to the vote, it was my understanding that the Democratic amendment would now be in order. Is that correct?

The PRESIDING OFFICER. The Senator from South Dakota is correct.

AMENDMENT NO. 527

(Purpose: To provide tax relief for working families, to increase the rate and spread the benefits of economic growth, and for other purposes)

Mr. DASCHLE. Mr. President, I have the amendment at the desk, and I ask for its consideration.

The PRESIDING OFFICER (Mr. BROWNBACK). The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Dakota (Mr. DASCHLE), for himself, Mr. BINGAMAN, Mr. CONRAD, Ms. MIKULSKI, Mrs. BOXER, Mr. DODD, Mr. KERRY, Ms. LANDRIEU, Mr. CLELAND, Mr. DURBIN, Mr. KENNEDY, Mr. FORD, and Mr. LAUTENBERG, proposes an amendment numbered 527.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. DASCHLE. Mr. President, this debate today and tomorrow is not about whether to cut taxes but how to cut them. Democrats support a tax cut, but we want them to be the right kind. We want them to be fair, especially to working families.

I congratulate Senator ROTH and Senator MOYNIHAN and the Members on both sides of the aisle for the bipartisan effort to improve the House bill. In many ways it is a substantial improvement of the bill passed by the House Ways and Means Committee. But in the view of many Democrats, problems still remain in the version that is now before us.

Under both the House and the Senate plans, the top 1 percent of taxpayers, people making over $350,000 a year, receive more than the bottom 60 percent put together, people making under $50,000.

This chart depicts very well what the circumstances are. In the Archer bill, 67 percent of all the benefits in the tax bill go to the highest 20 percent. In the Roth bill, 65 percent of all the benefits go to the top 20 percent. In the bill that we are presenting as an alternative today, 20 percent of the benefits go to the top 20 percent, but 75 percent of the benefits go to the middle 60 percent.

So the distribution, the progressivity of the alternative plan that we are presenting today, is a significant improvement for working families across this country.

The people who have yet to share fully in the economic recovery are in the bottom 60 percent, the bottom four quintiles of income distribution, not in the top 1 percent. They ought to be the ones to largely benefit from the plan that this Congress and ultimately that this country enacts into law.

But instead of helping identify middle-class families, the House and Senate bills shortchange them—9.2 percent in the middle 20 percent, 2.4 percent in the next to the bottom quintile, 2.3 percent under Roth, and a very small percentage of the benefits actually go to middle-class working families as the Finance Committee bill is written today.

We can do better than this. We owe the American people better than this, and our bill attempts to do that.

We recognize that we are in the minority, and many Democrats, recognizing that, have worked closely with our Republican colleagues to do the best we can to reflect a better distribution. Many of us will support the final passage if we are not successful in passing this version because we don't want the perfect to be the enemy of the good.

But it is important for the American people to know what we could have done and what we would have done were we to be in the majority.

So we are offering this comprehensive alternative but with an expectation of having a good debate and contrasting the Finance Committee-passed bill, which is dominated by the Republican majority, with our Democratic alternative.

Our Democratic alternative really has four objectives.

First and foremost, what I have just described, we want to ensure that there is fairness for working families.

Second, we want to target the growth incentives to those companies and those activities where we can do the most good.

Third, we want to ensure that we put an emphasis on education.

And, fourth, we don't want a tax time bomb. We don't want to explode the deficit at some point in the future given the terrific effort that has been put forth in recent years to bring the deficit down and ultimately to balance the Federal budget.

So our goal is to do all of those things and stay within the bounds and the confines of the budget agreement that was agreed to by the administration and leadership in both the House and the Senate.

Our plan then delivers on all counts. We provide a fair, targeted approach to middle-class families, and we do that in a number of ways.

Most importantly, we recognize that it is an income tax that working families are most concerned about. They don't pay as much Federal income tax as they pay other forms of taxes that affect them directly.

Middle-class families are faced with a substantial tax liability that falls outside the realm of income tax today. In fact, 99 percent of all working families who earn less than $21,000 pay more in payroll taxes than they do in income taxes; 97 percent of those who make between $21,000 and $41,000 pay more in payroll taxes than they do in income tax; 90 percent of those who make $41,000 to $62,000 actually pay more in payroll tax than they do in income tax. Even in the category that we would call middle-class families, $62,000 to $94,000, 65 percent, well over half, almost two-thirds of them, pay more payroll tax than they do income tax. It is only in the top fifth, those making more than $94,000 that actually pay, the majority of them, more income tax than they do payroll tax.

So one of the key features, one of the centerpieces of our bill, is to ensure that we recognize where the tax liability is for working families.

So we apply the child tax credit against the payroll tax as well as against the income tax because it is the payroll tax where we can do the most good for most working families.

We have a chart that really depicts the circumstances for working families today—families, in this case, making somewhere between $22,000 and $41,000. After they take their deductibles, after they get down to their net income, they pay an average of $252 in income taxes and over $3,828 in payroll taxes. So their liability for payroll tax is substantially higher. Not only do 99 percent of them pay more in payroll tax than income tax, what they pay is so much more—$3,828 versus $252 in income tax.

So our bill provides an opportunity for those who are saddled with a far greater degree of liability for payroll tax to be able to address it in the most effective way. That child tax credit would be made applicable to both the payroll tax and the income tax.

We also do something else. As the current Finance Committee bill is written, the earned-income tax credit is calculated first. And then, if there is anything left, they are eligible for the child tax credit.

Mr. President, we stack them in just the reverse fashion. We provide the child tax credit first so that they have the full use of that credit against either payroll tax or income tax, and then we allow the earned-income tax credit to kick in.

So we provide working families an opportunity first to use the child tax credit against the payroll tax, and second to be sure that they have the full opportunity to use it by stacking it ahead of an EITC, the earned-income tax credit, if they are indeed eligible for it.

So we make the bill fairer, and from those fairness proposals that we provide that distributional analysis that so clearly slows the contrast—I will just put this chart up briefly again to clarify it again. That is how we get this great distributional breakdown—75 percent of the benefits going to the middle 60 percent of all income brackets.

That is why there is such a difference between the 25 percent and 10 percent and 9 percent in this case or 32 percent and 21 and 19 in the case of the fourth 20 percent. So we really provide a far

better distributional opportunity for working class families than anything else.

But that is what our first goal was, to ensure fairness, to ensure that those who need it the most have the most opportunity to benefit from a bill like this.

Our second goal, as we said, was to ensure that we provide the maximum degree of opportunity to businesses that really need the kind of help that these tax tools can provide. In order to do that right, what we want to be able to do is target the capital gains and the other tax features in ways that will ensure that we provide the most bang for the buck. We eliminate the huge capital gains windfall for the top 1 percent. In the currently drafted Senate Finance Committee bill, we change their flat 20 percent capital gains rate, which benefits the top bracket most, to an equal 30-percent capital gains exclusion for all income brackets.

Let me explain what we are attempting to do in this case. Right now, because of the flat cap of 28 percent on capital gains taxes, those in the top income tax bracket actually get a benefit of about 30 percent in capital gains exclusion because of the cap. What we do is apply that capital gains exclusion, that 30 percent, across all income brackets, thereby giving working families, those who are making $60,000 or $80,000 or $100,000, the same opportunity to use the 30 percent exclusion that the upper income bracket currently has available to them.

So we expand that 30 percent across the entire array of income brackets in order to assure that people who want to invest in this country, who want to benefit from the tremendous economic opportunity and the growth that we would like to continue here will benefit—that is, will benefit those who can use it the most. So we provide more opportunities for that to happen.

We also try to do a number of things that will target small businesses and family farms. We cut the capital gains rate nearly twice as deeply for most small businesses. What we provide is a 50-percent exclusion for investment into companies with assets of under $100 million, startup companies—a 50-percent exclusion across all income brackets. Startup companies which need that investment, that cannot compete with General Electric or cannot compete with Westinghouse or IBM, these are companies that really need the additional incentive, and we provide it to them. And then we say if you are really a startup company with assets under $25 million, we are going to allow you to roll over your capital gains taxes entirely if you reinvest within 6 months. So there is no capital gains on an investment in a company with assets under $25 million.

When it comes to targeting the benefits to the businesses where we could do the most good by having the 30-percent exclusion for all working families, by including a 50-percent exclusion for businesses under $100 million and a complete rollover of taxes for those companies with assets under $25 million, in addition to the $500,000 exclusion on all households, on the sale of all houses, we provide, in my view, the best package that has yet been proposed to the Senate with regard to how to use the capital gains tools most effectively.

We also do something that the NFIB, the National Federation of Independent Business÷ and many business organizations that said is their No. 1 priority. We make health insurance fully deductible for the self-employed—fully deductible. That is not in the Finance Committee bill, but it is in the Democratic alternative.

So, Mr. President, when you look at all the different ways in which we try to help small, Main Street businesses, we provide a substantial degree of additional assistance to those families who need it the most. But we do not limit ourselves just to small business. We also address the problem of inheritance tax with farmers today.

Currently, small businesses and farmers who want to keep a business or a family farm in the family are finding it exceedingly difficult to do that. You cannot do that if you have to pay the inheritance taxes, in many cases, on small businesses or family farms that you want to keep in the family. So we increase by $900,000 the exemption for those businesses and family farms which are truly kept in the family. We will provide a $1.5 million inheritance tax exemption for those businesses and family farms that want to be kept in the family as generations move on.

So, Mr. President, I think this is a very significant array of tax tools to help those across this country, whether they are workers, businesses, or farmers, in an effort to do as much as possible to help business succeed in this increasingly competitive and yet optimistic economic outlook that we face in the country today.

That is the second goal—providing the greatest degree of capital growth to those areas where we can do the most good.

The third goal is education. And, again, I will say what I said at the beginning. I think the Finance Committee deserves great credit for a lot of the things they did in that bill to try to advance education through our Tax Code, to do a number of things that will be very helpful and beneficial not only to students but to working families and to schools themselves. We just think you can do a lot better. We think that instead of just 2 years for the HOPE credit, we ought to be providing 4 years of HOPE credit opportunities. Instead of just ensuring that we provide the KIDSAVE option, bonus credit for education IRA savings, we ought to ensure that we provide for a complete Pell grant eligibility. We do not penalize Pell grant recipients. We provide the full KIDSAVE option, but we do not say you can have one or the other. We are not going to penalize those who take out the Pell grant, as well. So we want to do as much as we can to ensure through the HOPE credit, through the KIDSAVE, through Pell grants the full opportunity to use the benefits that the Federal Government provides to ensure that people have a chance to go to school. We do not think that the limited funding for crumbling schools in the bill is going to be adequate enough. We provide additional funding for crumbling schools, as well.

So, Mr. President, when it comes to education, these tools are going to go a lot further in ensuring that every single student has the opportunity to go to school and to take full advantage of the opportunities that we provide in this tax bill to help offset the increasing costs of going to college today.

Finally, Mr. President, we think it is very important that we be fiscally responsible. That was our fourth goal. We are concerned about the tax time bomb. The Senate bill currently is very heavily backloaded. The billions of dollars in additional cost in the year 2017 cause us great concern; $830 billion is what has been estimated by the Joint Tax Committee as the cost in the year 2017 for the Senate bill today. The cumulative cost in the year 2007 is $250 billion; in the year 2002, 5 years from now, $85 billion. So while we live within the confines of the budget agreement in 5 and in 10 years, we are not so sure that we do that in the outyears, in the years beyond 10 years. What happens in the year 2017 when we have to face the prospect of a loss of revenue of some $830 billion?

Mr. President, we can do better than that as well. I think it is very important that we try to maintain the fiscal discipline that we have acquired in recent years, that has brought so many great economic dimensions to our country and to our future as a result of the discipline and the wise decisions that we made as far back as 1993.

So, Mr. President, in summary, our Democratic alternative is truly a families first tax plan, providing the greatest degree of relief to middle-class families across this country regardless of whether they are laborers or business people or farmers. We have shown it is possible to be progrowth, profairness and profiscal responsibility at the same time. Our bill provides help for working class families, provides good help for those businesses and industries that want to continue to grow in this rapidly growing economy in a competitive way. We provide the greatest degree of assistance to education of any tax bill available in the Congress today. And we do it all in the context of fiscal responsibility, our fourth goal.

Mr. President, I HOPE our colleagues will take a good look at this plan. I am excited about it. I believe in it. I think a lot of people would like to see this legislation passed over and above what has been proposed by the Finance Committee in spite of the good work they have done in many areas.

I might add that the Secretary of the Treasury has just sent a letter that is very laudatory of the effort made by our Democratic caucus, and I ask unanimous consent at this time that a letter dated June 26 sent to me by the Secretary of the Treasury, Robert Rubin, be printed in the RECORD.

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

DEPARTMENT OF THE TREASURY
*Washington, DC, June 26, 1997.*

Hon. TOM DASCHLE,
*Minority Leader, U.S. Senate,*
*Washington, DC.*

DEAR TOM: I want to commend you and the other Senate Democrats for your tax proposal.

Any tax-cut package must meet four basic tests to reflect sound policy. First of all, the tax cuts must be fiscally responsible by avoiding an explosion in out year costs. Second, the tax cuts must provide a fair balance of benefits for working Americans. Third, the tax cuts must encourage economic growth. Fourth, the tax package must reflect the terms of the bipartisan budget agreement including a significant expansion of educational opportunities for Americans of all ages. We believe that your overall package meets each of these tests.

We are particularly pleased that your proposal gives American families the help they need to make investments in education and life-long learning. The decision to include a HOPE scholarship proposal mirrors our initiative to make education more affordable and to make the 13th and 14th grades universal. You have improved our initial proposal by allowing students who receive Pell Grants and still pay tuition to receive the HOPE scholarship. We fully endorse that change. Although our tuition deduction plans differ in some particulars, we are pleased that your proposal incorporates the full $10,000 tax benefit for tuition paid—regardless of its source. Like our proposal, your tuition plan will help families who are not wealthy enough to pay for the entire amount of tuition out of savings and are therefore forced to borrow. It will also help Americans undertake lifelong learning so that they can take advantage of the opportunities—and meet the challenges—of the new economy.

We are pleased that your proposal includes a child tax credit that can be offset against payroll taxes, thereby helping millions of working families raise their children. In contrast to the Senate Finance Committee bill, this feature will help ensure that many low-income families receive the full benefit of the child credit.

At the same time, your proposal includes several of the President's priorities that were part of the budget agreement—including an expansion of Empowerment Zones and Enterprise Communities, and the Brownfields tax incentives. Your proposal also addresses many of the President's other priorities—including a permanent extension of the exclusion for employer-provided educational assistance.

In sum, your tax-cut plan is a welcome and important proposal. While we continue to analyze specific provisions, we support the overall structure of the plan. We hope that members of both parties will give it careful consideration and will work with us to enact a tax-cut package that meets our four tests.

Sincerely,

ROBERT E. RUBIN.

Mr. DASCHLE. I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I yield myself such time as I may take.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ROTH. Mr. President, I rise in opposition to the substitute amendment proposed by the distinguished minority leader. The proposal that passed the Senate Finance Committee with overwhelming bipartisan support is simply a better package. The Taxpayers Relief Act of 1997 is fair, it is bipartisan, and, most importantly, it provides long overdue tax relief for middle-income families.

It makes clear that the consensus which is, indeed, developing on Capitol Hill is that the days of big, intrusive, overbearing Government are coming to an end. I am, indeed, pleased by the work and cooperation exhibited by the members of our Finance Committee. Our bill contains the best thinking and the most workable policies from both sides of the political aisle.

Mr. President, from the very beginning, I asked for ideas from all members of the Finance Committee, Republican and Democrat alike. We asked that they put their ideas in writing, and these were reviewed carefully and many incorporated into the initial draft. Again and again, we consulted with each other, met informally and discussed, and I can say I think the end product, our bill, was, indeed, the best thinking and most workable policies from both sides of the political aisle, and I might add, as well, from both ends of Pennsylvania Avenue, because we carefully reviewed and considered the proposals of the White House as well as those of the Congress.

It was put together constructively with an eye to providing American families the tax relief they need to encourage education, something that everybody wants for their children, and, most importantly, creating economic conditions that will promote jobs, opportunity, and growth for all the American people. Finally, let me point out the Finance Committee proposal meets the guidelines of the budget agreement.

The substitute amendment introduced by the distinguished minority leader today is not, in my humble opinion, a reflection of the growing consensus and bipartisan spirit that is reflected in the Finance Committee proposal. And it contains several major flaws which I would like to address. It does not—and I emphasize the word ''not''—provide immediate tax relief for middle-class American families. It does not. Again, I emphasize the word ''not,'' it does not effectively address the need to promote and improve educational opportunities for American youths. It does not promote meaningful savings, investment, economic growth.

The Chairman of the Federal Reserve said that the most important need of this country is to encourage savings, savings on the part of the American people. I regret that the substitute amendment was not drafted in such a way that draws the best each party has to offer in the debate over tax relief.

Let me address each of these concerns a little more specifically. A major distinction between the child credit in the proposed Daschle amendment and the Finance Committee bill is the way the credit is phased out. The minority leader's amendment would phase the child credit out over a fixed dollar amount. The way he does this, families earning over $70,000 would actually see an increase in their share of the tax burden. While these families under current law have a marginal tax rate of 28 percent, Senator DASCHLE's amendment would increase their rate up to 41 percent. That is a tax increase, not tax relief.

Beyond this, the Senate Finance Committee child credit gives a larger credit sooner, whereas the minority leader's credit phases in over time. Let's ask the American families, which one do they prefer?

Another major concern that I have with the minority leader's amendment is that it makes the child tax credit refundable. In other words, individuals who pay no income tax will receive a check from the Government. The Senate Finance Committee, in a bipartisan effort, considered and rejected the idea of making the credit refundable. Even the credit included in the administration's budget proposal was nonrefundable. Frankly, there are, indeed, very, very serious compliance problems associated with trying to administer a refundable tax credit. This was shown clearly by the administration in the package of reform proposals they released earlier this year to address fraud and error rates with respect to the Earned Income Tax Credit program. Frankly, it has been estimated that the fraud and error in that program is as high as 20 percent. It is obvious from the performance of IRS in this area that they are not equipped, at least at this stage, to administer a refundable program, at least another one, since they are already having such difficulties with the one already on the books. Our tax system works much more effectively when we reduce the amount of taxes people have to pay, rather than when the Government tries to give money back to Americans.

These are just a few of my concerns with the Daschle amendment regarding the child tax credit. There are other major concerns with this alternative proposal. For example, concerning education, the minority leader's alternative will result in tuition inflation, the last thing parents need. The education tax proposals contained in the Finance Committee tax bill represent the very best ideas from both ends of Pennsylvania Avenue. In studying the administration's HOPE scholarship tax credit, frankly the Finance Committee was very concerned about tuition inflation. In the past 15 years, college tuition has increased 234 percent—234 percent. For this reason, we carefully, and

again in bipartisan cooperation, Republicans and Democrats working together, crafted a proposal that will help keep tuition costs down. The Finance Committee proposal provides a 50-percent tax credit for the first $3,000 of tuition expenses; 75 percent of the first $2,000 of tuition expenses for students attending a community college. This will not encourage tuition inflation.

I cannot emphasize too much the importance of discouraging tuition inflation. In the Finance Committee we had a number of hearings where young people came and testified about the problem they had in paying for college tuition and expenses. One young lady, who was the daughter of a single parent, put herself through dental school with the help of her mother, and ended her college with a debt of something like $90,000. There is something wrong when our hard-working young students have to end their college careers and start their adult careers with that kind of debt overhanging them. So I cannot emphasize too much the importance of discouraging tuition inflation.

In addition to the HOPE scholarship tax credit and the education tax proposals contained in the Finance Committee bill, our design is to help families through all stages of education. These proposals include a permanent extension of employer-provided education assistance for undergraduate and graduate education. This is a proposal that has long been endorsed, sponsored jointly by my distinguished colleague Senator MOYNIHAN and myself. Our proposals include a student loan interest deduction as well as tax-free savings for graduate and undergraduate education. Our proposal also provides penalty-free IRA withdrawals for postsecondary and graduate education, a deduction for teacher training course work, a repeal of the tax exempt bond cap for new construction projects, and it helps in the construction of elementary and secondary school building.

As I have said, the educational proposals in the Finance Committee bill were crafted carefully. They had strong support on both sides of the political aisle as well as throughout the education community. A letter I received from the Association of American Universities and the National Association of Independent Colleges and Universities demonstrates this strong support. In part, that letter reads:

> The higher education related tax provisions being considered by the Senate Finance Committee will make higher education more accessible for undergraduate and graduate students.

Let me repeat that. The Association of American Universities and the National Association of Independent Colleges and Universities wrote the committee that our education-related tax proposals ''will make higher education more accessible for undergraduate and graduate students.'' And it goes on to say it will ''help ensure that the Nation has the highly educated, well trained work force it will need for the 21st century.''

Speaking of the 21st century, an analysis of the alternative plan introduced by my distinguished colleague, Senator DASCHLE, shows it does not contain nearly the kind of policies that are needed to keep America's economy strong. The incentives to save and invest that are contained in the Finance Committee bill are seriously weakened if not abandoned in the Daschle alternative. In the area of capital gains, for example, the Finance Committee tax relief bill was a bipartisan measure that passed by the overwhelming majority of 18 to 2. It received this broad support because of its fairness and the understanding by Members on both sides of the aisle that America needs capital for a bright and prosperous future.

The capital gains proposal in the Finance Committee bill is fair. According to recent IRS statistics, about 13.2 million individual taxpayers reported capital gains in 1994. Over 11 million of these taxpayers had gross incomes of less than $100,000, and over 7 million had incomes of less than $50,000. In other words, 50 percent of individuals with capital gains had incomes of less than 50,000 and reducing the capital gains tax to 20 percent will represent a real and significant tax break for millions of middle-income taxpayers.

It will create capital formation for jobs, opportunity and growth, most important objectives for the future. This, after all, remains our objective. It reflects what the American people have asked us to do. I am proud of the way Members of the Senate have come together from the right and from the left to give their best efforts to the Taxpayer Relief Act of 1997. Let us not undermine such a positive consensus with an amendment that does not reflect the bipartisan spirit we achieved with the Finance Committee legislation.

Mr. President, the bottom line is that the Daschle amendment does not—does not spell relief. The incentives to save and invest that are contained in the Finance Committee bill are seriously weakened, if not abandoned, in the Daschle alternative.

Let me say in conclusion, again, that we urge the Senate to reject the Daschle amendment and support the Senate Finance Committee bill which was endorsed by a vote of 18 to 2.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I ask unanimous consent that I be permitted to yield 2 minutes to the Senator from California without losing my right to the floor, and then I will proceed on our time.

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

Mr. KERRY. I yield 2 minutes to the Senator from California.

Mrs. BOXER. That was going to be my request. I ask for 3 minutes.

Mr. KERRY. I yield 3 minutes.

Mrs. BOXER. Mr. President, there is something that the chairman said that calls for a response. I am pleased to stand here today endorsing the Democratic leader's proposal. The way we should cut taxes in this country should be a fair way, it should be good for children, it should be good for working families, it should be good for small business, and that is what this proposal offers.

I say to my colleagues on both sides of the aisle, in 1993, we had two ways to approach the issue of economic recovery: the Democratic way, which passed by one vote, I might say, and the Republican way, which failed. Here we stand being able to cut taxes for the American people because we were right, because the kind of economic policy we put into place in 1993 has worked.

We have seen deficit reduction that has surpassed our imagination. We are down to $70 billion from a high of $290 billion when President Clinton took over as President. We have seen 11 million or 12 million new jobs created. We have seen an economic recovery finally hitting my State that is making this day possible.

So I say to the American people, they ought to look at the two plans. Again, we have a Republican plan, and we have a Democratic plan. Many of us may wind up voting in the end for the Republican plan. We will vote for amendments to change it, and if they are not adopted, we may well do that. But I think the Democratic leader's plan is the fair way, and let me say why.

Deloitte & Touche did an analysis of the Republican plan in the Senate, and in terms of hard, cold dollars—and they are a very incredible accounting firm, objective—they go through the taxes that would be owed under the Republican plan by a married couple with two children, one in college and one under the age of 18. What they come up with is that the household with an income of $20,000 will get a $375 break. The very highest break goes to people—listen to this—earning over $1 million a year. They would get $2,400 back. That surpasses the people in the entire middle class. They get more money if they earn $1 million back than any other part of this economic spectrum.

So in fairness, the Democratic plan has got it. It changes that. It doesn't give the most to the most wealthy, to those who earn over $1 million.

Second, children. My colleague talks about how children are going to be helped by the Republican plan, but in the Democratic plan, we help all the children.

Under this particular plan, only 50 percent of the children in California, Mr. President, get help, because this child care credit is not refundable off your payroll taxes. What we have to understand in this Senate is that people pay more in income tax. They pay

payroll taxes. We say you shouldn't be denied a child credit if you fall into that category.

Mr. President, I want to help all the children. I want to help small business by gearing capital gains cuts to them. That is what we do on our side.

Finally, I thank the chairman of the committee for helping me with the Computer Donations Act and the 401(k) protection plan that he has agreed to look at for us. I just want to say, it is a good moment for us because the economic recovery is so strong, we are in a position to give something back to the American people, and I am pleased about that.

I yield to my colleague from Massachusetts and thank him for his generosity.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, I yield myself such time as I may use.

Mr. President, as I listened to the distinguished chairman of the committee talk about the virtues of this bill, I kept hearing language trying to describe the bill saying it is bipartisan, it meets the demands of all the people, it has followed the guidelines, somehow suggesting that merely by saying these things, it is true, that these are the things that are in this bill. But when you look behind each of those descriptive adjectives, there is a different reality.

First of all, with respect to the bipartisanship, everybody understands that the Republicans control the committee. The Republicans could have reported out whatever they wanted to do, and that the only way there would be any capacity to improve it somewhat from what people viewed as a very draconian position was to become involved and play along.

Everybody in the Senate and every observer understands that just because people vote for it to come out of the committee and have played a role in helping to bring it back from a precipice doesn't mean it is where it ought to be, or that it represents the best that we could achieve or the fairest that we could achieve.

Indeed, a number of people who voted to send it out of the committee will vote for the Democratic alternative because it really represents much more of what they would have liked to have gotten but couldn't get because of the dynamics of how things work in a committee.

It isn't enough to say that this is good for all the people. The charts, the statistics just contradict it. It is so obvious that it almost defies imagination, and we really have to spend a lot of time on it. The fact is that the bottom 20 percent of Americans under the House plan, the Archer plan, got 0.5 percent of the savings of the tax bill. Under the Roth bill, originally they come up with 0.4 percent, but under the Democratic alternative, they did better than either, with 5.1 percent, not an enormous difference. The reason for the lack of the enormous difference is that you have the earned income tax credit and you don't have earnings sufficient on an income tax form to be able to provide credit savings that go to people at the lowest end because of the way the tax structure works. We understand that.

But when I hear the chairman say that middle Americans do the best, that is where the statistics tell a contrary story. No matter how many times our colleagues on the other side of the aisle try to say this is good for middle America, this is for all Americans. All Americans, just look at the facts.

Under the Archer bill, it was 9.2 percent that went to the next 20 percent of income earners; the second to the lowest 20 percent. Under the Roth bill, 2.3 percent. Under the Democratic alternative, it is 16.3 percent—16.3 percent versus 2.3 percent. You can ask any child in the fifth or sixth grade, or almost any grade, if they know the difference, whether 16.3 percent is more than 2.3 percent. But under the Democratic alternative, the second 20 percent of income earners in America will get 16 percent versus the Roth 2.3 percent. That is a very significant difference.

But then I move up in the income scale to the third 20 percent of income earners. Under the Archer bill, it was 9.2 percent. Under the Roth bill, it is 10 percent. But under the Democratic bill, it is 25 percent—25 percent versus 10 percent. It is very clear on its face that the average American income earner does better under the Democratic alternative than they will under the Republican bill.

In the fourth 20 percent, and we are moving up in income now, we are talking in the $50,000 to $75,000 range, that is a considerable amount above the mean earnings of most Americans. That 20 percent in the Roth bill would get 21 percent; in the Democratic bill they would get 32.3 percent. What you have here, Mr. President, is just a stark difference, but here is the most significant difference, and I ask Americans to focus on this. It is a very significant difference.

Under the Archer bill and under the Roth bill, the highest 20 percent of income earners in America, the people earning more than $100,000, the millionaires, the billionaires, they would get 67 percent—67.9 to be precise—under the Archer bill, 65.5 under the Roth bill—65.5 percent. But under the Democratic bill, they get only 20.8 percent. So there is an enormous difference in the distribution in what people will get.

Mr. President, I know that our colleagues on the other side of the aisle will say, well, that's what happens automatically, that people with the money are going to get the capital gains tax cut, they are going to put their capital into investments, it is automatic that if you have a specific percentage of reduction, those people are going to get the lion's share of the break.

It is automatic if that is the break you write into law, but there is nobody here whose arm is being twisted or who is being forced to write that into law. We have the prerogative of deciding how we are going to divide up the benefits of this tax break.

I listen to my colleagues say that the Democratic alternative is really terrible when it comes to capital investment and savings because it isn't as generous in the capital gains tax cut. Ask most Americans what they think the economy in America is doing today? Why has the stock market doubled in the last few years? Why is the stock market at a record high? Why are so many businesses reporting profits that are at record level? Why are so many chief executive officers now earning 223 times the earnings of the average worker when 20 years ago it was only about 25 times the earnings of the average worker? Corporate America is doing very well today, very well, and I am glad. I voted for a bill in 1993 that helped corporate America to do pretty well today. And it has resulted in 4½ straight years of deficit reduction.

But you have to ask yourself, if capital gains tax difference between 28 and 20 percent is so great, why is America doing so well today? It hasn't stopped some of the greatest mergers and acquisitions in American history from taking place. I don't think any economist in the Nation believes fundamentally—will we release some capital? The answer is yes. I happen to be for a capital gains tax cut, and I think it is beneficial to release some capital. But I think there are ways to do it that spread the fairness and that respect a sort of evenhandedness and a playing field that is more fair than what we are going to witness here.

Mr. President, the Finance Committee has given us a list of tax breaks, the benefits of which flow chiefly to the wealthiest Americans. Nearly 43 percent of all the benefits will go to the wealthiest 10 percent of American income earners. I want to say that again. Forty-three percent of the Republican proposal goes to 10 percent of Americans, and under their proposal, 60 percent of the hard-working middle class of America and the poorest of Americans will share 12.7 percent.

So 60 percent of America is going to be fighting for 12 percent of the tax benefits, while 10 percent of America gets 43 percent of the tax benefits. I can't believe that any American really believes that that is fair distribution of the benefits of this, Mr. President. I think it sets a new standard of unfairness. It is a transfer of wealth, a transfer of wealth from hard-working middle Americans, middle-income earners to the wealthiest and to the people who have done the best over the last few years.

If you do not believe that these are the people who have done the best in

the last few years, just take a look at the charts. Take a look at the statistics which come from every single one of our Government agencies and analysts in the private sector.

The bottom 20 percent of income earners in America in 1975 were earning $18,947, on average. In 1985, they were earning $18,816. They lost income. And in the year 1995, 20 years later, they were earning $19,070, which was an increase of about $110 or so over 20 years.

The next 20 percent of income earners went from a $30,701 average in 1975, to $32,415 in 1985, to $32,895 in 1995. So they had about a $380 gross increase, on average, in 10 years; and they had a $2,000 increase before that. When you factor in inflation, it is a loss. They lost income over those 20 years.

You know who did not lose income over those 20 years? The people who are being rewarded the most in this tax bill. The only people in America who grew in that period of time were the top 20 percent of income earners. And they grew more than 100 percent. Yet people are finding a wonderful rationale to come to the floor and suggest that in 1997 there is a new standard of fairness which is prepared to give to those who got the most even more. It is extraordinary.

Mr. President, we have the ability to write a different distribution. It is up to us. And in the Democratic alternative that Senator DASCHLE has proposed, the poorest 60 percent of Americans receive 46 percent of the tax cuts. Some people could make an argument that the poorest 60 percent ought to earn 100 percent of the tax cut or maybe 75 percent of the tax cut or 60 percent.

We have tried to respect the notion that we do want to spread it out and we do want to respect the notion of savings and growth and encourage a capital gains tax. So we settled on the notion that those 60 percent—rather than scrambling for 12.7 percent of the total tax cut—would get 46 percent of those tax cuts.

In the Finance Committee proposal, people earning between $30,000 and $85,000 get only 30 percent of the tax cut, Mr. President. That is what I call and most people look at as middle class in America—$30,000 to $85,000. And they receive only 30 percent of the tax cut. So when the chairman says, under our bill we are spreading this evenly among everybody, look at what the middle class gets. The very people he said are the best beneficiaries are getting only 30 percent of this, the vast majority going to those who have done the best in recent years.

By any measure, Mr. President, I think the Democratic alternative is sound economically, and I think it is fair because it helps those who actually need a tax break to raise a child or to go to college or to start a business or to generate one of those high-wage 21st century, high-value-added jobs. And this is one of the crucial differences between our parties and, I think, between these two measures.

For us, deficit reduction and the tax cut is a policy. I think for the Republicans it is an end in and of itself. For us, it is a means to an end, not the objective to be achieved, but a means of achieving the larger objective, which is creating more jobs, making sure our human resources are attended to; whereas, for them, I think that just getting that cut somehow has become a goal and a target.

The problem is, that in doing so, our friends on the other side of the aisle are offering America a choice that I am confident most Americans are not aware of. This tax bill is backloaded with a time bomb, because while in the beginning it does not have all of the negative impact of the massive tax cut to the wealthy and shares some at the front end so they can say, look how you are going to do well at the first part of this, at the back end you balloon the amount of lost revenue, which will have a very significant impact under any circumstances, but obviously particularly if there were to be a downturn in the current revenues or in the economy.

So you have a tax cut that for the first 5 years is $85 billion going back to the American people. But the second 5 years, it is going to cost $250 billion. And 10 years after that, when baby boomers are retiring and when Medicare and Social Security are being strained at a much greater degree than they are now, you are going to have a cost in this tax bill of $650 to $700 billion.

Our policy, on the other hand, in my judgment, lays out the right set of priorities, Mr. President. We have cut capital gains in the past at times in America's history where the economy really mandated it. But I find it hard to understand, given how well the stock market is doing and how well investments are doing generically and how extraordinarily competently the corporate sector has moved to deal with some of the competitive issues that we faced during the 1980's and the early part of the 1990's—I think they deserve enormous credit for having done so—but having done so, one has to ask the question, what is there in today's economic indices that suggest sound economic policy in having such a broad loss of revenue for the capital gains tax, which in itself is so broad that you are making a choice not to give more revenue back to the middle class?

I mean, that is the tradeoff here. If you are going to give the full breadth of the capital gains tax cut to the higher end, you have less money available to give to the middle end. I think most Americans would join me in asking a very simple question. Why should somebody be rewarded for the sale of their Persian rugs or their art or their yachts, which do not contribute significantly to the kind of economic activity that we are talking about? Certainly it accrues capital to them, I understand, and they will spend some of that capital and invest some of that capital, but what is the justification for expanding the capital gains reduction from a 28 percent tax only to a 20 percent tax or lower in order to encourage that kind of transaction?

So in the Democrat alternative, what we have done is I think sensible. We want to reward the risk-taker and the entrepreneur who creates new jobs and who put their money on the line in an entrepreneurial effort to try to broaden the tax base of this country. I think that ought to be rewarded.

I think I am the only U.S. Senator who introduced a zero capital gains tax, which I would like to see for new investments in 1 of the 25 or so critical technologies which are the areas where we will fastest create the most high-value-added jobs that will raise the income of our workers and indeed raise the standard of living of our Nation. And just like Japan or other countries that did not have any capital gains tax, I think it would behoove us to take some of this money from the rugs and the collectibles and the other assets people will get a windfall from and provide a zero capital gains tax in the long run on investments up to $100 million in a new issue of stock, help for 5 years in one of those kinds of companies.

In our bill we do not go to zero. But we do have a 50-percent exclusion on the capital gains tax for that kind of qualified investment up to $100 million, the stock held for 5 years. In doing so, Mr. President, I am confident that we will do what is really necessary, which is provide venture capital with the kind of incentive to move to the kinds of ventures that will truly create jobs and kick the economy. And in doing so, it allows us to provide more money to the middle class to help them send a kid to college, help them be able to pay for child care, help them be able to do some of the fundamentals that we think are so important in terms of spending time with family or raising a family, and indeed puts much more money into the pockets of the people we truly consider to be middle America.

Mr. President, the Finance Committee has also tried to suggest that its child care provision is better than the child care provision that is put forward in the Democrat alternative. And I would like to just assert that again the facts do not bear that out.

The Democrat alternative does more for more people than the Finance Committee proposal. It does more for precisely those families who need the help the most, and those are young families with young children where this will provide them the opportunity to do much better for the future of the country.

The reason is, Mr. President, because I heard the chairman talking about how their tax credit, the tax credit in the Finance Committee proposal, goes to families earning up to $150,000 of income, and, therefore, it reaches more people. But the truth is, when you look underneath the figures, it does not reach more people.

The reason it does not reach more people is that most Americans today who are with young families who need help pay most of their income through the payroll tax. Their money is taken out of their paycheck at work. And it goes to the Social Security system and they are, therefore, mostly not able to take advantage of the tax credit because too many families in America do not have enough income that is taxable to wind up getting the credit, and the payroll tax winds up penalizing them even more.

The vast majority of families in America pay most of their tax in the payroll tax. And what the Finance Committee does not do is provide an offset against the payroll tax, the result of which is that very little of the credit is available to a family earning $30,000 or less under their credit.

Whereas, under the Democrat proposal, the credit would be available because of the offset against the payroll tax, it would go right down to families earning $15,000. And that encompasses many more families who are in need of the child tax credit.

So there is a very simple truth here, that they give the credit all the way up to $150,000; our credit fades out between $70,000 and $85,000. The result of that is we are able to give more credit to the people who are most in need.

So, Mr. President, I believe that a dispassionate analysis, a fair analysis of these two proposals is very clear about who benefits and who does not.

I want to emphasize that many of us on the Democrat side support a capital gains tax reduction. I am one of them. Some do not; some do. But I am convinced that you can target that capital gains reduction when you have a limited amount of resources to deal with, as we do, and we are forced to make the hard choices we are making so that you spread out the benefits in a fairer way. And that is precisely—precisely—what the Democrat alternative does.

I wish in many ways we could have gotten to this point in a different way. We might have, had we not been forced into the strictures of this deal where the deal became almost more important than some of the policies that were contained within it. By definition, the deal being a compromise, it is a bit of this and a bit of that. In the end, regrettably, Mr. President, I think it has come out with a disproportionate, imbalanced allocation or shift of resources in America.

Most Americans, when they are given a chance, if they were to be or could really take note of the differences between these proposals, would obviously applaud the education benefits that the chairman talked about—of course they would—but the Democrats would support those benefits, also. That is not at issue here. What is at issue here is the difference between how you get money to the families that really need it versus how much you ought to provide in incentive for increased savings or investment out of the proposals that are in both measures.

I think on balance, the proposal of the Democratic leader, Senator DASCHLE, is both fairer and steeped in greater economic sense, and in the end I believe most Americans will come to that judgment.

Mr. President, how much time remains for the Democrat side?

The PRESIDING OFFICER. Seventy-one minutes.

Mr. KERRY. I reserve the remainder of my time.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I have been delegated to manage our time by the distinguished Senator from Delaware, and as such, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Washington is recognized for up to 10 minutes.

Mr. GORTON. Mr. President, meet Bill and Vivian Loomis from Lind, WA. The Loomises farm, in eastern Washington, wheat and potatoes. The Loomises, under the present tax law, have been dunned by the Bureau of Internal Revenue to pay an alternative minimum tax on income they have not even received. That is to say, they are supposed to pay, this year, taxes that will not accrue until next year because the income will not come in until next year.

Now, they have had to spend $20,000 of their hard-earned money in fighting the Bureau of Internal Revenue, the IRS, on that subject. We have, in a bipartisan manner, gotten the IRS to lay off of many other farmers who are in the same position.

This bill, this Republican bill, this bill reported almost unanimously by the Senate Finance Committee, takes care of that situation. It rights that wrong. It says to Bill and Vivian Loomis, ''You don't have to pay taxes until you've received your income.'' Simple justice, Mr. President.

But what else does the Republican proposal before the Senate do for people like Bill and Vivian Loomis who have worked hard all their lives as farmers in eastern Washington? Mr. President, it says to them, when they pass away, their farm will not be taken away by the Internal Revenue Service with a punitive and overwhelming death tax. It gives them a bit of a break in their ability to pass that on to their children and grandchildren.

Now, Mr. President, Bill and Vivian Loomis have 7 children and 11 grandchildren. Their children are too old to give them the tax credit that is included in the Republican proposal. But their sons and daughters who are raising kids, who are struggling on limited incomes that they are earning and paying taxes on will get a $500 break for each of those 11 grandchildren of the Loomises' who are under the age of 17 years old. Real people, real benefits. And when those grandchildren are ready to go to college or university, there will be tax credits to help pay for that tuition.

Mr. President, we are talking here, today, about real people who work hard, who earn an income, and who pay taxes on that income. Our Taxpayer Relief Act is to provide relief for those taxpayers. It is not designed to add to the welfare system. It is designed to provide relief for real taxpayers. It is designed to say that the Loomises, should they decide to sell their farm, will not pay an overwhelming and punitive capital gains tax; that if they have managed to save and invest in some stocks, they can sell them to go into a better investment without an overwhelming and punitive capital gains tax.

Mr. President, the best single line I can give is, 75–75—75 percent of the benefits of this Taxpayers Relief Act go to families with incomes of $75,000 and less per year, who are actually paying taxes today. That is what this is all about.

We really hear a great deal from the other side, a side that really was not at all happy about reducing taxes on hard-working Americans at all. I am delighted they have an alternative that at least provides some tax relief. But until we came along we heard about nothing other than tax hikes, not tax reductions.

My constituents, Mr. President, in the State of Washington, pay the fifth highest income taxes per person in the United States of America—almost $7,000 a year. They will get almost 2 billion dollars' worth of real tax relief, to real taxpayers, out of this bill. The benefits of our bill as against the other that attempts to target everything, that attempts to adjust society again through the Tax Code, our tax relief will go to real people, real people, like Bill and Vivian Loomis, who have worked hard all their lives, who have put something away, who want to help their children and grandchildren, who want to help build their country and who want to pass something of what they have done on to their children.

It is much the superior proposal. It does not depend on gimmicks, like saying that the rental value of the house they own and live in is part of your income—as if you could live on the street and rent your house out. It is based on providing real tax relief to real working people who are overtaxed in the United States today, who have worked hard and deserve to keep what they have earned, like Bill and Vivian Loomis.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Illinois.

Ms. MOSELEY-BRAUN. Mr. President, I yield myself 3 or 4 minutes. I want to make a general statement about the tax bill.

I serve as a member of the Senate Finance Committee and was part of the deliberations. Last night, I commended the chairman of that committee as well as our ranking member for the efforts they made to try to craft a tax bill that addressed the concern that all of us had in achieving fiscal responsibility and in achieving fairness.

In the first instance, the bill as a whole does achieve fiscal responsibility because it is a balanced budget bill. That is a good thing. The deficit under President Carter years ago was $73 billion. Under President Reagan, it ballooned to $221 billion. It reached $290 billion under President Bush. When President Clinton took office, he inherited a $290 billion deficit. Our national debt at the time was $4.4 trillion.

Now, since that time, President Clinton's bill in 1993 to give us a budget agreement that would head us toward budget balance has proved to be successful, and it proved to be the right thing to do. That bill, at the time, was very controversial, but the fact is that it has worked and we are now in our fifth year of deficit reduction. The deficit now is at the lowest level that it has been since President Carter. I think that is something we all can celebrate and applaud. This bill continues in that direction.

The reason why having a balanced budget is important is not just that it is a matter of a sound bite. Quite frankly, some of the economists tell us it is not the most critical thing, that you can function in terms of the budget overall without it being in balance. However, for me, and I am a strong supporter of achieving a balanced budget, to me, the issue is one of fairness, of generational fairness, of making certain that our decisions in our time do not foreclose the decisions that the next generation, these young people sitting here, that they will be able to make for their time, when they move into leadership and have the opportunities to make decisions. So as not to pass on our old bills, so as not to foreclose their opportunities, it is an important thing to achieve a balanced budget. This bill does that.

However, as was pointed out by speaker after speaker, the way the bill is structured, the budget deficit does explode in the outyears, and that means that while it looks on the surface that we will have a balanced budget, at the same time we are setting ourselves up for a huge fall by allowing it to explode beyond the 5- to 7-year window. That is not a good idea. It seems to me if we are going to be really fiscally responsible, we have an obligation to balance the budget and then to keep it balanced.

So this Democratic alternative cures that defect. It cures that defect by achieving fiscal responsibility by seeing to it that we do not balloon the deficit in the outyears.

The other thing about this alternative is it is also fair. There are those of us who believe this is not a time to cut taxes, that we would be better off achieving complete balance before we got into tax cutting. And we could have cut the deficit quicker had we not cut taxes at this time. It is not a matter of being against tax cuts, just a matter of timing, whether or not it makes sense to go and give up your second job, if you will, while you are still trying to pay off your old bills. That is the equivalent, if it were a family making a decision, we are making a decision to give up the second job, although we still have old bills.

There is consensus around the tax cuts that are in this bill. Capital gains—I do not think too many would argue that capital tax cuts are a bad idea. The estate tax cuts—again, my colleague across the aisle a minute ago talked about the importance to family farmers. I come from a State that is largely agricultural, and I know how important having the estate tax reform that is in this bill is to people who own farms. The help for people who have children is another good thing and will help struggling families—and the support for education in this bill.

All of these things are good news, and that is why this alternative, I think, should be supported by both sides of the aisle, because this alternative says we are going to take the principles of fairness and make certain there is balance in terms of the whole American family, in terms of who gets what from the tax cuts. Right now the tax cuts are heavily stacked in favor of the wealthiest Americans. People who need help the most—the working people, the middle class—get less from this tax cut and less from this agreement than do those who are clipping coupons. This is not to set up a class conflict, because, if anything, if you learned anything in these times, it should be that as Americans we are all in this together and it cannot be rich versus poor. If anything, we all have to come together and make certain that we allow our economy to grow and to build and to tap the talents of everybody. But that, I think, begs the question of whether or not we are being fair in giving working families their due with regard to this tax bill. It does not reach that.

Last evening, I spoke about the fact that such a vast majority of the benefits of this tax cut that go to the wealthy as opposed to the middle class or the working poor, that we can change that. Well, the Democrat alternative does change it. The Democrat alternative suggests that we do more for people who are struggling, that we do more for people who spend more of their payroll, more on payroll taxes than on income taxes, that we help those families that are just trying to get by and to make it. We help them a little more. That is what the Democratic tax alternative does.

As a member of the Senate Finance Committee, again, part of the process here is the compromise. We worked together, and I voted along with many of my colleagues for the Senate Finance bill, and I will vote for it on final passage. I urge my colleagues to take a good look on both sides, take a good look at this alternative, and see in your own minds whether or not it does not strike you as being fiscally responsible, which we all want to do, but being more fair. You consider the number of people in this country and the interests and the wide range of income; we do not want to do anything at this time that will exacerbate that income gap that we all know is widening. If anything, what we want to do is try to keep the country on an even keel with regard to policies that we come out with here.

For that reason, again, I support this Democratic alternative. I will support the bill on final passage. I hope this amendment is part of it.

I thank the Chair, and I yield the floor.

Mr. ABRAHAM. Mr. President, on behalf of the majority, I yield myself such time as I may need to speak to the bill and, really, as well, to this amendment. I think the bill that the Finance Committee has brought us today is a very good bill. I look forward to supporting it against some of the amendments that would seek to undercut the basic thrust and to see it to final passage.

Obviously, this bill doesn't reflect what any single Member of the Senate would have drafted had they total control over the legislation and the agenda here. It reflects, as so many speakers have indicated, a strong bipartisan effort—something we have talked a lot about in this Chamber over the years, but do not always deliver—a strong bipartisan effort to find common ground behind a sensible strategy for providing tax relief for the working families of our country who pay taxes, a chance for those families to keep more of what they earn. So, to that end, I am here to speak on behalf of the legislation.

Mr. President, tax cuts are long overdue. In 1992, President Clinton, while running for election, promised a tax cut. Unfortunately, in 1993, that tax cut was replaced by the largest tax hike in American history. Today, we stand 16 years away from the last tax cut for the working families of our country. Four tax increases have transpired since Americans last received tax relief.

Today, Federal taxes are consuming 21 percent of our Nation's gross domestic product, or our country's national income. Mr. President, that is more than at any time in the past 200 years. Let me put that in perspective because I think the argument that we have heard here for so long is that Americans don't need a tax cut. Well, Mr. President, they do. Not during World War II, not during the Vietnam war, not during the Depression or during any time in the last 200 years of our country's history have taxes consumed such a high percentage of the American income. And for that reason, this legislation must pass, must be signed into law, and must provide relief for the American people. Today, in our country, taken together, Federal, State, and local taxes cost the typical American family more—more, Mr. President—than food, clothing, and shelter combined. Food, clothing, and shelter

typically cost approximately 28 percent of a families income; taxes take up to 38 percent. To me, that is simply too much.

After several tries and one veto from President Clinton, Congress is working this week to give hard-working American families fair and overdue tax relief. I would like to speak about some of the provisions in this legislation, Mr. President, that I think are especially noteworthy, which will help taxpayers through all stages of their lives. Children will benefit from a $500-per-child tax credit that will increase their family's ability to care for them and plan for their futures. Teens and young adults will be helped by sensible, targeted education tax breaks that will help finance their schooling. Those who have finished their educations will benefit from progrowth tax cuts, including the capital gains tax cut, that will stimulate economic expansion and provide more good jobs at good wages. Americans working to start small businesses also will benefit from the flood of new venture capital that will result from cutting capital gains taxes. Those looking toward retirement will benefit from expanded individual retirement accounts, IRA coverage, including the new full spousal IRA, and from the capital gains tax cut. More than 40 percent of American families own stocks directly or indirectly, Mr. President. American seniors currently constitute 12 percent of the population and realize 30 percent of America's capital gains.

Americans considering their legacy to their children—especially small family business owners and farmers—will benefit from a substantial cut in the effective death tax. All Americans will benefit from a cleaner environment, thanks to this bill. Urban families, in particular, too often must live near contaminated sites because the owners of those properties have abandoned them and no one else can afford to clean them up.

That is why I worked with a number of other Members of this Chamber to include in this bill a provision allowing those who clean up these environmentally contaminated brownfield sites to expense their cleanup costs on an accelerated basis. This will not only encourage business to clean up and put to productive use areas that now contaminate our cities, but it will also create unlimited numbers of potential job opportunities for people who, today, are searching for a chance to get on the economic ladder.

I want to focus on that for another minute, Mr. President, because I believe this part of the legislation, which hasn't received as much attention as some of the other sections, really is very pivotal to the future of this country. We can address environmental problems and we can address the problems that we see in too many economically distressed areas, in terms of trying to generate opportunities, because of those brownfields provisions that have been included in this legislation.

Mr. President, this tax bill that we offer today, this tax relief plan, is fair. As the Senator from Washington indicated just a few moments ago, 75 percent of the tax relief provided in this plan goes to those families who make $75,000 of income or less. Now, obviously, a lot of people can use statistics to make their argument, and we do on the Senate floor. But one thing that is irrefutable, Mr. President, is that if you are making $75,000 or less, you are going to receive 75 percent of the tax cuts in this legislation. Now, obviously, there are ways people can argue to get around it, and I will comment on some of those, perhaps, in a minute here. But unless people want to now call those in the $75,000 income category the richest Americans and the wealthy Americans, then, Mr. President, this tax bill clearly is one aimed at providing fairness to working middle-class families.

Let me talk about what this means to my State of Michigan for just a moment. Under our tax proposal, the family tax relief provisions will provide over $3 billion of tax relief for working families in my State, thanks to the $500-per-child tax credit. That means that literally hundreds of thousands of Michigan children, over the next 5 years, are going to be receiving a $500 tax credit on an annual basis, Mr. President. That means more dollars available for young families to help feed and clothe and advance their children's learning. In addition, families in my State will be receiving $1.3 billion over the next 5 years from this tax relief plan in order to help finance college education.

Mr. President, the average American family should not have to go bankrupt, nor should a college graduate have to be in debt for decades just to be able to have a degree of higher learning. Yet, that is too often the choice confronting American families these days.

Mr. President, our bill, in my State alone, will provide over a billion dollars of support to those working families. In addition, we have incentives for the creation of new jobs and opportunities—approximately $69 million in capital gains tax relief, approximately $124 million in terms of IRA expansions for the families in my State, a substantial increase in order to stimulate the kinds of job opportunities that we want for our citizens.

Michigan is a State with a lot of small businesses, and a lot of family owned farms, Mr. President. Every time I travel back in the State and talk to those in the small business or the farming community, I am told time after time, ''You have to do something to make it possible for us to keep the family business and the family farm in the family,'' because when the family that is running the business or the farm—when the last member of that family passes away, the death taxes are so much, they have to sell the property, or they have to sell the business in order to pay the taxes, and their children will not be able to inherit their rightful claim. This legislation addresses that very effectively, as well.

So for my State, Mr. President, it means a great deal. There are a variety of additional tax incentives for Michigan. When they are all added up, it results in over $3 billion in tax relief over the next 5 years for the folks that I represent, the folks in my State, who are paying the bills, playing by the rules, and sending their tax dollars to Washington. It is a bipartisan piece of legislation.

I was extraordinarily impressed by the fact that the Finance Committee was able to come together and pass this legislation on an 18-to-2 vote. That indicates the extent to which our tax cut plan makes sense.

So for all of those reasons, Mr. President, I am proud to come here today in support of this legislation. I want to just comment on one or two of the points made in opposition during recent speeches that have taken place here. The first is the argument that, somehow, 70 percent of the benefits go to the upper income groups in this country. Well, as the Senator from Washington already indicated, that only works if you impute income to the families of this country for everything from fringe benefits to unrealized capital gains to even the imputed rent on a home that you own. As the Senator from Washington said, that is fine if you are going to live on the street. Then you can take credit for those imputed rental dollars. If you are staying in the house, you can't. To use that kind of calculation to try to make this tax bill seem less fair, to me, Mr. President, is going way beyond the limit. I mean, the fact is, if we are going to start thinking about these sorts of things as income, it will only be a matter of time before somebody stands up in the Senate and wants to tax that income. Pretty soon, we will be asking people to pay taxes on the imputed rent of the house they own. That is a precedent we don't want to start here. The fact is, if you can't spend it, you can't be treated as having earned it.

Mr. President, the bottom line is that that argument does not hold water; nor does the argument that suggests that we should not pass this tax bill because the median income of working families has not changed during the last 20 years. The facts are, Mr. President, that it has not been stagnant. The average income of families in this country have changed dramatically over the last 20 years. Unfortunately, they have gone down; then they went up, and now they have been coming back down again. The interesting correlation between those changes, Mr. President, is what we have done in Washington. In the late 1970's, the average median income went down, when we had high tax policies coming out of Washington. Following the 1981 tax cuts that gave working American families a chance to keep more of what

they earned, median incomes went up and stayed up, and they kept going up for about 8 years. And then we started the tax policies again, first in 1990, then 1993 and, yes, those incomes have come down. If anything, that argues for cutting taxes, as we are attempting to do today.

For all of these reasons, Mr. President, I think the bill brought by the Senate Finance Committee deserves our support. I look forward to working with members of that committee as we finish our work here today. I compliment them on both sides of the aisle for a job well done. This is not an easy task. I especially thank Chairman ROTH for his leadership. I think it is a great package, and I look forward to supporting it.

I yield the floor.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota is recognized.

Who yields time?

Mr. CONRAD. I yield myself such time as I might consume.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, I rise as a member of the Finance Committee who voted to send this bill to the floor, and to speak about its merits and demerits and about the alternative that is being offered by the Democratic leader.

Mr. President, I voted to send this bill to the floor because I thought that we should have a chance to improve it here on the floor of the U.S. Senate. As I indicated in the committee, I don't believe the distribution of the benefits in the bill that was done in the Finance Committee is fair. I find it very difficult to justify the distribution of the benefits in the bill that has come out of the committee. Hopefully, we will improve it here on the floor of the Senate. This is our first chance to improve it, with the comprehensive alternative being offered by the Democratic leader.

I have just heard several on the other side say that, under this bill, 75 percent of the benefits go to those earning under $75,000. That is just not the case. They have entirely left out payroll taxes in the calculation. Seventy-three percent of the American people pay more in payroll taxes than they pay in income taxes. But they only want to construct the distribution table that deals with income taxes. They don't want to talk about payroll taxes, despite the fact that 73 percent of the American people pay more in payroll taxes than they pay in income taxes. What kind of a comparison is that?

Second, they are only dealing with the first 5 years of the major components of this bill that favor the wealthiest among us. This bill is backend loaded with respect to the benefits from those provisions.

So what they are doing is comparing only a part of the package and they are leaving out the part of the package that has the disproportionate share of the benefits going to the wealthiest among us. Mr. President, this is not a package just for the next 5 years. This is a package that creates permanent law.

If we are going to be honest with the American people about the distribution of the benefits, we can't just look at the first 5 years. Mr. President, I think we have to review a bit of history as to why we are here today.

How is it that we can be talking about tax reductions after we have been through a period of deficits that are out of control?

Mr. President, I believe we are here because Democrats made some very tough choices in 1993. As a result, as you can see from this chart, the unified budget deficit has fallen dramatically from $290 billion in 1992 to $67 billion this year.

I might add that this is a projection of the deficit this year. But that is the best evidence that we have of what the deficit will be this year. So let's remind ourselves how we got here. We got here because Democrats passed an economic plan that has led to a dramatic reduction in our deficit.

This, again, is the unified budget deficit. That counts all income and all outgo.

Let me just go to the next chart to show people a little different way of looking at it.

The line I just showed is the same as this blue line on the chart that I titled ''the real budget deficit'' that shows that there is really more deficit reduction that is needed for true balance. The point is when you talk about the unified budget deficit, the blue line—you can see it has come down just dramatically. But you see this red line right above it. That represents the true budget deficit because that counts the Social Security surpluses that are being used to mask the real size of the deficit.

One can see that, although this is called a balanced budget plan—and, in fact, on the unified deficit you get to a balance in 2002—if you look at the Social Security surpluses, what you find is that in the year 2002 you have a $109 billion budget deficit. In fact, all of the documents disclose that there is a $109 billion budget deficit in the year 2002.

I say this to try to be objective about what is happening here. There is no question we have made dramatic progress on reducing the unified budget deficit. It is also, I think, undeniable that more needs to be done. That has to be thought of as we evaluate this entire budget package.

Mr. President, because the Democrats did vote for a dramatic economic plan in 1993, we did get the deficit going down on either measure. Whether we are looking at the so-called unified deficit, or whether we are counting Social Security surpluses, on either count the deficits have gone down dramatically. That has kicked off one of the strongest economic recoveries in our history with 12 million new jobs since 1993—a peacetime record. We have seen the unemployment rate go down to the lowest level since 1973—a dramatic improvement in unemployment. The inflation rate is under 3 percent since 1993. You can see dramatic improvements in the inflation rate of this country as a result of the economic plan that was put in place in 1993.

Not only do we see dramatic improvement on new jobs and dramatic improvement on unemployment, the inflation level at its lowest level in 31 years, but we also see real business fixed investment growing at a 9-percent annual rate for the last 4 years. In fact, it is by far the best rate of real business fixed investment in about 20 years.

Mr. President, the fact is that the economic plan passed in 1993 has worked and has worked extraordinarily well. If we look at the 10-year period from 1992 to 2002, the savings from the 1993 deficit reduction plan will total in that 10-year period $2 trillion.

The budget plan we have before us now in that same time period—because it is only effective the last 5 years and it is a much smaller package—will contribute $200 billion to deficit reduction, about one-tenth as much as was provided by the savings from the 1993 deficit reduction plan.

Mr. President, the fact is this economic plan works and has worked extraordinarily well. It is the reason that today we are able to consider tax reductions.

Mr. President, when we consider tax reductions, it seems to me that we ought to apply four tests:

First of all, does the tax reduction fairly distribute the benefits?

Second, does the plan keep the deficit under control for the long run, or do we blow a hole in the deficit after making all of the progress that we have made since 1993?

Third, it seems to me the test should be, do the tax reductions promote educational opportunities?

Fourth, will the tax cuts benefit the economy and promote higher economic growth?

Again, I go back to the 1993 plan. The fact that deficits were really reduced by either measure has meant lower interest rates, has meant stronger investment, has meant greater economic growth, and has meant an incredible resurgence in the U.S. economy. In fact, today the United States is rated the most competitive economy in the world.

Mr. President, when we look at the plans before us with respect to how to cut taxes, we can start to evaluate how they rate on the four tests that I have applied.

The first test: The fairness of the distribution of the benefit. Mr. President, I direct your attention to this chart, the Democratic alternative versus the plan out of committee. For the top 1 percent, the yellow shows the plan out of the Finance Committee, the red shows the Democratic alternative. Under the plan out of the Finance

Committee, the top 1 percent get 13 percent of the benefits. Interestingly enough, under that plan, the bottom 60 percent get about 13 percent of the benefits. It does not strike me as a fair distribution of the benefits.

The alternative before us, the Democratic plan, shows a much more fair distribution of the benefits. The Democratic plan has the top 1 percent of the income earners in the country getting 1.4 percent of the benefits. The bottom 60 percent get 46 percent of the benefits.

Again, I would say it is a far more fair distribution of the benefits of the tax plan than under the committee alternative.

This is a little different way of looking at it. This looks at the American economy in terms of the top 20 percent of the income earners in our country and the benefits that they get. This is the plan out of committee, the yellow bar. The red bar is the Democratic alternative. You can see under the plan out of committee that the top 20 percent of the income earners in our country get 65 percent of the benefits. Under the Democratic alternative, they get about 21 percent of the benefits.

In the next quintile, the committee alternative gives them 32 percent of the benefits, the Democratic plan gives them 21 percent.

Again, Mr. President, I think it is clear that the Democratic plan provides a more fair distribution of the benefits when we start cutting taxes.

One of the key reasons for the differences between the distribution of the plan is because the Democratic alternative makes the child care credit effective against payroll taxes. The reason for that, as I indicated in my opening, is 73 percent of the American people pay more in payroll taxes than they pay in income taxes. In fact, payroll taxes have been going up dramatically since 1950. This chart shows from 1950 to 1996. Here is what has happened to individual income taxes in terms of a percentage of tax receipts. Here is what has happened to payroll taxes. Individual income taxes have stayed about flat in terms of their percentage of our tax receipts. Payroll taxes have jumped dramatically.

Mr. President, this chart shows who is paying the tax bill and how the distribution has changed over the years. This shows from 1960 to 1996. Individual income taxes, you can see, 44 percent. Now they are at 45 percent. Payroll taxes were providing 16 percent of the revenue base in the country in 1960. Now they have gone up to 35 percent—35 percent of the tax receipts in the country are coming from payroll taxes; regressive payroll taxes.

Corporate income taxes: Their share has changed dramatically as well. In 1960, they provided 23 percent of our receipts. They are now down to 12 percent. And excise taxes have gone from 17 percent in 1960 down to 8 percent.

Mr. President, this I believe is one of the real flaws in the bill before us. Because the child care credit does not credit against payroll taxes, even though 73 percent of the people in this country pay more in payroll taxes, people at the lower end of the income scale don't get the benefit of the so-called child tax credit. In fact, this chart shows in the lowest 20 percent of income earners in this country, 99.5 percent of them are ineligible for the child tax credit under the committee proposal. Nearly 100 percent of the lowest 20 percent of the income earners in our country aren't eligible.

In the next 20 percent, nearly 90 percent of them are ineligible for the credit.

Mr. President, how is that fair? How is it fair that we have a tax credit for children but 40 percent of the people in America don't get the benefit of it because it is not refundable?

I would remind my Republican colleagues that in the Contract With America they made it refundable against the payroll tax and in the initial draft of this bill they made it refundable against the payroll tax. They were right. They have made a change that is a mistake, in my judgment, in terms of fair distribution of the past tax.

That goes to the question of distribution.

The second question is, Does this plan blow a hole in the deficit in the outyears?

This chart shows the outyear costs of what we call backloading. That is, certain tax types with certain tax plans explode in terms of their cost in the second 5 years of this 10-year plan.

Mr. President, this chart shows what happens to the IRAs that are included in this plan, the alternative minimum tax, and the capital gains tax cuts. In the first 5 years they cost $12 billion. But look at what happens in the second 5 years. The cost mushrooms to $84 billion, seven times as much in the second 5 years.

If I had a chart that showed what happens in the next 10 years, you would see these things explode, even further endangering the fiscal responsibility that we have taken on since 1993 in the effort to dramatically reduce the budget deficit.

Mr. President, I think that is a mistake. If we look at some of the elements of the backloading, we look at the alternative minimum tax, and you can see in the first 5 years there is no cost. Then it takes off like a scalded cat. In fact, in the second 5 years that costs $15 billion. No cost the first 5 years, $15 billion the second 5 years. But it is not just the AMT tax that has that characteristic. We see the same thing with capital gains. The capital gains provision goes from $3 billion in the first 5 years to $24 billion in the second 5 years. It explodes. I think we have to ask ourselves, does that make sense? Does that endanger the deficit reduction that we have worked so hard to achieve?

The IRA proposal is even more dramatic. It costs $9 billion in the first 5 years; it costs $45 billion in the second 5 years.

I think all of us would like to do these things. The question is, what do we lose? What happens if, because we have taken this kind of approach, the deficit reduction is in danger? I say to my colleagues the best tax cut is the tax cut we get from the lower interest rates by having deficit reduction. The very best tool for economic growth is getting the deficit down, which lowers interest rates, which helps spark investment, which helps spark the economic growth that has made such a dramatic difference in this country since the 1993 economic plan was approved.

The other test I apply that I think is a commonsense test is, are we promoting educational opportunity? I say the Senate package certainly has very good measures with respect to encouraging education, but I think the Democratic alternative is better. According to Citizens for Tax Justice, the top family income levels receive the largest education credit per family under the committee bill. Over 43 percent of families would be eligible for only a small part of the credit and an estimated 30 percent of American families under the committee bill have insufficient tax liability to receive any benefit from the HOPE credit. The Democratic alternative addresses that shortcoming.

Finally, it seems to me we should look to the economic incentives of the competing proposals. The Democratic alternative targets tax cuts to small businesses, farmers, and those who take risks in investing in small startup companies.

I believe that is where we should target the benefits. A recent Congressional Budget Office study found that 89 percent of tax returns reporting capital gains in 1993 had gains of $10,000 or less with the average gain being $2,000. By contrast, the 3 percent of returns showing gains of $200,000 or more accounted for 62 percent of the total value of capital gains.

It seems to me this is clearly a case where greater targeting to small business, small farmers makes good sense. We can get more bang for the buck by targeting these dollars than by giving them to those who are at the top of the income ladder, the very wealthiest among us, those who need it the least of all. The Democratic alternative provides nearly twice as deep a capital gains tax cut for owners of small and startup businesses. Most small businesses and farms will enjoy a 14-percent rate under the Democratic alternative rather than the 20-percent rate in the committee bill. That is because 75 percent of small businesses and farmers are proprietorships, partnerships or S corporations that will have much better and stronger benefit under the Democratic alternative.

Mr. President, I conclude by saying there is no question that the chairman of the Finance Committee treated us

fairly in the Finance Committee. He was as fair as one could ever ask a chairman to be. I have commended him publicly. I have thanked him privately as well. He conducted himself as a real gentleman. I want to say that again publicly here today.

The question is not whether or not we worked together in the Finance Committee. The question is whether we could do better with an alternative.

I sincerely believe the Democratic alternative offered by Senator DASCHLE earlier today is better. It is more fair in its distribution. It protects the future by making certain we do not blow a hole in the deficit in the out years. It provides more targeted education benefits to all of the American people so that we make certain no one is left behind. And it is better for long-term economic growth because it focuses the dollars on those small businesses and those farms that are really at the heart of the American entrepreneurial revolution.

I end as I began. In 1993, many of us took a stand with respect to a plan to reduce the deficit. Our friends on the other side of the aisle said that the plan would not reduce the deficit, that it would increase unemployment and that it could crater the economy. They were wrong. The facts are clear. That plan dramatically reduced the deficit, reduced unemployment, and we have seen dramatically increased economic growth, dramatically increased business investment. That plan worked.

Now, today, we have another choice to make on an alternative of tax relief. The question is, who will benefit? Are we going to give the lion's share of the benefits to the wealthiest among us, or are we going to seek to spread the benefits more broadly throughout the American society?

I do not think there is any question but that the Democratic alternative is a more fair distribution of the benefits. I hope my colleagues could support it. I thank the Chair and yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico.

Mr. DOMENICI. I understood the distinguished manager of the bill was going to give the Senator from New Mexico 20 minutes, and I note the presence of Senator BENNETT. He asked me if he could have 5 minutes of my time to address the issue just presented, so I would ask that he be given 5 minutes of my time.

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

Mr. BENNETT. Mr. President, I thank the Senator from New Mexico for his courtesy, and I thank the Senator from North Dakota for his presentation. I think it is a very thoughtful presentation, and there are many parts of it with which I agree. There are a few, however, with which I disagree, and I appreciate the opportunity to put this disagreement close to it in the RECORD.

The Senator is justified in talking about the difference between things as they are now and things as they were 4 years ago when we were debating the 1993 tax package from the President. I am not sure he is entirely correct in saying that the program voted on this floor in 1993 is responsible for the tremendous growth we have had in the economy. I would remind him and other Senators that during that same 4-year period, we constantly heard how terrible Alan Greenspan and the Federal Reserve were behaving and that if, indeed, Alan Greenspan did not open up and make tremendous changes in monetary policy, the economy could crater, that jobs would be lost, that we would have tremendous deficits, and all of these other things would happen.

At some other time we can debate whether the tremendous growth we have had is the responsibility of the Clinton administration or the Greenspan Fed. The fact is, no one is really quite sure. The fact is, we have a booming, wonderful economy, and we should be grateful for it, however we apply blame or credit, which brings us to the issue that the Senator is addressing.

Will the tax program that we are talking about continue to stimulate that growth and allow it to burgeon, or will it in some way provide brakes on that growth in the name of income redistribution? The Senator says the issue is wealth distribution and how do we distribute the wealth in the fairest possible way. That is the portion with which I would argue.

Wealth distribution is not a static question. You do not have the wealthy at the top and the poor at the bottom. You have constant movement up and down the ladder. I always use the example of Donald Trump, who at one time was in the wealthiest 1 percent, and then he made a few bad mistakes and he was bankrupt. Then he made a few smart moves, and he is back up again.

Read the list of the people who are the richest people in the United States and you find the list is constantly changing. If I may be personal, there was a time not many years ago when I was clearly at the bottom in this country. I had a year not that many years ago where my earnings were zero and my wealth was going down because I was living on savings, and then when they were gone, I was going deeply into debt. Fortunately, one of my business ventures worked out, and now I would be listed up in that rarefied area that the Democrats seem to want to complain about. My point being that you cannot say you have a static group at one area that is going to be benefited and a static group at the other area that is going to be hurt; you have constant movement going back and forth.

The responsibility of the Senate is not to redistribute wealth among these supposed static groups in a way to create fairness. It is to create a program that will stimulate the growth so that there will be more money for everybody. John F. Kennedy said a rising tide lifts all ships. That is not always true in terms of skill problems and educational problems, but I think it is true in terms of economics. We want a tax program that will continue the dramatic growth that we have had in this country, and I respectfully suggest that that which is coming out of the committee is more geared to produce that result.

I thank the Chair.

Mr. DOMENICI. Mr. President, I thank the Senator from Utah for his very pointed remarks.

I think I would just say also that I thought the Senator made a good presentation. Senator CONRAD is always a contributor here. In fact, he voted for this Republican plan that he does not like here today, as I understand it. All Democrats on the committee voted for the bill in committee, I asked Senator GRAMM, and he confirmed that Senator CONRAD voted for the package. So I assume what we have going right now is something like this: A good bill was reported out of the committee. It had bipartisan support. It had Democrat support as well as Republicans. Now the Democrats have decided to bring back onto the American political scene the rich versus the poor issue.

I want to say something about the President because the distinguished Senator attributed the entire growth for the last 4½ years to the deficit package that increased taxes in 1993, and I will not go through what I believe caused it, and I will give the President some credit. I think the two things that economic historians will write are that the Federal Reserve Board for the first time in history has found out how to control interest rates in a very simple way, and they are doing it on a gradual up-and-down basis and they have kept this economy from going into cyclical downturns.

That is No. 1. No. 2, I give the President of the United States credit for one thing. Once his deficit package went in, frankly, the President listened more to probusiness advisers in his Cabinet, probably led by his Secretary of the Treasury Rubin, than all the rest combined. And I think history will reveal that the President did great things by nonaction. In fact, he is not a typical President in that he did not take significant steps to hurt business during a regime of a Democrat President—to put on more regulations, to make it more difficult to beat them up and talk about business. He was the other way. And I think he deserves some credit for what he did not do that one might have expected from a Democratic President.

You combine the two. The Federal Reserve is taking care of inflation and the President leaving the economy alone. This strong economy may still last for a few more years and defy some of the rules, although I doubt whether the ups and downs are finally done away with. I see a great economist in the Chamber. I am referring to the Senator from Texas. Maybe someday

when we have the time he could talk about the economic cycle.

But I come here today for two other reasons. First, Mr. President, I really do not believe it is fair to the American people for the other side of the aisle and the White House to continue to talk about this package as if it helps the rich and hurts the poor.

First of all, Mr. President and fellow Senators, the only odd game out is the White House and the Treasury Department, who are furnishing the Democrats with the evaluation of the distribution of this tax cut package. No other institution of significance and broad acceptance is using that broad definition of income to evaluate the distribution of these tax cuts. And that is because the Treasury Department does not use the income that average people make to determine what bracket people are in.

It might shock you to know, Mr. President, and millions of Americans, that what the Democrats are talking about magically turns into $65,000 income family out of a $40,000 actual-income family.

Let me repeat. The Treasury Department's approach says, fellow Americans, taxpayers, what you are earning—and then you look at it and I am paying $6,000 in taxes—they are saying that is not your income.

They take income, add the value of the rent of your house, the value of fringe benefits, the value of all your assets if you were to sell them—unrealized capital gains—plus the value of our pension and life insurance. That is why a family who thinks they earn $40,000 appears on the Treasury's charts as a family earning $65,000.

Your income under the Treasury definition assumes that you are out on the street and you rent your own house. So they add about $8,000 or $10,000 to your income. Believe it or not, if you have any stock in any American corporation, even 10 shares, they have gone through the difficulty of imputing to you, the stockholder, the earnings of the corporation in which you have stock, even if they did not declare a dividend. Won't that be a shock to Americans, if they thought they were earning all that much money every year.

Let me make our case on this side. Actually, we rely upon the Joint Tax Committee. They are bipartisan and professional.

We did not use the White House's very strange way of calculating income called the family economic income approach which counts all of this phantom income I just outlined.

I put a credit card up here just to show you about it. I call it the Family Economic Income credit card. This is what the administration would give to an American taxpayer as the White House's credit card. But like the familiar add campaign for other credit cards, if you want to really buy something, you better have a Visa card because the country's shop keepers don't take the Family Economic Income Card.

Interestingly enough, Senator GRAMM, if you took this Family Economic Income card to a store to buy something, it's no good. If you took it somewhere to pay your college kid's tuition, it's no good.

This card inflates your income between 50 percent and 65 percent. It creates paper income. Or said another way, it counts phantom income as real income. So you can throw it away, just as you ought to throw away the evaluation of this tax package made on these kinds of evaluations.

It is absolutely plain and simple, and I defy anyone anywhere, including editorial boards, those who are commenting on the news—you just go ask, ask the Treasury Department, ''Is a $40,000 income earner who, under this package that the Republicans have, if that person, that family is going to get back a certain amount of taxes and you apply that to the taxes they paid before, and if the difference is a savings of $3,000 in income taxes, you ask them are they giving you credit for that? Or do they have some other process to evaluate what you got by way of a tax cut?'' I assure you they will not give you credit for the tax cut you got, because they started out by figuring you were in a different income bracket. Isn't that amazing? That is absolutely amazing.

How can somebody come to the floor and say this package is predominantly for the rich when one simple fact disposes of it?

Mr. President, 78.8 percent of the benefit under this bill goes to families earning $75,000 or less. Senator GRAMM, isn't that what you understood when the bill was reported out of committee? Isn't that what the Joint Tax Committee said to you?

Because we put income earning limitations on the $500 child credit we designed the credit to target the middle class. The $500 child credit is a huge portion of this tax cut. And the next component that is significant is for middle-income Americans, is the $1,500 education tax credit. It likewise has income limitations.

If you take those two together pieces of the package it constitutes over 82 percent of the tax cuts, how can it be that the charts used by the other side of the aisle are right?

It is because some of the Democrats are not using the income that Americans earn. They are using an imputed income calculation called family economic income. Imputed means we count it as income if you did not earn it. It is as if your earnings include what you could have earned, rather than what you have earned.

We want to make the point today. We are going to try very hard, against very difficult odds to rebut the media reports that this is a tax cut for the rich. The fact is this: 78 percent of the tax benefit goes to middle-class families earning less than $75,000.

Mr. President, for those who want to look up here, this is the way the Joint Tax Commission of the United States, a bipartisan group, says these tax cuts are spread. Less than $10,000 gets .06 percent tax cut because they are not paying much taxes. Let's go down this chart. For people earning $10,000 to $20,000 the percent of the tax cut goes to 4.8; for people earning between $20,000 and $30,000 their taxes are cut by 15 percent; and for those earning between $30,000 to $40,000 their taxes are cut by 32 percent; those earning $40,000 to $50,000 their taxes are cut by 48 percent.

That means families earning $75,000 of real income or less, 78.7 of this tax cut goes to them.

If you want to report that the tax cut goes to the rich you ought to report that 75 percent of the benefits goes to American wage earners who are earning $75,000 or less.

Having said that I want to move on quickly. There will be a little obfuscation because the White House will say this family income approach is not theirs, it was done in the Reagan White House.

This is a way to figure out how much people are worth. And they did that as a model for tax reform. Does it mean that on income tax and other taxes that you are paying currently, that this is a true model of what your income is? Of course not. Because it assesses to you income you never earned, you probably will not earn, and it says it does not matter, we are ''imputing'' it to you anyway. That is the way you are distributing this money pursuant to those kinds of tables.

Let me move, for a minute, to a couple of more facts. We are on the threshold of passing the largest tax cut in 16 years. It will help Americans of all ages and all brackets. Again, I commend the chairman and I commend the Democratic Senators who voted for the package. I thought it was an exemplary example of bipartisanship. As I said, apparently some of them if not all of them have decided to produce a new package today, just to prove a point and try to make a point based on White House Treasury analysis rather than those analyses done by the experts that represent us.

Let's put this in perspective. Parents of 43 million children will pay $500 per child less in taxes; 4.8 million parents with kids in college and taxpaying students will have $1,500 more to spend; and 7.2 million recent job entrants will be able to deduct their student loan interest. That is a pretty big percentage of Americans, and a huge portion of Americana, and essentially all of them are, for all intents and purposes, all of them are middle-class Americans if you use $75,000 as the definition of middle class.

Mr. President, the $500 child care credit will help the working poor and the middle class. The value of the personal exemption has been eroded over time, and the cost of raising a family has become more expensive. The credit in this bill will totally eliminate the

Federal income tax burden for tens of thousands of families in New Mexico. I am particularly pleased that the Finance Committee decided to design the credit so that the working poor would also see the benefit of the $500 credit. Of the 718,850 families who file tax returns in New Mexico, 175,087 of them claim an earned-income credit. I applaud the Finance Committee's approach. It is a logical sequel to the new welfare reform law with its emphasis on moving from welfare to work.

I want to speak for a minute and I hope every Senator avails himself or herself of this, the $500 credit will save New Mexico families $454 million over 5 years.

A $500 per child credit is significant tax relief. According to the Heritage Foundation, a family with two kids eligible for two $500 credits would have an extra $1,000 a year in the family budget, and this amount would be enough to pay the mortgage for 1.5 months or pay for 15 months of health insurance or buy gas for the family automobile for 8 months.

In New Mexico, about 78 babies are born every day. In fact, I just was looking at a list. I have it here. I ask unanimous consent that their names be printed in the RECORD, just to show that on the day they are born they earn for a parent a $500 child care tax credit reduction. If they are too poor and eligible for an earned income tax credit, they still get $250 of that, under the bill the committee reported out.

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

[From the Albuquerque Tribune, June 2, 1997]

BIRTHS

Here are the recent births at Albuquerque hospitals. Unless otherwise indicated, the parents live in Albuquerque.

PRESBYTERIAN HOSPITAL

*Feb. 5*

Velda and James Harrison of Grants, boy, Stephen Jordon.

Tess and Tom Kerstetter of Tijeras, boy, Justin Lawrence.

Tonija and Jim Pitts, girl, Sara Nicole.

Geneva and Rogue Tena, girl, Dannion Lee.

Cindy Weatherford, boy, Xavier Michael Dax.

*Feb. 6*

Selina and Scott Burt of Rio Rancho, boy, Michael Duncan.

*Feb. 7*

Mary and Christopher Andres of Bemalillo, boy, Christopher James.

Rhonda and George Buffet II, girl, Rachael Michelle.

Delilah and Bruce Langston, boy, Jeremiah Edward.

Zoyla and George Nuanez, boy, Antonio Andres.

Jessica Small and Gregory Foster, girl, Ryleigh Madison.

*Feb. 8*

Kathryn and Rick Carnes, girl, Theresa Jordon.

*Feb. 9*

Joyce and Lorenzo Barela of Belen, boy, Michael Andrew.

Genevieve and Michael Gomez, girl, Savannah Renee.

Karla Vallo and Christopher Sarracino of Acoma, girl, Raquel Elaine.

*Feb. 10*

Amy and Dan Conley, boy, Gunnar Ty.

Brenda and Mark Edwards, boy, Eligah Jordon.

Roberta and Carlos Gutierrez, girl, Samantha Dawn Elaine.

Paula and David Jackson of Belen, twins, Kaitlyn Joann and Ashley Nichole.

Denise and Donnie Tapia, girl, Savannah Adeline.

*Feb. 11*

Kalynn and John Kemaghan of Los Lunas, girl, Bryanna Marie.

Lisa and Bill Nesbitt, girl, Kathryn Anne.

Loretta and Thomas Mordstrand, girl, Angela Michelle.

Dolores Sanchez and Antonio Alire, boy, Antonio Jose Jr.

Carolyn and David Torres, boy, Nicholas Antonio.

*Feb. 12*

Jamela Eudora Antone of Torreon, girl, Emain Fawzi Gadri.

Tracie Asenap and Lorenzo Bemal, boy, Jakob Matthew.

Renee and David Samora, girl, Desiree Alexis.

Amber Woods and Christopher Lucero II, girl, Sierra Rae.

*Feb. 13*

Annie and Andrew Chavez, boy, Andrew Steven.

Jodi and Andy Darnell of Bernalillo, girl, Rachel Emily.

Monica Garcia and Alfred Baca of Los Lunas, boy, Alfred Gene Jr.

Annette Gurule and Lee Acosta, girl, Desiree Annette.

Brenda and Kevin Judd, boy, Brandon Lee.

Ann Michelle Nelson, boy, Taylor Emory.

Michelle and Juan Tena of Grants, boy, Armando Alberto.

*Feb. 14*

Angelique and Steven Garcia, girl, Elena Merced.

Monica Monroe and Michael Smith, boy, Clayton Steward.

Yvonne and Antonio Berni of Los Lunas, girl, Jasmine Danielle.

*Feb. 15*

Evangeline and Ricardo Duran of Los Lunas, boy, Ricardo.

Freda Billie and Ronald Begay of Gallup, girl, Fershaylynn Ervin Percy.

Victory and Michael Brohard, boy, Michael Matthew.

Kristin and Christopher Johnson, boy, Luke Nakaya.

Brigida Leyba and Wallace Jackson, girl, Jazmine Jacklyn.

Kristine Pineda, boy, Adrian Tomas.

Dana and Johan Resediz, girl, Vanessa Annette.

Danielle Stebleton and Dartanian Benson, girl, Dajour Tanae.

LOVELACE MEDICAL CENTER

*May 14*

Jennifer Duran and Anthony Hernandez of Albuquerque, twin boys, Marlano and Martino.

*May 18*

Bobbie Jean Leach and James Gonzales of Albuquerque, boy.

*May 19*

Daniel and Paula Vasquez of Albuquerque, boy.

*May 20*

Bill and Dianna Matier of Albuquerque, girl.

Roy L. Wade and Elizabeth Shoats of Albuquerque, girl, Jessie Daniel.

Antoinette and Marco Lovato of Albuquerque, girl.

Chad and Nancy Mills of Albuquerque, girl.

*May 21*

Ronald and Theresa Sanchez of Albuquerque, girl.

Daniel and Julie Sandlin of Albuquerque, boy, Eric Matthew.

*May 22*

Marvin and Frances Dominguez of Albuquerque, boy.

*May 23*

Jim and Deanna Fafrak of Albuquerque, girl, Tatiana Marie.

Maurice and Anna Ortiz of Albuquerque, boy.

*May 24*

Paul and Yvette Baca of Albuquerque, boy.

*May 27*

Jay Hale and Kyona Lucero of Albuquerque, boy.

Randy and Kelly Irwin of Sandia Park, boy.

*May 28*

Patric and Erin Carabajal of Albuquerque, girl.

*May 29*

Martha Jane Cavic and Paul Burdette Tilyou of Albuquerque, girl.

Camille and Larry Vigil of Albuquerque, boy, Kyle Anthony.

*May 30*

Bibiana Gower and James Kaminski of Albuquerque, boy.

*June 1*

Eric and Samantha Clark Rajala of Albuquerque, girl.

Louie Apodaca and Cynthia Mendoza of Albuquerque, boy.

*June 3*

Rick and Kathleen Emmert of Farmington, boy.

Quentin and Mary Doherty of Edgewood, girl.

ST. JOSEPH NORTHEAST HEIGHTS HOSPITAL

*April 28*

Ernie and Laura Manzanares of Albuquerque, boy.

*April 29*

Ross and Gloria Tollison of Albuquerque, girl.

*April 30*

Angle West and Casey Hamblin of Albuquerque, girl.

*May 1*

Mike and Charla Smith of Albuquerque, boy.

Monique Rawinsky and Getty Litts of Albuquerque, girl.

Scott and Katie Jacobson of Albuquerque, girl.

*May 2*

Kenneth Schafer and Siobhan Martin-Schafer of Albuquerque, girl.

Craig and Angie Parr of Albuquerque, boy.

*May 3*

Bryan and Betty Bareia of Albuquerque, boy.

Jeff and Evelyn Coleman of Albuquerque, girl.

*May 4*

Joseph and Sheri Tafoya of Albuquerque, girl.

*May 5*

Larry Davidson and Angela Archibeque of Albuquerque, boy.

Mark Bigoni and Catherine Gragg of Albuquerque, boy.

*May 7*

Jeffrey and Andrea Ehlert of Albuquerque, girl.

Mark and Judith Neuman of Albuquerque, girl.

*May 8*

Jon Ira and Cheryl Robertson of Albuquerque, girl.

Herman Wilson and Shryl Benally of Albuquerque, boy.

Gilbert and Morayma Sanchez of Albuquerque, boy.

*May 9*

Loren and Debra Cushman of Albuquerque, girl.

Antoinette Barela and Eric Lopez of Albuquerque, girl.

Bill and Liz Montgomery of Albuquerque, boy.

Nilufar and Anwar Hossain of Albuquerque, girl.

*May 10*

Arturo and Yeavette Andujo of Albuquerque, boy.

*May 11*

Maria Elena Vargas and Phillip Lopez of Albuquerque, girl.

*May 14*

Marnie and Omar Sadek of Albuquerque, boy

Lianne Patterson of Albuquerque, boy.

Karen and Steve Lillard Albuquerque, girl.

*May 15*

Ryan and Victoria Fellows of Albuquerque, girl.

*May 18*

Hal Byrd and Mary Dewitt-Byrd of Albuquerque, boy.

*May 19*

Luisa Lara and Ben Lucero of Albuquerque, girl.

David and Theresa Spinarski of Albuquerque, girl.

*May 20*

Toby Avalos and Maranda Pugh of Albuquerque, boy.

Wendy and Eugene Garcia of Albuquerque, boy.

Jim and Elaina Freesc of Albuquerque, girl.

Thomas and Tina Rowland of Alburquerque, boy.

*May 21*

Cabot and Patricia Follis of Albuquerque, boy.

Eddie Salas and Silvia Valencla of Albuquerque, girl.

*May 22*

Melanie Herrera and Christian Dunn of Albuquerque, girl

Orlando and Marie Encinias of Albuquerque, boy.

*May 29*

Amanda and Aaron Tucker of Albuquerque, boy.

UNIVERSITY HOSPITAL

*Feb. 26*

Kathleen and Juan Arellano of Albuquerque, boy, Alonzo Luis.

*Feb. 27*

Ana and Mario Rivera of Albuquerque, girl.

*Feb. 28*

John and Mary Matthews of Albuquerque, girl, Anna Kathleen.

*March 8*

Jason and Maria Cordova of Albuquerque, boy, Vincent Layson.

Cameron and Lois Cole of Albuquerque, girl, Rebecca Elizabeth Marie.

*March 9*

William and Livia Treat of Albuquerque, girl, Alejandra Maria.

Albert and Laura Carrasco of Albuquerque, boy, Albert Jr.

Cang Phan and Dat Nguyen of Albuquerque, girl Donna Nguyen Tan.

Jeremy and Michelle Lee of Albuquerque, girl, Ashley Nicole.

Vincent and Tracey Everett of Albuquerque, girl, Christina Isabelle.

*March 11*

Sonia Gutierrez and Anthony Martinez of Albuquerque, girl, Elena.

John and Emily Loucks of Albuquerque, boy, Thomas Edward.

*March 16*

Tim and Kathleen Newell of Albuquerque, girl, Emily Allison.

Mary Ann Vasquez of Albuquerque, boy, Mark Anthony.

*March 18*

Doug and Terry Lengenfelder of Albuquerque, girl, Hayley Shannon.

Julie Lopez and Damion Jenkins of Albuquerque, girl, Jenaya Neshae.

*March 20*

Juanita Carrillo and Charles Orona of Albuquerque, girl, Allcia Maria

*March 21*

Virginia Garcia of Albuquerque, girl, Stephanie Amanda.

Mr. DOMENICI. This bill provides some very, very good deductions and credits for going to college. So a tax cut, as I view it, is long overdue. In 1948, American families sent about 3 percent of their income to Washington for taxes. Today it is closer to 25 percent. I believe it is much better to leave more money in the hands of our families and our parents and our people.

This bill provides eight separate provisions that help finance college. The most significant is a $1,500 tax credit for 50 percent of the tuition for the first 2 years of a 4-year college; 75 percent of the tuition paid at a community technical school. I believe the committee designed these right and I believe they make good sense.

There is the deductibility of student loan interest. This provision automatically shifts the benefit toward children of low- and middle-income families. The $2,500 deduction of student loans and the interest on them is well designed, and it will produce some powerful incentives as students graduate for them to get on with their lives and get out from under the debt burden as soon as possible. This bill makes an exclusion of $5,525 worth of education assistance.

Mr. President, I have additional remarks that analyze my State but I close by once again repeating: This is the chart of the Joint Committee on Taxation of the United States, that says this is the distribution of our tax cut based on income the American people are making. It has a few imputed things in it but nothing like the White House, and people will be surprised how much they are allegedly earning under the Treasury of the U.S. evaluation of their earnings.

I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. CONRAD. Mr. President, I yield such time as the Senator from North Dakota will consume.

Mr. DOMENICI. Mr. President, I believe we have a lot more time left. Could we ask how much time is left?

The PRESIDING OFFICER. The Senator has an hour left and the other side has 39 minutes left.

Mr. DOMENICI. I wonder if we could start to equalize it a little bit by going on our side.

Mr. DORGAN. I ask the manager, my understanding of the process was we were going back and forth on the presentations.

Mr. DOMENICI. I was not here. Is that correct?

Mr. CONRAD. That was the agreement.

The PRESIDING OFFICER. There was an agreement to that effect, 4 hours equally divided.

Mr. GRAMM. Mr. President, let them go ahead if they want to. We have over an hour and they have 39 minutes. What we were going to do is try to run ours down. But I always am interested in being informed by our colleagues. Let them go ahead and respond and then, if I could be recognized, I will speak.

The PRESIDING OFFICER. The Senator from North Dakota yields how much time to the Senator from North Dakota?

Mr. CONRAD. So much time as he shall consume.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. I ask if the Senator from North Dakota will yield to me for a question?

Mr. DORGAN. I will be happy to yield to the Senator for a question.

Mr. CONRAD. We have heard from our friends on the other side with respect this question about imputed income in charts that have been used. I would just ask the Senator from North Dakota if he is aware, if you take imputed income out—take it out—it does not change this chart an iota, it does not change it at all; not a whit? It would change the income amounts for each of these categories, it does not change the relationships at all. The reality is, if you compare these two plans, the top 20 percent of the income groups in the United States under the Finance Committee plan gets 65 percent of the benefits. Under the Democratic plan, they get 20 percent of the benefits.

The fourth quintile gets 21 percent of the benefits under the Democratic plan and gets 32 percent of the benefits under the plan out of the Finance Committee. You take imputed income, put it aside, you don't want to use that, although it has always been used here as the measurement for distribution under Republicans and under Democrats. That's the way it has been done.

I happen to agree, you ought to leave imputed income out of it. But if you take the cash income, this is the same distribution that you get on these two plans. You have five quintiles, and those five quintiles bear the same relationship. What changes is the income categories attached to each. That is a fact.

The relationship between the quintiles does not change. Under the plan that is being advocated by our friends on the other side, the biggest benefits go to the wealthiest among us. It is undeniable. That is the case. They want to quote Joint Tax. Let's talk about what is wrong with the Joint Tax proposal.

Rather than assess the effect of the tax cuts when fully implemented, Joint Tax tables, cited by our friends on the other side of the aisle, cover only the years up to 2002. I ask my colleague from North Dakota if he is aware, as a result, the Joint Tax Committee's tables ignore 94 percent of the combined $82 billion of capital gains tax changes, estate tax changes and IRA tax cuts contained in the Roth bill. Is the Senator from North Dakota aware?

Mr. DORGAN. Senator CONRAD is exactly correct. And, if I might reclaim my time, let me add to Senator CONRAD's presentation something that is not from us, but something from the New York Times. Let me read an editorial from the New York Times, because I know anyone can bring anything to this floor. You can bring a chart to this floor that says shrimps whistle, pigs fly, and the Moon is made of green cheese. You can bring a chart that shows anything you want. Will Rogers said it best about this debate. He said: ''It's not what he knows that bothers me. It is what he says he knows for sure that just ain't so.''

Let me read you the New York Times editorial about this discussion we are having:

> Before Congress votes on anything, it should get its facts straight. The Republicans present bogus tables suggesting their tax package is fair. The tables stop at the year 2002, before the cuts that favor the wealthy on capital gains, inheritance and retirement accounts take hold. Also, the GOP treats as burdens the tax payments that the investors will voluntarily make as they sell stocks and bonds to take advantage of a lower capital gains rate. The bizarre implication is that investors are hurt by a rate cut. These tables suggest that the middle class reaps most of the benefits. Independent analysts say that about 50 percent of the cuts will go to the richest 5 percent of the taxpayers.

That is not me saying it, it is a New York Times editorial.

Is the New York Times correct? Yes, they are correct. Why? Here is the reason. The chart that we have just seen illustrated on the floor of the Senate about burdens is a chart that covers only the years up to 2002, and it ignores 94 percent of the costs of capital gains, estate, IRA tax cuts in the Senate bill. When the tax cuts proposed in this bill are fully phased in, there is no question what the distribution of this tax cut is. By far, the preponderance of the tax cuts offered in this bill will go to the richest Americans.

This chart that we have just seen, the burden table that is offered on the floor of the Senate, portrays capital gains tax cuts as increasing the tax burden on upper income taxpayers, and it also excludes the estate tax cuts, which total $35 billion in the Senate bill. That is why you have a table that is simply wrong.

Is it right in the context of what it proposes to tell people in a snapshot of time? Sure, but what it proposes to tell people is something that doesn't include all of the facts. It says, take a look at this little slice, and then we are going to give you the conclusion about this little slice of facts, but it is not real.

Mr. President, we are having a discussion about whether the proposed tax cut can be improved. The answer is, yes, it can; it can be improved. One of the things that traps everyone in this Chamber and I think everyone in Congress is the minute you start talk about cutting taxes, we rush immediately to the corner and begin to talk about taxes, and then we begin immediately to talk about capital gains. Let me describe another approach that makes more sense.

Two-thirds of the American people pay higher payroll taxes than taxes. The tax that has increased in this country in recent years has been the payroll tax. The folks who go to work, work hard, sweat, get dirty, take a shower after work are the folks who earn a wage. They don't sit home clipping coupons. They don't get big dividends. They don't have big stock gains. They work for a wage. And then someone who showers before work and sits on the front porch and never raises a sweat and never gets dirty because they are simply cashing in their dividend checks and watching the stock market go up, and so on, they get capital gains. But we are told that stream of income somehow is preferable to the income from work.

So we have a philosophy in this Chamber that says let us tax work, but let us exempt investments. Why? Why tax work and exempt investment? And if you do that, what is the consequence? The consequence is easy to understand. Who has the investments and, therefore, who gets the tax break if you exempt investment? Who works and who pays the higher payroll taxes because they work? Then who is largely left out of this equation when it comes time to talk about cutting taxes?

The other side says to us, ''Well, except we propose a per-child tax credit, and that's going to help all those families with children,'' except they propose the tax credit not go to nearly 40 percent of the children in this country because the folks don't make enough money to qualify for it. Why? Because they measure it only against the income those folks earn as opposed to measuring it against the payroll tax they pay—and, I might add, a higher payroll tax at that.

Can this be improved? Absolutely. Should it be improved? You are darn right it should be improved. Has Senator DASCHLE proposed something that will dramatically improve this tax relief proposal so when you pass around the largess of tax cuts, you go around that table and you see the income earner sitting at the table, those at the bottom fifth, those at the second fifth, on and on, each of them are going to get a significant part of the tax relief? Is that what Senator DASCHLE has proposed? I think so. If we don't pass this substitute, we will end up with a tax bill that goes around that table and passes out tax cuts in a way that is fundamentally unfair. Oh, there are some at the table who will get almost nothing, some just a few crumbs, some a few tiny little slices, and some at the other end of the table will sit there with a huge platter and three-fourths of the cake. All we are suggesting is there are other ways to measure proposals for tax cuts that provide a fairer distribution.

I find interesting this discussion we have about the economy and where we are and where we are headed. The economy is doing better in this country. Some wouldn't give this administration credit under any set of circumstances. But this economy rests not on the shoulders of the Federal Reserve Board, the last American dinosaur that sits down there in that concrete temple; this economy rests on the confidence of the American people that we and others will do the right thing to keep this economy on track.

Doing the right thing in 1993 meant a Deficit Reduction Act that brought down the Federal budget deficit in a serious way. It was not fun to vote for that because it wasn't politically smart to vote for that, and my party paid a significant price for passing it. I can recall—and I won't mention names—I can recall those who stood up and said, ''You pass this and this country will be in a recession.'' ''You pass this and this country will be in a depression.'' ''You pass this and you will throw the economy completely off track.''

We passed it. We indicated to the American people we were serious about reducing the deficit. Guess what? The American people took hope and confidence from that, and the result is when you have confidence, you buy cars, houses, you make decisions about the future based on that confidence. When you lack confidence, you defer those purchases and you have an impact on the economy that is negative. When you have confidence, you have an impact that is positive. I am pleased we did what we did in 1993, and the economy is better because of it. Inflation is down, the deficit is down, unemployment is down, economic growth is up.

So, in that context, while we balance the budget, or attempt to balance the budget, with a series of decisions now and attempt to provide some tax relief, the question today is, who will receive the relief? And we get these burden sharks that give us a vision of who gets the relief that is simply wrong.

Again, I refer to the New York Times editorial. You can't give us a description of who gets tax relief by leaving out the bulk of the tax relief that is going to go to the upper income folks.

Let me finish on one additional point. One of my concerns about what we are doing is we will create a tax shelter industry if we go the totusporcus route of capital gains. I believe very much that recreating the tax shelter business in this country is unhealthy for America.

Senator DASCHLE is proposing something that makes sense. Let's measure against payroll taxes paid; let's measure against that an ability to receive tax relief based on the refundable child care tax credit. That makes great sense to me. If we don't make that child care tax credit refundable against payroll taxes paid, which are the taxes that have increased in recent years, then we will not have done working families a great favor with this bill.

So I stand today and hope that colleagues will support the substitute offered by Senator DASCHLE, cosponsored by myself and others. I think it is substantially more fair, and I think it substantially improves the tax relief bill the Senate is now considering.

Mr. President, I know others wish to speak. I appreciate the courtesy of the Senator from Texas. My understanding was we were going back and forth, and I appreciate very much the courtesy of the Senator from Texas.

I yield the floor.

Mr. GRAMM. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Texas for 10 minutes.

Mr. GRAMM. Mr. President, this is not a debate about taxes, this is a debate about class warfare. I do not understand how people can love jobs and yet hate the process that creates those jobs. If America is going to be saved, it is going to be saved at a profit, and I am not going to apologize for trying to provide incentives to create jobs, growth, and opportunity in America.

We can stand here and shout back and forth with our colleagues who are saying, ''Well, if you make $30,000 a year but you own your own home, if you rented your home, you would get another $8,000 of income, so you make $38,000. And if you own a life insurance policy, it is building up internally, and so while you think you are making $30,000, but you actually have $8,000 from your home and another $6,000 from your insurance policy, and your retirement is going up, and, really, you are making $45,000 a year—you only think you are making $30,000 a year, but really you are rich.''

Let me tell you, I can cut through all that stuff. There is a simple code that if you understand, you will understand everything they are saying: If you pay taxes, then you are rich under the Democrats' plan.

Their basic program is very simple: Never cut taxes, because taxes are only imposed on rich people. Always raise taxes, because taxes are always imposed on rich people. So, as a result, they always want to raise taxes, but never want to cut them.

It is interesting to note that the average tax burden on working Americans today is at the highest level in the history of the United States of America.

We have heard a lot of talk about their great bill in 1993. Might I remind my colleagues that the word then was that this bill only taxes rich people.

Who were those rich people? Everybody who buys gasoline. Who were those rich people? People on Social Security in the President's original bill who made $25,000 a year, if you counted what they would get if they moved out of their own homes and rented it for income.

But, look, this is not a debate that is worthy of America. What we should be debating is, will this tax cut create jobs? Our objective should not be trying to spread the misery or redistribute the wealth. It ought to be to try to create wealth.

We hear our colleagues say, ''Can you believe that the tax cut before us does not cut taxes for the lowest 20 percent of all income earners in America?'' Did you hear that? ''This bill does not cut taxes for the lowest 20 percent of income earners in America. How could that possibly be so?'' Well, the reason it is possibly so is because the lowest 20 percent of income earners in America pay no income tax.

This is not a welfare bill. This is a tax-cut bill.

The top 20 percent of income earners in America pay 78.9 percent of all the income taxes in America. The bottom 40 percent, on balance, pay no income taxes at all. Is anybody surprised that the top 20 percent, who pay almost 80 percent of the income taxes, will get a tax cut when you are cutting taxes and that the bottom 20 percent, who do not pay any income taxes, will not? Why is that supposed to be a revelation? Do we have to increase welfare every time we try to help working families?

In the bill that is being proposed, we have yet another massive increase in a welfare program. It has a wonderful name, EITC, the earned-income tax credit. What it has become is an unearned-income tax credit. This is a program which pays people who do not pay taxes but is called a tax cut.

The last time taxpayers got a tax cut was in 1981. In 1981, the average amount we were giving away in EITC, this welfare program the Democrats call a tax cut, was $285. Today, that average beneficiary is getting $1,395. The average American who does not pay income taxes but who is getting an earned-income tax credit to offset taxes—in many cases when they have no tax liability—has had their subsidy increase from $285 a person to $1,395; while working families who do pay taxes have not gotten a dollar of tax cuts. In fact, their after-tax income has actually declined.

Now we are here trying to give a $500 tax credit per child for every working family in America, so that Americans who make $30,000 a year and have two children will be off the income tax rolls. What is the complaint from our Democratic colleagues? Their complaint is that we are not giving money in our tax cut in large enough amounts to people who are not paying taxes.

This is a tax-cut bill. This is not a welfare bill.

We pass a lot of welfare bills around here—too many of them—but this is not one of them. This is a tax-cut bill. We should ignore all this malarkey about the bottom 20 percent not getting any income tax cut, they do not pay any income taxes.

Our colleagues have lamented the payroll tax. They claim that they are really worried about the payroll tax. Well on May 22, 1996, John ASHCROFT, the Senator from Missouri, offered an amendment to allow moderate-income people to deduct their payroll tax from their income in calculating their income tax.

Every person who has spoken in favor of this amendment, who has criticized the underlying bill for not giving tax cuts to people who do not pay income taxes, and who has lamented the payroll tax—every one of them voted against Senator ASHCROFT when he tried to cut taxes for people who are paying big payroll taxes.

Let me also say that all of those who I have heard today speak in favor of this amendment also supported the Clinton health care bill that would have raised the payroll tax by 8.9 percent to pay for socialized medicine. Of course, today they are terribly upset about the payroll tax and they want to give income tax cuts to people who are not paying income tax.

What is their program? Their program is tax cuts for people who do not pay taxes, capital gains tax cuts for people who do not own capital.

Our program is to cut taxes for people who actually pay taxes. I am not going to apologize for the fact that when 20 percent of the people pay 80 percent of the taxes, when you are going to do a tax cut, that 20 percent is going to get a bigger tax cut.

Listening to all this talk, you would think that every year the tax burden is getting heavier and heavier on lower income people. It is not true. The tax system has become more progressive every day since Ronald Reagan became President. In fact, his tax cut made the system more progressive, as does our tax cut.

We really should not even be talking about this because it just smacks of us

pitting one group of people against another based on their income. Many of the people in the Senate today grew up in families that were low- or moderate-income families. You are not stuck being poor your whole life because your parents are poor.

Neither of my parents graduated from high school, but they did not resent people who made money, nor did they feel the Government should come along and take it away from somebody else to give it to them.

Now, maybe this sells. Maybe this sells politically to say, ''Twenty percent of the income earners get no tax cut.'' Maybe it sells. But remember, they do not pay any income taxes either.

This is a tax-cut bill.

In 1993, taxes were increased by $250 billion in the Clinton tax-increase bill. We are cutting it by $74 billion in our bill and 75 percent of it is going to families that make $75,000 a year or less. Maybe those families are rich to the Democrats. Maybe a working couple making $75,000 should be taxed into poverty. I do not think so. I want them to be able to keep more of what they earn.

I thank the Chair for its indulgence.

Mr. BINGAMAN addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BINGAMAN. Mr. President, I yield myself up to 10 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I want to change the subject just slightly in this debate and talk about a different aspect of why I believe the Democratic alternative being proposed here is preferable to the bill which was reported by the Finance Committee. That is because, as I see it, the Finance Committee bill has in it what have been referred to as fiscal ''time bombs,'' which would explode the size of the revenue loss as we move into the next century.

Our bill, our alternative, the Democratic alternative, tries to eliminate those fiscal time bombs, and in doing so is more fiscally responsible for the long-term future of the country.

Let me talk about that aspect of it slightly. I do so first with this chart that I have here. This chart shows tax cuts—the Senate bill; this is the bill we are debating and getting ready to vote on here either late tonight or tomorrow—shows that the tax cuts in this Senate bill are heavily backloaded.

What that means is that, although the budget agreement calls for $85 billion in tax cuts in the next 5 years, through the year 2002, it calls for $250 billion in tax cuts up through the following 5 years, up to 2007, and if you take the next 10 years and look at what happens in that period so that you have the full 20-year period in mind, it goes to $830 billion in tax cuts and lost revenue to the Treasury. That is what we mean by backloaded.

You say, why are we losing that much revenue? What is there in this tax bill that is costing that much revenue? Here are three of the main reasons why we are losing that revenue.

Of course, this chart only goes through the year 2007, but it shows that the alternative minimum tax, of course, the change there is losing $15 billion, the change in the capital gains is losing $24 billion in this second 5-year period, and the change in the IRA's is losing $45 billion.

I want to talk a moment about the provisions in this bill related to IRA's and how we are going about losing that much money.

We are losing it primarily because of a provision in this bill that is called the IRA Plus—the IRA Plus. People need to understand a little bit about the IRA Plus.

Mr. President, there are two kinds of IRA's that are available to any of us today in America. One is a deductible IRA where you are able to deposit into your individual retirement account money before you pay tax on it. That is deductible money, deductible from your tax return.

The other, of course, is a nondeductible IRA. You can deposit up to $2,000. If you do not use the deductible IRA, you can deposit up to $2,000 in a nondeductible IRA. That is money that you have already paid tax on.

You can have either under current law.

Let me just talk a moment about the deductible IRA. Under current law, all taxpayers with incomes below $50,000—that is joint filers—so a family that earns less than $50,000 or reports income of $50,000 may make a deductible contribution to an IRA. They can put up to $2,000 in an IRA every year without paying tax on that money. That can be saved by them for their retirement into the future. They do not have to take it out, do not have to begin taking it out until they are over 70 years old. That is a very good benefit.

All ratepayers who are not covered by an employer-sponsored plan may make deductible contributions regardless of their income level. So we are saying that if you are not covered by any kind of employer-sponsored plan, you can go ahead and deposit your $2,000, take the tax deduction under current law, and you are not penalized. This covers over 70 percent of all of those who are eligible, so that 70 percent of the people filing tax returns today can take this $2,000 deductible contribution if they so choose.

Under the proposals in this bill on deductible IRA's, all taxpayers then with incomes below $100,000—we are essentially doubling or increasing by twice the income level for joint filers—and any family with an income up to $100,000 can make a deductible contribution to an IRA. All taxpayers who are not covered by an employer-sponsored plan may make deductible contributions regardless of the income level.

The estimate here is that we are now talking, under the proposed bill, of 90 percent of all taxpayers, 90 percent of all families will be eligible to make deductible contributions.

We are going next, Mr. President, to the real clincher in this so-called IRA Plus.

An IRA Plus is a nondeductible IRA. It is not a deductible IRA. It is not the kind of IRA that is available to people who have $100,000 or less in income or who are covered by an employer-sponsored retirement plan. This is aimed primarily at those who earn over $100,000 in income and who have employer-sponsored retirement plans already.

Current law says that you can go ahead and deposit your $2,000 each year. That money compounds, that money gains interest or capital gains of whatever kind until such time as you start drawing the money out, at which time you pay tax on it.

The proposal in here, IRA Plus, says that not only can you have this, you can have it in a particularly attractive way.

First of all, we are going to let you take any IRA you have now and convert it into an IRA Plus if you want to and pay the tax that is due up to January 1, 1999. You have to pay it during the 5 years that it is covered by this budget plan so we can take full credit of those funds in deciding whether we have balanced the budget, but you can pay that, and then once you have set that up, the nondeductible IRA is no longer taxable.

There is no tax owed when you realize a gain. There is no tax owed when you distribute money out of that IRA. There is no tax owed when you spend the money. We are setting up essentially, Mr. President, our own version of a Swiss savings account or a Swiss bank account.

We have all read about people with lots of money who go to Switzerland and set up a bank account so they can avoid taxes that way. They will not have to do that anymore. They can just set up an IRA Plus, put money in there, and then any gain they realize on that for the rest of their life is not taxable.

This is the only place in our tax law, as far as I know—I am not an expert on tax law—but as far as I know there is no place else in our tax law where we set up this kind of a provision, where we say if you put money in one of these accounts we will no longer charge you any tax on that or on the gains from that money for the rest of your life. This is what the IRA Plus is. This is why this bill is so heavily backloaded.

Clearly, this is a fiscal time bomb. There is no other way to look at it. There is no justification, in my view, for us putting this kind of a benefit in for individuals who have over $100,000 in income and who are also covered by another employer-sponsored retirement plan. This is a provision which is not, as I understand it, in the House bill that is being considered on the House side.

I hope very much later in the debate today I can offer an amendment to try to strike this provision from our own bill. If we do strike this provision, we will deal with a great deal of the problem that exists in the Finance Committee bill in the backloading of this provision. It will be much more fiscally responsible to eliminate this provision, and clearly it will be fair to working Americans at all income levels.

I still want all Americans to have the right to deposit the $2,000 after tax into an IRA, just as they can under present law. That is entirely appropriate. But they ought to have to pay tax on the earnings from that as they do today.

Mr. President, I hope this amendment is seriously considered when I do get a chance to offer it later in the evening. I also believe that the fact that we are eliminating this IRA Plus in the alternative that the Democrats are offering today is a major reason why I am planning to support that alternative.

I commend Senator DASCHLE for putting it forward today, and I yield the floor.

Mr. NICKLES. Mr. President, I yield myself 10 minutes.

Mr. President, first, I wish to urge my colleagues to vote no on Senator DASCHLE's substitute. I started to call it the Democratic substitute. I hope that is not the case. I really truly hope that is not the case, because we passed a bipartisan bill, one that had Democrats and Republicans supporting it.

For those people that are saying this bill that was passed is for the wealthy and so on, that is absolutely hogwash. This bill that we passed in the Finance Committee is very family friendly. The bulk of the benefits, over 80 percent of the benefits, are for families with kids and/or education. The child tax credit, for example, starts phasing out with families or individuals that have incomes above $75,000. Personally, I think it should be for all families, but we did not make it that way. I think we should make it for all families. Upper-income people will not get it.

So this idea that we are just benefiting upper-income people is absolutely not true. Upper-income people, the highest-income people, do not get the family tax credit. Everybody else does. I think we should make it apply to everybody, but we didn't. There are income limits on that.

There are income limits on the education tax incentives. They start phasing out with individuals at $40,000 and couples at $80,000. A lot of times we will not be able to tell our constituents that everybody gets this. People with incomes up to $40,000 will get it if they are individuals or couples at $80,000, but above that they might not. We cannot brag about this too much because not all Americans get the education incentive. Not all Americans get the child tax credit. I tell you, a lot more Americans will get these tax benefits under the package that is before the Senate, the bipartisan finance company, than under Senator DASCHLE's alternative.

Senator DASCHLE's alternative is redistribution of wealth. It is not a tax cut for taxpayers. It is using the tax system so we can channel more money to people that do not pay taxes in the first place. It is kind of complicated because he says we want people to get the child care tax credit, and then we also want them to get the earned-income credit in addition to that. Wait, what is he doing? On the child care tax credit, that is only $250. Ours is $500. Now, there is a little difference here. Ours is for $500, his is for $250. Ours apply to children up to age 18 and below age 13 everybody gets $500. In Senator DASCHLE's approach, they get $250. If they put it in an IRA, they get $350. That is the Government telling people what to do. Nobody gets any benefit under Senator DASCHLE's proposal if they are between ages 13 and 18 until the next century—until the year 2000. That does not make a lot of sense. He says he has a child credit, but it is only $250; but if you are 14 years old, you do not get anything under their proposal.

Why? Well, the reason why he did that is to have the credit be refundable. I urge my colleagues when they say tax ''credit refundable,'' really what they mean is we want to have a spending program. This is not a program to cut taxes. It is a program for Uncle Sam to spend money through the tax credit.

President Clinton likes this. There is a big increase in the so-called earned-income credit. I hope we change the name of that section of the Tax Code later on today or tomorrow. But they use that Tax Code as refundable tax credit to write people checks.

My colleagues on the Democrat side said we want to give whatever child tax credit and earned-income credit on top of that so Uncle Sam can continue writing more checks. I ask unanimous consent to have printed in the RECORD at the conclusion of my statement, a chart showing how much the earned-income credit has expanded in the last several years.

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

(See exhibit 1.)

Mr. NICKLES. In 1990, the maximum benefit was $953 for a family with 2 or more children. In 1993 it was $1,511. This year, the maximum benefit for two children is $3,680, and 90 percent of that is not a tax credit. It is Uncle Sam writing a check. It is not reducing somebody's tax liability. In most cases these are not Federal income tax liabilities, but Uncle Sam writing a check. Somebody said that is to make up for payroll taxes. They pay Social Security taxes, yes, 7.65 percent, but the tax credit is 40 percent, far and above what they pay in Social Security taxes.

I just mention to my colleagues, this is the welfare program, and our colleagues supporting Senator DASCHLE's amendment want to expand it. They want to give a child care tax credit and expand the earned-income credit, give both, so they can say we are giving money to low-income people. The Tax Code should not be for redistribution of wealth. If we are going to have a tax cut, it should be for taxpayers.

They say this plan that passed the Finance Committee is unfair because it advantages upper income. Absolutely false. Eighty-two percent of this package in the first 5 years falls to families with incomes less than $75,000 or $80,000; 75 percent of the whole package falls to families less than $75,000.

Then a couple of comments, well, it benefits the wealthy. They do well because we have capital gains. Absolutely false. I ask unanimous consent to have printed in the RECORD another chart, showing the highest 10 percent of the taxpayers pay 47 percent of the tax.

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

(See exhibit 2.)

Mr. NICKLES. How much of the benefit do they get out of this tax bill? The highest 10 percent pay almost half the tax. How much benefit do they get out of this bill: 13 percent. The highest 1 percent, the wealthiest people in this country, what percentage of the tax do they pay? They pay 18 percent. How much benefit do they get out of this bill? They pay 18 percent. Of the total tax bill of this cup, the highest 1 percent pay 18 percent of the total income tax. How much benefit do they get out of this bill: Two percent. Mr. President, the wealthy are not making away like bandits on this.

This is a family-friendly tax bill. If one believes that we should put the majority of this money in to help families, we have done it in the Finance Committee package. We have done it with the tax credit that says if you have 3 children you get $1,500 that you get to keep, that you get to save, and if you pay $1,500 in income tax, a little over $100 a month, you get to keep it. It is yours. You decide how to spend it. That is in the bill that passed the Finance Committee.

You can go to your constituents, as long as their incomes are less than $75,000 and say, what is your income tax, look at your W–2. If you have two kids, that is $1,000 a year you get to keep. If you have four kids, that is $2,000 of your money that you get to keep. That is in our proposal. It is not in the Democrat proposal. Senator DASCHLE's proposal is $250 for the first couple of years, $350 maybe if you put it into an IRA.

Mr. President, there is no comparison between these two packages. Unfortunately, Senator DASCHLE's proposal is really redistribution of wealth. It is not a tax cut. The Finance Committee proposal that we have is not perfect, but at least it is very family friendly. The $500 tax credit is real. It will apply to all families up to incomes of $75,000, where we start phasing it out, $110,000 for couples on the child tax credit.

I urge my colleagues to reject the DASCHLE amendment, have bipartisan

support and overwhelmingly vote for passage of this bill and overwhelmingly reject another income redistribution scheme that is propagated by my colleagues on the other side.

I might mention, as well, Mr. President, most of the people who have spoken out in favor of Senator DASCHLE's amendment, one, voted for the 1993 tax bill which was not a tax cut, it was a tax increase. They really have not been interested in tax cuts. They have been interested in tax increases. If you look at this proposal that they have, it is really trying to figure out how can we take more money from some people and give to somebody else. It is redistribution.

Mr. President, I urge my colleagues to vote no on their proposal and to support the proposal that was reported out of the Finance Committee.

I yield the floor.

EXHIBIT 1

EARNED INCOME CREDIT—TWO OR MORE CHILDREN

[Historical]

| Year | Credit percent | Maximum credit | Min. income for max. credit | Max. income for max. credit | Phaseout income |
|---|---|---|---|---|---|
| 1976 | 10.00 | $400 | 4,000 | $4,000 | $8,000 |
| 1977 | 10.00 | 400 | 4,000 | 4,000 | 8,000 |
| 1978 | 10.00 | 400 | 4,000 | 4,000 | 8,000 |
| 1979 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1980 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1981 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1982 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1983 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1984 | 10.00 | 500 | 5,000 | 6,000 | 10,000 |
| 1985 | 11.00 | 550 | 5,000 | 6,500 | 11,000 |
| 1986 | 11.00 | 550 | 5,000 | 6,500 | 11,000 |
| 1987 | 14.00 | 851 | 6,080 | 6,920 | 15,432 |
| 1988 | 14.00 | 874 | 6,240 | 9,840 | 18,576 |
| 1989 | 14.00 | 910 | 6,500 | 10,240 | 19,340 |
| 1990 | 14.00 | 953 | 6,810 | 10,730 | 20,264 |
| 1991 | 17.30 | 1,235 | 7,140 | 11,250 | 21,250 |
| 1992 | 18.40 | 1,384 | 7,520 | 11,840 | 22,370 |
| 1993 | 19.50 | 1,511 | 7,750 | 12,200 | 23,049 |
| 1994 | 30.00 | 2,528 | 8,425 | 11,000 | 25,296 |
| 1995 | 36.00 | 3,110 | 8,640 | 11,290 | 26,673 |
| 1996 | 40.00 | 3,564 | 8,910 | 11,630 | 28,553 |
| 1997 | 40.00 | 3,680 | 9,200 | 12,010 | 29,484 |
| 1998 | 40.00 | 3,804 | 9,510 | 12,420 | 30,483 |
| 1999 | 40.00 | 3,932 | 9,830 | 12,840 | 31,510 |
| 2000 | 40,00 | 4,058 | 10,140 | 13,240 | 32,499 |
| 2001 | 40,00 | 4,184 | 10,460 | 13,660 | 33,527 |
| 2002 | 40,00 | 4,320 | 10,800 | 14,100 | 34,613 |

Source: Joint Committee on Taxation.

Provided by Senator Don Nickles, 06/26/97.

EXHIBIT 2

DISTRIBUTIONAL EFFECTS OF FINANCE TAX BILL

| | 1997–2002 | | 1997–2002 | |
|---|---|---|---|---|
| | Total | Percent | Cumm | Percent |
| CHANGE IN TEXES IN MILLIONS | | | | |
| Income Category: | | | | |
| Less than $10,000 | 73 | −0 | 73 | −0 |
| $10,000 to $20,000 | (6,408) | 5 | (6,335) | 5 |
| $20,000 to 30,000 | (13,667) | 11 | (20,002) | 15 |
| $30,000 to 40,000 | (22,241) | 17 | (42,243) | 33 |
| $40,000 to 50,000 | (20,309) | 16 | (62,552) | 48 |
| $50,000 to 75,000 | (39,676) | 31 | (102,228) | 79 |
| $75,000 to 100,000 | (20,217) | 16 | (122,445) | 94 |
| $100,000 to 200,000 | (5,386) | 4 | (127,831) | 98 |
| $200,000 and over | (1,965) | 2 | (129,796) | 100 |
| Total | (129,800) | 100 | | |
| Income quintile: | | | | |
| Lowest | (539) | 0 | (539) | 0 |
| Second | (9,173) | 7 | (9,712) | 7 |
| Third | (29,261) | 23 | (38,973) | 30 |
| Fourth | (46,437) | 36 | (85,410) | 66 |
| highest | (44,390) | 34 | (129,800) | 100 |
| Total | (129,799) | 100 | | |
| Highest 10% | (16,430) | 13 | | |
| Highest 5% | (4,087) | 3 | | |
| Highest 1% | (2,066) | 2 | | |
| TAX BURDEN IN BILLIONS | | | | |
| Income Category: | | | | |
| Less than $10,000 | 30 | 0 | 30 | 0 |
| $10,000 to $20,000 | 191 | 2 | 221 | 3 |

DISTRIBUTIONAL EFFECTS OF FINANCE TAX BILL—Continued

| | 1997–2002 | | 1997–2002 | |
|---|---|---|---|---|
| | Total | Percent | Cumm | Percent |
| $20,000 to $30,000 | 442 | 5 | 663 | 8 |
| $30,000 to $40,000 | 622 | 8 | 1,285 | 16 |
| $40,000 to $50,000 | 654 | 8 | 1,939 | 24 |
| $50,000 to $75,000 | 1,578 | 20 | 3,517 | 44 |
| $75,000 to $100,000 | 1,281 | 16 | 4,798 | 59 |
| $100,000 to $200,000 | 1,639 | 20 | 6,437 | 80 |
| $200,000 and over | 1,638 | 20 | 8,075 | 100 |
| Total | 8,077 | 100 | | |
| Income Quintile: | | | | |
| Lowest | 60 | 1 | 60 | 1 |
| Second | 340 | 4 | 400 | 5 |
| Third | 874 | 11 | 1,274 | 16 |
| Fourth | 1,614 | 20 | 2,888 | 36 |
| Highest | 5,190 | 64 | 8,078 | 100 |
| Total | 8,077 | 100 | | |
| Highest 10% | 3,782 | 47 | | |
| Highest 5% | 2,756 | 34 | | |
| Highest 1% | 1,436 | 18 | | |

Mr. LAUTENBERG. Mr. President, I rise as a cosponsor of the Daschle amendment, which would provide significant tax cuts for ordinary, middle-class families, without leading to exploding deficits in the future.

Mr. President, throughout this Nation, millions of middle-class families are struggling simply to live the American dream. They love their children, but they don't see them very much. They work long hours. They're trying to save for their retirement, and their kids' education. But they're having a hard time just paying their bills, and making ends meet.

Mr. President, these are the people who most need tax relief.

And yet, Mr. President, those are not the people who get the bulk of the relief in the underlying bill, as reported by the Finance Committee. The committee's bill provides more benefits to those in the top 1 percent of the population than to the entire lower 60 percent, combined. That's not right. And this amendment would correct the problem.

Mr. President, this amendment provides many of the same types of tax cuts that are included in the Republican plan. And the total amount of tax relief is roughly the same. But the provisions are structured differently, to give most of the benefits to ordinary Americans.

The Democratic alternative provides a $500 tax credit for children. But, unlike the Republican version, it makes the credit available for working families with little or no tax liability.

The Democratic alternative provides significant tax relief to help Americans handle the costs of higher education. And it provides substantially more benefits for those attending lower-cost community colleges than the Republican legislation.

The Democratic alternative would cut the capital gains tax rate. But, unlike the Republican version, it gives most of its benefits to the middle class, not the very wealthy.

The Democratic alternative also reduces estate taxes. But instead of lavishing huge breaks on the heirs to multimillion dollar estates, it focuses benefits on small businesses.

Mr. President, another advantage of the Democratic alternative is that it costs do not explode in the out years. The underlying bill has several provisions the costs of which increase substantially in the future, such as the so-called backloaded IRA and capital gains breaks. This problem is addressed in the Democratic alternative, which is much more fiscally responsible.

So, Mr. President, in many ways the Daschle amendment is a far superior alternative to the underlying bill, and I would urge my colleagues to support it.

Mr. President, while I have the floor, I wanted to take just a few minutes to discuss the first reconciliation bill that the Senate approved yesterday.

Mr. President, as one of the principal negotiators of the bipartisan budget agreement, it pained me to have to vote against the first reconciliation bill. Unfortunately, that bill went far beyond the bipartisan budget agreement, to a point that I felt I could not support it in good conscience.

I am especially concerned, Mr. President, that the first reconciliation bill includes substantial changes in Medicare—changes that have not been adequately considered, and that could be very harmful to the program, and to the millions of Americans whose health will depend upon it in the future.

For example, the bill would eliminate Medicare coverage for individuals aged 65 and 66. Yet it provides no alternative for these people. This could leave millions of older Americans without access to affordable health insurance. And that's not right.

The bill also would encourage higher income beneficiaries to leave the program, by completely eliminating all subsidies of their premiums. That could undermine Medicare's universal support, and lead to a two-tier system in which sicker, less wealthy seniors would be forced to pay more for less. And that's not right.

Finally, the bill would create a substantial economic burden for many frail and sick elderly Americans, by establishing a new copayment for home health benefits. This copayment could cost up to $760 per year—a substantial percentage of many seniors' income. And that copayment would come on top of an already substantial increase in premiums called for under the bill.

Mr. President, that's just not right.

Mr. President, none of these provisions was included in the bipartisan budget agreement. And none have really been seriously debated in the 105th Congress. The public has had little opportunity for input on this, and most Americans probably don't even know what's being considered in the Senate.

Mr. President, let me make one thing clear. There is no question that we will have to make changes to the Medicare program as the baby boomers reach retirement age. However, changes like these are too important to rush through Congress as part of a reconciliation bill that must be considered

under very expedited procedures. These are serious issues that deserve serious attention and public input.

Mr. President, I am hopeful that the final version of the first reconciliation bill will not include most of these problematic provisions. The President, and many in the House of Representatives, share many of my concerns about the Medicare changes. And so I continue to hope that these provisions will be eliminated in the final version of the legislation, and that I will be able to support it.

Mr. ABRAHAM. Mr. President, I have spoken previously about the problems associated with the Treasury Department's use of the concept called family economic income in assessing the distributional impact of the Taxpayer Relief Act. Under this controversial approach, the Treasury Department artificially inflates income by adding to it the value of fringe benefits, retirement benefits, unrealized capital gains, and the imputed rent on homes. The effect of this is to make middle-income wage earners appear to be richer than they really are. So if you get a tax cut under the Taxpayer Relief Act, the Treasury Department classifies you as ''rich.''

Under normal methods of measuring income used by the Joint Committee on Taxation, the CBO, and most private sector forecasters, this tax cut overwhelming by benefits middle-class families. Under this bill, 75 percent of the tax cut goes to people making $75,000 or less. And 82 percent of the tax relief goes directly to families with children. Those are the facts.

Mr. President, I ask unanimous consent that a study by economist Bruce Bartlett, which debunks the Treasury's use of this flawed concept, be printed in the RECORD.

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

TREASURY'S DISTRIBUTION TABLES DON'T ADD UP

(By Bruce Bartlett)

One of the most important factors in evaluating tax legislation is the distributional impact of the tax changes. Toward this end, the Treasury Department and Congress's Joint Committee on Taxation (JCT) produce tables[1] showing the effects of tax cuts and tax increases on people with different incomes. The purpose of these tables is to help give legislators a sense of how a given tax bill will actually affect the well-being of their constituents. As a result, distributional tables have enormous political importance and often are critical in determining both the size and shape of tax legislation.

Unfortunately, the process of producing distributional tables is fraught with difficulty. There are serious conceptual problems in determining what is income, what is the appropriate tax unit for analysis, and the incidence of taxation. there are no clear-cut answers to these questions, and thus there is a great deal of arbitrariness in choosing what to include or exclude in putting together a distributional table. However, different assumptions can lead to wide differences in how tax legislation appears to impact on taxpayers. These assumptions are seldom spelled out explicitly either to policymakers or the general public.

In recent days, the Treasury Department has been highly critical of the tax bills being considered by Congress. The Treasury alleges that the benefits of the tax legislation approved by the House Ways and Means Committee and the Senate Finance Committee are skewed too heavily toward the rich and too little toward the poor. As Treasury Secretary Bob Rubin told the House Ways and Means Committee Chairman Bill Archer on June 11: ''We think this package disproportionately benefits the most well off in society at the expense of working families.'' According to the Treasury analysis, 67.9 percent of the Ways and Means bill and 65.5 percent of the Finance Committee bill would go to the richest 20 percent of families.

There are serious problems with the Treasury analysis, however, that cast grave doubt on its validity. Much of this relates to the concept of income as ordinary people understand it, or even to the concept of income everyone uses on their tax returns. For this reason, the Treasury analysis offers a very misleading picture of how pending tax legislation will actually impact on people.

The basic concept of income most people are familiar with is Adjusted Gross Income (AGI), because that is what the Internal Revenue Service uses to determine tax payments. AGI includes wages, salaries, taxable interest, dividends, alimony, realized capital gains, business income, pensions and other familiar forms of income. Treasury starts with AGI but adds to it many forms of income that are not included on tax returns and that most taxpayers would not consider to be income at all. These include the following:

Unreported income. This includes the incomes of people whose incomes are too low to require them to file tax returns as well as income that taxpayers fail to report. These adjustments increase AGI by about 13%.

IRA and Keogh deductions. These are normally deducted from gross income before AGI is calculated. However, Treasury treats them as if they are not deductible. Treasury also counts as income the return to previous IRA and Keogh contributions that remain undistributed.

Social Security and AFDC. For most taxpayers, Social Security benefits are not taxable. However, Treasury treats everyone's benefits as if they are taxable. AFDC (Aid to Families with Dependent Children) is the Federal Government's principal welfare program. It is also treated as if it is taxable income.

Fringe benefits. These include such things as employer-provided health benefits, life insurance and pensions that are presently tax-exempt.

Tax-exempt interest. Most interest on municipal bonds is free of federal income tax, however Treasury treats such income as if it were taxable.

Imputed rent. This is the ''income'' homeowners allegedly receive in the form of rent they pay to themselves. In other words, all taxpayers living in their own home are treated as if they were renters who rent out their home to someone else.

Unrealized capital gains. Capital gains are only taxed when realized. But Treasury counts unrealized gains as if they were realized annually.

Retained earnings. Owners of corporate stock are assumed to receive 100% of corporate profits, even though much of that profit is never paid out to them in the form of dividends but is retained by the corporation.

The result of all these changes is to increase AGI by about 50%. In other words, in the aggregate, all taxpayers are 50% richer than their tax returns say they are. The effect of this is to make many taxpayers of relatively modest means appear to be rich in Treasury's distribution table. For example, the number of taxpayers with incomes over $100,000 is three times higher under Treasury's definition of income than under the normal definition used on tax returns.

Although FEI generally increases income far beyond what most taxpayers would recognize by including unfamiliar forms of income, Treasury also excludes much income that taxpayers do find familiar. For example, pensions and dividends are not treated as income. Since pension contributions and all corporate profits are already attributed to taxpayers, including pension and dividend payments as well would constitute double-counting.

The effect of Treasury's methodology is to make many people with very low incomes appear to pay a lot of taxes. For example, any retired person living on pensions and dividends pays taxes on such income currently. But under Treasury's distribution table their income completely disappears. However, since their tax liability is unchanged, they appear to be paying an extremely high effective tax rate when they actually are not. Thus FEI not only makes many people with modest incomes appear to be rich, it also makes many people with modest incomes appear to be poor.

Another anomaly is that capital gains on corporate stock are excluded from income because all gains are assumed to result from retained earnings. Since such earnings are already attributed to shareholders, counting capital gains would constitute double-counting. The problem is that when shareholders sell stock it may represent many years of earnings, leading to a large tax liability. The effect, is to make people realizing capital gains appear to be much more heavily taxed than they actually are.

Finally, although Treasury includes imputed rent from homeowners, it does not make the same adjustment for those living in public housing. In fact, all non-cash welfare benefits except food stamps are excluded from FEI. Yet such benefits are economically very significant. According to the Census Bureau, in 1995 non-cash benefits reduced the number of people living in poverty from 36.4 million to 27.2 million. The effect of excluding non-cash benefits from FEI is to make many poor people appear to be utterly destitute.

Although Treasury's unusual definition of income is the main reason why its distribution tables make the Ways & Means Committee and Finance Committee tax bills appear to largely benefit the rich, there are also other reasons. The most important is that Treasury assumes that the tax bill is fully effective in 1998. However, many provisions of the tax legislation do not take effect for many years. This makes the tax cut appear much larger than it actually is.

Thus Treasury's distribution table is based on a tax cut of $71.2 billion in the case of the Ways & Means Committee bill and $60.8 billion in the case of the Finance Committee. Yet according to the JCT, the Finance Committee bill would actually increase federal revenue slightly in 1998. Even in the year 2007, when the tax cut is fully phased-in, it would only lower federal revenues by $40.2 billion. Thus Treasury's distribution table implies a tax cut between 50% and 100% larger than it actually is.

A major reason for this anomaly is capital gains. Under current law, capital gains are only taxed when realized. But Treasury assumes that all capital gains, even those that are unrealized, should be taxed annually. Thus any reduction in the capital gains tax

[1] Tables in this article are not reproducible in the Congressional Record.

rate automatically reduces federal revenue, regardless of its effect on realizations and actual government receipts.

However, experience shows that capital gains realization are highly sensitive to changes in the capital gains tax rate. Reductions in the tax in 1978 and 1981, as well as the rate increase in 1996, had enormous effects on realizations and, hence, revenues. Even Treasury admits that lowering the capital gains tax rate, as proposed by both congressional tax bills, would temporarily increase federal revenue by increasing capital gains realizations. Yet despite the fact that actual federal revenues rise, Treasury's distribution table still shows owners of capital assets getting a big tax cut. In effect, Treasury assumes that all capital gains—including those induced by the lower tax rate—would have been realized anyway.

The JCT uses this same methodology, which has the effect of making those paying more in capital gains taxes appear to be paying less. Professor Michael Graetz of Yale Law School has been very critical of this methodology. He points out that in 1990 the JCT's distribution table showed President Bush's proposed cut in the capital gains tax giving taxpayers a $15.9 billion tax cut, although its own estimate showed that federal revenues would be lower by at most $4.3 billion. Based on this contradiction, Graetz constructed the chart shown in Figure II. As one can see, those with incomes about $200,000 appear to be getting a tax cut four times larger than their actual reduction in tax liability could possibly be.

In short, Treasury's distribution tables bear no relationship to reality. While they may serve some purely academic purpose, they fail to convey to policymakers any sense of how real people are actually affected by proposed tax changes. They make some people appear to be much wealthier than they actually are and others poorer. Any ordinary persons looking at one of these tables will have no real idea of where they themselves stand, and will have a very distorted picture of how the proposed tax changes will affect them.

Professor Graetz believes that the methodology for creating distribution tables is so deeply flawed that they should be abandoned altogether during the legislative process. As he writes, ''The information transmitted to policymakers through the current practice of producing distributional tables is simply bad information.'' Instead, it would be better to stick to known concepts of income, such as AGI, that taxpayers are familiar with and produce illustrative examples of how taxpayers in different circumstances will fare under proposed tax changes. This will at least convey an accurate picture of how such changes will affect specific taxpayers. If distributional tables are produced, it should only be after the fact, showing the true impact of a tax change on actual taxpayers.

Another reason to abandon distributional tables because they have a tendency to dominate the tax legislative process to the exclusion of everything else. Sound principles of tax policy are routinely cast aside, the impact of taxes on the economy gets short shrift, and the tax code is made even more complex just to make the tables look right.

A good example of this is the Earned Income Tax Credit (EITC). The ETIC gives low-income workers a credit against their taxes of up to $3,556. However, if their actual income tax liability is less than this, they get a refund of the difference. Thus if a worker qualifies for $2,000 in EITC but only owes $800 in taxes, she get a check from the Treasury for $1,200.

This year the EITC is expected to cost the federal government $26 billion. Of this amount only $3.6 billion actually offset peoples' tax liability. The rest, $22.4 billion, will be ''refunded'' to taxpayers who have no tax liability and get a check from the government instead. In other words, although it is a provision of the tax law, the EITC essentially is a welfare spending program.

Although it is in fact a spending program, the EITC is important for tax policy because it allows politicians to say they are cutting taxes for the poor even though they pay no taxes. Indeed, some Democrats are in effect now trying to expand the EITC so that even more people will get government checks from the program. The way they propose to do this is by saying that taxpayers will be allowed to use the proposed child credit before calculating the EITC.

Under the Republican tax bill, all families with children would receive a credit against their income taxes of up to $500 per child. However, the credit would not be refundable. Families owing no taxes due to the EITC or other tax provisions would not be able to use the credit because they have no liability to offset. Under the Democrats' plan, if a family uses the child credit to eliminate their income tax liability before calculating the EITC, they will get a larger EITC check from the government.

Since those with low incomes pay no income taxes to begin with, the only way they can get a tax cut is by making it refundable. That is why the Democrats appear to offer a bigger tax cut to those with low incomes.

Republicans respond that expanding the number of people getting a check from the government is no way to conduct tax policy. They are right. But the bigger problem is the obsession with the distributional effects of tax legislation, to the exclusion of all other considerations.

In conclusion, the debate over the distributional effects of Congress's proposed tax cut is highly misleading. Because the measure of income and which Treasury's distribution tables are based has no relation to the average person's concept of income—or the IRS's—many of the ''rich'' are in fact people with middle incomes, as are many of those who appear to be ''poor'' in its analysis. This insofar as they purport to tell taxpayers how the tax bills would actually affect them, they are utterly worthless.

Mr. DODD. Mr. President, I rise today in support of the Daschle alternative tax cut amendment. First, let me commend the Finance Committee on the job it's done. Chairman ROTH and Senator MOYNIHAN should be commended for their efforts to craft a bipartisan bill, something that the other body failed to achieve in their tax-writing committee.

Clearly, the Finance bill is better than the bill offered in the House in several respects. However, I believe we can do better, and we must do better to assist America's working families. And that is what the Daschle substitute is all about. It offers families fair and equitable tax relief.

And let's be honest: even in the midst of the strongest economic recovery of the century, many families at the lower income levels are still struggling. They worry about job security, pensions, meeting the costs of higher education, and finding good quality child care. Appropriate, targeted tax relief for these families can help them meet these challenges.

The House and Senate bills, regrettably, shower most of their tax cut benefits not on working families, but on those who least need relief. They deny relief to taxpayers and small businesses in the middle and at the bottom of the income scale. The Finance Committee bill grants 65 percent of its tax cuts on the wealthiest 20 percent of the population.

Mr. President, the Daschle amendment seeks to right these wrongs by bringing relief to working Americans and small businesses. Unlike the competing proposals, the DASCHLE amendment promotes fairness and puts working families first. In contrast to the Finance Committee bill, our amendment provides 65 percent of tax relief not to the most affluent 20 percent, but to the middle 60 percent. That's about twice as much tax relief for the middle class as the Republican Finance Committee proposal.

Under the Daschle amendment, the affluent would get their fair share of the tax cuts, but no more. The top 1 percent of taxpayers would only receive 1 percent of the tax cut, compared to the Archer and Roth proposals which give 19 percent and 13 percent, respectively, of their tax cut to the top 1 percent of income earners.

But fundamentally this debate isn't about statistics. It's about meeting vital family needs and providing additional resources to meet the many challenges they face. The Daschle amendment strengthens families and puts working families first. It provides payroll tax relief by making the child tax credit refundable against all payroll taxes, not just income taxes. An average family of four earning $35,000 pays $2,700 in income taxes, and another $5,300 in payroll taxes. These are the families who desperately need tax relief, and these are the families who would benefit from the Daschle amendment. This provision alone would extend the child tax credit to 10 million more children and families.

The House Ways and Means and the Senate Finance bills deny credit to many working families. Families making less than $25,000 would receive no credit due to their negligible income tax liability. Further, these bills would cut the child credit for families qualifying for the Earned Income Tax Credit.

There are few issues more critical to American families than education. The Daschle amendment recognizes this and provides $10 billion more in education benefits to working American families. The Daschle amendment provides more for school construction, more for Pell grant recipients, and more for tax credits for families to send their children to college. The Ways and Means and Finance bills provide less—less for school construction, less for Pell Grant recipients, and less for tax credits for families to send their children to college. I think we can all agree that unless we tap and nurture the talents and energies of all our people, we won't be able to meet the challenges of the 21st century.

The Daschle amendment also offers fair and equitable relief to middle class

investors, small businesses, and family farms. Under the Daschle amendment, all investors would get the same 30 percent capital gains break that the top 1 percent of income earners already have. This proposal cuts the capital gains rate nearly twice as deeply for most small businesses and provides much needed relief.

Under the Ways and Means and Finance bills, however, primarily the wealthiest taxpayers would reap the benefits of an across-the-board capital gains tax cut. For example, a person who makes $45,000 would receive an average capital gains tax cut of $255, while one who makes $200,000 or more would receive an average cut of $11,520. Clearly, these bills are skewed to benefit the wealthiest income earners and disadvantage those who most need tax relief—working families.

Further, the Democratic alternative targets all estate tax cuts to family businesses and family farms, in an effort to relieve the tax burden felt by many. Again, however, the Ways and Means and Finance bills favor the wealthy by providing $35 billion in estate tax cuts to the wealthiest 1.4 percent of estate owners. Clearly, Mr. President, we must do better to bring relief to a much larger percentage of estate owners in America.

Finally, Mr. President, in the midst of providing tax relief that is fair and equitable, it is imperative that we not lose sight of our obligation to enact legislation that is fiscally responsible. The Daschle amendment allows us to maintain the fiscal discipline we have worked so hard to achieve in recent years, dating back to the wise decisions we made in 1993.

The Finance Committee bill is heavily backloaded. The Joint Tax Committee estimates that the cost of that measure will explode in the out years, costing $830 billion by the year 2017. I have grave concerns about facing the prospect of losing some $830 billion in revenue. And that is why I offered an amendment during the budget reconciliation negotiations which demanded that we adhere to our budget agreement in which we agreed to a net tax cut of $85 billion through 2002, and not more than $250 billion through 2007.

Mr. President, we must be committed to preserving the integrity of the balanced budget agreement and adopt a tax package that is fair and responsible. The American people will not be served by a budget that reaches balance briefly in 2002 and then veers back out of balance afterward. The Daschle amendment balances the budget by the year 2002, and does not threaten to push the budget out of balance beyond 2002.

Mr. President, Senator DASCHLE's alternative plan is fair, it puts families first, and it stimulates jobs and growth. And not least, it is not a ticking time bomb that threatens to push the budget out of balance, blowing a hole in the deficit in later years. And that, Mr. President, is why I urge my colleagues to support this fair, equitable, and modest measure.

The PRESIDING OFFICER. Who yields time?

Mr. WELLSTONE. Mr. President, I yield myself 15 minutes. I say to my colleagues I will probably take 10 minutes.

How much time remains?

The PRESIDING OFFICER. Fifteen minutes and thirty seconds.

Mr. WELLSTONE. Mr. President, I will try and take 7½ minutes and leave 7½ minutes for my colleague.

Mr. President, I have more than enough to say but just in response to my good friend from Oklahoma, there was a quote—and maybe this is the same argument he is making—from Speaker GINGRICH, ''When you take out billions of dollars in tax cuts for working people and put in billions of dollars for people who pay no taxes, that's increasing welfare spending.'' We are talking about the child credit.

Mr. President, let me just remind the Speaker and my good friend from Oklahoma, looking at CBO numbers, this is the percentage of working families who would not be eligible for the majority party's child tax credit, whose payroll taxes exceed their income taxes. The bottom fifth, 0 to $21,700, 99.6 percent; second fifth, $21,000 to $41,000, 97 percent.

There are a lot of working families in the State of Minnesota and all across this country who are not going to be eligible for this child tax credit who pay payroll taxes, who work hard, pay taxes, and are, quite frankly, resentful of this argument that is being made. As a Senator who represents those families, I am especially resentful of such an argument.

I only need to know one thing about this tax proposal, this reconciliation bill. In the State of Minnesota, the tax bill excludes 41 percent of the children. Mr. President, 607,463 children of the 1.5 million children in Minnesota would not receive a benefit from the child tax credit. I repeat, 607,000 children of 1.5 million children will not receive the benefit of the child tax credit. Those are working families.

I say to Democrats, every Democrat, every single Democrat, and as many Republicans as possible, ought to be out here advocating and fighting for those families. It is outrageous to make the argument that they do not pay any taxes or they are ''just on welfare.'' Absolutely outrageous.

Mr. President, you have heard the figures presented out here so I do not need to go through that again except to say I am telling you, in the cafes in Minnesota, when people get a close look at this reconciliation bill they are going to be amazed.

They are going to be really teed off because they are going to say, wait a minute, I thought there was going to be tax relief for us, the small business people, and us, working families. They are going to find out that the lion's share of the benefits go to the very top, the folks that are the CEO's, the multinational corporations who are raking in, on the average, $3 million a year.

You know, Mr. President, I sometimes think that my colleagues believe that if you make $100,000 a year, you are middle class. I would be surprised if more than 10 percent of the people in this country make over $100,000 a year. What about these working families?

Well, we have a proposal here that targets these tax benefits to working families, to small businesses, to family farmers. I am telling you, this is one of these moments where the differences between the two parties make a difference. My gosh, I think a lot of people in Minnesota are scratching their heads and saying: Has there been a hostile takeover of the Government process in Washington, DC? We have been hearing about all this money in elections, and we are now starting to believe that the only folks that sit down at the bargaining table and get their way are people who have the economic resources, because we sure are getting the short end of the stick.

And they are right. I hope we will get a huge vote for this alternative.

Mr. President, let me just summarize a couple of amendments. How much time do I have left?

The PRESIDING OFFICER (Mr. KEMPTHORNE). There are 10 minutes, 14 seconds remaining on the amendment.

Mr. WELLSTONE. I have about 3 minutes, I guess. Let me just mention a couple of amendments that fit in with this whole idea of tax fairness.

One amendment that I hope to do, with Democrats and Republicans, is to make sure we take the HOPE scholarship program and make these tax credits refundable. It is the same issue. Think about the community college students; many are older, going back to school and with children. If we want to make sure that we are really providing help to them—they are not going to be able to take advantage of this $1,500 because they are not going to have that liability. If we want higher education to be affordable for many of these working families, we simply have to do that. A higher education is so important to how our children and grandchildren will do that I hope we will be able to pass that amendment.

The second amendment that I want and hope to do with Senator BUMPERS takes the tax cuts and puts it into a Pell grant program. We simply make the Pell grant $7,000 a year, and that is the most efficient, effective way of making sure that higher education is affordable.

The third amendment I want to mention is the amendment I want to do with Senator CAROL MOSELEY-BRAUN, which has to do with tax credits and, again, for school infrastructure. I say, what are we doing with all of these tax benefits mainly going to wealthy people and we are not investing 1 cent into rebuilding rotting schools across America? What kind of distorted priorities are out here?

Finally, I want to mention—in case I don't have a chance later on as we run out of time—that I have an amendment I think is real interesting, which goes like this. If you have a company—and please remember that average wages rose 3 percent in 1996. Salaries and bonuses of American CEOs rose 39 percent to $2.3 million. So what I say to a company is: Look, if you want to pay your CEO over 25 times what the lowest wage worker makes, go ahead and do it, go ahead and do it. Right now, we say you can do it up to a million dollars. But don't do it on the Government's tax tab. You can pay your CEO anything you want to, but when it is above 25 times what the lowest wage worker makes, you don't get any tax breaks for doing that, just as we don't end up getting tax breaks when someone mows our lawn. We don't get to deduct that. What are we doing here, if we are talking about fairness?

Well, Mr. President, the differences make a difference. This is an outrageous argument that working families paying a payroll tax are only receiving welfare payments. This is an outrageous proposition that over 600,000 children are not going to benefit in the State of Minnesota from this tax credit. We are talking about a tax bill out here that provides the lion's share of benefits to those people least in need of the assistance.

Mr. President, there is no reason in the world for Senators to be quiet on this issue. I hope we get a very strong vote for our amendment. I yield the rest of my time to the Senator from—

Mr. ROTH. Mr. President—

Mr. WELLSTONE. Are we going to rotate?

Mr. ROTH. That is correct.

Mr. President, I yield 7 minutes to the distinguished Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana is recognized for 7 minutes.

Mr. BAUCUS. Mr. President, in the last couple of hours, in my judgment, this debate has turned into a rather partisan matter, with Republicans lining up on one side and Democrats lining up on the other. That is fine. I mean, each Senator has his right to say what he or she thinks. That is why we all ran for office and why we are here doing our very best for our constituents.

But I also think that our people at home want us to, as much as possible, work together. Sure, some of us have differences, but, as much as possible, they want us to work together for the best interests of the American people. That, I think, is why the President worked with the Congress to try to fashion, and did fashion, a budget agreement—an agreement which will reduce the budget deficit by the year 2002; an agreement which contains provisions that the President, the chief Democrat in our country, wanted; and provisions which the Republican leadership in the Congress wanted. It is not the best agreement in the world, but we are a democracy and democracies sometimes are messy and uneven. But it was a pretty good agreement, by most Americans' standards.

The House then attempted to put together its portion of the agreement. I might say that the Ways and Means Committee got pretty partisan. Democrats on the Ways and Means Committee fought vociferously with Republicans on Ways and Means. But the Republicans have a majority of the votes, so they won. Democrats lost, and from the Democrats' point of view, the bill that came out of House Ways and Means Committee is a pretty bad bill.

I take my hat off to the chairman of our Finance Committee and our ranking member. The chairman of our committee took a different tack. His view is to work together. The chairman of the Finance Committee, the Senator from Delaware, Senator ROTH—I have never seen anyone as fair with both sides of the aisle, in trying to come together with a solid agreement that made sense, near unanimous sense, to the members of that committee. It is wonderful. I have served with other chairmen of the Finance Committee. I know Senator MOYNIHAN knows of when I speak. Sometimes that did not happen in other Congresses. In other Congresses, sometimes it was all Republicans this and all Democrats that. When the other side has the votes, you can make a statement, but you lose.

In this case, Chairman ROTH worked with the Democratic side of the aisle, and, as a consequence, we came up with a lot better bill—better, I say, than what is produced in the House pursuant to the budget agreement, agreed to by the President and congressional leadership. Why is it better? It is better because he worked with us. It is also better for these reasons: It has a cigarette tax, which I think most Americans want; it gave a big chunk of dollars to child care, to health insurance, which people want in this country; there is a big emphasis on education, which I think most people in this country want.

There are many provisions which are very good. Now, in return for Chairman ROTH working so hard with Senator MOYNIHAN to put an agreement together, Chairman ROTH asked a very reasonable question with respect to six key points, in the final hours of putting this bill together. The six key points, very simply, dealt with a ticket tax, cigarette tax, with unified credit, and there are a couple others. But there are six key points. He asked us, would all the members of the committee agree to support that agreement? He asked for a show of hands. Every hand went up. Every member of the committee raised his hand to support the agreement.

Now, here we are on the floor today, Thursday afternoon, and my party leader has come up with a very good substitute. In many respects, I think it is better than the bill that came out of the committee. But I made an agreement. I pledged my honor to support the six terms that Senator ROTH asked us to support, so that we would come up with a better bipartisan bill. That is not to say I support or am bound to support every provision of the bill. But with respect to those six key points, I feel duty-bound to honor that commitment, and I will do so here today.

Now, if we could find a Democratic substitute which did not contravene any of those six points, I would probably support it. But the substitute before us does contravene those six points. I feel, as a matter of honor, that I cannot support the Democratic substitute.

I must say that the bill before us—the Finance Committee bill—is not that bad. Remember, we are operating under the agreement that the President and congressional leadership agreed to. Given those parameters, this is not that bad a bill. It reduces the budget deficit, it does reduce taxes, it gives a child tax credit, it helps education, and it is good—not perfect, but it is good.

Now, on down the road, we will have opportunities to still improve upon the bill. The President, after all, has the authority to sign or not sign the bill. I very much pledge to work with all Members of Congress, with my constituents at home, and with the President and the conferees, whoever they may be, to keep improving upon this bill.

I must say, Mr. President, that this is a very difficult position to take because I do not like to be taking a position contrary to the leader of my party. But I do believe that it is the right position to take. After all, we are elected to do what's right. In my judgment, what is right is to support the agreement I reached with the chairman of the committee and also work to continue to improve upon this bill as it reaches different stages of this progress. I, therefore, will not vote for the substitute.

Mr. MOYNIHAN. Mr. President, I yield myself 2 minutes to say to the Senator from Montana that his was an immensely honorable and accurate statement. You raised your hand, as did we all, for $24 billion of child health. I have been 21 years on the Finance Committee and there has never been such a moment or such a provision. And that happened in a compromise in which the Republican majority agreed to a large tax increase we could use for the child health care.

Senator ROTH was remarkable throughout, and no words of praise are too great. In our world, your word is all you have. We gave our word. I think we did it responsibly and I think we will be seen to have done such.

Mr. BAUCUS. If the Senator will yield for 30 seconds, the choice we had in the Finance Committee was to either work with the chairman for a better bill or not work with the chairman and make a statement and get a worse bill.

Mr. MOYNIHAN. Precisely.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I wish to compliment my colleague from Montana for his statement. I will yield the Senator from Missouri 5 minutes.

Mr. KENNEDY. Mr. President, I thought we were rotating between those who supported and those who opposed. If I am correct, the Senator just spoke on the Democratic side in support of the Republican position. Are we rotating?

Mr. MOYNIHAN. Mr. President, the Senator from Massachusetts is correct. That is fine.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I yield myself the 7½ minutes that remain.

The PRESIDING OFFICER. The Senator may proceed.

Mr. KENNEDY. Mr. President, I wish my good friend and colleague from Montana had been on our side, and it would have been appropriate, obviously, for the other side to move ahead. But he made his decision and made his presentation, and now I would like to respond.

Mr. President, I will have the opportunity later on this evening to talk about really where we are in terms of the child care program.

The fact of the matter is that $16 billion that was put in the bill was suggested by the administration's proposal which had a $14 billion cut. The Finance Committee added $8 billion. I commend my colleague and friend, Senator HATCH, for making that effort and for making that fight. Without his efforts, that would not have taken place. So we are farther down the road than we were prior to the time of that particular markup.

But the fact of the matter is—and later on this evening I will have a chance to talk about where we really are in terms of the funding that has been allocated for children and the number of children that still remain. I find it interesting that this provision that the members of the Finance Committee took and accepted deals with accelerated depreciation, deals with airline tickets, a small amount of EITC, and the child care. I find it interesting that the Finance Committee was willing to accept the cigarette tax but use it for those non-child-related issues, even though the Republican leadership had opposed our cigarette tax.

I tried, with all respect, to understand this enormous sense of unity and deep moral commitment to this particular proposal when on its face it is difficult to really understand, given the fact that the originators of the tobacco tax were those Senators—Senator HATCH and myself—devoted toward addressing the needs of children in this country, the sons and daughters of working families who can't afford it. We got a part of it. But evidently the members of the Finance Committee swore in blood that depreciation on buildings as well as airline tickets was basically more important than the children. I am always interested in why that should be such a high moral issue and purpose. I have difficulty in understanding it.

But, Mr. President, the issue today with the particular recommendation before the Senate is whether this proposal really meets the test of fairness for all Americans. That should be the test. Will this really be fair to the taxpayers in this country, or are we tipping the scales in a very important and special way to the wealthier individuals and corporations of this country?

Senator DASCHLE has taken an enormous amount of time and painstaking diligence to fashion a proposal that fundamentally meets the agreement that was reached with the President in terms of what would be the tax adjustments. Senator DASCHLE has put forward a proposal that will be much fairer for all Americans.

We sometimes rail in this body about how the particular proposal really is fairer and more just, but I do think in any fair examination the overwhelming evidence shows that the proposal of Senator DASCHLE is fairer to the working families of this country, and decisively so. This should to be the test.

It is interesting, as we come closer and closer to the final conclusion, that the overwhelming majority of Americans understand this. Even prior to this debate on the various surveys—and I just saw this morning on the early morning shows—the American people understand the difference. They have not seen this debate or heard about this debate. They are out there working even while we are in the debate and discussion. But they understand fundamentally who is going to be on their side and who is going to be on the side of the working families. They are correct.

Senator DASCHLE, I believe, deserves great credit for his leadership in offering to the Senate a proposal that is fairer for working families and for many Americans who have in too many instances been left out farther and farther behind in the period of the last 20 years. Sixty or sixty-five percent of Americans are farther behind and are working harder. Their family members are working harder, and they are working longer in terms of total hours of the week, in terms of families and just being able to keep their heads above water. The reason is the increase in the payroll taxes they have been paying, as described by my friend and colleague, Senator WELLSTONE.

So we have an opportunity—one of the few opportunities that we have—for the 65 to 70 percent of the American families who have been working longer, who have really been the ones who have brought this economy back. We have a stronger economy today because working families have been out there working harder, longer, and smarter in terms of the American economy. They have benefited very little in terms of their own standard of living.

We have an opportunity this afternoon and tomorrow to make some difference in that. The real issue is, are we going to make that kind of a commitment to those working families, whether it is on the child credit programs, or whether it is the education programs, or whether it is basically the overall rate programs, or whether we are going to reward the smaller enterprises that are going to be innovative and creative and expand employment by giving them some adjustment in terms of capital gains? Yes; and whether we are going to make sure that those who are going to get some break in terms of estate planning are going to be those who are going to continue to work the farms and be a part of the American primarily heartland of this nation in terms of producing the food and fiber which we eat.

Those are the issues, Mr. President, and the issue is which way will the Senate of the United States go? Are we going to say to those 60 or 70 percent of the Americans, ''We care about your kids, we care about education. We fashioned the particular program in terms of the HOPE scholarship, and we are going to arrange the other provisions of the Tax Code so that you have a better opportunity, middle-income families, lower-income families, with a modest expansion of the Pell provisions''? Are we going to do that? Our answer is yes, and the Daschle proposal does so.

Are we going to really look out for the sons and daughters of working families? To Senator DASCHLE's credit, it is more expansive and more targeted in reaching the sons and daughters of working families.

So, if we are talking about fairness, if we are talking about equity, if we are talking about how we are adjusting the various rates, including the children's tax credit and the payroll tax, and adjusting those in ways so that we are saying, ''While you may not have been paying a great deal more out of your income tax, you surely are in terms of your payroll tax. We are going to provide some degree of relief.''

So that is the issue. We need to understand that. We can all say, ''We are for education.'' However, you have to look at the proposal. Whose proposal really meets the central challenge that working families and middle-income families are facing in sending their kids to school? It is the Daschle proposal. Whose proposal really does the most in terms of the children? It is the Daschle proposal. Who does the most in terms of trying to make sure that we are going to provide important incentives to smaller, modest, middle-income families who are trying to get started with smaller new businesses by providing enhanced job opportunities? It is the Daschle proposal.

So, Mr. President, I am just proud to support this proposal. It doesn't incorporate all of the kinds of factors that perhaps some of us would like to have. However, it is a serious and very important proposal that deserves the overwhelming support of the Members of this body.

Let me just finally point this out: On the overall issue of tax equity, the Democratic alternative is clearly fairer. More of the benefits of the Republican plan go to the top 1 percent of taxpayers than go to the bottom 60 percent of taxpayers—13.1 percent versus 12.7 percent.

In the Democratic alternative, only 1.4 percent of the benefits go to the top 1 percent of taxpayers and the top 20 percent of taxpayers only receive 20 percent of the benefits. The vast majority of the benefits go to taxpayers who have incomes in the middle 60 percent of the income distribution; 71 percent of the benefits. The Democratic alternative is vastly preferable to the regressive Republican bill because it is fairer to lower and middle-income taxpayers.

Mr. President, this Republican proposal is going to give a green light to all those individuals who have been doing extremely well—extremely well in terms of the stock market. We have seen that go right up through the roof. But who has been out there making those stocks go up, making those businesses work? It is hard-working men and women.

If we accept the Republican proposal, we are saying to all of those who have been able to make very substantial amounts of money that they are going to provide additional kinds of opportunities for them to be able to keep that money while we are saying to those who are working and have worked hard that you are going to get the crumbs. That is what the distribution issue is really all about.

I am not the only one making these observations. We have seen the Center on Budget and Policy Priorities estimate that the cost of the Republican proposal will increase by between $500 and $600 million in the 10 years following the current budget period.

I was 1 of 11 Senators who voted against the economic proposal in 1981 because we were going to balloon the deficit. Only 11 of us at that time voted against it. We are going to see the same kind of balloon now in the outyears.

Who is going to be out here at that time to try to make those adjustments and make those changes when Members of the Senate are going to say, ''Well, we had better close some of those tax loopholes?'' You know what will happen. They will cut back further in education. They will cut further back in children's program. They will cut further back on day care support—on all of the programs that have been continually cut back, or at least attempted to be cut back, in these past 3 years.

The Democratic alternative does not engage in these accounting tricks to balance the budget. The Democratic alternative is honest with the American people, fair to American taxpayers, and it deserves to be adopted.

Republicans make many arguments in favor of their proposal, and many of their concerns are valid. The current system is not perfect. There are many things to improve. We need to give tax relief to families, we need to encourage investment in education, and we need to grant relief from the hardships that are sometimes caused by the estate tax.

On all these general points, Republicans and Democrats agree.

However, the Republican plan uses these arguments as excuses to give enormous tax cuts to the well-heeled and the powerful and it does so as far as the eye can see. It therefore violates the fundamental principles that any tax bill must meet: tax fairness and fiscal responsibility.

The Democratic alternative, on the other hand, is true to both of these principles. It allocates the tax relief fairly among all income brackets. And it guarantees that the amount of the tax relief is responsible, so that we will have a balanced budget not only in the year 2002, but in the years after as well.

Both, the Republican proposal and the Democratic alternative have a child tax credit. On their face, the two proposals appear similar. However, the Republican credit will not benefit lower and many middle income people, while the Democratic proposal will. The Republican proposal will not benefit families who do not earn enough income to claim the full credit. This cut-off applies not only to the extremely poor, but also to families earning up to $30,000 a year.

Under the Democratic alternative, the credit is refundable against both income taxes and payroll taxes. Many more working families will be able to obtain the full benefit of the credit under the Democratic plan. This point is critical for those who earn less than $30,000 a year because their payroll taxes are larger then their income taxes. They deserve tax relief too.

In addition, the Democratic tax credit for children has another significant advantage. It is calculated or stacked prior to the earned income tax credit. Under the Republican plan, the credit is stacked after the earned income tax credit. This means that the working poor who are eligible for the earned income tax credit many not be able to obtain the full benefit of both credits.

If their income tax after taking the earned income tax credit is too small, then they will not benefit from the Republican child credit.

The Democratic alternative will enable these working families to benefit from the child credit too. 47 percent of American children would not be eligible for the child credit under the Republicans proposal. An additional 8 million children would be eligible for only a partial benefit. Clearly, the Republicans have gerrymandered their credit to save money by denying it to as many working families as possible.

Because the Democratic plan allows the credit to be offset against both payroll and income taxes, and allows families the full benefit of both the earned income tax credit and the child tax credit, the Democratic plan will reach 7 million more children than the Republican proposal.

In addition, the Republican child credit is not indexed for inflation. The effect of the credit will drop every year as inflation decreases its value. The Democratic alternative will index the child credit for inflation. We are serious about giving tax relief for families. The Republican proposal is designed to appear generous, but in reality it offers little to lower and middle income persons. Even those middle class and upper income families who receive the credit under the Republican version are better off in the long run under the Democratic version, because their credit is indexed for inflation as well.

The Democratic plan is not welfare. If a family does not work, and does not pay any federal taxes, they will not get the benefit of the credit.

The Democratic alternative gives the credit only to working families. It will help those who need this credit the most, the working poor. The Republican proposal will not help them at all. The Democratic alternative offers an honest tax break. The Republican proposal is a let-them-eat-cake tax break.

The Democratic proposal also does a better job of encouraging investment in education.

The education provisions of the Republican bill are skewed toward higher-income taxpayers. The bill provides only $20 billion for the HOPE scholarship and nothing at all for the tuition deduction. But it provides over $7 billion for other savings provisions that help higher income families.

The bill's allocation of only $20 billion to HOPE scholarship falls far short of the commitment made under the budget agreement to provide $35 billion for tax benefits for higher education. The letter signed by NEWT GINGRICH and TRENT LOTT on the budget agreement specifically states that tax relief of roughly $35 billion will be provided over 5 years for post-secondary education, and that the education tax package should be consistent with the objectives put forward in the HOPE scholarship and tuition tax proposals contained in the Administration's fiscal year 1998 budget to assist middle-class parents.

The administration's proposal had two goals: to help middle class families during the critical years while students are in college, and to encourage lifelong learning.

Students and families across the nation are concerned about escalating tuition, and this bill does not do enough to help them. The Republican bill is flawed in other major respect in this area—it utterly fails to address

the need to help workers expand their skills and education.

The Daschle alternative addresses these problems. It provides a broader HOPE scholarship, and a valuable tuition tax credit for lifelong learning. This credit will enable taxpayers to recover 20 percent of their tuition costs up to a maximum of $10,000, for learning after the HOPE credit expires. This provision can give real benefit to teachers, nurses, auto mechanics and all others in jobs that need continual upgrading of skills. The workplace depends more and more on highly trained workers. To sustain a strong economy, we must invest in ongoing education throughout life.

The bill also provides a disproportionate education benefit to high income families. It contains three separate provisions to encourage savings for college, at a total cost of over $7 billion over the next 5 years. Lower income families do not have the luxury to save as much as higher income families do, and will not be able to take advantage of these provisions.

The Democratic alternative provides some additional benefits for students that are also in the bill, and I support these provisions. Specifically, I support the permanent extension of section 127, the provision for employer-provided tuition, including graduate students. I also support the elimination of the $150 million cap for institutions of higher education, and the restoration of the deduction of student loan interest.

I also strongly support funding for crumbling schools. The deterioration of hundreds of schools across the United States is a disgrace. But this bill offers only a token help on this problem. This bill allocates only $360 million over 5 years by making changes in bond rules. The Democratic bill, on the contrary, will result in a real commitment to improving our schools. It also encourages States to allocate that money to school districts with the greatest needs. The Republican bill offers only band-aids to put over leaking roofs. The Democratic bill provides real relief for school districts to repair their crumbling schools.

The Democratic bill provides for these benefits—the crumbling schools, the section 127 aid, the student loan interest—in addition to HOPE and a tuition tax credit.

In contrast, the Republican bill provides the additional benefits by taking away from HOPE and eliminating a tuition tax break. It pits student against student, giving these additional benefits to some students only at the expense of students who could benefit from HOPE and the tuition credit.

Investing in education is investment in the future. We must do more to help all needy students. The tax benefits need to be targeted to those who need them, and not wasted on those who can afford to save and pay for college on their own.

The Democratic proposal also better addresses the problem with the current estate tax, without creating a giveaway to the rich.

In the current tax system, the estate tax often creates real hardships for families who have just lost a loved one. When the owner of a family business or farm dies, there can be a large estate tax bill at one of the worst times possible. There may well be many other expenses such as funeral costs and legal bills. The estate tax could force the family to sell the business or farm.

Relief is appropriate in these situations, and the Democratic alternative provides it. There would be special estate tax treatment when 50 percent or more of an estate consists of a family business or farm. In these cases, the first $900,000 of the estate is exempt from estate tax, as long as the children or grandchildren continue to actively operate the business or farm for 10 years.

The Democratic alternative is targeted to cases where families may not be able to easily liquidate their holdings to pay the tax. The Republican bill gives relief to all estates. Even if the estate is that of a rich person who invested in stocks and other investments which are easily liquidated, the Republicans still give tax relief. The problems that deserve to be addressed occur only in approximately 1.4 percent of all estates. Instead of extending justifiable relief to these 1.4 percent of estates, they extend relief to all estates. Clearly the Republicans are using rare cases of hardships for family farms and businesses as a fig leaf to cover a massive estate tax break for the wealthy.

Finally, the 20-cent increase in the tobacco tax contained in this amendment is a critical element in tax fairness—and for achieving priority public health goals as well. I am pleased that it is not only a feature of this amendment but of the bill reported by the Finance Committee with a strong bipartisan vote.

Tobacco is one of our most undertaxed industries. Even with the 20 cents per pack cigarette tax increase, the tobacco industry remains grossly undertaxed—whether the standard is historical tax levels, comparison to other countries, or the costs that smoking inflicts on our society and on non-smoking taxpayers.

In 1965, Federal and State tobacco taxes accounted for 51 percent of the retail price of a pack of cigarettes. By 1996, the figure had fallen to just 31 percent. Even with the 20-cents per pack increase, the share of the cost of a pack of cigarettes going to federal and state taxes will be 39 percent—still far below the 1965 level.

Raising the cigarette tax by 20 cents will being our tobacco taxes more in line with the rest of the industrialized world. Our current 24 cent per pack cigarette tax is one of the lowest among all industrialized nations—and it will still be one of the lowest, even with the 20 cent per pack increase in the bill.

The costs that smoking inflicts on our society and on non-smoking taxpayers are immense. It kills more than 400,000 Americans a year. It costs the nation $50 billion a year in direct health costs, and another $50 billion in lost productivity. The average pack of cigarettes sells for $1.80 today—and it costs the nation $3.90 in smoking-related expenses.

It is time that the tobacco companies paid a fairer share of these costs—and this bill is the time to start. Not only is a higher tax on tobacco products the fair thing to do, it is the most important single step we can take to stop the epidemic of youth smoking—an epidemic that will ultimately claim the lives of 5 million of today's children if we do nothing. One million young people between the ages of 12 and 17 take up this deadly habit every year—3,000 new smokers a day. The average smoker begins smoking at age 13, and becomes a daily smoker before age 15. Raising the tobacco tax by 20 cents a pack will save the lives of 400,000 of these children. The fact is that a twenty cent a pack increase is only a starting place. We should do more—much more.

Eight billion dollars of the funds raised by the tobacco tax increase over the next 5 years are earmarked for children's health insurance. Here, too, we need to do more. Even with the combination of these funds and the $16 billion in the budget agreement, at least four and a half million uninsured children will still be left out and left behind. Without the tobacco tax funds, 6.7 million children will remain uninsured. A tobacco tax increase devoted to children's health is the right policy at the right time.

These facts are bad enough. But the problem is growing worse.

According to a Spring 1996 survey conducted by the University of Michigan Institute for Social Research, the prevalence of teenage smoking in America has been on the increase over the last five years. It rose by nearly one-half among eighth and tenth graders, and by nearly a fifth among high school seniors between 1991 and 1996.

Once children are hooked on cigarette smoking at a young age, it becomes increasingly hard for them to quit. Ninety percent of current adult smokers began to smoke before they reached the age of 18. Ninety-five percent of teenage smokers say they intend to quit in the near future—but only a quarter of them will actually do so within the first eight years of beginning to smoke.

If nothing is done to reverse this trend in adolescent smoking, the Centers for Disease Control and Prevention estimate that five million of today's children will die prematurely from smoking-caused illnesses.

Increasing the federal cigarette tax is one of the most effective ways to reduce teenage smoking. Study after study has shown that the cigarette tax is the most powerful weapon in reducing cigarette use among children, since they have less income to spend on tobacco.

Philip Morris, the nation's largest tobacco company, conceded as much in an internal memorandum as far back as 1981, which noted that ''it is clear that price has a pronounced effect on the smoking prevalence of teenagers, and that the goals of reducing teenage smoking and balancing the budget would both be served by increasing the federal excise tax on cigarettes.''

Frank Chaloupka, an economist at the University of Illinois at Chicago, found that an increase in the federal cigarette tax by 20 cents will reduce teenage smoking by 7 percent, saving the lives of almost 400,000 children.

Finally, on the overall issue of tax equity, the Democratic Alternative is clearly fairer. More of the benefits of the Republican plan go to the top 1 percent of taxpayers than go to the bottom 60 percent of the taxpayers (13.1 percent vs. 12.7 percent). In the Democratic alternative, only 1.4 percent of the benefits go to the top 1 percent of taxpayers, and the top 20 percent of taxpayers only receive 20 percent of benefits. The vast majority of the benefits go to taxpayers who have income in the middle 60 percent of the income distribution (71.6 percent of the benefits). The Democratic alternative is vastly preferable to the regressive Republican bill, because it is fair to lower and middle income taxpayers.

The Democratic alternative is honest to the American people. The Republican bill states that it will result in a balanced budget by the year 2002. In fact, it might accomplish this.

But in future years, the amount of Republican tax cuts will explode, and the deficit will increase enormously. The Center on Budget and Policy Priorities has estimated that the cost of the Republican proposal will increase by between $500 billion and $600 billion in the 10 years following the current budget period. It will be nearly impossible to balance the budget in those years if this Republican tax giveaway is enacted into law.

The Democratic alternative does not engage in these accounting tricks to balance the budget. The Democratic alternative is honest with American people and fair to American taxpayers, and it deserves to be adopted.

I withhold the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield the distinguished Senator from Missouri 7 minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized for 7 minutes.

Mr. BOND. Mr. President, I thank the distinguished chairman of committee and the manager of the bill.

Having been enlightened by quite a few minutes of debate on the floor, I asked for 2 additional minutes.

First, I want to emphasize that what we are talking about here is a bipartisan bill. My friend from Massachusetts characterized it as a Republican bill.

I particularly appreciated the kind comments by the Senator from Montana. As I listened to his praise of the measure, I was reminded of those immortal words of Mark Twain. When asked about the music of Wagner, he said, ''It is not as bad as it sounds.'' There was some of that in the praise that the Senator from Montana heaped upon this measure. I appreciate his support and his good words.

When I listened to my colleague from Massachusetts, I found out why this music sounds so much better than the alternative because, Members of the Senate, I agree that we are looking for saving and protecting the working men and women of America, the small business owners. As chairman of the Small Business Committee, I have had the opportunity to listen to those people who are struggling to make a living for themselves and provide jobs for others through small business.

I can tell you that after we dealt last year with some of the significant problems in regulatory reform, it was clear that the small businesses of America are overtaxed and overburdened by the Federal Government's desire for more money. They are the ones who are pulling the wagon. They are moving the economy. And they are paying the tariff for this Government.

This measure, the bipartisan agreement reached between leaders of Congress and the President, provided that there would be spending reforms and that there would be tax reductions—tax reductions in the process of getting to a balanced budget. Those tax reductions are absolutely essential if we want to continue the dynamic engine that moves this country forward.

I rise in strong opposition to the Daschle amendment because, No. 1, the Daschle amendment only provides $68.1 billion in net tax cuts— a 20-percent reduction from the bipartisan plan. It goes back on the agreement reached between the leaders of Congress and the President on what we need to do to get this economy moving again.

The Daschle plan provides $14 billion less to American families than the bipartisan plan would in the child tax credit. Families under it would only receive $350 per child instead of $500 per child, and children aged 13 and over would not even be eligible.

The Daschle plan, moreover, is a bad deal for seniors. Seniors get about one-third of the capital gains realized in this country. They would have to pay 10 percent more in capital gains taxes under the Daschle scheme.

But it is a particularly bad deal for small business owners and farmers. It contains less than half the death tax relief contained in the bipartisan plan, and on capital gains taxes, seniors, small business owners, farmers, and self-employed would pay 10 percent more.

As I said, the Daschle plan is a dealbreaker. The DASCHLE plan is outside of the scope of the agreement under which we are working.

Mr. President, in saying that, I want to emphasize that there is one important element which must and will be added to the measure pending before us. One of the top priorities for farmers, ranchers, truckdrivers, and small business men and women across this country is getting fairness in tax treatment of the money paid for health insurance premiums. For too long people who are self-employed have suffered because they have not gotten the same breaks that a large corporation or institution gets in being able to deduct 100 percent of what is paid for health insurance.

Now, I fought long and hard in 1995, and I included an amendment in the Balanced Budget Act, unfortunately, vetoed by President Clinton, which would have increased the health insurance deduction for the self-employed to 50 percent from 25 percent. In 1996, I worked with Senator Kassebaum to include in the Health Insurance Portability and Accountability Act an increase in the self-employed health insurance deduction incrementally to 80 percent. That is not far enough and that is not fast enough. Today, while the self-employed can deduct 40 percent of their health insurance costs, they are still not on a level playing field, and very few of them can wait until 2006 to get sick.

The budget resolution reported out of the Budget Committee includes an amendment I offered that was cosponsored by every member of the Budget Committee present, which calls for a portion of the resources available in this legislation to be set aside for an immediate 100-percent deductibility of health insurance for the self-employed. As I said, it was cosponsored by all members, Democrat and Republican.

Earlier this month, I originated a letter to the Senate Finance Committee urging full deductibility for the self-employed. That letter was signed by 53 Senators. I believe that is a majority.

Now, an immediate deduction of 100 percent would make health insurance more affordable and accessible to some more than 5.1 million self-employed who lack health insurance, almost a quarter of the self-employed work force. In addition, full deductibility of health insurance by the self-employed will also help insure 1.4 million children who live in households headed by self-employed individuals.

Coverage of these self-employed and their children through the self-employed health insurance deduction will enable the private sector to address these health care needs. I am proud to cosponsor the amendment put forward by my colleague and neighbor from Illinois, Senator DURBIN, which would pay for the cost of this deductibility with a 10-cent increase in the tax on cigarettes. This is one way we can pay for this measure. We know that 3,000 children become regular smokers every day and start down that dangerous

road at 13. By enacting this amendment, we cannot only pay for health insurance, we can provide a deterrent against children smoking and thus help save lives. In addition, the revenues raised will be used for a directly related purpose, reducing the cost of health care coverage for the self-employed and their families.

Last week, with my colleague and neighbor from Arkansas, Senator BUMPERS, I introduced a measure, the Pregnant Mothers and Infants Health Protection Act, to set up a fund to discourage smoking among pregnant women and among parents with small children because of the tremendous impact of birth defects from smoking and because of the danger of SIDS for those who smoke.

In any event, I believe that this amendment will improve the measure. I urge defeat of the Daschle amendment. The budget resolution calls for full deductibility of health insurance. I look forward to working with my colleagues to include that measure in the final bill as reported out.

I thank the Chair, and I thank the chairman of the committee.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 5 minutes to the Senator from New Hampshire.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 5 minutes.

Mr. GREGG. I thank the Senator from Delaware. I wish to join with the many Members of this Senate who have congratulated the Senator from Delaware and the Senator from New York for bringing forward this bipartisan initiative, which is really rather extraordinary when you think about it. It is obviously an outgrowth of the fact that the President and the leadership of the Congress have gotten together on how to balance the budget and give a tax cut to working Americans.

This bill is a product of that initial agreement which occurred in May. The fact it came out with almost unanimous support out of the Finance Committee is something that we should take very seriously as a Congress and especially as a people, in recognition of the fact that this is a bipartisan initiative.

Now the leader of the Democratic Party has come forward, even though a large—well, the entire Finance Committee membership of the Democrat Party voted for the underlying bill—the leader of the Democrat Party has come forward with a proposal as an alternative. I think a couple of comments need to be made about the specifics of that because it has some problems in the way it handles children and families with children.

To begin with, it is a phased-in child credit. So, under Senator DASCHLE's proposal, it is not until the year 2000 that families get the $500 credit. In fact, if you have a child who is over the age of 12, you do not get any credit, any credit at all until the year 2002.

Well, the practical effect of that is that there are going to be a lot of kids who outgrow the credit; the kids grow up; they get older. The credit will not be available. The families will not have a credit between now and the year 2000 if their children are under 12. It will be a phased-in credit. And if their children are over 12, they won't get it until 2002. If you have a child who happens to be a 12-year-old today, you are never going to get this credit under the—not the Democrat proposal, because the Democrats are supporting the underlying bill—under the DASCHLE proposal.

It is pretty outrageous, really, to claim that that bill is more effective in addressing kids than the bipartisan proposal when it does not even cover kids. It does not even cover kids who are over 12 years old until the year 2002.

Equally significant is the practical effect of the way that they recover the credit from working families. Under the Daschle proposal, the effective tax rate of families earning between $70,000 and $80,000 that have a number of kids in the family would be 58 percent not counting the FICA tax. So the actual tax rate under the Daschle bill is 73 percent—73 percent for those folks in that income bracket.

Now, there are a lot of working Americans today who have a fair number of kids who have to have both parents work to support them. And, in fact, unfortunately, one of the facts of America today is that many parents have to work simply to pay taxes. One of the spouses works full-time simply to pay the taxes on the family and the other spouse works to try to take care of the family. One is working to take care of the Government; the other one is working to take care of the family.

If you have a number of kids and you are getting hit with a 73-percent tax rate, even though you may have a fairly high income with a fair number of kids, that tax rate essentially wipes out your income, wipes out not only the income of the spouse working for the Government, but it does a pretty good job on that spouse who is out there trying to earn for the family.

Mr. DOMENICI. Will the Senator yield for a question?

Mr. GREGG. I am delighted to yield.

Mr. DOMENICI. Will you explain for the Senate one more time what that 73 percent is?

Mr. GREGG. If you happen to have a large number of kids, and I think the Senator from New Mexico may have a few children——

Mr. DOMENICI. They are already gone, but, yes, I do.

Mr. GREGG. When we were coming up through the ranks, if you had seven to eight kids, which is a lot of kids, you would need an income probably of $70,000 to $80,000. Both parents would have to be working to maintain those families. In that bracket, you would be paying an effective rate of 58 percent on your income tax. And another FICA tax on top of that works out to be an effective rate of 73 percent on the additional earnings.

Mr. DOMENICI. And that is under the Daschle proposal?

Mr. GREGG. That is under the Daschle plan.

Mr. DOMENICI. Do they raise taxes in those areas?

Mr. GREGG. That is exactly what happens, because the manner in which they recover the tax credit from people after they start to phase down the tax credit is a tax increase of significant proportions, well above the base rate of 28 percent.

The PRESIDING OFFICER. The Senator has used his 5 minutes.

Mr. DOMENICI. I thank the Senator.

Mr. GREGG. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. I yield 5 minutes to the Senator from Pennsylvania.

Mr. SANTORUM. I thank the Senator.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized for 5 minutes.

Mr. SANTORUM. I thank the Chair.

Mr. President, I rise in very strong support of the bill that came out of the Finance Committee, the tax bill that provides tremendous tax relief for all Americans, because what this bill is aimed at doing is creating jobs, creating opportunities, getting an infusion of capital so we can increase our productivity.

Those are the kinds of things I thought we were going to be debating on the floor of the Senate. I thought we were going to talk about how we can create economic growth, how we can create better jobs for people, how the people at the bottom end of the economic strata can rise as a result of the opportunities that are available in the United States. And now what the Senate has evolved into today has been a bunch of charges that this isn't fair, that we should not look at economic opportunities or growth or jobs, a tune that is heard often here—jobs, jobs, jobs. We shouldn't look at job creation; we shouldn't look at economic growth; we should look at what is fair, who is getting the benefit, and we should draw class warfare lines in the sand here.

I just want to, if I can—I hate to even sort of get down, though, to that level, but that has really been the focus of this debate. I want to throw out—I hesitate to do this because we just get numbered to death in the Senate, but let me throw out a couple of numbers that I think are very easy to understand.

The top 20 percent of income earners in this country, the rich, the top 20 percent pay 79 percent of all income taxes. The top 20 percent pay 79 percent of all income taxes.

Now, they pay 79 percent of all taxes. What percentage of the tax cuts in this bill do the ''rich'' get? Twenty-two percent. In other words, the group that pays three-quarters of the tax get one-fifth of the benefit. And this is being

charged as a tax break for the rich. If I were rich, I would say you are ripping me off. I am paying all the taxes and everybody else is getting all the benefit.

But, no, they come here to the floor and they charge this is unfair; these people who are poor need tax cuts. Well, let me just straighten this out a little bit. Thirty-seven percent, the ''bottom 37 percent,'' of income earners in this country pay no taxes net. In other words, with the tax credits and the EITC and the other things that are out there, they pay no Federal income taxes.

Now, I do not know how you give tax cuts to people who do not pay taxes, but that is what the other side wants to do. In fact, if you go deeper into the analysis, you find that not only does the bottom 37 percent pay no Federal income taxes, the bottom 20 percent pays no payroll taxes net. In other words, all that money, the FICA that you have to pay out for Social Security and Medicare, if you are in the bottom 20 percent of income earners in this country, you get more back in earned-income tax credit than you pay out in payroll taxes.

But that isn't good enough. So people are getting—not only do they pay no income taxes, they pay no payroll taxes. In fact, they get more back than they pay. The other side wants to give them even more money. I am not opposed to helping people out, but where is this money coming from? It is coming from people who are paying taxes, people who are in the middle class who have been paying taxes for the last 16 years at very high rates, who deserve a break.

I am really about up to here with people running around saying we are for tax breaks for the middle class, but what they propose is welfare for people who pay no taxes. So let us get it straight. I am going to offer a resolution, a sense of the Senate, that says Federal income tax relief should go to people who pay Federal income taxes.

Now, you would think that that would be a joke, that everybody would vote for that—anybody who pays Federal income tax would be the only ones eligible to get tax relief—but, unfortunately, you are going to find a whole bunch of people who are not going to vote for that.

That is how far we have come. This is ''Washingtonspeak.'' For those of you who have not been in Washington very long, welcome, and this is what it is like. People actually stand around here and talk about giving tax breaks to people who do not pay taxes. While people who do pay taxes, anybody, is rich. Anybody who pays taxes in this country, by definition of what the Democratic plan is, is rich.

If that is where we have come in America, then I think the Founding Fathers will be turning over in their graves because they thought they created the land of opportunity where people were rewarded for working hard, for taking care of their families, for providing for themselves. What we are saying here is you are the bad guys, you are the ones who have to pay more.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. ROCKEFELLER. Mr. President, I yield myself 5 minutes off the bill.

The PRESIDING OFFICER. The Senator from West Virginia is recognized for 5 minutes.

Mr. ROCKEFELLER. Mr. President, I have talked with Senator MOYNIHAN and with Chairman ROTH about what I am now going to say. That is, I am going to vote for the Daschle alternative. It is a more difficult decision if you have been on the Finance Committee, because of what the others who have spoken of which has been referred to as the oath that we took, to support the bill. I view my oath as being upheld, and I say so for the following reasons.

This is a moral issue with me as well as a political philosophy issue. The piece of paper that we bound ourselves to, I will stick by. I was not satisfied, for example, with the earned income tax credit/child tax credit relationship that came back. I read it to be a certain thing. It did not turn out to be that way. On the other hand, for those eight pieces on that piece of paper—Finance Committee members will know what I am talking about—I did say that I would uphold those on the floor. And I will continue to uphold those. If, for example, a Democrat offers an amendment which would bring the EITC, child care credit, or child tax credit—bring it more in my direction, the way I would like it to be, then I will oppose that even though it is in the best interests of the country, and, I think, the right policy in our country. I will do that because that is what I consider I took my oath of loyalty to. It was not an oath of loyalty in some military sense. It was simply a matter of the way a very complex and difficult, bipartisan committee like the Finance Committee works. If you are bound together and you bind yourself together through the act of raising your hand, et cetera, that has an implication; it expects a response and that response will be forthcoming from me if individual amendments are offered which are related to the deal.

On the other hand, we have Democrats and we have Republicans in this body and I do think that the Democratic alternative being offered by Leader DASCHLE—and I greatly respect him and the work he has done on this, in a very trying period in his personal life—is a better alternative. Because I think it is a better alternative, it becomes—although I think that most people would understand it is probably not going to prevail—I think it becomes very important to say this is a better alternative. If we were doing it, if the Democrats had control of this body, this would be more likely the way we would do it. That is the kind of statement I wish to make in making my vote.

I care very much about what happens to the people of West Virginia. The economy of West Virginia is more fragile, the individual incomes in West Virginia are more fragile, especially as they are particularly young or particularly old, and I have a strong responsibility to that, as I do to my own sense of honor and my own word, within my work in the U.S. Senate and the particular nature of the Finance Committee.

So I gladly say I am going to be supporting the Daschle amendment because it is the better approach to solving our country's problems. Just as I was very glad, back in 1993 when Chairman MOYNIHAN turned to me and said I want you to cut $59 billion out of Medicare in order to ensure its solvency—I did not say slow the rate of increase, I said cut—and I went ahead and did it. And I helped put our economy in a position where we have been able to do things like provide a tax credit to hard working American families, and a number of other things which have been talked about on the floor.

But I want to make the reasons for my vote clear. It is something important and delicate because of my respect not only for my Ranking Member MOYNIHAN and Chairman ROTH, who has been eminently fair and bipartisan in the way he has conducted the Finance Committee, and his fine staff, all of them have been very fair. I want to make it clear I think the Democratic approach is a better one and I will be voting for it for that reason.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from Indiana.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 5 minutes.

Mr. COATS. Mr. President, I thank the Senator for yielding, and I also commend the Senator for some extraordinary work in putting together a real tax cut package for the American people.

There are items in this tax package that we have been attempting to incorporate, to give relief to American taxpayers, for many, many years. The Senator has been a leader and a champion of these. I am pleased to see we have arrived at a point where we can make substantial progress towards achieving these goals. The $500 tax credit for children is something that parents desperately need. It is something that has been far too long in coming. Parents have been put at tremendous disadvantage over the years under our Tax Code, if they are raising children, trying to pay for their expenses. This $500 tax credit is a big step in the right direction, in terms of redressing that.

I have some concerns about the designation, the mandate that designates

the credit is only received for children 13 and older if it is put into an education savings account. I will be speaking to that later, when the Senator from Texas introduces his amendment to make that optional. But I do support the other items in this package. It is far superior to the package that is being offered by Senator DASCHLE and some Democrats.

I say ''some Democrats,'' because this is a bipartisan package. There will be a number of Democrats supporting us in this because they know families need tax relief, because they know that capital gains spurs investments, creates jobs, and more important, goes to seniors and to people, small business owners and others who are not rich but who have saved and accumulated over a lifetime, assets that are taxed away by the Government because of appreciation of those assets or, more important, because of inflation. One-third of the capital gains available today under this tax package goes to seniors. So the DASCHLE bill is an antisenior bill. A clear understanding of capital gains will demonstrate that.

The changes in inheritance tax don't go to the rich, they go to the farmer who has been working on his land for his entire lifetime and would like to leave it to his children. They go to the small business owner who maybe started in his basement or garage and built up his business to a certain degree of asset level only for his family to see it taxed away and sold when that taxpayer dies, instead of passing on to his children. It goes to a large percentage of people who have every right to claim those assets. To suggest that we need an income redistribution, above what we already have, I think is a disservice. So I am in strong support of the Senator's position in opposition to Senator DASCHLE's proposal.

The PRESIDING OFFICER. Who yields time?

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time do we have?

The PRESIDING OFFICER. The Senator from New Mexico controls 9 minutes and 30 seconds.

Mr. DOMENICI. I yield 4 minutes to Senator CHAFEE.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized for 4 minutes.

Mr. CHAFEE. Mr. President, I wish to take a few minutes this afternoon to urge support for the tax bill reported out of the Finance Committee last week, and the bill that is before us today. Obviously I am not referring to the substitute, I am talking to the basic bill that came out of the Finance Committee with the support of 18 members in that committee.

That vote, 18 to 2 in the committee, more than anything else is a clear indication of the bipartisan process in which the chairman of the Finance Committee crafted the legislation. Others have talked about the major provisions of this bill, all of which are extremely important. I would just like to touch on some lesser known provisions, if I might, briefly.

The bill before us includes a permanent extension of the orphan drug credit. This provision encourages drug companies to conduct clinical research on rare, what they call orphan diseases, diseases that do not occur very often and thus there is not a large market for the drugs that are produced to care for that particular situation. Drug companies are reluctant to risk the investment or research dollars with such a small patient population, as, for example, exists for cystic fibrosis or hemophilia or Lou Gehrig's disease or Tourette's syndrome. This bill encourages and provides tax credits for those drug companies that spend the research money in these particular areas.

The bill also includes an extension of the work opportunity tax credit, which is an important tool to encourage businesses to hire individuals on public assistance. We passed, last year, the Welfare Reform Act. We want opportunities for those coming off welfare to find a job. The work opportunity tax credit does this. Currently, under the law, it is required that the individual work 400 hours in a job before the tax credit is available to his employer. Under this legislation, the 400 hours is reduced to 120 hours—with a reduced credit, but nonetheless something that will encourage employers to hire these individuals.

Another provision that is included in this particular section says that the work opportunity tax credit extends to disabled individuals, those receiving SSI benefits. This is a separate group from those coming off from welfare.

Another provision in the bill, which I think is very significant, small though it is, is the estate tax incentive for the preservation of open space. America is losing 4 square miles a day to development, 4 square miles. In my State, over 11,000 acres of farmland have been lost to development since 1974. It is a small State. Think of that, 11,000 acres gone to development from farmland. What this does is provide that those individuals who currently, if they keep their open spaces, are subject to stiff estate taxes—thus either they have to go into development to pay the taxes or, when they have to, sell it to developers—this provides a lower estate tax for land, as long as the owner is willing to keep the land undeveloped in perpetuity. In other words, he has to sign a conservation easement, keeping the land open in perpetuity, so there will be some open spaces around our major cities, places where there can be habitat for wildlife and plants and fish. This is a very, very significant piece, this section that is in the bill, that Senator ROTH was good enough to give us leadership on.

Mr. President, I yield to the chairman the remainder of my time.

Mr. ROTH. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 5½ minutes.

Mr. ROTH. I yield the remaining time I have to the distinguished Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. FAIRCLOTH. Thank you, Mr. President. How much time do I have?

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator has 5 minutes, 18 seconds.

Mr. FAIRCLOTH. Mr. President, I rise in strong opposition to the tobacco tax in this revenue bill. I am also troubled by this amendment to further increase tobacco tax. Make no mistake, these are flat-tax increases, plain and simple. This is no extension or loophole closure, it is a tax increase. That is what it is.

I didn't think that we were here to raise taxes on American families. I didn't think we were here for that purpose, but, obviously, that is what we have done.

The tobacco tax is the most regressive tax on the books today. We will drive up taxes on the working people more than anything, up to $100 or more per year.

The people who earn $30,000 a year pay 1.2 percent of the income tax in this country, but the people who earn $30,000 a year pay 47.2 percent of the tobacco tax. It is the most regressive tax on the books.

I find it a bit odd that some of the big tobacco tax supporters are the same people preaching the need for greater equality in the tax relief package. You just cannot have it both ways.

Mr. President, I say to my colleagues, is your talk about tax fairness anything more than talk? Is it airy persiflage, or do you mean what you are saying? Would you come to the floor to defeat a tax increase on the common man who smokes?

This bill raises tobacco taxes by 20 cents a pack. The DURBIN amendment would raise taxes by 10 cents a pack. This will hurt the 18,000 tobacco farmers in North Carolina and thousands more throughout the Southeast. It will cost them, literally, their jobs and their livelihood. Sure, it will let politicians tell the news media that we really took a shot at ''Big Tobacco.'' Well, ''Big Tobacco'' can look after itself, but the people who are growing it, the farmers, who they are really taking a shot at, cannot. The companies will not be bothered by this. The people who are going to be hurt are farmers, families, and communities.

It will hurt the 77,000 working people in North Carolina who grow tobacco and manufacture cigarettes. Just the tobacco sales bring in over $1 billion in cash receipts to the farmers of my State. The entire tobacco sector employs 150,000 people. It is a $7 billion business in North Carolina alone.

These are the fundamental core people of this State—hard-working men, women, and their families. Can you imagine the joy that they expressed when I went home and told them that they were going to be thrown out of

business but that we had cut the cost of international air travel? Tobacco pays the mortgages, the grocery bills, and sends the children to college. These people don't do international air travel. Tobacco builds and has built the hospitals, it builds the churches, and it builds entire towns and communities.

So, Mr. President, you be the judge. Is to say the tobacco tax is about politics not correct?

The other side points to this tax and says this is about children's health insurance. They say it is about underage smoking, and they say it is about changing people's behavior.

But it is not about children's health insurance. The settlement that the tobacco industry just signed clearly addresses this issue. There is $18.5 billion over 6 years for children's health insurance in the settlement that is now working its way through the process. The tobacco companies have already signed on the dotted line that they will pay into a fund for children's health insurance. There is already $16 billion in the bill for children's health insurance, and now we are going to vote another $8 billion for children's health insurance when the President only asked for $8 billion in the original bill and said that would be enough. Now we are going to $24 billion, and he only asked for $8 billion. I have never known him to ask for too little.

It is not about underage smoking. The industry just agreed to a sweeping package of changes to prevent underage smoking. The agreement virtually bans all advertising. The industry even agreed to massive fines if underage smoking did not drop drastically over the next 8 years. I don't know how they are going to stop people from smoking, but that we will have to work on when it gets here.

Mr. President, I ask unanimous consent for 2 additional minutes.

The PRESIDING OFFICER. The manager may yield time off the bill. All time on the amendment has expired.

Mr. ROTH. I yield 2 minutes off the bill.

Mr. FAIRCLOTH. Mr. President, if this were it, the bill would include favors for a variety of special interests. The liquor tax would get special breaks, even skydiving would get a special break. No, no one ever caused an accident on the road after a night of smoking, and I never heard anyone being attacked after a cigarette binge.

My point is, this bill isn't about public health, it is about the easy politics of attacking tobacco. The politics may be easy for Senators outside the Southeast, and particularly North Carolina, but this point reaches beyond politics. It reaches to the men and women in North Carolina and throughout the Southeast, hard-working people wondering why the U.S. Congress and their elected representatives are determined to throw them out of business and out of a job.

Everyone in Washington talks about the small farmer. We hear it daily. North Carolina is made up of small farms. The size of an average U.S. farm is over 450 acres, and in North Carolina, it is around 150 acres. We are small farms.

Tobacco pays the bills. An acre of tobacco will yield roughly $1,200 a year in net profit. Nothing else compares, and there really isn't anything else they can grow that begins to fit into the pattern and growth and lifestyle of the area.

Tobacco keeps eastern North Carolina and Southeastern United States farmers on the land, and that is the simple bottom truth line. Tobacco keeps the family on the family farm. Washington politicians are driving families off the farm just to score political points back home.

I want every Senator to understand what this tobacco tax means to real people. These farmers have names. They are good people. They are sending their children to school, and they are being driven out of a job to score political points. I hope that all Senators think about the people and the jobs that they are destroying when they next take a vote on a tobacco tax.

And another question, who is next on the hit list from the tax increase crowd? Tobacco today, tomorrow who knows what product they have decided to tax out of existence. I hope my colleagues will vote against any other tax increase. It is time to stand up for the people who are in the business working for families. Mr. President, I yield the floor.

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

Mr. MOYNIHAN. Mr. President, I yield the distinguished Senator from Louisiana such time as he may require from the bill.

Mr. BREAUX. Mr. President, I thank the ranking member. I won't be that long. I rise to commend the Democratic leader on our side, Senator DASCHLE, and others who have put together a major effort in trying to offer a package of democratically oriented tax cuts which, in great sincerity, many, many people feel would be, by far, the better way to proceed—a more balanced, more honest package of tax cuts and how those tax cuts should apply to society.

I think that what he is offering is yeoman's work in terms of fairness and making sure that if there is going to be a tax cut, people who need them the most will benefit the most from those tax cuts.

While I praise my Democratic leader, I rise to say that I will not be able to support that package when it is called to be voted. I say that because we do not live in a perfect world. Neither is the Congress a perfect place. Neither is the Finance Committee a perfect group of individuals who have the wisdom of Solomon to craft a perfect bill. But what we have crafted in the Senate Finance Committee, because of the work of both Democrats and Republicans working together, I think is a package that merits our support.

It is a better package from many perspectives, but let me concentrate just on the Democratic perspective of why the bill, in fact, is better than when it started.

First of all, there is $24 billion more money which is directed at children for health care, for young children who today do not have health care. That is a major, significant achievement. That was achieved in a bipartisan fashion with major input from Democrats who insisted that whatever money we are able to generate should be used for children who need help and need assistance. That is in this package which is before us today.

There is $8 billion of additional assistance that was achieved because, in a bipartisan fashion, we agreed to raise the cigarette tax on tobacco products and use a portion of those revenues for insuring the most vulnerable among us, the children, for one of the most important things that we can help children with, and that is their health care, both now and in the future. That is the result of a bipartisan working arrangement in the Senate Finance Committee.

In addition, I think that we have taken what was originally a Republican proposal to give everybody a $500-per-child tax credit that you could use for whatever purpose. You could use it to take care of your children, but you could also use it to buy alcohol, you could use it to go to the racetrack, you could use it for whatever purpose. In a bipartisan fashion, we worked to craft an amendment that said you will have these additional tax credits if you use a portion of it to educate your children. I suggest that there is not a better thing that we can do for families with children than to help those parents educate those children for the future so they can be successful members of our society.

We, as Democrats, I think, argued against indexing of capital gains saying we can't afford it. Let's take a capital gains reduction, we hope it will increase jobs and increase expansion in business, but also don't take the next step of indexing it. Because of working it in a bipartisan fashion, that in fact is in the bill.

Again, working in a bipartisan fashion, we made some tough decisions on Medicare and Medicaid, as a result of what we did, to try and bring about competition, to try and say we will make the tough decisions now and no longer will we have to say to people who tell us to fix Medicare, no longer will we say not now, not with us and not with this program. We have taken the tough decisions, and we have accepted them. When people say fix Medicare, this Finance Committee can say that we did what was necessary when we were called upon to make those decisions.

So I think as you look at the total package, it is better than when it

started. I, for one, as a person who participated in that process would feel less than totally honest if I was able to get the things that make it better in the package, and then when it came to vote for that package, walk away and say, ''No, I am going to vote for something else.'' That is not, I think, the way things should operate in a democratically elected body which is a divided Government. But while we have a divided Government, we do not have a divided Finance Committee. I think because of that bipartisan spirit and what we were able to do, today we have a better package before us.

Again, I commend our Democratic leader for offering something that I think if we were in control would be the bill that would be before this committee. But that is not the case. But what is the case is a fairly arrived at package that makes this bill much better. I think it deserves our support.

Mr. MOYNIHAN. Well said.

Mr. BREAUX. I yield the floor.

Mr. DASCHLE addressed the Chair.

The PRESIDING OFFICER. The distinguished Democratic leader.

Mr. DASCHLE. I will use my leader time, whatever time I may consume, to close the debate on the amendment.

I think it has been a good debate. We have had the opportunity to exchange views. I think perhaps there has been some misinformation about what the amendment does and does not do. I have heard that it is antisenior. I have heard that it raises taxes. There are a lot of concerns that perhaps at times like this we ought to spend time rebutting, but let me just get down to the basics.

The basics are that we want to provide as much help to middle-class families as we can. We want to provide as much growth and opportunity for expansion to startup companies, to companies that really need the help as we can.

Our view is that those companies that are in the multi-multibillion-dollar category, multinational companies that have extraordinary assets ought to be viewed differently than those companies that are just beginning, those startup companies that need all the help they can get to be able to survive and compete. We want to help those. We realize that our resources are not unlimited. So if they are not unlimited, we have to target the best we can those companies that indeed need the greatest degree of assistance.

We provide that in capital gains. We provide that in a number of investment incentives that allow those companies the opportunity to do all the things that they can to be competitive, be the next Microsoft or the next IBM.

Third, we feel it is as important as anything we do in this bill to target as many of our resources to education as possible.

And fourth, we want to do it in a fiscally responsible way. We are very concerned about the tax time bomb that could occur in 10 or 15 years, as we watch this explosion with great dismay, having worked so hard now to balance the budget and to bring this budget into balance within the next couple of years.

So, Mr. President, that is what we do, those four things. We provide more targeted assistance to those families who need it the most. I respect immensely the work done in the Senate Finance Committee. I respect the effort made in particular by the chairman and the ranking member in working in a bipartisan way. I respect Members who have made decisions on either side of this amendment for whatever agreements may have been consummated and the interpretation of the agreement as it relates to this amendment. I respect that.

I intend to vote, if we are not successful with this amendment, for the final package. But I do believe we can do better. I believe that when we provide 65 percent of the benefits to the highest 20 percent of incomes in this country, we can do better in distributing benefits across the board more effectively. I believe that our bill, which provides 75 percent of the benefits to the 60 percent in the middle, does a better job of using limited resources where they can do the most good.

Mr. President, that is what this amendment does. That is why I feel so enthusiastic about supporting it. That is why I am hopeful we can get a good vote this afternoon.

I yield the floor and ask for the yeas and nays.

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

The yeas and nays were ordered.

The PRESIDING OFFICER. The question occurs on agreeing to the amendment No. 527 offered by the Democratic leader. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 134 Leg.]

YEAS—38

| | | |
|---|---|---|
| Akaka | Ford | Lieberman |
| Biden | Glenn | Mikulski |
| Bingaman | Harkin | Moseley-Braun |
| Boxer | Hollings | Murray |
| Bumpers | Inouye | Reed |
| Cleland | Johnson | Reid |
| Conrad | Kennedy | Robb |
| Daschle | Kerry | Rockefeller |
| Dodd | Kohl | Sarbanes |
| Dorgan | Landrieu | Torricelli |
| Durbin | Lautenberg | Wellstone |
| Feingold | Leahy | Wyden |
| Feinstein | Levin | |

NAYS—61

| | | |
|---|---|---|
| Abraham | Bennett | Bryan |
| Allard | Bond | Burns |
| Ashcroft | Breaux | Byrd |
| Baucus | Brownback | Campbell |
| Chafee | Gregg | Murkowski |
| Coats | Hagel | Nickles |
| Cochran | Hatch | Roth |
| Collins | Helms | Santorum |
| Coverdell | Hutchinson | Sessions |
| Craig | Hutchison | Shelby |
| D'Amato | Inhofe | Smith (NH) |
| DeWine | Jeffords | Smith (OR) |
| Domenici | Kempthorne | Snowe |
| Enzi | Kerrey | Specter |
| Faircloth | Kyl | Stevens |
| Frist | Lott | Thomas |
| Gorton | Lugar | Thompson |
| Graham | Mack | Thurmond |
| Gramm | McCain | Warner |
| Grams | McConnell | |
| Grassley | Moynihan | |

NOT VOTING—1

Roberts

The amendment (No. 527) was rejected.

Mr. MOYNIHAN. I move to reconsider the vote.

Mr. CHAFEE. I move to lay it on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 520, AS AMENDED

Mr. ROTH. Mr. President, I ask that the Senate now resume consideration of amendment No. 520, the committee amendment.

The PRESIDING OFFICER. The Senator has that right. The pending amendment now is amendment No. 520.

Mr. ROTH. Mr. President, this amendment includes the $8 billion additional funds for the children's health initiative. As we have discussed earlier, the children's health initiative is a critical piece of the legislation before the Senate. Members on both sides of the aisle, both ends of the political spectrum, and everyone in between are committed to addressing the issue of reaching our Nation's children.

Each morning, more than 10 million children wake to face a day without health insurance. Clearly, this situation has weighed heavily upon us.

Throughout the first quarter of the 105th session of Congress, a number of Members have contributed to various proposals for reaching these children. I thank all my colleagues for their hard work and effort. At this hour, we have now reached a bipartisan agreement on the structure of how to help the States reach more of these uninsured children. Now that we have a structure, we must also ensure that it is adequately funded.

The committee amendment will provide an additional $8 billion for the children's health initiative, will secure that final necessary piece to make this bipartisan agreement work. Some Members may argue that $16 billion is too much money for the children's health initiative. Other Members will argue that $24 billion is not enough. The Finance Committee, which has carefully considered this issue, has agreed on a bipartisan basis that it is just right, and with this committee amendment we will inject $24 billion into reaching the goal of providing health insurance to more children.

Let me remind my colleagues that the States will also be required to provide matching funds. So the total amount will rise even higher. Of the 10

million children without health insurance, about 60 percent are either eligible to be enrolled into the Medicaid Program or they live in families with incomes about 250 percent of the poverty level. For a family of four, that is more than $40,000.

We do not, of course, want to displace the role of the private sector in providing health insurance for children. So this new initiative is really meant to be targeted for those approximately 3.8 million children who live in families who earn too much to qualify for Medicaid but not enough to pay for private insurance. The committee amendment will ensure that there are sufficient funds to meet the goal of reaching these children, and I urge all of my colleagues to support the Finance Committee provisions on this critical issue.

Mr. MOYNIHAN. Mr. President, in brief, sir, in the history of child health care, in the U.S. Congress there has been no measure equivalent in size and range to the measure the distinguished chairman brings before you. We spent much of the 103d Congress on this subject and did not add a penny to child health care. In 2 days, the Finance Committee added $24 billion, which we bring to you in this amendment, which I am sure will be supported on both sides.

Mr. KENNEDY. Will the Senator yield for a question? Will the chairman yield for a question?

The PRESIDING OFFICER. The Senator from Delaware controls the time.

Mr. ROTH. I am happy to yield for a question.

Mr. KENNEDY. Thank you very much. As I understand it, by accepting this proposal, the cigarette tax, which will be used to fund the Hatch proposal on child care, will actually terminate as a funding stream 5 years from now, and the revenues that will be raised by that tax will be used to offset the increased expenditures in the IRA's—just so that we all have an understanding of the final decision made by the Finance Committee.

Mr. ROTH. Mr. President, I say to my distinguished friend and colleague that the cigarette tax is permanent; it is not limited to 5 years.

Mr. KENNEDY. But the funding stream for the Hatch proposal——

Mr. ROTH. The funding stream is a 5-year plan.

Mr. KENNEDY. At the end of the 5 years, the funds that would be provided by the tobacco tax will be terminated for the children's health insurance proposal. So, effectively, we are saying to the States, as I understand it, that they are going to get a funding stream for 5 years. At the end of that, at least in this proposal, there will be no further funding.

Mr. ROTH. I will yield to the distinguished Senator from Utah to comment on that.

Mr. HATCH. Mr. President, I will respond to my colleague from Massachusetts. Because of the unique situation in which we were able to add this spending provision to the tax bill, this is the way it is written.

Mr. ROTH. I point out that the tobacco tax was for all purposes in the bill, not just for the children's health insurance.

Mr. KENNEDY. Well, I thank the Senators. As I understand it, then, the tax will be permanent, but those revenue streams that will fund the children's health insurance—the $8 million—will terminate after 5 years, and those revenues that would be created by the cigarette tax will be used for the offset, either on the IRA's, or the capital gains, or the estate taxes. I think I understand it correctly.

Mr. ROTH. I point out that what we have here is a 5-year plan, as I think was originally the case for the distinguished Senator from Massachusetts. Obviously, the plan can be renewed at the end of the 5 years.

Mr. KENNEDY. I just wanted to clarify the limitations on this funding stream. But I am grateful for the chairman's answer.

Mr. ROTH. I yield to the Senator from Utah.

Mr. HATCH. The original Hatch-Kennedy bill proposed a $20 billion health insurance program for children, plus it contributed $10 billion for deficit reduction. It was a 5-year authorization. Both of the sponsors assumed—and I believe properly so—that this program will work well, that children will benefit from it, and that it will be reauthorized at the end of 5 years. I have no doubt that is the case here as well.

But the provision the Finance Committee adopted continues the tax beyond the 5-year period, and the revenues may be used for other purposes.

To be clear, I assure my colleague from Massachusetts that, should this program work well, we will be revisiting it in 5 years.

And there is an additional point I wish to make for those of my colleagues who believe the additional funding is not needed. It seems fairly clear that the $24 billion, as important a sum as it is, will not cover all of the 10 million children who lack insurance. If we are very, very lucky, or if the Congressional Budget Office is smiling on us that day, it will cover at most about 8 million children. These figures are obviously subject to the way the States craft their programs, their cost-sharing requirements, and whether the States choose block grants or Medicaid.

For example, if all of the States chose Medicaid, which I do not believe would happen based on conversations I have had with Governors, I estimate that the most children we could cover with the $24 billion is around 5 million.

The other point I feel compelled to raise is that the CBO estimates are coming in very meager. I am not sure why, but they have been consistently scoring the major children's health proposals as helping very few children.

For example, I am told their preliminary estimate for the CHIPS proposal was that it would cover 2 million kids. Their initial estimate on the House-passed block grant was that it would help around 500,000 children, although that was later revised to 860,000.

As a simple gauge, I use the figure of $1,000 per child to measure coverage. This is more than the Federal share of an average Medicaid child, and equal to or slightly less than the average high-quality group health plan. This is also the rough measure that Dr. Bruce Vladeck at HCFA uses.

Based on that rough calculation, $24 billion over 5 years would cover just short of 5 million kids per year. That assumes that the funding were equal each year, and it assumes that there would be absolutely no inflation.

But to those who express concern about the shelf-life of the $8 billion figure we are considering today, the bottom line is that we are going to see how this program works.

I assure my friend and colleague and partner on this effort, a legislator who has been a tireless advocate for children for decades, that if this program works and it is benefiting children, we are going to reauthorize it five years from now.

It is that simple. I give my assurances that I intend to do everything in my power to live up to that promise. And I hope that our colleagues will support that.

This particular amendment has been brought up separately—not as part of the overall bill—because it is a spending amendment on the tax bill.

Because a point of order has been lodged, we need 60 votes in order to retain my provision in the bill.

I believe I am not overstating it—and I would like my colleagues to correct me if I am wrong—when I say that resolution of this issue as part of the total tax spending package was the critical juncture in bringing us together in the Finance Committee. That is a key reason why we have had so much support on both sides of the aisle.

So, it is critical that we pass this as part of the overall plan. I hope our colleagues will take that into consideration.

The tobacco tax is considerably less than that embodied in the Hatch-Kennedy bill, S. 526. But because of the $16 billion already in the spending bill we passed last night—which most would agree was placed there largely in response to the original Hatch-Kennedy filing—and because of the $8 billion we are adding today, we should have an adequate amount to take care of a substantial number of uninsured children in the foreseeable future.

If we approve this proposal and then retain the full $24 billion in the final conference agreement that is signed by the President, it would be a terrific thing for our society.

Adoption of this amendment can only help bring a larger bipartisan vote on the tax bill. And, in the end, I think we could all walk away feeling that we had accomplished the most significant

advance in children's health for decades.

I yield at this point.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, this is a very important measure that the distinguished chairman of the Finance Committee is advancing here this evening. What we are doing is, as he mentioned, our very best to care for the maximum number of low-income children with health care. There is a prescribed or suggested package of benefits that includes eyeglasses and hearing aids for these children from very, very low-income families. So, Mr. President, I urge my colleagues to support this measure.

I want to commend the chairman of the Finance Committee, the distinguished Senator from Utah, and, of course, the ranking member, Senator MOYNIHAN, for everything they have done to advance this proposal.

Mr. KENNEDY. Mr. President, I am certainly going to support the proposal that is recommended by the committee itself. I want to commend my friend and colleague, Senator HATCH, for his perseverance and persistence and tough-mindedness in moving us as far down the road as we are. But I think we are receiving numbers, even as we are here, about those that will be covered and, also, for example, by CBO—the number that they believe will be covered is considerably less than has been estimated by the Finance Committee.

It just seems to me that the great concerns that have been so well-articulated by the chairman of the committee and my friend and colleague from New York, Senator MOYNIHAN, Senator CHAFEE, and Senator HATCH, about the numbers of uninsured, and the fact that they are at the margin in terms of their income, being able to have to provide approximately after-tax income of almost maybe $800 or so, in that range, it is still a very heavy burden. I certainly hope that we can find—with the strong health implications of raising the tobacco tax and the importance of this particular national need, we welcome the fact that now it is an accepted Senate position that we are going to have a 20-cent increase, but that we can get about the business of assuring that all of those children are going to be covered. So I want to thank those Senators, Senator HATCH in particular and our other colleagues, for being willing to accept the concept and framework of the Hatch proposal. I also indicate that I think we have an opportunity to take care of the other remaining uninsured children. I don't know why we would take care of one child and not take care of another when they are all basically the sons and daughters of working families.

So I hope the Senate will accept this proposal. I want to make it very clear that we are preserving our right to make sure we are going to get coverage for the other children as well.

Mr. ROTH. I yield 3 minutes to the Senator from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROCKEFELLER. Mr. President, I thank both my ranking leader and the chairman of the committee. I say to my good friend, Senator KENNEDY from Massachusetts, that having witnessed this process, Senator HATCH fought like a tiger, would not yield in very close quarters, in order to get the additional $8 billion added on for children's health insurance, along with Senator CHAFEE, myself, and others. I think that ought to be very clear.

As Senator CHAFEE said when Senator CHAFEE and this Senator's bill failed, we managed to raise the standards of the bill to pass to such a degree to being very effective. As for not covering all children, that will be a matter of debate because of the uninsured already eligible and how to get to them.

I urge support of the committee amendment.

Mr. MOYNIHAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. MOYNIHAN. Mr. President, this is one of the finest moments the 105th Congress will know. It could not have come about without the courage and the conviction of the Senator from Utah. I would like to affirm everything he has said about the support on both sides of the aisle. It would be nice to have a unanimous vote. Let us hope we do have that, or near thereto.

Mr. CHAFEE. Mr. President, I would like to contribute regarding the work that the Senator from West Virginia did. But for the groundwork he laid in connection with what type of benefits there would be, what kind of assurances there would be for these children, I don't think we would be where we are.

So I want to pay tribute to the Senator from West Virginia.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. I yield 5 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this morning we started the first of a series of hearings in the Judiciary Committee on the tobacco global settlement. I have to say that the funding for this $8 billion, as well as a number of other provisions that will be in the tax bill, happens to come from the 20-cent-per-pack tax on cigarettes.

The reason that Senator KENNEDY and I originally put into our original bill a 43-cent tax on cigarettes is because tobacco is the number one preventable cause of death in this country today.

It is particularly important in this instance because of these 10 million children who are without health insurance, 5 million of them it is estimated will ultimately wind up smoking if we do not find some way to make smoking less attractive for them. It is also a proven fact that every time smoking goes up 10 percent in cost that 7 percent of these kids will never attempt to smoke, which is a very wise thing here. It is a spinoff benefit that we get in adding the cigarette tax.

I might also add that 50 percent of all smokers began before the age of 14, and 90 percent began before the age of 18.

So this particular amendment and this particular aspect of this particular bill has many, many good reasons for its adoption.

I hope our colleagues will support this because I think it is critical, and I think my colleagues on both sides who are really familiar with this will say that it is critical in the overall binding together in a bipartisan way of Democrats and Republicans in the best interest of our country and in support of these major, major two pieces of reconciliation legislation.

If you stop and think about it, this is one of the most just taxes that we have ever passed, and we have limited it to 20 cents rather than 43 cents. The advantage of that is that we will raise enough money to help not only children but help with some other serious problems on the committee.

It was a very difficult discussion because we always have revenue-raising problems, we always have offset problems, and we always have problems of differences on the Finance Committee. But here basically everybody was brought together. Ultimately this side of the equation passed 18 to 2. The spending side passed 20 to zero.

I hope our colleagues will support this amendment because it is critical to the overall passage of this matter.

It is also critical to these children. I don't know of a better thing we can do. We spend an awful lot of time around here doing an awful lot of good for people who can't help themselves, and here is a case where we have children 90 percent of whom live in families with at least one parent who works who can't help themselves but would if they could. This is the way to solve that.

It is a reasonable compromise. It is something that will work. It gets enough money out there in comparison to Hatch-Kennedy that I think it will work. It does it in a thrifty savings way.

I want to personally compliment the chairman and the ranking member of this committee and other members of this committee for their willingness to see through the solution of these problems with this amendment. I hope my colleagues on our side will support this amendment. I hope our colleagues on the Democrat side will support it because in doing so we will be pushing this process greatly forward.

I thank all of those who have participated and who will participate in helping us to do so.

I yield the floor.

Mr. HATCH. Mr. President, why do we need 8 billion on top of the 16 billion already appropriated?

We learned earlier that the House Commerce block grant may be scored

as reaching only 860,000 uninsured children. I understand that this is a complicated matter because some funds will be used for direct services and not to purchase insurance. But it just shows you that this whole area is not cheap.

We heard from Bruce Vladeck it costs about $1,000 or so for a good, solid insurance policy. We also know that the Federal share of Medicaid this year averages about $860 per child.

In the first year of the CHILD Program there will be an even 50/50 split between health care and deficit reduction so that $3 billion will be used for program costs. In year five, this program component will grow to $5 billion.

Using these numbers as a guide, it seems reasonable to expect that, depending a great deal how states chose to implement this program that our bill will be able to cover about 3.5 million or so children in the early years of the program and about 5 million children in the fifth year.

There are many variables such as which States chose to participate, what their State matching requirement is, what coinsurance and copayments they require, and so on. We must also take into account inflation which will erode the purchasing power of the yearly allocation.

Another way to look at the problem is to see how many children the $16 billion in the budget agreement could cover. This $16 billion amounts to an average of $3.2 billion per year. If we used all of this money to buy Medicaid coverage at $860 per child, it would cover about 3.7 million children.

This would still leave 1 million children under 125% of poverty with no health insurance.

Twenty-four billion dollars is about $4.8 billion per year spread over 5 years.

Depending on how States implement the program, cost-sharing requirements and so forth, I think that would cover between 5 and 6.5 million, perhaps 7 million children.

The PRESIDING OFFICER (Mrs. HUTCHISON). Who yields time?

Mr. ROTH. Madam President, I don't see anyone requiring further time to debate this issue.

So I yield whatever time I have remaining.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Is all time yielded?

The PRESIDING OFFICER. All time has been yielded.

Mr. DOMENICI. Madam President, I raise the point of order under section 302(f) of the Budget Act that amendment No. 520 results in the Finance Committee exceeding its spending allocations under section 602(a) of the Budget Act.

Mr. ROTH. Madam President, I move to waive all points of order against the committee amendment language for consideration of this provision now, and also for the language, if included at later stages, of the revenue reconciliation process such as in a conference report.

Mr. McCONNELL. Madam President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question occurs on agreeing to the motion to waive the Budget Act. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS], is necessarily absent.

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

The yeas and nays resulted—yeas 80, nays 19, as follows:

[Rollcall Vote No. 135 Leg.]

YEAS—80

| | | |
|---|---|---|
| Abraham | Durbin | Lott |
| Akaka | Enzi | Lugar |
| Allard | Feingold | Mack |
| Baucus | Feinstein | McCain |
| Bennett | Frist | Mikulski |
| Biden | Glenn | Moseley-Braun |
| Bingaman | Gorton | Moynihan |
| Bond | Graham | Murkowski |
| Boxer | Grassley | Murray |
| Breaux | Hagel | Reed |
| Brownback | Harkin | Reid |
| Bryan | Hatch | Robb |
| Bumpers | Hollings | Rockefeller |
| Burns | Hutchison | Roth |
| Byrd | Inouye | Santorum |
| Campbell | Jeffords | Sarbanes |
| Chafee | Johnson | Shelby |
| Cleland | Kempthorne | Smith (OR) |
| Cochran | Kennedy | Snowe |
| Collins | Kerrey | Specter |
| Conrad | Kerry | Stevens |
| D'Amato | Kohl | Thomas |
| Daschle | Landrieu | Torricelli |
| DeWine | Lautenberg | Warner |
| Dodd | Leahy | Wellstone |
| Domenici | Levin | Wyden |
| Dorgan | Lieberman | |

NAYS—19

| | | |
|---|---|---|
| Ashcroft | Grams | Nickles |
| Coats | Gregg | Sessions |
| Coverdell | Helms | Smith (NH) |
| Craig | Hutchinson | Thompson |
| Faircloth | Inhofe | Thurmond |
| Ford | Kyl | |
| Gramm | McConnell | |

NOT VOTING—1

Roberts

The PRESIDING OFFICER. On this vote the yeas are 80, the nays are 19. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to. The Budget Act is waived.

Mr. ROTH. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Madam President, I ask unanimous consent that the next two first-degree amendments in order to S. 949 first be an amendment by Senator DOMENICI regarding budget enforcement, to be followed by an amendment by Senator BYRD regarding the budget.

Mr. KERRY. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. KERRY. Reserving the right to object. I will not object.

Mr. DURBIN. Reserving the right to object, if I might ask the chairman before this unanimous consent is considered, I have an amendment pending, which I believe is the regular order, that I would like to have called up.

Mr. ROTH. I would say to the distinguished Senator from Illinois that we want to move ahead on a few amendments that I had mentioned here on a unanimous-consent basis. We will discuss with the Senator later his amendment.

Mr. DURBIN. Do I have the chairman's assurance that this amendment will be protected, there will be time for debate on it this evening?

Mr. ROTH. Yes. There will be time to debate it this evening. That is correct.

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

AMENDMENT NO. 520, AS AMENDED

THE PRESIDING OFFICER. The question now occurs on amendment No. 520, as amended, offered by the Senator from Delaware. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 520), as amended, was agreed to.

Mr. ROTH. Madam President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## MORNING BUSINESS

Mr. ROTH. I believe the distinguished Senator from New York would like us to go into morning business.

Mr. MOYNIHAN. Could we have 10 minutes for morning business, that we might discuss a momentous decision or nondecision by the Supreme Court this morning?

Mr. ROTH. I so move, Madam President.

The PRESIDING OFFICER. Without objection, it is so ordered. We are in 10 minutes of morning business.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

## RAINES V. BYRD

Mr. BYRD. Madam President, earlier today, in a seven-to-two decision, the United States Supreme Court ruled that Members of Congress do not have the requisite constitutional standing necessary to challenge the Line Item Veto Act.

That decision overturns the April 10 ruling of the U.S. District Court, which held that the Act does, indeed, injure

Members sufficiently to confer standing. Moreover, having granted standing, the District Court went on to conclude that the Act was an unconstitutional delegation of Congress' Article I lawmaking power.

As the Senator whose name titles today's decision—Raines v. Byrd—I am obviously disappointed that a majority of the Supreme Court denied standing to Members of Congress. However, I remain mindful of the fact that the most important decision in this matter lies ahead. In the meantime, I am somewhat heartened by the fact that at least one member of the Court was willing to consider the merits of our argument. In what I believe will be a vindicated position, Justice John Paul Stephens wrote that ''. . . the same reason that the [Members] have standing provides a sufficient basis for concluding that the statute is unconstitutional.''

Madam President, let me take this opportunity to personally thank two groups of individuals who, I know, share my concern with the Court's decision.

First, I wish to thank my Senate colleagues—Senator MOYNIHAN, Senator LEVIN, and former Senator Hatfield—for their support, their wisdom, and their counsel throughout this process. Although this has been a collaborative effort, I, for one, have valued their contributions. And there were two Members of the other body who, likewise, joined us—Mr. SKAGGS and Mr. WAXMAN. Of course, I would be remiss if I did not acknowledge the absolutly stellar legal work provided to us by Lloyd Cutler, Louis Cohen, Alan Morrison, Charles Cooper, and Michael Davidson. Despite the temporary setback, I am convinced that no other group of attorneys could have provided us with better, or more sound, advice.

Finally, be assured that there will come a time when a State or locality, or an individual or group of individuals, will feel the brunt of the misguided legislative gimmick called the line-item veto, and will seek judicial relief. When that time comes, I will stand ready at the helm to support that effort.

Mr. MOYNIHAN. Madam President, it is characteristic of our beloved former President pro tempore to thank others for the efforts that have led to the Court's nondecision today. Might I take the opportunity to thank him. It is his magisterial understanding of the Constitution and his Olympian commitment to it that brought us together, and brought to us the finest legal minds of this time to prepare the briefs that first won hands down in the U.S. District Court for the District of Columbia, and now have been put aside by the Court, but only temporarily. I think it would be not inappropriate to note that one judge and one Justice have spoken to this subject, and in both cases they have spoken to the unconstitutional nature of the act.

I ask the Senate if I might just indulge to read a paragraph from Justice Stevens' dissenting opinion this morning. He says:

> The Line Item Veto Act purports to establish a procedure for the creation of laws that are truncated versions of bills that have been passed by the Congress and presented to the President for signature. If the procedure were valid, it would deny every Senator and every Representative any opportunity to vote for or against the truncated measure that survives the exercise of the President's cancellation authority. Because the opportunity to cast such votes is a right guaranteed by the text of the Constitution, I think it is clear that the persons who are deprived of that right by the Act have standing to challenge its constitutionality. Moreover, because the impairment of that constitutional right has an immediate impact on their official powers, in my judgment they need not wait until after cancellation authority to bring suit. Finally, the same reason that the respondents have standing provides a sufficient basis for concluding that the statute is unconstitutional.

Madam President, I thank you for your indulgence. I think we may have overrun by a moment or two. I most appreciate that.

Again, our appreciation to Senator BYRD. I yield the floor.

Mr. DOMENICI. Has all time expired?

The PRESIDING OFFICER. There are approximately 3 minutes left in morning business.

Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

## PRAISE FOR SENATOR BYRD

Mr. TORRICELLI. Madam President, I, too, would like to join in words of praise for Senator BYRD. Every Member of this institution knows the Senate of the United States has no finer scholar nor better defender of the U.S. Constitution than the Senator from West Virginia. I share his disappointment in the decision of the Court today that standing does not rest with Members of Congress. But, indeed, as Senator MOYNIHAN noted, this is not only not a defeat, it is not even a retreat. The only two judges who were to consider this matter on its merits have reached the inescapable conclusion that by statute the Congress of the United States cannot rearrange basic constitutional powers as contained in the Constitution itself.

There will be another day with other parties who will bring this matter before the Court on its merits. And on that date, this Court will again, as it has on so many occasions, preserve the basic structure of the U.S. Government as contained in the Constitution. On that day, Senator BYRD will have his victory. It is postponed, it is delayed, but it will not be denied.

I once again offer my congratulations to the Senator from West Virginia on what will be his ultimate victory.

I yield the floor.

Mr. BYRD. Madam President, I thank the Honorable Senator for his gracious remarks.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there anyone wishing to speak in morning business? If not, morning business is closed.

## REVENUE RECONCILIATION ACT OF 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 537

(Purpose: To implement the enforcement provisions of the Bipartisan Budget Agreement, enforce the Balanced Budget Act of 1997, extend the Budget Enforcement Act of 1990 through fiscal year 2002, and make technical and conforming changes to the Congressional Budget and Impoundment Control Act of 1974 and the Balanced and Emergency Deficit Control Act of 1985)

The PRESIDING OFFICER. The Senator from New Mexico is recognized for an amendment.

Mr. DOMENICI. Madam President, I believe it is my turn to offer an amendment. I am going to offer an amendment on behalf of myself and Senator LAUTENBERG of the State of New Jersey.

Before I send the amendment to the desk, let me just talk a little bit about what I am trying to do. In the agreement reached with the White House, on the very last page of it, the White House, members from both sides, and the House, agreed that we would, as part of enforcing this 5-year budget, that we would extend and revise the discretionary caps for 1998 to 2002 at agreed levels shown in tables included in the agreement, and to extend the current law of sequester, which had its early origins in T. Gramm–Rudman-Hollings.

We also agreed within the discretionary caps we would establish what we call firewalls. They have been in existence for some time. We struck a compromise and said for now we would only extend them for 2 years instead of for the entire agreement, meaning we will have to bring those up in about a year, but we will have an opportunity on the next budget resolution, or the one after that, for those who want to extend it beyond that time, and I do.

We also agreed, and I want everybody to understand this one, to return to current law on separate crime caps at levels shown in the agreed tables. That has to do with a matter that is of real importance to Senator BYRD, Senator BIDEN, and the distinguished Senator from Texas, Senator GRAMM. That is an extension of the trust fund for crime prevention, to fight crime, which was established here in the Senate when Senator GRAMM on one day sought to use up the savings attributable to a reduced workforce, as I recall, and then said in that, if we are going to save the money, we ought to spend it for something everybody understands and would be worthwhile.

That trust fund then came into being with the amendment of the Senator

from Texas, supported by Senator BYRD and others. Now, that law expires in 2 years, but we agreed in the sessions with the White House and the leadership that we would extend the trust fund within the caps for the 2 remaining years of that law, meaning 1998 and 1999, after which the Congress is free to pass a new law on the trust fund or whatever they would like with reference to the trust fund.

But I think it is clear that without a new law, since that is a trust fund, you couldn't just continue to appropriate, and the trust fund is a fund set aside within the caps and getting the highest priority because it is already there in trust.

We agreed to four or five other things that are less important, and then we agreed to extend the pay-go, pay-as-you-go provisions which had heretofore been adopted and become part of the Senate's working process from the year 1990. Those pay-go provisions essentially said, if you are going to raise entitlement spending, you must offset it with entitlement cuts or tax increases. If you are going to cut taxes, you must offset that with entitlement cuts and vice versa.

We have in this amendment done all of those things. The distinguished Senator from New Jersey, who was part of the agreement and also my ranking member on the Budget Committee, joins me in sending a Domenici-Lautenberg amendment to the desk on this matter, and we ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI], for himself and Mr. LAUTENBERG, proposes an amendment numbered 537.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. DOMENICI. Mr. President, I want the Senate to know that this amendment is subject to a point of order, and I won't wait around for a point of order. I want the Senate to know that I am fully aware that this amendment is subject to a point of order, because it is obviously not part of deficit reduction. I am fully aware that a point of order could be made. I knew that from the beginning, and we knew that when we discussed extending this and putting in the caps for 5 years, which is the only way to enforce the discretionary savings in this budget. So I won't wait for a point of order. When the time is expired, I myself will move to waive the Budget Act in order to allow this legislation to be considered on this bill.

I say to my fellow Senators, there are many process amendments around. When the Senator from New Mexico said I would not offer this on the first bill, about 12 amendments came tumbling down because they are all waiting for process reform. Some of those amendments I would sympathize with, others I would not, which is not necessarily very relevant. But I must make a point of order on each and every one of those, if the sponsors do not, that they, too, will take 60 votes, unless somebody has some magical way—and maybe Senator GRAMM will try a magical way, maybe he won't—to try to get these amendments in at 50 votes. But I think everybody who wants to do these kinds of process changes ought to get 60 votes or they ought not get it done. That will be applying the law to everybody who wants to change our processes.

I hope everybody knows we could be here for the entire remainder of this bill if everybody who has a process change intends to offer it.

I will use no more time other than to shortly yield to Senator LAUTENBERG with reference to the amendment which he cosponsors. But let me make it very simple, if we do not adopt this amendment, or something like it, there is no way of enforcing the 5-year caps on appropriations. This was a three-legged stool. We get savings on the caps on appropriations, we get savings in entitlements, and we would do that sufficient to allow for a $85 billion tax cut, the third leg. There will be no enforcement of the appropriations total accounts that they can spend, and there will be no firewall between defense if we don't adopt something like this amendment.

I think it is properly drawn, and I hope that we can adopt it later on this evening when the debate is finished.

I yield the floor to Senator LAUTENBERG.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, I join with Senator DOMENICI in offering the amendment. It implements a provision in the bipartisan budget agreement that relates to the budget process. Without the support that comes from this, I think the work that had been done would be relatively penetrable in so many ways that we would not be able to come up with the final target that we are shooting for, and that is to make certain that we have the deficit down to zero at the end of 2002, and then we have preserved the caps that were placed there to achieve that objective.

The amendment extends several provisions in the Budget Enforcement Act that otherwise will expire and preserves the existing system for enforcing the fiscal policies established by the Congress.

Madam President, current law establishes an overall cap on the amount of spending that Congress can appropriate each year, but discretionary spending—I am referring to the programs appropriated annually by the Congress, including the entire gamut of Federal Departments and Agencies and most of their day-to-day operations. By contrast, discretionary spending does not include entitlement spending, Social Security, Medicare, which flows without the need for annual congressional action.

Under current law, total spending on discretionary programs cannot exceed the prescribed limits. However, these limits expire in fiscal year 1998, and the amendment would extend these limits to 2002 in accordance with the budget agreement. The levels established are the same as those adopted in the agreement and in the budget resolution.

In addition, the amendment extends the so-called pay-as-you-go or pay-go system. Under that system, all tax cuts, all increases in entitlement spending have to be offset by either revenue increases or reductions in other entitlements. The amendment will extend this system through 2002.

There was little disagreement in the bipartisan budget negotiations that the discretionary spending limits and the pay-as-you-go system ought to be extended. These two budget mechanisms are at the very core of the Budget Enforcement Act. The act has been in place since 1990 when it replaced the old Gramm-Rudman-Hollings law, and the system has proven to be successful.

There are many ways to measure success, but I begin by pointing to the bottom line. Since BEA, the Budget Enforcement Act, was put into place, our deficit has been reduced from $270 billion plus down to about $70 billion, a $200 billion reduction. By contrast, the old Gramm-Rudman system had promised dramatic deficit reduction, but when it came to producing results, frankly, it laid an egg.

When Gramm-Rudman came into effect in 1986, the deficit was $221.2 billion. By 1990, when Gramm-Rudman was repeated, the deficit had moved from $220 billion to the same level, $221.2 billion. That, Madam President, is not my idea of progress. Beyond helping to implement the real deficit reduction, the Budget Enforcement Act has avoided many of the political and policy distortions that were originally created by the Gramm-Rudman-Hollings legislation. The old system created an incentive for both Congress and the White House to use unrealistic economic assumptions and other gimmicks in order to game the system.

Since BEA was enacted, while there are still plenty of games in Federal budgeting, the process has dramatically improved. For example, Presidential budgets have used much more realistic economic assumptions, and we have largely been free of the threat of massive across-the-board cuts in defense and domestic appropriated programs that used to be so disruptive.

So, Madam President, I, along with Senator DOMENICI and Congressman KASICH, Congressman SPRATT and the administration, all in the negotiations agreed we should retain the basic framework of the Budget Enforcement

Act system. That is what we are proposing in the amendment before us. It is a fairly simple proposition.

In addition, this amendment includes separate spending limits for defense discretionary programs and nondefense discretionary programs in the next 2 fiscal years. This also reflects the bipartisan budget agreement.

Along with many other Democrats, I have long been skeptical of firewalls, but I remind my colleagues that these firewalls apply equally to both sides of the discretionary budget and could protect domestic initiatives from those who would shift funding from domestic discretionary to the military. I will also note that the separate defense and nondefense caps expire after 2 years.

Another provision in this amendment, which also implements the bipartisan budget agreement, would revise the rule governing scoring of asset sales. Under the proposal, asset sales could be counted in budget calculations only if they do not increase the deficit. This should help ensure we don't sell assets only for short-term income if those assets would generate significant revenues in the future. An example might be a Government-owned recreational facility that generates significant user fees.

Madam President, this amendment also includes provisions that establish reserve funds for Amtrak, highways and transits. These provisions will allow us to implement the comparable reserve funds that were included in the budget resolution, and they have been top priorities for me and, given my longstanding commitment to transportation investment, I worked very hard to make sure that we were going to provide the funds necessary to provide the investment in infrastructure so critically needed in our country.

Finally, Madam President, this amendment includes a variety of technical changes that are designed to correct errors and eliminate unnecessary reporting requirements and to revise the outdated provisions. So, I hope my colleagues will support us in this amendment. I express my appreciation, once again, to Senator DOMENICI and the staff, especially Sue Nelson, my Budget Committee staff, for their hard work and cooperation in the development of this legislation. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

Mr. LOTT. Madam President, I have a unanimous consent request that I have cleared with the Democratic leader.

## PROVIDING FOR ADJOURNMENT OR RECESS OF BOTH HOUSES OF CONGRESS

Mr. LOTT. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of H. Con. Res. 108, the adjournment resolution, which was received from the House. I further ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table.

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

The concurrent resolution (H. Con. Res. 108) was agreed to, as follows:

H. CON. RES. 108

*Resolved by the House of Representatives (the Senate concurring),* That when the House adjourns on the legislative day of Thursday, June 26, 1997, it stand adjourned until 12:30 p.m. on Tuesday, July 8, 1997, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, June 26, 1997, Friday, June 27, 1997, Saturday, June 28, 1997, or Sunday, June 29, 1997, pursuant to a motion made by the Majority Leader, or his designee, in accordance with this concurrent resolution, it stand recessed or adjourned until noon on Monday, July 7, 1997, or such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

Mr. LOTT. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

## REVENUE RECONCILIATION ACT OF 1997

The Senate continued with the consideration of the bill.

AMENDMENT NO. 537

Mr. DOMENICI. How much time do I have on the amendment?

The PRESIDING OFFICER. Forty-four minutes.

Mr. DOMENICI. And the opposition has 44 minutes?

The PRESIDING OFFICER. Sixty minutes.

Mr. DOMENICI. So we have used 16. Actually, unless Senator LAUTENBERG has anything further to say, I believe I have stated the case for the DOMENICI-LAUTENBERG amendment No. 537. Does Senator GRAMM want to offer an amendment to the amendment?

Mr. GRAMM. I think Senator BIDEN is going to offer an amendment first, and after his amendment is disposed of, then I will have an amendment, as will several other people.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Madam President, I wonder if the Democratic manager would yield me time off the bill.

Mr. DOMENICI. The Senator has time on his amendment.

Mr. BIDEN. Parliamentary inquiry. Can I get time in my own right?

Mr. DOMENICI. I yield back my time.

The PRESIDING OFFICER. The time is controlled by Senator DOMENICI and Senator ROTH.

Mr. LAUTENBERG. I yield back my time.

The PRESIDING OFFICER. Is all time yielded back?

Mr. DOMENICI. We yielded back our time.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

AMENDMENT NO. 539 TO AMENDMENT NO. 537

Mr. BIDEN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Delaware [Mr. BIDEN], for himself and Mr. GRAMM, proposes an amendment numbered 539 to amendment No. 537.

Mr. BIDEN. Madam President, I ask that further reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 43 of the amendment, strike lines 14 through 21 and insert the following:

''(5) with respect to fiscal year 2001—

''(A) for the discretionary category: $537,677,000,000 in new budget authority and $558,460,000,000 in outlays; and

''(B) for the violent crime reduction category: $4,355,000,000 in new budget authority and $5,936,000,000 in outlays;

''(6) with respect to fiscal year 2002—

''(A) for the discretionary category: $546,619,000,000 in new budget authority and $556,314,000,000 in outlays; and

''(B) for the violent crime reduction category: $4,455,000,000 in new budget authority and $4,485,000,000 in outlays;

as adjusted in strict conformance with subsection (b).''.

(2) TRANSFERS INTO THE FUND.—On the first day of the following fiscal years, the following amounts shall be transferred from the general fund to the Violent Crime Reduction Trust Fund—

(A) for fiscal year 2001, $4,355,000,000; and

(B) for fiscal year 2002, $4,455,000,000.

Mr. BUMPERS. Will the Senator from Delaware yield for an inquiry for a moment?

Mr. BIDEN. I would be happy to.

Mr. BUMPERS. Could the managers of this bill tell us how many second-degree amendments there are to this process?

I assume we are on the second-degree amendment process; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. BUMPERS. Could the managers tell us how many second-degree amendments they anticipate on this?

Mr. DOMENICI. I do not know.

Mr. GRAMM. I believe there will be four. Senator BIDEN will offer one for himself. Once that is adopted, I will offer a second-degree amendment. And

then we have two other Senators who want to offer second-degree amendments, so they will be seriatim.

Mr. BUMPERS. Then there are five, because I have one also. I am just wondering if we could get some kind of sequence so we know how they are going to be offered so we do not spend the rest of our lives waiting.

Mr. DOMENICI. I say to the Senator, you can be assured there will be four ahead of you, if you would like to be fifth.

Mr. BUMPERS. I thank the Senator for his courtesy.

Mr. GRAMM. Why don't you do yours last?

Mr. DOMENICI. That is what I said.

Mr. BIDEN. Madam President, the second-degree amendment I have at the desk is very simple and straightforward. The Senator from New Mexico is introducing a budget process amendment, and what the amendment of Senator GRAMM and myself does is, quite frankly, it merely extends the crime law trust fund for the extension of this agreement.

I am told by the staffs of the majority and minority that in the budget process agreement that was agreed to with the administration, there is a line on page 90 of the concurrent resolution of the budget fiscal year 1998. On page 90, it says, ''Retain current law on separate crime caps at levels shown in the agreement tables.''

All we are doing here is extending the crime law trust fund. We are not making judgments on how that will be disbursed within the trust fund. We are just extending the trust fund to the extent of this agreement. And, Madam President, as I offer this amendment, we are maintaining a commitment to one of the few specific ways the reconciliation package can, by virtue of the type of legislation it is, maintain a commitment.

The commitment we made was to fight violent crime. And, ironically, it is working. It is working. And so for us now to extend the violent crime trust fund, let it expire 2 years before this budget agreement expires, means we are going to be back at it again in the year 2000 or before, fighting over something we now know works.

So I realize we can take a long time debating this. But the bottom line is this: We are not suggesting, as the Senator from New Mexico knows, how this trust fund money within the caps will be disbursed; merely that we have the continuation of the trust fund as long as the budget agreement to the year 2002.

Of all the priorities addressed in this budget package, I believe that none is more important than continuing our fight against violent crime and violence against women.

The amendment I am offering, along with Senator GRAMM seeks to maintain this commitment in one of the few specific ways this reconciliation package can—by virtue of the type of legislation this is—maintain this commitment. That is by extending the violent crime control trust fund will continue through the end of this budget resolution, fiscal year 2002.

Senator BYRD, more than anyone, deserves credit for the crime law trust fund. Senator BYRD worked to develop an idea that was simple as it was profound—as he called on us to use the savings from the reductions in the Federal work force of 272,000 employees to fund one of the Nation's most urgent priorities: fighting the scourge of violent crime.

Senator GRAMM was also one of the very first to call on the Senate to ''put our money where our mouth was.'' Too often, this Senate has voted to send significant aid to State and local law enforcement—but, when it came time to write the check, we did not find nearly the dollars we promised.

Working together in 1993, Senator BYRD, myself, Senator GRAMM, and other Senators passed the violent crime control trust fund in the Senate. And, in 1994, it became law in the Biden crime law.

Since then, the dollars from the crime law trust fund have: Helped add more than 60,000 community police officers to our streets; helped shelter more than 80,000 battered women and their children; focussed law enforcement, prosecutors, and victims service providers on providing immediate help to women victimized by someone who pretends to love them; forced tens of thousands of drug offenders into drug testing and treatment programs, instead of continuing to allow them to remain free on probation with no supervision and no accountability; constructed thousands of prison cells for violent criminals; and brought unprecedented resources to defending our Southwest border—putting us on the path to literally double the number of Federal border agents over just a 5-year period.

The results of this effort are already taking hold: According to the FBI's national crime statistics, violent crime is down and down significantly—leaving our nation with its lowest murder rate since 1971; the lowest violent crime total since 1990; and the lowest murder rate for wives, ex-wives, and girlfriends at the hands of their intimates to an 18-year low.

In short, we have proven able to do what few thought possible—by being smart, keeping our focus, and putting our ''money where our mouths'' are—we have actually cut violent crime.

Today, our challenge is to keep our focus and to stay vigilant against violent crime. Today, the Biden-Byrd-Gramm amendment before the Senate offers one modest step toward meeting that challenge:

By assuring that the commitment to fighting crime and violence against women will continue for the full duration of this budget resolution.

By assuring that the violent crime control trust fund will continue—in its current form which provides additional Federal assistance without adding 1 cent to the deficit—through 2002.

The Biden-Gramm amendment offers a few very simple choices: Stand up for cops—or don't; stand up for the fight against violence against women—or don't; and stand up for increased border enforcement—or don't.

Every Member of this Senate is against violence crime—we way that in speech after speech. Now, I urge all my colleagues to back up with words with the only thing that we can actually do for the cop walking the beat, the battered woman, the victim of crime—provide the dollars that help give them the tools to fight violent criminals, standup to their abuser, and restore at least some small piece of the dignity taken from them at the hands of a violent criminal.

Let us be very clear of the stakes here—frankly, if we do not continue the trust fund, we will not be able to continue such proven, valuable efforts as the violence against women law. Nothing we can do today can guarantee that we, in fact, will continue the Violence Against Women Act when the law expires in the year 2000.

But, mark my words, if the trust fund ends, the efforts to provide shelter, help victims, and get tough on the abusers and barterers will wither on the vine. Passing the amendment I offer today will send a clear, unambiguous message that the trust fund should continue and with it, the historic effort undertaken by the Violence Against Women Act that says by word, deed, and dollar that the Federal Government stands with women and against the misguided notion that ''domestic'' violence is a man's ''right'' and ''not really a crime.''

I urge my colleagues to support the Biden-Gramm amendment.

At the appropriate time—and I am not quite sure yet when is appropriate—I will ask for the yeas and nays on this.

But make no mistake about it, what we are voting on here is whether or not we are going to commit now to the extension of the trust fund, the violent crime trust fund, for the extent of this agreement. That is all this does. That is everything it does, but that is all it does.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER (Mr. BENNETT). The Senator from New Mexico.

AMENDMENT NO. 537, WITHDRAWN

Mr. DOMENICI. Mr. President, I withdraw my amendment.

The PRESIDING OFFICER. The amendment is withdrawn.

The amendment (No. 537) was withdrawn.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from West Virginia is recognized.

AMENDMENT NO. 540

(Purpose: To eliminate tax deductions for advertising and promotion expenditures relating to alcoholic beverages and to increase funding for programs that educate and prevent the abuse of alcohol among our Nation's youth)

Mr. BYRD. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes an amendment numbered 540.

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

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

The amendment is as follows:

At the end of the bill, add the following:

TITLE —ALCOHOL ADVERTISING RESPONSIBILITY ACT

**SEC. 01. SHORT TITLE.**

This title may be cited as the ''Alcohol Advertising Responsibility Act''.

**SEC. 02. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) alcohol is used by more Americans than any other drug;

(2) it is estimated that the costs to society from alcoholism and alcohol abuse were approximately $100,000,000,000 in 1990 alone.

(3) in 1995, the alcoholic beverage industry spent $1,040,300,000 on advertising, while the National Institute for Alcohol Abuse and Alcoholism was funded at only $181,445,000;

(4) more than 100,000 deaths each year in the United States result from alcohol-related causes;

(5) 41.3 percent of all traffic facilities in 1995, or 17,274 deaths, were alcohol related;

(6) in addition to severe health consequences, alcohol misuse is involved in approximately 30 percent of all suicides, 50 percent of homicides, 68 percent of manslaughter cases, 52 percent of rapes and other sexual assaults, 48 percent of robberies, 62 percent of assaults, and 49 percent of all other violent crimes;

(7) approximately 30 percent of all accidental deaths are attributable to alcohol abuse;

(8) alcohol advertising may influence children's perceptions toward an inclinations to consume alcoholic beverages;

(9) 26 percent of eighth graders, 40 percent of tenth graders, and 51 percent of twelfth graders report having used alcohol in the past month; and

(10) college presidents nationwide view alcohol abuse as their paramount campus-life problem.

(b) PURPOSES.—The purposes of this title are—

(1) to repeal the existing tax subsidization for expenses incurred to promote the consumption of alcoholic beverages;

(2) to reduce the amount of alcohol advertising to which our Nation's youth are exposed; and

(3) to increase funding for those programs that educate and prevent the abuse of alcohol among our Nation's youth.

**SEC. 03. DISALLOWANCE OF DEDUCTION FOR ADVERTISING AND PROMOTION EXPENSES RELATING TO ALCOHOLIC BEVERAGES.**

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end of the following:

**SEC. 280I. ADVERTISING AND PROMOTION EXPENDITURES RELATING TO ALCOHOLIC BEVERAGES.**

''(a) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred to advertise or promote by any means any alcoholic beverage.

''(b) ALCOHOLIC BEVERAGE.—For purposes of this section, the term 'alcoholic beverage' means any item which is subject to tax under subpart A, C, or D of part I of subchapter A of chapter 51 (relating to taxes on distilled spirits, wines, and beer).''.

(b) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end the following:

''Sec. 280I. Advertising and promotion expenditures relating to alcoholic beverages.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31 of the year in which this Act is enacted.

**SEC. 04. ALCOHOL ABUSE EDUCATION AND PREVENTION AMONG YOUTH.**

(a) IN GENERAL.—Subject to subsection (c), there shall be transferred, from funds in the Treasury not otherwise appropriated, to the entities described in subsection (b) amounts to the extent specified under subsection (b).

(b) EDUCATION AND PREVENTION PROGRAMS.—

(1) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—The amounts specified in this subsection shall be:

(A) IN GENERAL.—With respect to the Substance Abuse and Mental Health Services Administration, $120,000.000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to supplement substance abuse prevention activities authorized under section 501 of the Public Health Service Act (42 U.S.C. 290aa).

(B) USE OF FUNDS.—Amounts provided to the Substance Abuse and Mental Health Services Administration under subparagraph (A) shall be used directly or through grants and cooperative agreements to carry out activities to prevent the use of alcohol among youth, including the development and distribution of public service announcements.

(2) CENTERS FOR DISEASE CONTROL AND PREVENTION.—

(A) IN GENERAL.—With respect to the Centers for Disease Control and Prevention, $120,000.000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to carry out a comprehensive strategy to prevent alcohol-related disease and disability.

(A) REQUIRED USES.—In carrying out the comprehensive strategy under subparagraph (A), the Centers for Disease Control and Prevention shall—

(i) enhance and expand State-based and national surveillance activities to monitor the scope of alcohol use among the youth of the United States;

(ii) enhance comprehensive school-based health programs that focus on alcohol use prevention strategies;

(iii) develop and distribute commercial advertising to prevent alcohol abuse among youth; and

(iv) enhance and expand Fetal Alcohol Syndrome prevention activities throughout the United States.

(3) NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.—With respect to the National Highway Traffic Safety Administration, and in addition to any funds authorized from the Highway Trust Fund, $120,000.000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to carry out programs under sections 402, 403, and 410 of title 23, United States Code, and to develop and implement a paid media campaign targeting high-risk youth populations to improve the balance of media messages related to alcohol impaired driving.

(4) INDIAN HEALTH SERVICE.—With respect to the Indian Health Service, $40,000,000 for fiscal year 1998, $60,000,000 for fiscal year 1999, $60,000,000 for fiscal year 2000, $70,000,000 for fiscal year 2001, and $70,000,000 for fiscal year 2002, to supplement the programs that such Service is authorized to carry out pursuant to titles II and III of the Public Health Service Act (42 U.S.C. 202 et seq., 241 et seq.).

(c) AUTHORITY TO TRANSFER FUNDS.—The Committee on Appropriations of the House of Representatives and the Committee on appropriations of the Senate, acting through appropriations Acts, may transfer the amount specified under subsection (b) in each fiscal year among the entities referred to in such subsection.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, would the Chair indulge me momentarily?

I protect my right to the floor.

The PRESIDING OFFICER. The Senator from West Virginia will be protected in his right to the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. BYRD. I thank the Chair.

Mr. President, last Friday negotiators from the tobacco industry and State attorneys general announced the landmark agreement addressing the impact of tobacco use on our Nation, particularly our young people. Although this important deal will likely face many obstacles and has a long way to go toward implementation, it is an unprecedented first step toward curbing tobacco use and paying for the harm caused by that use.

This process has caused our Nation to focus on an important public health danger and is an important step in working toward a meaningful solution.

While I applaud the action being taken to address the pernicious health effects of tobacco, I am concerned that its evil twin, which also has a staggering impact on our Nation, is to a large measure being ignored.

Mr. President, the cost of alcohol abuse to our country is staggering. According to the National Institute on Alcohol Abuse and Alcoholism of the National Institutes of Health, alcohol is used by more Americans than any other drug. And the results are devastating.

The flood tide of alcohol causes more than 100,000 deaths each year in the United States. Alcohol abuse and alcoholism imposes approximately $100 billion in cost each year on society. Links have been found between alcohol abuse and cirrhosis of the liver, as well as other harmful health conditions. Alcohol is a contributing factor in assaults, murders and other violent crimes, including fatal drinking and driving accidents.

At the bottom of every empty bottle is another family in crisis, another career being destroyed, or another dream washed away.

The amendment I am offering today would eliminate the tax deduction for alcoholic beverage advertising expenditures. In addition, it would increase funding for a number of programs that educate and prevent the abuse of alcohol among our Nation's youth.

What should be of the utmost of our concern in our Nation is the impact of alcohol on our children and our grandchildren.

I am introducing this amendment on behalf of the children who died because they were drinking and driving, and on behalf of the millions of children who are drinking right now without the full appreciation of what they are doing to themselves and what they could potentially do to others.

Alcohol is the drug of choice among teenagers.

Mr. President, more specifically, and looking at this chart compiled by the National Center on Addiction and Substance Abuse, the use of alcohol by our Nation's youth is highlighted among different age groups, including children between the ages of 12 and 17. Among children between the ages of 16 and 17, 69.3 percent have at one point in their lifetimes experimented with alcohol.

Clearly, as made evident by these alarming statistics, alcohol is the leading problem among teenagers—not marijuana, not cocaine.

In the last month, approximately 8 percent of the Nation's eighth graders have been drunk—have been drunk. We are talking about eighth graders, 13 years old—13-year-olds. I never heard of such a thing when I was in my teens, as a young man, or in my middle age. We are talking about eighth graders, 13-year-olds.

Every State has a law prohibiting the sale of alcohol to individuals under the age of 21. How is it then that two out of every three teenagers who drink report that they can buy their own alcoholic beverages?

The youth of this country, who at the delicate age of 15 should be enriching their minds with schoolwork, improving their bodies with exercise, and discovering the wonders of life through God and family values, instead are experimenting and endangering themselves with booze. Junior and senior high school students drink 35 percent of all wine coolers and consume 1.1 billion cans of beer a year. I know, because I pick some of them up off my lawn—I am talking about the beer cans, not the young people.

I will repeat what is common knowledge to us all: Every State has a law prohibiting the sale of alcohol to individuals under the age of 21. Alcohol is a factor in the three leading causes of death for 15- to 24-year-olds—the three leading causes—accidents, homicides, suicide. In approximately 50 percent to 60 percent of youth suicides, alcohol is involved.

Links have been shown between alcohol use and teen pregnancies and sexually transmitted diseases. Eighty percent of the teenagers do not know that a can of beer has the same amount of alcohol as a shot of whiskey or a glass of wine. By the time they are in college, 40 percent have binged on alcohol during the previous 2 weeks.

In 1994, 8.9 percent—almost 95,000—of the clients admitted to alcohol treatment programs that received at least part of their funding from the State were under the age of 21, including over 1,000 under the age of 12. And 31.9 percent of youth under the age of 18 in long-term State-operated juvenile institutions were under the influence of alcohol at the time of their arrest.

While our Nation's education system needs repair, it seems that our society has been successful in teaching these kids something. The problem is that what we have taught them is deadly.

Drinking impairs one's judgment. We all know that. Nobody will dispute that. Alcohol mixed with teenage driving is a lethal, a lethal combination. We read about it all the time in the Washington Post, the Washington Times, and every newspaper in the land. In 1995, there were 1,666 alcohol-related fatalities of children between the ages of 15 and 19. The total number of alcohol-related fatalities that year was 17,274. Mr. President, for many years I have taken the opportunity, when addressing groups of young West Virginians, to warn them about the dangers of alcohol. I supported legislative efforts to discourage people, particularly young people, from drinking any alcohol. For example, 2 years ago I authored an amendment that requires States to pass the zero-tolerance laws that will make it illegal for persons under the age of 21 to drive a motor vehicle if they have a blood alcohol level greater than .02 percent. This legislation not only helps to save lives but it also sends a message to our Nation's youth that drinking and driving is wrong, that it is a violation of the law, and that it will be appropriately punished. Unfortunately and tragically, we all know someone, whether it is a family member or a friend or an acquaintance, whose life has been cut short by a drunk driver. These are senseless losses that are devastating to the families and the friends who are left behind.

As if the aforementioned statistics about youth alcohol use and the results of that use are not frightening enough, young people who consume alcohol are more likely to use other drugs.

On the chart to my left, Senators will note these statistics, compiled by the National Center on Addiction and Substance Abuse at Columbia University, statistics which show that 37.5 percent of young people who have consumed alcohol have used some other illicit drug, versus only 5 percent of young people who have never consumed alcohol; 26.7 percent of those who have consumed alcohol have tried marijuana, versus 1.2 percent of those who have never consumed alcohol; 5 percent of youths who have partaken of alcohol have tried cocaine, while only 0.1 of 1 percent of those who do not drink have used cocaine. So it is not a question that is even debatable that youths who drink alcohol are more likely to use other drugs.

Mr. President, as the aforementioned facts and figures indicate, alcohol exacts a tremendous cost on our society. These costs are not always clear-cut. For example, consider the costs of the lost productivity of a person showing up at work on a Monday morning with a hangover and inadequately performing his or her job, perhaps making a mistake that results in injury. How many of us would like to ride in the automobile that was made on such a Monday morning? How many of us would like to fly on the airplane whose maintenance man or woman, whose mechanic was on a binge the previous day? While there is no way to accurately gauge the enormous costs that alcohol exacts upon our society, there can be no doubt that the pleasures of alcohol consumption exacts a considerable price on our Nation.

The purpose of the amendment that I introduce today is simple. My proposal would simply tell all producers of alcoholic beverages that they can no longer deduct the costs of their advertising expenditures on those products from their Federal income tax liability. While advertising is generally deductible as a legitimate business expense, I believe there exists a moral, legitimate reason to create an exception for producers of alcoholic beverages whose products exact such considerable costs on our society. My proposal would not make illegal any advertising of alcoholic beverages. It does not say that any advertising of alcoholic beverages is unconstitutional. It does not attempt to ban such advertisements, nor would it create any additional Federal bureaucracy to regulate alcohol products. Rather, it would simply end the American taxpayers' subsidization of alcohol advertising by amending the Internal Revenue Code of 1986 to include a disallowance of any deduction for any amount paid or incurred to advertise or promote by any means any alcoholic beverage. This is not a sin tax. It is, rather, an end to the sin subsidy that has left American taxpayers footing the bill for both alcohol advertising and the high health care costs inflicted on society by alcohol consumption. Now there may be those who argue that it is wrong to single out alcohol advertising expenses. I counter that with the question: What other product, with the possible exception of tobacco, costs society $100 billion each year? What other product results in more than 100,000 deaths each year in the United States? The statistics are indeed staggering.

Mr. President, in these complicated times, the innocence of youth, the innocence of youth is dashed away at an early age by the irreverent messages spewing from the television set. Profanity and violence on television programming are interrupted only by the aggressive commercials seeking to influence viewers in the name of profit.

Our impressionable youth, pressured by the self-indulgent motives of revenue-hungry corporations are bombarded by countless images glorifying an unrealistic view of reality, often insincerely portraying alcoholic beverages as an ingredient for ideal lifestyles. Our children are besieged with the message that if you drink you will attract beautiful women, if you drink you will be popular, if you drink you will excel at sports. Are these the images of reality or do they leave out something important? Do they leave out some important facts about alcohol consumption? What about the negative and all too prevalent results of alcohol consumption—the hangovers that result in lost productivity, the tragic deaths, the injuries caused by a drunk behind the wheel, the hospital visits for alcohol poisoning, the horrible effects of cirrhosis of the liver and the families torn apart by alcohol abuse.

The industry indicates that their advertisements do not target young people, although this is debatable. A January Wall Street Journal article, detailing a competitive media reporting survey commissioned by the Journal, found that beer advertisements are often aired during programs that are watched by large numbers of adolescents. The findings of this survey are extremely disturbing. In one example, referenced in the article, a beer ad ran during the airing of a popular cartoon show on the MTV station of which 69 percent of the audience was comprised of children under the age of 21.

Mr. President, I ask unanimous consent to have printed in the RECORD the Wall Street Journal article.

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

[From the Wall Street Journal]

ARE BEER ADS ON BEAVIS AND BUTT-HEAD AIMED AT KIDS?

(By Sally Beatty)

When a commercial for Schlitz Malt Liquor appeared last year on MTV during ''My So-Called Life,'' a show about teenage girls, beer maker Stroh called the airing an aberration.

Even as the ad helped launch a Federal Trade Commission probe into alcohol advertising to children, Stroh said it had a longtime policy of aiming ads only at adults of legal drinking age; MTV said the ad ran by mistake because of a last-minute programming switch.

In fact, the commercial was hardly an isolated event. Despite the beer industry's insistence that it doesn't target kids, its commercials regularly wash over underage viewers. A survey by Competitive Media Reporting for the Wall Street Journal showed that during one arbitrarily chosen week—the first week of September—youths under the drinking age made up the majority of the audience for beer commercials on several occasions.

For instance, Molson beer was advertised during a 10 p.m. episode of ''Beavis & Butt-Head,'' the popular MTV cartoon series about two obnoxious teens. Fully 69% of all the episode's viewers that night were under 21—the legal drinking age in all 50 states—according to Nielsen Media Research's widely used ratings data. Molson, which is marketed in the U.S. by Philip Morris's Miller Brewing, also advertised on MTV's racy youth dating show, ''Singled Out,'' just after 7 p.m., when 52% of the audience was under 21. And Stroh advertised Schlitz Malt Liquor during MTV's prime-time music-video show at 8:30 p.m., when 56% of the audience was under 21.

That same week, Adolph Coors ran two ads on the Black Entertainment Television channel after 8 p.m., when 65% of the audience wasn't old enough to drink. Also that week, Anheuser-Busch ran an ad for its Budweiser brand just after 8:30 p.m. on BET during music-video programming, when 70% of the audience was under 21.

These commercials look like clear violations of the chief beer industry trade group's own guidelines for TV ads. ''Beer advertising . . . should not be placed in magazines, newspapers, television programs, radio programs or other media where most of the audience is reasonably expected to be below the legal purchase age,'' states the Beer Institute's published ''advertising and marketing guidelines.'' The industry is pointing to these guidelines in an aggressive lobbying effort against proposed new federal restrictions of beer and liquor advertising.

The number of ads reaching kids is ''very troubling,'' says Jodie Bernstein, director of the FTC's bureau of consumer protection and a top official involved with its ongoing probe into alcohol marketing to kids on television. Her bureau enforces laws banning unfair or deceptive ad practices, including a statute that says it's unfair to aim ads at people who aren't legally able to buy the products. A company that runs afoul of such laws can face fines, orders to pull ads and regular FTC screening of future advertising.

Ms. Bernstein won't comment on the FTC's probe. However, she says that in any investigation, the commission would look first at whether alcohol advertisers are ''following their own guidelines.'' For example, ''Is it OK if [the percentage of underage viewers] gets up to 70% once in a while? I don't think it's OK.'' And she says the commission would ''never act on just one episode or one mistake—we would act on the pattern.''

Brewers and TV executives insist that it doesn't make sense to evaluate beer ads on a single night's audience. ''Any attempt to analyze the beer industry's media-buying practices by examining only selected broadcast media buys during a one-week period is misleading and simplistic,'' said Miller Brewing in a statement responding to questions about the survey. Miller added that more than 75 percent of the broadcast audience reached by the programming it buys is over 21.

At Stroh, officials argue that there's a difference between putting ads in front of kids and targeting them explicitly. ''We understand that when an ad is run it's going to be seen by some people who are under 21 years of age, whether it's a billboard, in a magazine or on TV,'' says Stroh general counsel George Kuehn. ''That does not mean we target the group that is under 21.''

Whether the beer industry advertises to kids became a hotly debated question after the liquor industry last year abandoned its longstanding guidelines banning TV ads. That sparked a national uproar over exposing kids to alcohol ads—putting the beer industry in the spotlight.

In Congress, Rep. Joseph P. Kennedy II (D., Mass.) has introduced legislation that would ban most forms of alcohol advertising from 7 a.m. to 10 p.m., require health warnings on print, radio and TV ads and require alcohol ads that run in publication with a 15% or more youth readership to appear only in black-and-white text.

There are already signs that brewers and Madison Avenue are worried about the threat of regulation of beer ads. No. 1 brewer Anheuser-Busch revealed last month that it quietly pulled all its beer advertising from MTV, saying it hoped to ''ensure that our intent is not misperceived in today's climate.'' The Madison Avenue's main trade group, the American Association of Advertising Agencies, recently abandoned its longtime stand against restrictions on ads for products like alcohol and cigarettes. It proposed setting up a new self-regulation committee, warning that the industry otherwise faces a government crackdown on ads for beer and other adult products.

But setting reliable guidelines for such ads remains tricky. TV executives argue that Nielsen ratings aren't reliable measures of kid viewership—even though the ratings are the TV industry's gold standard for gauging the cost of ad time. Says John Popkowski, executive vice president in charge of ad sales at MTV Networks: ''If you pick one show on an isolated night you might find one that's an aberration statistically,'' since cable channels' viewership is sometimes relatively small.

On the E! Channel, for instance, Miller Brewing ran a Foster's ad on Sept. 2, just before 7:30 p.m., during the show ''Melrose Place.'' That night, 41% of the show's audience was under 21, according to Nielsen. But David T. Cassaro, senior vice president in charge of ad sales for E! Entertainment Television, says that from July 1 to Sept. 29 between 7 p.m. and 8 p.m., only about 28% of E! Entertainment's audience was under 21. Overall, Mr. Cassaro adds, only 19% of E! Entertainment's total audience isn't old enough to drink.

''With networks like BET the numbers are so small that they jump all over the place,'' adds John Goldman, a spokesman for Adolph Coors. ''You take as much care as you can but the programming changes often.'' Mr. Goldman says that in the third quarter, the over-21 audience reached by BET between 7 p.m. and 8 p.m. ranged from 80% to 43%.

Mr. Goldman adds that Coors doesn't buy MTV as a matter of company policy. ''We want to avoid any misperception that we're aiming at an underage audience.''

Mr. BYRD. Mr. President, looking at another chart to my left, this chart demonstrates competitive media reporting estimates that the alcoholic beverage industry spent more than $1 billion on alcohol advertising in 1995.

In contrast, in 1995, the Federal investment in the National Institute on Alcohol Abuse and Alcoholism was a mere $189.8 million for alcohol research. Does the industry expect us to believe that it would spend this huge amount of money—$1.1 billion—if it were not getting something for that money? Some may argue that this legislation would adversely affect the advertising industry by forcing producers of alcoholic beverages to eliminate their advertising expenditure. Poppycock. I do not believe that this would be the case.

Alcoholic beverage producers spend large amounts of money to advertise their products because it encourages people to consume their product and it, therefore, increases sales. Eliminating the advertising deduction will not eliminate the fundamental business practice. By making these advertisements less profitable, this amendment may reduce the overall amount of alcohol advertising in our society. However, let there be no doubt that the alcohol ads will keep on running. You

can bet your bottom dollar on that. They will. The difference, however, will be that the American taxpayer will no longer be subsidizing this activity and that the money will go, instead, to getting the other side of the alcohol story out. That is what we need to start doing. We need to start now getting the other side of the alcohol story out. It is perhaps not the most popular thing politically to attempt to do here, but it needs to be done.

This amendment is all the more necessary because, last year, the Distilled Spirits Council of the United States decided to reject its self-imposed ban on advertising hard liquor on television and radio. I decried this decision by the Distilled Spirits Council because it is a step backward at a time when our Nation is working to curb alcohol abuse. Now hard liquor advertisements will be flowing over the airwaves. This is not the direction in which our Nation should be moving.

According to the Joint Committee on Taxation, the elimination of the tax deduction would result in $2.9 billion in savings over 5 years. My amendment targets the savings from the elimination of the disallowance to programs to prevent alcohol abuse among our Nation's young people and to educate children about alcohol. The Substance Abuse and Mental Health Services Administration would be given increased funds to supplement programs to prevent the use of alcohol among young people and to fund a media campaign designed to counteract the constant bombardment to which our children are subjected daily by alcohol advertisements. It is important to give our children information about the risks associated with the consumption of alcohol. We should not sit idly by and leave unchallenged the messages of alcoholic beverage advertisements that only good things happen to those who drink alcohol.

This amendment will also direct funding to the Centers for Disease Control and Prevention to carry out a comprehensive strategy to prevent alcohol-related disease and disability. The CDC would be given authority to enhance and expand fetal alcohol syndrome prevention activities throughout the Nation. According to the NIAAA, fetal alcohol syndrome is estimated to affect from one to three children out of every 1,000 live births.

To address the distressing problem of alcohol-impaired driving, the National Highway Traffic Safety Administration's alcohol-impaired driving incentive grant program, previously known as section 410, would receive additional funding. Funding is also made available to NTSA to launch a media campaign about the perils of driving under the influence.

The Indian Health Service will receive funding for its alcohol abuse programs to address the issue of alcohol abuse, which has such a devastating effect on the first Americans. I don't refer to them as native Americans. I don't refer to them as native Americans. I am a native American. If I am not a native American, of what country am I a native? I refer to them as the original Americans, or the first Americans.

The harm that alcoholic beverages cause our Nation is not a second-rate hangover, but a serious affliction that kills more than 100,000 people each year. By adopting this amendment, we would be making a positive effort to improve the health of our Nation, particularly of our children, and to send a sober message to those who are capitalizing on profits generated by recklessly advertising alcoholic beverages through far-reaching and seductive means, such as television.

We should act in the best interests of the American people and announce ''last call'' to those who have been receiving tax breaks for peddling booze, take a step in the right direction and begin to repair some of the damage brought by alcohol in this country. Let us begin by putting a cork in the tax loophole that has left American taxpayers picking up the tab for the alcohol industry.

Now, Mr. President, I am very well aware that a point of order will be made, or can be made. I am well aware of that. But I think the debate has to start at some point. I think that point is now. We hear a great deal about tobacco and we hear a great deal about children, about children's health. I hope those who support those programs and talk much about them would support this effort. We are talking here about children's health. We are talking here about something that kills 100,000 people every year. I am not seeking to ban alcohol. I am not seeking to regulate alcohol. I am simply seeking to end the subsidization by the taxpayers of this country of alcohol.

Think about it. Think about it on your way home tonight as you drive out the George Washington Parkway and see someone in front of you wobbling from one side of the road to the other. Think again. Suppose your wife is up at Tyson's Corner getting ready to drive home with the children and that same fellow who was in front of your car wobbling may kill your wife and your children.

So let's start talking about it. Let's start airing the subject here. Let's stop putting it behind the curtain, putting it under the rug, saying it is taboo. It is not. It is not taboo. Think about our children, our grandchildren. This is the product that kills other people. Tobacco may kill me. Tobacco may kill the individual who smokes it. But alcohol may not kill the person who imbibes; it may kill the innocent—the driver in the other car.

So I hope that Senators will support my amendment. As I say, I am sure that there is a process or a motion available, but I am accustomed to those things. I say let the Senate work its will.

I yield the floor.

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. I yield 5 minutes to the distinguished Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, I thank the chairman of the Finance Committee for yielding me a few moments. I listened very carefully to my good friend and colleague from West Virginia and to his observations about the dangers of drinking and driving, with which I completely concur.

Of course, representing Kentucky, as my friend from West Virginia knows, not only do we have 60,000 tobacco growers, which is, of course, the subject of a number of amendments that may come on this bill; we are also the home of bourbon. If this kind of whiskey is not made in Kentucky, it cannot be called bourbon. Let me suggest that there are no industries—and I checked with the Finance Committee staff—that have been singled out by law and, as a result of being singled out, are not allowed to deduct their expenses for advertising. So this would be a first.

To begin with, as a matter of tax policy, certain kinds of legal industries are not allowed to deduct their advertising, and others are. There is also—while we are thinking of both cigarettes and alcohol—another important distinction. There is no argument that misuse of alcohol is a problem in this country. As a Senator from a tobacco-producing State, I never make the argument that smoking cigarettes is good for you. Obviously, it isn't. But there are many in the medical profession who would say that the consumption of alcohol, if used properly—properly—is actually good for you. I am not a physician, I can't make that argument, but there is a growing argument being made by many in the medical community that a certain amount of alcohol, properly used, is actually good for you health, not bad for your health.

So we have here a legal product, Mr. President, which, arguably, if properly used, might actually be good for you, which the distinguished Senator from West Virginia, I gather, is saying when misused, of course, is clearly a terrible thing and a disaster not only for the person misusing it, but for others who may be affected by that, and that because a product may be misused, the Government should step in and say: Your advertising is not allowed.

Regardless of how you may feel about this——

Mr. BYRD. Will the Senator yield?

Mr. MCCONNELL. Yes.

Mr. BYRD. For a correction only. My amendment does not say your advertising will not be allowed. I am not saying that at all. The alcohol industry may continue to advertise. I am just saying, let's stop the subsidization of that advertising, the subsidization by the taxpayers.

Mr. MCCONNELL. I thank the Senator. I think I did understand his

amendment to disallow a deductibility for advertising, which would make this the only industry of which the Finance Committee is aware where such deductibility would be disallowed.

Aside from my home State and the product, which, if properly used, might actually be good for you, I wonder if my friend from West Virginia doesn't share my concern that once we go in this direction, we might find other activities that some may find offensive being subject to the same kinds of efforts to disallow deductibility for certain kinds of business expenses.

I think, for example, West Virginia and Kentucky used to trade back and forth in terms of coal production. One year West Virginia would be first; the next year Kentucky would be the first. Alas, neither are first anymore. Wyoming is. But there are many Americans who think, as a result of the burning of coal, that the area is polluted and that, as a result of that, people contract lung problems. In fact, there is an initiative by the Clinton administration just announced this week which the Senator from West Virginia and I both have serious reservations about designed to cut down on air pollution—so the argument goes—so there will be less lung disease.

I wonder, if we go down this path of trying to pick out which industries' deductions for certain kinds of business expenses are to be allowed or not allowed based upon our judgment about what is harmful to the public, whether or not somebody might come in and say, ''Well, we shouldn't allow production costs associated with the mining of coal to be deductible because, after all, the burning of coal leads to the pollution of the air, which then leads to lung disease, which then leads to death.''

I just am concerned that this is a step in the wrong direction. I understand fully the concerns of the Senator from West Virginia, and I share them. I think the use of alcohol leads to a great deal of tragedy.

But I hope we will not single out this legal industry producing a product, which, if properly used, many people in the medical field feel is actually good for you, for this kind of selective treatment on deductibility.

Finally, let me say that I am not an expert on the budget deal. But it is clear that there is a lot of momentum in this body to hold the deal together, and this is clearly not part of the budget deal.

I hope that the proposal will not be approved, in all due respect to my good friend and colleague from West Virginia. I hope this would not become part of the measure before us.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, may I say that I fully understand the economic impact of the tobacco industry on the State of the distinguished Senator who has just spoken. West Virginia grows good tobacco crops as well, and the income from those tobacco crops certainly impact upon many families in many counties of West Virginia. We are talking about here, though, a product that results in the maiming and in the killing of people—innocent men, women, and children.

The distinguished Senator from Kentucky mentions the carbon dioxide emissions and other greenhouse gas emissions and possible implications of those emissions on health. People who breathe that air may well, indeed, suffer an adverse impact on their health. But they don't go out and maim. They don't go out and drive an automobile, lose their proper judgment, and end up killing innocent people. They do not go home and abuse their spouses if they smoke cigarettes or if they breathe air blown from them. They don't go home and abuse their children. They don't go home and assault and batter the other members of their family.

I am talking about a product that we all know—it is not just this Senator's opinion. We all know when we read the daily newspapers about the effects of drinking and driving. We all read the newspapers in the spring following the graduation exercises at high schools, and we read, with horror, the stories of a few young people who get into an automobile and wrap that automobile around a telephone pole and they are all killed or maimed—maimed for life.

That is what we are talking about. I am not talking about singling out an industry. I am talking about an industry that creates a product that is hurtful—not just hurtful to the person who uses it, but endangers, as I said already, the lives of others. We all know that.

But I do appreciate the fact that the Senator is from Kentucky, and I respect him for that, and I respect his viewpoint and count him and his fellow Kentuckians as good neighbors.

I yield the floor.

Mr. ROTH. How much time would the Senator from Montana like?

Mr. BURNS. Probably no more than 5 minutes.

Mr. ROTH. I yield 5 minutes to the Senator from Montana.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. I thank my friend from Delaware.

Mr. President, no one on this floor makes his case with such passion as my friend from West Virginia. We have a couple of things in common that we will not go into here. But I also know from where he comes. And when you start talking about this issue of singling out something, then we have to look at probably the real facts.

First, there is the presumption in this amendment that somehow the advertising is evil or bad, or that it wreaks health problems on the American people. There is no question in anybody's mind across this land that the abuse of alcohol is one of our greatest problems—no doubt. Yet, there is no scientific evidence that would even suggest the casual relationship between advertising and abuse.

In order to get to the root of the problem of alcoholism and all of the problems that it brings, study after study after study has been made in the relationship of advertising. In fact, during the 1980's, when the advertising for alcohol products was increasing, actual consumption per capita actually was decreasing. So not only does advertising not impact abuse, it doesn't even impact the overall consumption.

Singling out a product is not, I don't think, what fair tax law is about.

So let's be upfront about it, because I am familiar with the broadcast industry. It has economic impacts on small business. It has economic impacts. And once we start singling out products, do we start talking about red meat, eggs, or sugar? Where do we draw the line? The impact it might have on the national pastime? We could say, ''OK, we don't need it in the broadcasting industry. We can all pay for pay-per-view''—the impact on an industry within itself. And the list goes on and on trying to explain to our constituents why different things happen and cost more, because there is a decrease in advertising support in free television. That also brings us our weather, our farm reports, our news, our emergency conditions. All of these things that are supported by free over-the-air broadcasts will be impacted if this amendment is successful.

The industry has taken steps to limit or try to curb the abuse that alcohol has on a person or individual. There is no doubt about it. And in some areas some would say it is even working.

I know that all of us want a tax cut. All of us want a balanced budget. But to single out and start limiting an ad tax or deductibility for legal products is not the right approach. It is not the right approach—not on a legal product.

So I urge my colleagues to oppose this. It is unwarranted. I think it is unwise. And I am not real sure, it might have some constitutional overtones because advertising is still freedom of speech. It cannot be treated differently than any other form.

The Senator from West Virginia makes a point. It is the abuse of the product. The advertising has very little to do with the abuse of the product.

Thank you, and I urge the defeat of this amendment.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, the Senator talks about red meat, eggs, and sugar. The Honorable Senator is my friend. Who ever heard of anybody eating red meat, eggs, and sugar, and getting out in the car and having that car plunge into a tree, weave all across the road, and kill and maim other people? Red meat doesn't cause an individual to drive drunk and get in the car and

drive all over the highway. Eggs and sugar don't do that in their form as eggs and sugar, in their natural form.

The Senator also, I think, made reference to the Federal Trade Commission in 1985, which found ''no reliable basis to conclude that alcohol advertising significantly affects consumption, let alone abuse.'' Well, let's see what the conclusions are from the effects of the mass media on the use and abuse of alcohol.

The National Institute of Alcohol Abuse and Alcoholism, U.S. Department of Health and Human Services, Research Monograph-28, 1995:

[The] preponderance of the evidence indicates that alcohol advertising stimulates higher consumption of alcohol by both adults and adolescents . . . It appears to be a contributing factor that increases drinking to a modest degree rather than being a major determinant. (Dr. Charles Adkins, Department of Communications, Michigan State University.)

Now I shall quote Dr. Sally Casswell, Alcohol and Public Health Research Unit, School of Medicine, University of Aukland:

[T]here is sufficient evidence to say that alcohol advertising is likely to be a contributing factor to overall consumption and other alcohol-related problems in the long term.

Now quoting Dr. Joel Grube, Prevention Research Center:

[A]lcohol advertising can influence children, particularly their beliefs about alcohol and, indirectly, their intentions to drink as adults.

Finally, let me quote Dr. Esther Thorson, School of Journalism, University of Missouri:

If research were designed to take account of what the advertiser is trying to do and if it examined the relationship between the specific structure of the message and the individual or group for whom that message is targeted, investigators probably would find ''whopping effects''.

Mr. President, I appreciate the views that have been expressed by my friend from Montana and, as I have already indicated, by my friend from Kentucky. I appreciate their views, and I respect their views.

Mr. President, I don't think there should be any doubts in the minds of any Senator or any person who is viewing this Chamber via that electronic eye that the drinking of alcohol affects the judgment of people, and that there are many other costs that are not tangible, that cannot be translated into dollars and cents— the cost of lost productivity, the cost of broken homes, the cost of children abused. And I could go on.

I have made my case, and I ask for the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Delaware has the remaining time.

Mr. ROTH. Mr. President, I yield back the remainder of my time, and I make the point of order that the pending amendment is not germane to the provisions of the reconciliation measure and I therefore raise a point of order against the amendment under section 305(b)(2) of the Budget Act.

Mr. BYRD. Mr. President, I move to waive the point of order and ask for the yeas and nays on my motion.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. There is an hour equally divided on the motion.

Mr. BYRD. Mr. President, I yield back my time.

Mr. ROTH. Mr. President, I yield back the balance of my time.

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question is on agreeing to the motion to waive. The yeas and nays have been ordered. The clerk will call the roll.

The bill clerk called the roll.

Mr. MCCAIN (when his name was called). Present.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS], is necessarily absent.

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

The yeas and nays resulted—yeas 12, nays 86, as follows:

[Rollcall Vote No. 136 Leg.]

YEAS—12

| | | |
|---|---|---|
| Bumpers | Glenn | Rockefeller |
| Byrd | Hatch | Sarbanes |
| Cleland | Helms | Thurmond |
| DeWine | Kennedy | Wellstone |

NAYS—86

| | | |
|---|---|---|
| Abraham | Faircloth | Lieberman |
| Akaka | Feingold | Lott |
| Allard | Feinstein | Lugar |
| Ashcroft | Ford | Mack |
| Baucus | Frist | McConnell |
| Bennett | Gorton | Mikulski |
| Biden | Graham | Moseley-Braun |
| Bingaman | Gramm | Moynihan |
| Bond | Grams | Murkowski |
| Boxer | Grassley | Murray |
| Breaux | Gregg | Nickles |
| Brownback | Hagel | Reed |
| Bryan | Harkin | Reid |
| Burns | Hollings | Robb |
| Campbell | Hutchinson | Roth |
| Chafee | Hutchison | Santorum |
| Coats | Inhofe | Sessions |
| Cochran | Inouye | Shelby |
| Collins | Jeffords | Smith (NH) |
| Conrad | Johnson | Smith (OR) |
| Coverdell | Kempthorne | Snowe |
| Craig | Kerrey | Specter |
| D'Amato | Kerry | Stevens |
| Daschle | Kohl | Thomas |
| Dodd | Kyl | Thompson |
| Domenici | Landrieu | Torricelli |
| Dorgan | Lautenberg | Warner |
| Durbin | Leahy | Wyden |
| Enzi | Levin | |

ANSWERED ''PRESENT''—1

McCain

NOT VOTING—1

Roberts

The PRESIDING OFFICER. If there are no other Senators wishing to vote, the yeas are 12, the nays are 86. One Senator responded present.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

PRIVILEGE OF THE FLOOR

Mr. ROTH. Mr. President, I ask unanimous consent that Barbara Angus and Mel Schwarz of the staff of the Joint Committee on Taxation be granted full floor access during consideration of S. 949.

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

Several Senators addressed the chair.

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

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

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

POINT OF ORDER—SECTION 602

Mr. ROTH. Mr. President, I move to withdraw the request for a waiver of the point of order on section 602 of S. 949.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. Mr. President, reserving the right to object, what is the section?

Mr. KERRY. What is it? Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Delaware has the floor. Does he yield?

Mr. BROWNBACK. Will the Senator from Delaware explain the section?

Mr. ROTH. Mr. President, this was a motion to strike section 602, ''Incentives conditioned on other DC reform.'' This part deals with:

Amendments made by section 701 shall not take effect unless an entity known as the Economic Development Corporation is created by Federal law in 1997 as part of the District of Columbia government.

Senator BROWNBACK made a point of order on this matter and I, in turn, asked for a waiver. We are now asking that the waiver be withdrawn, so that the point of order will lie.

The PRESIDING OFFICER. Is there objection to withdrawing the waiver?

Mr. KERRY addressed the Chair.

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

The PRESIDING OFFICER. The Senator from Delaware does not lose the floor.

Is there objection?

Mr. KERRY. Reserving the right to object, Mr. President.

Mr. President, I will not object.

Mr. ROTH. Mr. President, I move to withdraw my waiver of the point of order.

The PRESIDING OFFICER. Is there an objection to moving to withdraw the waiver.

Mr. BROWNBACK. Reserving the right to object, do I understand the chairman to say now that you are removing your waiver to the point of order that I have raised?

Mr. ROTH. Yes.

Mr. BROWNBACK. OK. So the point of order would lie.

Mr. ROTH. Correct.

Mr. BROWNBACK. I thank the Senator. I just needed that clarification.

Mr. HARKIN addressed the Chair.

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

Is the Senator reserving the right to object?

Mr. ROTH. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The point of order is withdrawn.

The motion to waive the Budget Act was withdrawn.

Mr. DURBIN addressed the Chair.

Mr. ROTH. Mr. President, please.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. I make a point of order a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

Mr. KERRY. I object.

The PRESIDING OFFICER. Objection is heard.

The assistant legislative clerk continued with the call of the roll.

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

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

Mr. ROTH. Mr. President, I ask unanimous consent that the following Senators, in the order listed, be able to bring up their amendments, the time for each of the amendments be listed and divided equally between the two sides. The first would be Senator DURBIN for 20 minutes, to be equally divided; Senator NICKLES 10 minutes, to be equally divided; Senator GRAMM 20 minutes to be equally divided; Senator KERRY of Massachusetts 20 minutes equally divided, and——

Mr. FORD. Reserving the right to object, Mr. President. Reserving the right to object.

You have in there Senator DURBIN's amendment for, what, 20 minutes equally divided?

Mr. ROTH. That is correct.

Mr. FORD. Mr. President, I want to object to that one. And you can jerk it out if you want to, because you have rolled over the tobacco industry and my farmers long enough. And I don't intend to sit here without a fight for the additional 11 cents you want to put on after you have already put on 20 cents.

So if you want to change that one, that is fine; otherwise, Mr. President, I will have to object.

Mr. GRAMM. Take it off.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. ROTH. I yield for a comment.

Mr. KERRY. Can I suggest, Mr. President, the following. We are going to have to resolve that issue. We are obviously not going to resolve it immediately if an objection is going to be lodged.

So I recommend that we put in line reserving the time that the Senator has agreed to already cut it down to, in the event we reach some agreement that it will be able to be debated, absent that, that we set it aside temporarily with the understanding we take the order as you have described it.

Again, let me just ask, if I could, Mr. President, how much time remains for each side so we know we are dividing this properly?

The PRESIDING OFFICER. The Senator from Illinois has 43 minutes on his amendment.

Mr. KERRY. I am referring to both sides total on the bill.

The PRESIDING OFFICER. The majority has 1 hour and 35 minutes; the minority has 1 hour and 18 minutes.

Mr. KERRY. Mr. President, I ask then unanimous consent that added to that list, for the minority side, the order be as follows: Senator DODD, Senator LANDRIEU, Senator TORRICELLI, Senator HARKIN, Senator LEVIN, Senator BINGAMAN, Senator WELLSTONE, and Senator KOHL, each of them to have 10 minutes on our side.

Mr. FORD. Mr. President, reserving the right to object. Reserving the right to object.

Mr. ROTH. Mr. President, it is obvious we are not close to unanimous consent as to how to proceed, so I think we will just have to go to regular order and call upon Senator DURBIN to bring up his amendment.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. Does the Senator from Delaware withdraw his request?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

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

Mr. DURBIN. Mr. President, what is the pending business before the Senate?

The PRESIDING OFFICER. The pending question is the amendment of the Senator from Illinois.

Mr. DURBIN. I seek the regular order.

The PRESIDING OFFICER. The Senator from Illinois and the Senator from Delaware control the time.

The PRESIDING OFFICER. Who yields time?

Several Senators addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I seek recognition on this amendment.

I want to make it clear to my colleagues, I am more than willing to accommodate on the remainder of the time. As I understand it, there are about 42 minutes left on this amendment. I do not need all that time. I am more than happy to reduce it equally on both sides and allocate the remaining time on this amendment, any time left before the Senate, among the Members. And I hope that there is no objection to that. But if there is such an objection, I have no other recourse but to proceed on this amendment. And I now have the floor.

I yield for the purpose of a question to the Senator from Oklahoma.

Mr. NICKLES. Will the Senator yield, not for the purpose of a question, but maybe for a suggestion?

Mr. DURBIN. Yes.

Mr. NICKLES. That we go ahead and debate the Senator's amendment until he is satisfied with it, his cosponsors are satisfied with it, and then maybe at that time you can set it aside, and we will go ahead and vote on the other amendments, and you then have had your debate, and we will have a vote on yours somewhere in the pecking order.

Mr. DURBIN. I thank the Senator.

It is the only way I can proceed at this point since there is no unanimous consent that is going to be agreed to.

Mr. KERRY. Mr. President, if the Senator would yield for a moment.

Mr. DURBIN. I yield to the Senator from Massachusetts for a question.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. I believe the Senator from Kentucky will agree to a time. I believe the Senator would agree to a time. And I think, in fairness to all the other Senators, that if we could try to establish some kind of order, I think that everybody will benefit that much more. I think we were very close to having that arranged, if the Senator from Oklahoma would just forbear for a moment.

Mr. ROTH. What is the order, Mr. President?

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

Mr. DURBIN. Mr. President, I can proceed on this amendment. And if Members can work out some accommodation, I will do my best to abbreviate this debate and give everyone a chance, because I know many people waited.

Mr. President, this—

Mr. KERRY. Would the Senator yield for a question?

Mr. DURBIN. Yes.

Mr. KERRY. Can we get a sense for what the Senator from Illinois means about abbreviating this? Is there some period of time?

Mr. DURBIN. Yes. The Senator is going to try to do it in the 20 minutes that was in the UC request, allocating an equal amount of time to the Senator from Missouri.

Mr. KERRY. Mr. President, if the Senator will yield just for the purposes of asking something.

Mr. DURBIN. Yes.

Mr. KERRY. Will the Senator from Kentucky agree to a 20-minute time period on the Senator from Illinois' amendment?

Mr. FORD. Mr. President, since it has been laid on me—and I do not mind that at all. I have always heard when you tear the hide off it comes back—you are tougher. And I will agree to the 20 minutes. I do not want to, but I will agree to it.

All I hear for the last week is banging my State and my farmers and my tobacco. And I think I ought to have an opportunity to defend myself and my people. If I am going to be limited to 10 minutes, you know, I am not sure that my colleague and I, with 5 minutes each, can do it adequately. We can do as well as anybody else in 5 minutes.

But I hope they would give some consideration to it.

Mr. President, I will agree to the 20 minutes equally divided, since I have used 5.

Mr. KERRY. I thank the Senator.

Mr. DURBIN. I want to make certain, Mr. President, that I understand. Is this time being taken from the time allocated on my position on the amendment?

The PRESIDING OFFICER. Time is being charged to the Senator from Illinois.

Mr. DURBIN. I hope we can reach agreement quickly then. And I yield for the purpose of a question to the Senator from Delaware. I believe the chairman has a suggestion.

Mr. ROTH. I suggest that we proceed with my proposal, Senator DURBIN having 20 minutes equally divided; Senator NICKLES 10 minutes divided; Senator GRAMM 20 minutes divided; and then Senator KERRY of Massachusetts 20 minutes divided.

Mr. DORGAN. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Reserving the right to object, and I will not object, but I do want at this point to try to understand the circumstances.

When the time has expired on this bill—that will occur I guess in an hour and a half or 2 hours, less than 2 hours—I am wondering what the intentions of the chairman and the ranking member are with respect to further proceedings on the bill.

Will we cast record votes this evening, for example, on the DURBIN amendment? How many additional record votes this evening? How long will we be in session this evening? And when do we intend to begin tomorrow, and with how many amendments?

Mr. ROTH. It is the intent, I say to the Senator from North Dakota, that when the 10 hours expires today, to go out until tomorrow morning, at which time the amendments can be offered and voted upon.

Mr. DORGAN. Further reserving the right to object, is the intent of the chairman to have the additional recorded votes, for example on the DURBIN amendment?

Mr. ROTH. It is unclear at this time. I urge that we proceed, let the debate proceed, and we can work out the other details forthwith.

I move the adoption of my unanimous consent request.

Mr. KENNEDY. Reserving the right to object.

Mr. President, like many others here, I would like to just be able to get a short period of time. To be able to get on the early part of that queue, I would be glad. But I have an amendment with regard to tobacco tax. So I wanted to just make sure that we are going to even be able to discuss this or at least have some idea where we are to have that, too.

Mr. ROTH. Mr. President, in order to get things moving, let us proceed. Regular order. I urge Senator DURBIN to proceed to debate his amendment, and we can try to work out things.

Mr. KERRY. Mr. President, if I could just answer my senior colleague.

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

Mr. DURBIN. I am going to proceed. I hope that my colleagues will meet and discuss UC's, and Senator BOND and I would like to explain an important amendment.

Mr. FORD. Are we on 20?

Mr. DURBIN. I do not think we have any agreement at this moment.

Mr. KERRY. Would the Senator yield for one moment? I think we can get this locked in place.

Mr. DURBIN. I yield only for a question.

Mr. KERRY. Mr. President, will the Senator permit the Chair to hopefully rule on the unanimous-consent request that was proposed, during which time we will have whatever Democrat time, whatever time on this side of the aisle that remains, divided equally among everybody who has an amendment so that no Senator's preference goes over another, just divide it equally?

Mr. DURBIN. I say to my colleague from Massachusetts, I would be happy to do that, so long as I do not yield my right to the floor in the process.

Mr. ROTH. Mr. President, I move the adoption of my unanimous consent.

Mr. KENNEDY. Mr. President, how much time would remain at the end? I am glad to divide it all up with my colleague, but how much time remains?

Mr. ROTH. Mr. President, I have been going around in a circle about 10 times now. I think the best thing to do is to let the Senator from Illinois proceed with the debate of his amendment, and we can try to work out further agreements subsequently.

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

Mr. DURBIN. Thank you, Mr. President.

AMENDMENT NO. 519

Mr. DURBIN. Mr. President, this amendment was offered last night. It is an amendment which I think most Members are conversant with because it is not a new issue. This is an issue which has been literally before Congress for almost 50 years.

It is an issue of rank discrimination. It is an issue of unfairness. It is an issue of inequality. And it goes to the heart of protecting American families.

The issue at hand is the deductibility of health insurance premiums.

Those Americans fortunate enough to work for corporations, employees and management, enjoy a 100 percent deductibility of all health insurance premiums. I think that is good policy. It encourages health insurance protection. It protects families.

If you happen to be one of the 23 million Americans who are self-employed and you buy health insurance for your family, your tax deductibility is 40 percent. What does that mean? It means, unfortunately, a higher percentage of self-employed people and their families are uninsured. It means that the children, of course, of these self-employed do not have health insurance protection, and it basically means a discrimination in our Tax Code which should have been removed long ago.

There are those who have argued for gradualism. Let us very, very slowly, in a glacial-like pace reach the day when we have equality and parity, 100 percent deduction for all Americans.

I am happy to be joined by my colleague from Missouri, Senator KIT BOND, and also my other colleagues who have said that they think as I do, that it is time for us to end this inequality and to give real parity and fairness so that both the self-employed and those working for other businesses have the same opportunity for 100 percent tax deduction.

I ask unanimous consent Senators BOND, DORGAN DASCHLE, HARKIN, BOXER, MIKULSKI and JOHNSON be added as cosponsors of my amendment No. 519.

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

Mr. DURBIN. Let me say at this point, too, it is easy to come before this body and to propose new tax benefits. We know the difficult part, the offsets—how do you pay for them?

I have come up with a means of paying for this which I think you can detect has some controversy attached to it, but I think it is reasonable. It would impose an additional 11-cent-per-package tax on cigarettes sold in America and a parallel percentage increase on spit tobacco and snuff.

Now, the bill proposed by the Senate Finance Committee already raised the Federal tax on tobacco and cigarettes, for example, from 24 cents to 44 cents. This bill would add an additional 11 cents. Make no mistake, it is a tax. For

those who have told me, as I have spoken to them, ''Oh, I never vote to increase the tax,'' I remind you if you are voting for the Senate Finance Committee bill, you are voting for an increase in this very same tax.

I ask you to consider whether or not it is worth 11 cents on a package of cigarettes to extend this kind of protection to over 20 million Americans. I think it is. I hope you will agree with me.

If we do not make this move this evening, if we do not finally grasp this opportunity, seize this opportunity and increase the deductibility of this health insurance for self-employed, they will languish for 8, 9, or 10 years before ever approximating or reaching parity. That is not fair. It is not fair to the self-employed. It is not fair to the Americans who are disadvantaged by this provision in the Tax Code.

I might also add that many of my colleagues are interested in small business. They believe, as I do that small business is the real engine of economic growth in this country. One of the largest associations of small businesses is the National Federation of Independent Businesses, over 600,000 businesses. When they surveyed their members nationwide, they learned last year that the No. 1 issue—the No. 1 issue—on the minds of their members was the deductibility of health insurance. Business Week magazine recently noted that this was one of the two top obstacles to success for many small businesses. So if you want to encourage small business and the creation of jobs, I urge you to support this amendment.

Let me speak for a moment about this tobacco tax. I know that my colleague and friend from the State of Kentucky feels very passionately about this issue. I might tell him that I do as well. I will tell you what will occur if you increase the cost of tobacco products. Children will be less inclined to buy them. As these products become more expensive, children cannot afford them. It is a fact that has been proven over and again. It was recently shown just a few years ago in Canada when they had a dramatic increase in their tobacco tax. So we know that by increasing this tax by 11 cents, we end up making over 20 million Americans who are self-employed, give them a position of fairness when it comes to tax treatment, and we reduce the likelihood that children will end up using these tobacco products.

Now I know there will be a lot said about tobacco farmers in opposition to my amendment. I want to make this a matter of record. I have said from the beginning I am prepared to work with those Members who want to help transition tobacco farmers into other crops and other livelihoods. I believe that is the wave of the future and it should be part of any comprehensive change in tobacco policy.

I will conclude and then defer to my colleague from Missouri. An estimated 4½ million American children and teenagers smoke cigarettes and another million use smokeless tobacco. Every 30 seconds in America a child smokes for the first time—3,000 a day—and a third of them—1,000—will die with this addiction to nicotine. And teenage smoking has risen by nearly 50 percent since 1991.

So I say to my colleagues, I think this is a balanced approach. It helps those who truly deserve it. It says to the tobacco industry, we will make your product a little more expensive and take it out of the hands of children. This is a reality. If you look at the State taxes around the United States, some of them range as high as $1 a package and they are going up. The States understand this is a source of revenue which is a reasonable source to turn to for legitimate reasons. We should turn to the source of revenue, turn to it this evening.

I yield for purposes of debate, but do not yield the floor, to my colleague from Missouri, Senator BOND.

The PRESIDING OFFICER. The Chair recognizes the Senator from Missouri.

How much time is yielded?

Mr. DURBIN. Five minutes.

Mr. BOND. Mr. President, I thank my distinguished colleague and neighbor from Illinois. I commend him for his perseverance in being able to hold on to the floor. These are very difficult times and this is a very important amendment. I congratulate him on staying with it so we can bring this up and debate it while we have the attention of this body.

I believe my experience in the State of Missouri is probably like the experience that most of us have had in our own States. As we travel around and talk to farmers, to people involved in small business, to truck drivers, day care operators, people who work for themselves, they ask an unanswerable question: Why is it that I can only deduct, now, 40 percent of what I pay in health insurance premiums for myself and my family when my neighbor next door who works for a large corporation, or in the country when my neighbor next door who works for a large corporate farm gets his or her health care paid and the employer deducts 100-percent of what they pay and they do not have to include any of the health insurance on their income tax? Why does the self-employed person only get to deduct 40 percent?

Frankly, there is no answer, Mr. President. There is a gross inequity in this system. It is an inequity that has been pointed out by every farm organization in my State time and time again. It has been pointed out by organizations representing small business.

At the conclusion of my remarks, I will enter in the RECORD a letter from the NFIB of June 26 expressing their strong support for the 100-percent deductibility for the amounts paid for health insurance for self-employed business owners.

This is a matter of equity. This is a matter that is absolutely essential to see that the 5.1 million self-employed individuals in the country today have health insurance and the 1.3 million children who do not have health insurance and who live in a family headed by an entrepreneur, a self-employed business owner.

This, to me, is not only an inequity, but it is a very bad policy outcome. We are talking about the health of children. One of the best things we can do is provide 100 percent deductibility.

Mr. President, the reason I am here joining with my colleague from Illinois, we have pointed out in this tax relief bill, this tax reduction bill that is before the Senate now, with $85 billion in taxes, we have pointed out that this is one of the top priorities of small business and of farmers, of the struggling working middle class of America.

Before the debate began, I circulated a letter signed by 52 of my colleagues, in addition, saying that this was important. Unfortunately, the three top small business priorities were excluded—the self-employed tax deduction for health care, the home office business deduction, and the independent contractor. This measure, unfortunately, is not in either the House or the Senate bill. We feel it is vitally important to put it there. I congratulate my colleague from Illinois in choosing the tobacco tax. Tobacco taxes are being raised in this bill. There is no more important place to put those taxes than this, guaranteeing health for self-employed and their children.

In addition to the figures that my colleague from Illinois stated, about 3,000 children becoming regular smokers every day, last week when Senator BUMPERS and I introduced a measure to encourage pregnant women to stop smoking, I pointed out that while tobacco use among most pregnant women is declining, tobacco usage among teenage pregnant women is on the increase. In my State it is 50 percent above the national average, and not surprisingly our birth-defect rate is 50 percent above the nationwide average. This will have an impact on discouraging teenagers from starting to smoke. It will help encourage pregnant women, particularly pregnant teenagers, to stop smoking.

Mr. President, this is an important matter of equity. It is a matter of health care policy. I urge my colleagues to support what I know will be a required budget waiver so that this could be included.

Before I yield the floor, I ask unanimous consent to have printed in the RECORD the letter of June 26 from the vice president for Federal Government relations of NFIB, Dan Danner, saying, ''The self-employed have an extremely difficult time purchasing health insurance. This is why 3 million self-employed business owners have no health insurance, nor do 1.3 million of their children.''

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

NATIONAL FEDERATION OF INDEPENDENT BUSINESS,
*June 26, 1997.*

Hon. CHRISTOPHER BOND,
*U.S. Senate, Washington, DC.*

DEAR SENATOR BOND: On behalf of the 600,000 members of the National Federation of Independent Business, I am writing to express our strong support for 100% deductibility of the amounts paid for health insurance for self-employed business owners.

The CEOs of large corporations can deduct 100 percent of their health care costs, while the self-employed can only currently deduct 40 percent of their health care costs. This is simply not fair. The Kassebaum/Kennedy health care law was a good first step, but still does not give the self-employed the fairness they deserve in that the law only allows the self-employed to deduct 80 percent of their health care costs by the year 2006.

The self-employed have an extremely difficult time purchasing health insurance. This is why 3 million self-employed business owners currently have no health insurance, nor do 1.3 million of their children. Full deductibility will help make health insurance more affordable for these small business owners. Therefore, the self-employed need full deductibility now.

Sincerely,

DAN DANNER,
*Vice President,*
*Federal Governmental Relations.*

Mr. BOND. I yield the floor.

Mr. NICKLES. Mr. President, would the Senator from Delaware give me 4 minutes?

Mr. ROTH. I yield 4 minutes to the Senator from Oklahoma.

Mr. NICKLES. Mr. President, one, I want to ask my colleagues to vote no on the Durbin-Bond amendment and tell them I think I have a pretty good record—I heard the support of NFIB for deductibility for the self-employed. I used to be self-employed, so I support that.

For my colleagues' information, I will be offering an amendment after the Durbin amendment, very soon, that will accelerate and allow self-employed people to deduct a greater percentage for their health insurance at a much faster rate than now is under existing law. It does not go to 100 percent, but likewise we do not increase taxes another 10 cents, which I think a lot of people, not just from tobacco States, are saying ''Wait, we are already increasing it 20 cents, almost doubling the tax, should we do another 10 cents?''

I might mention the Finance Committee said we would stop at 20 cents. I do not think the Durbin amendment will become law. I want to let my colleagues know we will offer an amendment that will accelerate deductibility for the self-employed. We will be offering that subsequent to this so they can vote no on the Durbin amendment, vote yes on the amendment that Senator HAGEL and I will be introducing momentarily that will give the self-employed a greater benefit for deducting their insurance.

I yield the floor.

Mr. ROTH. I am pleased to yield 5 minutes to the Senator.

Mr. FORD. My other colleague will need some time, too. I thank the chairman.

You know, Mr. President, this has been an interesting week. We had a negotiation with the attorneys general around the country, and the tobacco industry is stuck for almost $370 billion. The price of cigarettes go up. How much more do you want? And then the Finance Committee puts on 20 cents more, and that raises the price of cigarettes and smokeless tobacco. And now we want to put on 11 cents more. Why? To help the small businessman get a deductible on his health insurance?

At the same time, you are putting 65,000 farm families out of work in my State. You say you are going to help. You may never get the bill to help. I think it is time to stop it. It is time we quit. My farmers have to survive. And we hear all the States have an excise tax. Well, we had a good many here in the past that would vote against any excise tax because they thought it all should go to the States. It is their prerogative. But when you add 20 cents onto the State, and you add another 11 cents onto the State, then you add 75 cents on, if you get the negotiated agreement out there, the income to the community and to the Federal Government are going to go straight down. They are playing with funny money, because the more you increase it, the less income you are going to have. When you increase the tax, the less income you are going to have. So now you say you have all this income coming in—you are playing with funny money.

One other point, Mr. President. You talk about low income—59.5 percent of this tax will come out of those who make less than $30,000 a year—$30,000 a year—and 34 percent of the money the Senator from Illinois and the Senator from Missouri want will come from those that make less than $15,000. Talk about the little man—you are talking away from the man that makes $15,000 and a man with a family that makes less than $30,000. You are going to take 60, 65 percent of that money from that group. What do they benefit? You put them out of business.

I ask unanimous consent to have printed in the RECORD the Tax Foundation's analysis on where the cigarette tax and smokeless tax would come from and how many States would lose what money, and how many individuals of what financial income category would have to pay for this.

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

BOTTOM LINE ON FINANCE COMMITTEE'S PROPOSED 20¢ CIGARETTE EXCISE HIKE: BOTTOM INCOME EARNERS WOULD PICK UP MOST OF THE TAB

WASHINGTON, D.C., JUNE 20, 1997.—The Senate Finance Committee' proposed 20¢ per pack addition to the current 24¢ federal cigarette excise could play havoc with lower-income Americans' pocketbooks, according to an analysis by the Tax Foundation.

Tax Foundation Economist Patrick Fleenor says that, judging by historic cigarette consumptions patterns, over a third of the $15 billion that the Finance Committee hopes to bring in over five years will be paid by those earning less than $15,000 a year (see Chart 1). Another 25 percent of the total revenues will be paid by Americans earning between $15,000 and $30,000. In all, those earning $30,000 or less would foot about 60 percent of the total bill for the new tax.

CHART 1: NEW COLLECTIONS BY INCOME GROUP BASED ON FINANCE COMMITTEE'S 20¢ CIGARETTE EXCISE HIKE

| Adjusted gross income | 5-year total (millions) | Share of tax burden (percent) |
|---|---|---|
| under $15,000 | $5,098.2 | 34.0 |
| $15,000 under $30,000 | 3,819.9 | 25.5 |
| $30,000 under $45,000 | 2,315.2 | 15.4 |
| $45,000 under $60,000 | 1,318.8 | 8.8 |
| $60,000 under $75,000 | 911.6 | 6.1 |
| $75,000 under $115,000 | 982.5 | 6.6 |
| $115,000 under $300,000 | 474.2 | 3.2 |
| $300,000 and over | 80.0 | 0.5 |
| Total | 15,000.0 | 100.0 |

Source: Tax Foundation estimates based on data from IRS, Bureau of the Census, and Center for Disease Control.

Juxtaposed to this, those earning $115,000 or more will account for less than four percent of the additional tax revenues.

''Whether the Finance Committee recognizes it or not, the proposed tax will really make a dent in the budgets of America's lower-income households,'' Mr. Fleenor stated.

In a state by state comparison, California will bear the single largest burden if the new tax is enacted, paying $1.16 billion to the U.S. Treasury over five years (see Chart 2). The 10 states with the highest projected tax payments will pay 50 percent of the overall tax increase, according to Mr. Fleenor's calculations (see Chart 3).

*Chart 2: New collections by State based on Finance Committee's 20¢ cigarette excise hike, 5-year total*

[Share of tax burden; in millions of dollars]

| | |
|---|---|
| Alabama | $278.1 |
| Alaska | 35.0 |
| Arizona | 200.0 |
| Arkansas | 177.7 |
| California | 1,155.5 |
| Colorado | 199.2 |
| Connecticut | 167.5 |
| Delaware | 57.7 |
| Florida | 852.0 |
| Georgia | 452.2 |
| Hawaii | 34.9 |
| Idaho | 56.3 |
| Illinois | 638.8 |
| Indiana | 501.8 |
| Iowa | 169.4 |
| Kansas | 148.0 |
| Kentucky | 429.5 |
| Louisiana | 293.7 |
| Maine | 81.8 |
| Maryland | 251.2 |
| Massachusetts | 299.7 |
| Michigan | 507.3 |
| Minnesota | 246.5 |
| Mississippi | 183.3 |
| Missouri | 420.7 |
| Montana | 48.8 |
| Nebraska | 92.1 |
| Nevada | 92.1 |
| New Hampshire | 115.6 |
| New Jersey | 413.1 |
| New Mexico | 70.2 |
| New York | 829.5 |
| North Carolina | 563.5 |
| North Dakota | 33.0 |
| Ohio | 801.8 |
| Oklahoma | 229.0 |
| Oregon | 186.8 |
| Pennsylvania | 743.4 |
| Rhode Island | 59.1 |
| South Carolina | 258.1 |
| South Dakota | 45.7 |
| Tennessee | 413.7 |

*Chart 2: New collections by State based on Finance Committee's 20¢ cigarette excise hike, 5-year total—Continued*

| | |
|---|---|
| Texas | 880.9 |
| Utah | 62.9 |
| Vermont | 46.0 |
| Virginia | 448.9 |
| Washington | 229.7 |
| West Virginia | 135.8 |
| Wisconsin | 306.5 |
| Wyoming | 34.7 |
| District of Columbia | 21.5 |

Source: Tax Foundation estimates based on data from IRS, Bureau of the Census, and Centers for Disease Control.

*Chart 3: Top Ten State Contributors to Senate Finance Committee's 20¢ Cigarette Excise Hike*

| | |
|---|---|
| 1. California | $1,155.5 |
| 2. Texas | 880.9 |
| 3. Florida | 852.0 |
| 4. New York | 829.5 |
| 5. Ohio | 801.8 |
| 6. Pennsylvania | 743.4 |
| 7. Illinois | 638.8 |
| 8. North Carolina | 563.5 |
| 9. Michigan | 507.3 |
| 10. Indiana | 501.8 |
| Total | 7,474.5 |

Source: Tax Foundation estimates based on data from IRS, Bureau of the Census, and Centers for Disease Control.

''What's ironic about this tax,'' noted Tax Foundation Executive Director J.D. Foster, ''is that, with over half of it earmarked for healthcare costs for poor children, it amounts to a case of the poor paying for new programs for the poor.''

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NEW TAX FOUNDATION ANALYSES QUESTION ROLE OF EXCISE TAXES IN SOUND FEDERAL AND STATE TAX POLICY

WASHINGTON, D.C., JUNE 20, 1997.—Do excise taxes represent good or bad tax policy? The Tax Foundation recently published the first two in a series of five Background Papers focusing on this and other questions relating to the role excise taxes play in our economy.

In ''Excise Taxes and Sound Tax Policy,'' Dr. John R. McGowan, Associate Professor of Accounting at Saint Louis University's School of Business, provides an overview of how and why the federal excise system evolved.

Excise taxes have always played a large role in the federal government's revenue collections, forming the bulk of total revenues in the early years of the republic.

While excise taxes constitute under five percent of total revenues today, the federal government still imposes excises on a wide variety of goods and services, including gasoline and diesel fuel, tobacco and alcohol products, airline tickets, firearm sales and firearm dealers, heavy trucks and trailers, large tires, coal, vaccines, fishing equipment, and even bows and arrows. Federal excise receipts recently approached $60 billion.

Today, about 70 percent of excise revenues come from the taxes on alcohol, tobacco, and gasoline and diesel fuel, says Dr. McGowan. The accompanying charts shows that federal excises on distilled spirits, beer, and wine, raised about $7.2 billion in 1995, while the tobacco excise raised about $5.9 billion, and gasoline and diesel fuel taxes raised over $22.6 billion.

Dr. McGowan concludes that while excise taxes are relatively easy for governments to impose, they generally do not represent sound tax policy. Excise taxes can introduce significant amounts of inefficiencies into the economic marketplace and create a net reduction of benefits for consumers. Most significantly, excise taxes are widely believed to be regressive and therefore contrary to long-held concepts of fairness in the United States tax system.

In ''The Use and Abuse of Excise Taxes,'' Dr. Dwight R. Lee, of the University of Georgia, examined the inefficiencies of the excise tax. While he acknowledged that inefficiencies are inherent in any taxation, because taxes distort the economic choices that people make, Dr. Lee observed that the most efficient tax system minimizes this type of distortion.

Excise taxes, however, are conspicuously at odds with the goal of reducing tax distortions, says Dr. Lee. They are the most distorting of all taxes per dollar raised. Instead of spreading the tax burden as neutrally as possible over a broad tax base, excise taxes single out a few products for a high and discriminatory tax burden. While obviously unfair to the consumers of the taxed product, imposing or increasing excise taxes to fund tax relief for other taxpayers only exacerbates the problem.

Excise taxes are sometimes proposed to fund specific government spending programs, called ''earmarking.'' Only in a very few situations—where the consumption of a product is complementary to the use of some other good that cannot easily be priced directly—can earmarked excise taxes be efficient. But even here the efficiency of the excise tax depends upon the revenues being unconditionally allocated to the complementary use to reduce the cost of rent seeking. The greater the rent seeking over the allocation of the revenues from a potentially efficient excise tax, the less efficient it is and the lower the efficient rate of taxation (under reasonable assumptions about the relevant elasticity of demand).

Mr. FORD. Mr. President, let's be fair. We had a negotiated agreement. It wasn't good enough. That may be the floor. So here we come with 20 cents more, and then 11 cents more. I have 65,000 farm families that this legislation will put out of business. Oh, we are going to take care of them. Well, you take care of them, then I will talk about taxes. You take care of my farmers and I will talk about taxes after that. I will talk about how much you get from the tobacco industry. I will talk about how much you are going to do for this group or that group. So take care of my farmers, take care of my people. I have stood by and watched these people be run over long enough. Oh, you can come out here with crocodile tears. I can tell you all the sad stories. But small businessmen are small businessmen, and a small farmer is still a small farmer. And 69 percent of my farmers have another job. It becomes a husband, wife, and family occupation. You want to put them out of work.

I understand smoking. I have been smoking for 54 years and I am still here, thank God. I understand smoking. My grandchildren don't smoke, and I understand all of that. But then, a while ago, we didn't put a little deductible, or eliminate the deductible on the distilled spirits industry—beer, wine, and distilled spirits. Here we have tobacco and you pile on and pile on and pile on.

Mr. President, I hope my colleagues will do the best they can to help in this case. It is an additional tax. It is putting my people out of work. It is saying to children on the farm—children on the farm—that you are going to have less income next year. You are going to have less next year. Substitute another crop. That indicates that you don't know what tobacco brings, you don't know what corn brings, or what soybeans brings—$1,844 net profit for an acre of tobacco, and $100 from soybeans. You have to plant acres and acres and acres of soybeans and one acre of tobacco.

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

Mr. FORD. I suppose it's time. I was sweating anyhow.

Mr. ROTH. Mr. President, I yield 5 minutes to the Senator from Kentucky, [Mr. MCCONNELL].

Mr. MCCONNELL. Mr. President, if I were a Senator from any other State listening to this debate, I guess I would have to conclude that I don't have any tobacco growers. Cigarette smoking is obviously not good for your health. Why should I not vote for the Durbin-Bond amendment?

Reason No. 1: We entered into a budget agreement and this breaks it wide open. There has been a lot of momentum in this Chamber over the last week to stick to the budget agreement. This is a deal breaker. It wasn't negotiated by the President and the leaders of the Republican Congress. It wasn't even voted on by the Senate Finance Committee.

So the stake you have in this, I say to my colleagues, you will be voting to bust the budget deal wide open, in order to raise taxes on low-income Americans. What a great idea. This is supposed to be a package about lowering taxes by $85 billion, or close thereto, over the next 5 years, and a vote for the Durbin-Bond amendment turns it into a tax increase bill—a tax increase bill on the lowest income people in America. In fact, 60 percent of any tobacco tax increase will be borne by Americans making less than $30,000 a year. So you will be transforming this bill, which has been criticized by some downtown as somehow a benefit for the wealthy, into a major tax increase on the most vulnerable, low-income people in our society.

Regardless of how you feel about tobacco, regardless about how you feel about smoking—I don't smoke and don't support it particularly; I think it is not good for you—it is a legal product. That isn't the issue here. Why in the world, in a bill designed to lower taxes, would we want to have a whopping tax increase on the lowest income people in America?

My good friend from Missouri said it is a matter of equity. It sure is. What is equitable about it? We are singling out one industry and one socio-economic group in America for a major tax increase in a bill designed to lower taxes on working American families. It absolutely distorts everything this tax reduction bill is supposed to be about. Obviously, it has an impact on my State. Senator FORD and I feel passionately about this. Maybe some product

in your State will be next. But this transforms this bill into a major tax increase on low-income Americans. I can't think of a worse direction to go in.

Finally, let me say that it is estimated that it will cost our State of Kentucky 2,700 jobs, just like that. Clearly, that is a matter of major concern to us. But the consumers of cigarettes are all over America, not just in Kentucky, not just in North Carolina. They are, by and large, lower income people, who will continue to smoke after that, and you have just socked them with a major tax increase, Mr. President.

I certainly hope my colleagues will not, A, break the budget deal and, B, have a whopping tax increase on low-income Americans.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 5 minutes to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized for 5 minutes.

Mr. FAIRCLOTH. Mr. President, I don't know of a lot more that can be said on the subject. It has been very adequately and eloquently addressed by the two Senators from Kentucky. But we talk about equity and we talk about fairness, but the truth of it is that is not even in the vernacular of what we are saying here tonight. What we are doing is very simply this—I said it yesterday, I think, or the day before—they said it was a historic session. Yes, it is a historic session. We are destroying an industry that has served this country for 300-plus years, and we are simply wiping it out.

Now, when you go to the 77,000 workers in North Carolina and say to them, your job is gone, your industry is gone, but the good news is that international air travel is cheaper for you—most of them haven't been out of the county. So that is what we are saying here.

I don't doubt that the real interest here is to reduce and enable people to deduct their health insurance. I didn't notice that it was proposed to be paid for by any 10-cents-a-bushel tax on corn. And they go back to Illinois and Missouri and explain to the corn farmers there that we really have done you a great favor. No, it is on tobacco, which has been the whipping boy. Anybody in the Senate or in the Congress in the last year or two that had an ax that needed to be ground, they have come to the tobacco industry to grind it for them. That is very simply what happened. This is a source of money for whatever eleemosynary or good feeling or cause we have. This is a source of money.

As has been said earlier, enough is enough. I hope colleagues in the Senate will recognize that this has gone far enough. It breaks a budget agreement, and it is time to stop it.

I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I yield 5 minutes to the distinguished Senator from North Carolina, Mr. HELMS.

The PRESIDING OFFICER. The Senator from North Carolina, Mr. HELMS, is recognized.

Mr. HELMS. Mr. President, we have taken on the air of a Gilbert and Sullivan comic opera here tonight and all this week. I heard on the radio, I say to my colleague from North Carolina, on the early morning news, several days ago, I heard a Senator say, ''Yes, we are going to give umpteen hundred million dollars to children''—he didn't say children, he said ''chillin,'' and, oh, how benevolent he was—''because we are going to raise the cigarette tax,'' we are going to sock the tobacco companies. Well, he is not going to do any such thing. But that is what he wants the folks back home to think.

Speaker after speaker has pointed out that you are not taxing the tobacco companies; you are taxing the lower income people of this population of the United States. If you don't believe it, look at the record. Yet, they say, we are socking it to the tobacco companies—the evil tobacco companies—and they have all sorts of statistics that they pulled out of their hip pocket, saying how many lives it is going to save. They are not going to save any lives.

The point is, I say to my friend from Kentucky, it is so much hot air. They know it is hot air, but they have nothing else to say. And they want a headline back home that Senator Joe Blow really socked it to the tobacco companies. No, Joe Blow is not socking it to the tobacco companies.

He is socking it to the low-income people of this country who do something that maybe Joe Blow doesn't do—enjoy cigarettes. I don't smoke. Nobody in my family does. But I will tell you one thing. When you get down to it, it's a matter of choice and statistics—and you can play all sorts of games with statistics. But LAUCH FAIRCLOTH has it right and so does the distinguished Senator from Kentucky. Both of them have it right about how many jobs this is going to adversely affect.

This is the game we play. Go ahead and play it if you think you can win. I hope you can. But get you a little monkey and one of these organ grinders and sing this debate that you are making about tobacco, then you can be really funny.

I thank the Senator. I yield such time as I may have.

Ms. MOSELEY-BRAUN. Mr. President, I would like to express my support for the spirit embodied in Senator DURBIN's amendment to S. 949. This amendment seeks to increase the health insurance deduction for self-employed individuals to 100 percent. I agree that this is the right thing to do and that the Senate should consider options for ensuring that small business owners, particularly women, and farmers have access to the same tax deductions that are available to large corporations. I do not, however, agree with the way my Illinois colleague has suggested we pay for this particular increase, and for that reason, I cannot support this amendment.

The bill before us today reflects a long and tedious, bipartisan compromise among the members of the Finance Committee. That compromise, which provides for increased access to education, increased savings incentives, family tax relief, and agricultural and business investment incentives, also reflects some hard choices regarding upon whom the burden to pay for such benefits should fall. A part of the compromise made by the members of the Finance Committee was the decision to forgo increasing tobacco taxes at the present time. This decision was made with due consideration to the ongoing tobacco litigation, which may result in a dramatic increase in current tobacco taxes.

I definitely support the spirit of Senator DURBIN's amendment. A 100 percent deduction for health insurance premiums could reduce the annual net cost of health insurance for a typical family by as much as $500 to $1,000. In addition, such a deduction could provide tax equity for the 10.6 million self-employed Americans who currently can only receive a 40 percent deduction, unlike large corporations, who currently can deduct 100 percent of incurred health insurance premiums. There is no doubt that there is merit to the goals of this amendment.

As much as I would like to support the amendment presented by my colleague today, however, I believe that the compromise made by the Finance Committee should be honored. To do otherwise could place other programs and incentives of vital importance to the average American family and small business at risk. Because I believe that we have an obligation to make good on the promises of this bill, I cannot support this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. NICKLES. Would the Senator yield 1 minute to me?

Mr. ROTH. I yield 1 minute to the Senator from Oklahoma.

Mr. NICKLES. I again remind my colleagues. I urge them to vote ''no'' on the Durbin amendment. There may be a point of order raised on it. I hope they sustain the point of order. I again remind them that right after this amendment, we will be offering an amendment that will have a significant improvement on deductibility for self-employed persons, one that I believe we cannot only pass but hopefully prevail in conference on as well.

The PRESIDING OFFICER. Who yields time?

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Could I ask my friend and colleague from Delaware, are there

any more requests for time on their side of the aisle?

Mr. ROTH. No. I will yield back my time.

Mr. DURBIN. Might I have 3 or 4 minutes? Then I will be prepared to yield back the floor as well.

Mr. ROTH. Does the Senator have time remaining?

Mr. DURBIN. Yes. I believe I have some time remaining.

The PRESIDING OFFICER. The Senator from Illinois has 23 minutes left.

Mr. DURBIN. I will not use that, I guarantee you.

Let me say this. I want to respond to some of the points raised in this debate. I have been involved in this debate for over a decade and have heard many of these arguments, and I disagree with them. But I do respect my colleagues both in the House and in the Senate who make these arguments. I believe they are heartfelt and sincere. I believe they are speaking for the people that they represent.

I believe I am speaking for the people that I represent not only in Illinois but across the Nation when I talk about the need to have some fairness when it comes to hospitalization insurance premiums and to stop all of the promises that have gone on for more than a decade that we are going to give these people fairness. ''Oh, we love small business. Oh, we love the family farmer. We are going to get around to helping you on health insurance matters in the next year 2 years.'' Senator NICKLES said maybe 10 years from now we are going to get around to it.

Please. I have been involved in that debate. Senator DORGAN has. Senator CONRAD has. This has gone on for more than a decade.

All of these promises we can deliver on tonight.

Listen to the arguments. Again, I find it incredible.

One of my colleagues from Kentucky stands up and says this busts the budget deal. What? There was a provision in the budget deal that I voted for on this floor that limited the tobacco tax to only a 20-cent increase? I missed that provision. I don't think it was in there. If you will read it closely, that wasn't part of the budget deal.

I might say to my colleagues. This is meddling strange—that you can impose a 20-cent increase in the Finance Committee, and it has no impact on employment in Kentucky or North Carolina, but Durbin wants to put 11 cents on, and all of a sudden we have thousands of people out of work. My goodness. Twenty cents has no impact, and 11 cents more we have tipped the scales, and it is all over for tobacco? Give me a break. Give me a break.

What we are talking about here is an 11-cent increase on an item which is going to cost you $2, $3, or $4 a pack anyway.

You know, they talk about it being a regressive tax. Poor people smoke. Yes, they do. Yes, they do. They are correct in saying that. Eighty-five percent of the people smoking today—poor and rich, it is the same thing—''I wish I could quit. I really wish I could quit.'' Some of them say, ''You know, if the tax gets too high, I might not be able to afford these darned things.''

So you are talking about helping poor people. You are going to help them quit smoking, and help them live a little longer. That is a real help.

Again, one of my colleagues said, ''Why don't you go around and tax corn? You have corn in Illinois. Why are you taxing tobacco from my State?''

There is a big difference. The corn in Illinois and the corn in Missouri can be used for nutritious purposes. When it comes right down to it, tobacco is neither food nor fiber—neither food nor fiber.

And let me add this. Tobacco is the only crop regulated by the U.S. Department of Agriculture which has a body count, the biggest single preventable cause of death each year. Don't stand up and tell me this is another agricultural product, another farm commodity. This is an item which, used according to manufacturers' directions, will kill you. That is what tobacco is all about. It is not another agricultural product.

So when you talk about imposing a tax on this, we are talking about the health of America and the health of children. Oh, yes, in that low-income group, that regressive tax, that tobacco tax—the low-income group includes a lot of Americans who live on allowances they get from their parents. Those are the low-income Americans, too, kids going and buying tobacco on the corner.

Mr. FAIRCLOTH. Will the Senator yield?

Mr. DURBIN. I am happy to yield.

Mr. FAIRCLOTH. Would you give me an estimate of how many people are sick or die from drinking liquor a year made out of corn?

Mr. DURBIN. I can't answer you that question.

Mr. FAIRCLOTH. If you know a lot about tobacco, then you should know something about corn.

Mr. DURBIN. I know that corn is a nutritious product and can be used and is probably consumed on a regular basis by the Senator who asked me the question. He looks pretty healthy.

I will tell you something else. Tobacco is the No. 1 preventable cause of death in America today. You can't say that about corn, soybeans, wheat or any other commodity. You can't say that about it. You know it as well as I do. You can't make light of the fact that a product, if used as intended, kills people. You can't make light of the fact that when you follow the manufacturers' directions, you die when you use that product.

Mr. FAIRCLOTH. What is the point? I am not trying to—

Mr. DURBIN. Mr. President, let the Senator speak on his own time.

Mr. President, regular order.

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

Mr. DURBIN. Let me tell you this in closing.

I have heard a lot of arguments tonight made about the defense of tobacco. I say to my colleagues on both sides, if you are ready to vote for this tax bill, you are already imposing a tax on tobacco of 20 cents. I am saying to you that 11 cents is going to buy a lot of good for America—not only keeping the products out of the hands of kids but finally keeping our promise to small business and family farmers.

I urge you to look beyond some of the arguments that you have heard tonight, that you have heard over and over again, and think about the bottom line when this is done. Thirty-one cents on a package of tobacco is not going to break the tobacco industry. But it is going to save a lot of small businesses which will have a chance to survive.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. ROTH. Mr. President, I make a point of order that a quorum is not present.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ROTH. Mr. President, has the distinguished Senator from Illinois returned all time?

The PRESIDING OFFICER. No. The Senator from Illinois has 18 more minutes remaining.

Mr. ROTH. Does the Senator want to yield back?

Mr. DURBIN. I am prepared to yield back my time.

Mr. ROTH. I am prepared to yield back the remainder of the time.

The PRESIDING OFFICER. All time is yielded.

Mr. ROTH. Mr. President, the pending amendment is not germane to the provisions of the reconciliation measure. I, therefore, raise a point of order against the amendment under section 305(b)(2) of the Budget Act.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. DURBIN. I move to waive the Budget Act, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

VOTE ON MOTION TO WAIVE THE BUDGET ACT

The PRESIDING OFFICER. The question occurs on agreeing to the motion to waive the Budget Act in relation to the Durbin amendment No. 519. The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Kansas [Mr. ROBERTS] is necessarily absent.

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

The yeas and nays resulted—yeas 41, nays 58, as follows:

[Rollcall Vote No. 137 Leg.]

YEAS—41

| | | |
|---|---|---|
| Abraham | Glenn | Lugar |
| Biden | Gorton | McCain |
| Bingaman | Gregg | Mikulski |
| Bond | Harkin | Murray |
| Boxer | Hutchison | Reed |
| Bumpers | Johnson | Reid |
| Collins | Kennedy | Santorum |
| Daschle | Merry | Sarbanes |
| DeWine | Kohl | Shelby |
| Dodd | Landrieu | Specter |
| Dorgan | Lautenberg | Torricelli |
| Durbin | Leahy | Wellstone |
| Feingold | Levin | Wyden |
| Feinstein | Lieberman | |

NAYS—58

| | | |
|---|---|---|
| Akaka | Enzi | Mack |
| Allard | Faircloth | McConnell |
| Ashcroft | Ford | Moseley-Braun |
| Baucus | Frist | Moynihan |
| Bennett | Graham | Murkowski |
| Breaux | Gramm | Nickles |
| Brownback | Grams | Robb |
| Bryan | Grassley | Rockefeller |
| Burns | Hagel | Roth |
| Byrd | Hatch | Sessions |
| Campbell | Helms | Smith (NH) |
| Chafee | Hollings | Smith (OR) |
| Cleland | Hutchinson | Snowe |
| Coats | Inhofe | Stevens |
| Cochran | Inouye | Thomas |
| Conrad | Jeffords | Thompson |
| Coverdell | Kempthorne | Thurmond |
| Craig | Kerrey | Warner |
| D'Amato | Kyl | |
| Domenici | Lott | |

NOT VOTING—1

Roberts

The PRESIDING OFFICER. On this vote, the yeas are 41, the nays are 58. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The point of order is sustained and the amendment falls.

Mr. ROTH. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 518

Mr. BAUCUS. Mr. President, I opposed the Bumpers Amendment that would repeal percentage depletion for hardrock mining companies operating on public and formerly public lands. I believe this amendment is the wrong approach to bringing about mining law reform.

Hardrock mining provides many high-paying jobs and is essential to the economy of Montana. This amendment would raise taxes on the hardrock mining industry which will negatively effect everyone that depends on mining for their economic livelihood.

The intent of this amendment is not about percentage depletion. This amendment is an overt attempt to punish the hardrock mining industry for the lack of success in reforming the 1872 Mining Law. Percentage depletion is being used as a surrogate to bring about reform. If there are problems with the 1872 Mining Law, we should approach those problems directly—not in the form of repealing percentage depletion. Let's not wage economic warfare against an entire industry.

The repeal of percentage depletion is the wrong tool for bringing about mining law reform. The Bumpers amendment could have potentially devastating effects on the hardrock mining industry.

CHILDREN'S HEALTH CARE PROVISION

Mr. MCCAIN. Mr. President, today, I voted for an amendment to the Budget Act which would improve access to health insurance for uninsured children in our country by providing an additional $8 billion to the $16 billion already contained in this bill for children's health care. This $24 billion in new Federal funding will allow us to expand Medicaid coverage for very low-income children and will put affordable health care insurance within the reach of every family.

I am deeply concerned about the approximately 10 million children in our country who are currently lacking health insurance coverage. It is distressing that such a large number of our children lack access to primary and preventative care. I find it even more disconcerting that recent reports indicate that most of these children reside in families with one or more working parents.

Providing access to health care for uninsured children has been a priority for me since coming to the Senate. During the 103d Congress, I offered legislation which attempted to address this problem and provide access to health care for many of our Nation's uninsured children. This issue has remained a high priority for me in the 105th Congress and I am pleased that we were able to pass this amendment today.

This amendment is financed by a 20-cent-a-pack increase in the cigarette tax, which will raise enough revenues to provide the additional $8 billion for children's health insurance coverage. Although I have traditionally opposed new taxes, I believe that this proposal is necessary to help working parents purchase affordable health care coverage for their children.

I wholeheartedly believe that every child deserves a healthy beginning in life. There should not be any children in our country who cannot count on access to quality health care when they need it. I believe that this bipartisan children's health insurance proposal will address this problem in a fiscally responsible manner and allow us to provide coverage to our Nation's most vulnerable population.

Mr. MURKOWSKI. Mr. President, I rise in strong support of the tax cut bull that forms the heart of the second reconciliation bill.

I want to take this opportunity to commend the chairman of the Finance Committee, Senator ROTH and the ranking member, Senator MOYNIHAN, for their efforts in ensuring that the Finance Committee's bill was reported with strong bipartisan support. I hope the spirit of bipartisanship that permeated the committee's work will extend to our debate on the Senate floor.

Mr. President, during this past week, we considered the first budget reconciliation bill which was designed to slow the growth of Federal spending and to stop the hemorrhaging of the Medicare Program. And we successfully achieved both goals while at the same time making a commitment to boost funding by $16 billion to enable more children in America to obtain health insurance.

The tax bill we are considering today builds on that achievement by earmarking $8 billion from increased tobacco taxes for expanded children's health insurance. With this unprecedented $24 billion commitment of funds for children's health insurance, I believe the Senate has made an investment in the health of the children of America that should alleviate the anxieties and fears of millions of parents about paying for the health care of their children.

What is even more remarkable about the reconciliation bills we are considering this week is that at the end of the process, we will have set this Government on course to finally achieve a balanced budget. While I believe the tax cuts contained in this bill provide much needed financial relief for the vast majority of working Americans, I believe our greatest achievement is balancing the budget.

What that means is that when this agreement is fully implemented in 5 years, the Federal Government will no longer have to borrow to keep this Government operating. Most importantly, the balanced budget will give us the opportunity to finally begin paying down our enormous $5-plus trillion national debt.

Mr. President, on Monday, the world's financial markets were reminded of the enormity of the American Government's debt and the impact that debt has on the global marketplace. When Japanese Prime Minister Hashimoto suggested that he was tempted to sell off portions of Japan's American debt portfolio to stabilize the yen/dollar exchange rate, markets plummeted throughout the world. On Wall Street, we saw the Dow Jones average drop 192 points, the second largest point decline in exchange history.

Although markets recovered after Japan's Finance Minister dismissed the idea that Japan would dump it's Treasury securities, the lesson is unmistakable. The security of our economy can

never be assured so long as this country continues to run deficits and pile up billions in additional debt. As long as we must turn to world markets to finance Government spending, our economy's health is always in danger of being held hostage to the political whims of foreign governments and speculators.

That is why it is so important that we balance the budget and begin to pay down the debt. And that is why these reconciliations bills are vital to our Nation's economic security.

Mr. President, the tax bill before us provides much-needed relief for the hard-working middle-income families who have not seen their tax burden reduced in 16 years. Despite what some of my colleagues on the other side of the aisle may allege about this tax bill, the lion's share of the income tax cuts—81 percent—will go to families earning between $12,000 and $62,000.

This bipartisan bill will reduce the taxes paid by every low- and middle-income family with a child by $500. For a family with three children under 13, their tax burden will be reduced by $1,500. That's $1,500 that the family will have available to pay off bills, buy clothing for their children or spend as they see fit.

A provision in the bill requires families with children between the ages of 13 and 17 to invest their $500 children's tax credit in an educational savings account. While I think it is important that we do as much as we can to encourage families to save for college, I think it is inappropriate for us to require families to establish these accounts. I will support an amendment that will debate this provision from the bill.

The bill also provides more than $30 million in tax relief for families that are facing enormous college education bills. And it encourages economic growth and savings by reducing the capital gains tax and expanding individual retirement accounts.

I also applaud the changes the committee made to the estate tax, with the goal that family businesses should be kept together rather than split apart in order to pay estate taxes. In fact, Mr. President, it is my hope that we can fundamentally change, if not eliminate, the estate tax with what can only be called confiscatory tax rates. Although we have not been able to achieve that result in this bill, I think that should be one of our goals when we consider fundamental tax reform in the future.

Mr. President, the items I have just noted represent the highlights of the bill. What is again worth mentioning is how we were able to craft this bill. We did it with input and good debate between Republicans and Democrats on the committee. There was no rancor. We were not partisan, we tried to work within the confines of the budget agreement negotiated by our leadership with the White House.

I would hope that that spirit of bipartisanship will continue as we debate this bill since I think we can all agree that the goal of providing tax relief for hard-working Americans and encouraging savings and investment are in the best long-term interests of our Nation.

AMENDMENT NO. 518

Mr. KYL. Mr. President, as he has done numerous times over the past 10 years, Senator BUMPERS again attacked the hardrock mining industry in the United States. This time, he chose to introduce an amendment to the Tax Reconciliation Bill to repeal the percentage depletion allowance. This allowance has been in the tax code for over 60 years and repeal would be an arbitrary tax increase on the industry.

Repeal of the allowance is a tax increase. Mining companies cannot recover higher costs, including higher taxes, by raising prices because mineral prices are set by international commodity market. It should be noted that the mining industry already pays high average federal tax rates—32 percent per a GAO study—because of the corporate alternative minimum tax.

In addition to the damage that would be done by this arbitrary tax increase, I would emphasize that this is not the way to reform the mining law. Although Senator BUMPERS and I may not agree on the specific reforms necessary, we do both agree that a comprehensive, responsible reform is necessary. Along with my other Western colleagues, I would like to see reform that is environmentally sound and allows industry to thrive in a healthy and supportive atmosphere. A one-shot tax increase on the Senate floor is neither comprehensive nor responsible. Any reform of such an economically significant domestic industry should be done through the committee process where all parties have a chance to be heard and the issues can be dealt with in a thoughtful and meaningful manner.

I voted against the Bumpers amendment today and I am pleased that it was defeated.

BROAD BASE REFORM

Mr. SHELBY. Mr. President, the bill before the Senate tonight, promises to provide about $75.8 billion in tax relief over the next 5 years and approximately $238 over 10 years. Mr. President, that is a good step forward. But, Mr. President, I rise tonight to remind and encourage my colleagues that while this bill might be viewed as a good step forward in providing tax relief to the American people. It is just that: a step forward—hopefully, toward greater reform in the future.

I will offer a sense-of-the-Senate resolution for a very simple, but very important purpose: We must not forsake our broader agenda to seek comprehensive reform of our tax system. Tax cuts are not a substitute for broad based reform.

Mr. President, while we live in a society that accepts the notion that some level of taxation is necessary to finance the cost of government, our challenge has always been how much government and at what cost.

In my view, the power to tax is the most ominous and potentially destructive power granted to government by the people and that is because taxes empower governments, not people, With that in mind, our tax policy should do no more harm than is necessary to achieve its stated good. This maxim underscores why we need to change our current system, and specifically eliminate the estate and capital gains taxes.

Our current tax system promotes waste and inefficiency, penalizes savings and investment and rewards dependency. Not only is the current Tax Code inequitable in who and how it taxes, it is responsible for fueling much of the growth of government and Federal spending. Changing how we collect revenue to pay for the cost of government will be a significant step in helping devolve power from Washington back to the people and restoring greater freedom.

We need to address significant tax policy changes that will not only provide taxpayers' relief, but will simplify and equalize tax collection. Taxation is bad enough without administering that tax through an inefficient, inequitable, complex and unresponsive tax system.

Yesterday, the National Commission on Restructuring the IRS came out with their report and recommendations. I have not had an opportunity to review their report completely, but I did note that simplification on the Tax Code was among one of their primary recommendations, including establishing one broad based tax system.

While the Commission was not tasked and did not address specific legislative proposals to reform the tax system, I believe that the underlying principle of seeking a''truly fair and comprehensive'' tax system is something we can all agree on And I would take this opportunity to commend my colleagues from Nebraska and Iowa for their leadership on this issue.

While I believe a flat tax is the most equitable replacement that supports the most freedom at the least cost—this resolution is not an endorsement of the flat tax. It only calls for Congress and the President to move forward with consideration of broad based reform.

While this bill attempts to reverse the punitive effects of our tax policy and tax system which currently punishes the basic values of work, savings and individual liberty, it is not sufficient to undo the basic premise that seems to underlie the current system and that is that the Government is entitled to all that you earn. And only through selected, targeted tax credits, deductions, exemptions and the like are the American people allowed to keep portions of the income that they work hard every day to earn.

Our tax policy should support the most freedom at the least cost and embody the least intrusive means of levying and collecting taxes. But most importantly of all, Mr. President, we need a policy that does not punish the basic values of work, savings and individual liberty.

Mr. President, without comprehensive tax reform, we will never truly be able to say that the era of big government is over.

Mr. President, I would encourage my colleagues to join me and the Senator from Idaho in supporting this sense-of-the-Senate resolution.

Mr. LOTT. Mr. President, I do want to propound a unanimous consent request here, that would allow us to carry out the indication that we have put at the table here that this would be the last vote of the night.

Before I do that, I want to say again I really appreciate the bipartisan cooperation that we have had throughout this week. I think it has made the Senate look good and it has taken a lot of work and several of us have had to keep our commitments in a way that was not always easy, but we have stuck by it on both sides of the aisle. I thank the Senators for doing that. I appreciate also your tolerance when I suffered mightily on one of the votes myself today.

The chairman and the ranking member have been a pleasure in working through all of this. I thank them and their staff. It is a little premature. I think we are tired, we are trying to find a way to complete our work, but it is important we also take note of the fact that we have been doing some good work working together. We want to keep that going.

So we have a unanimous consent request that we have worked with Senator DASCHLE on. He has made a lot of very positive recommendations. We think this would be the fairest way under the process that we have now to complete our work.

I want to say, Senator DASCHLE and Senator DOMENICI, Senator BYRD and I have been talking about the fact that we need to take a look at the process and see if we cannot come up with a little better way to do it without the votes in seriatim at the end of this process. Senator BYRD has a resolution he is going to introduce. Senator DASCHLE and I are going to appoint a task force of senior Senators to see if we cannot come up with some ideas we can agree to, to allow this process to be done better in the future.

UNANIMOUS CONSENT AGREEMENT

Mr. LOTT. But, in view of what we have to deal with, I ask unanimous consent, now, that during the remainder of the consideration tonight of S. 949, the following be the only amendments in order, other than agreed-upon amendments to be offered by the managers: The Nickles amendment, the Gramm amendment, and Kerry of Massachusetts amendment. I further ask at the conclusion of the debate on the above listed amendments, it be in order for any Member of the Senate to address the Senate with respect to an amendment that may be offered after all time is expired, but there be no further amendments to be in order this evening.

I further ask that at the conclusion of the remainder of the time on S. 949, the Senate automatically proceed to a period of morning business with Senators permitted to speak for up to 10 minutes each. That way, if all time has expired and you have an amendment that you are going to offer tomorrow, you have that 10 minutes in which you can explain tonight what your intentions are, what is in the amendment; so I ask at the conclusion of the remaining time on S. 949 the Senate automatically proceed to this period of morning business.

Mr. BIDEN. Reserving the right to object.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object. Mr. Leader, would you clarify for me please, and I regret to take your time, will there be no amendments offered tomorrow that are not offered tonight?

Mr. LOTT. No. Under this agreement, if a Senator has not had the opportunity to offer his amendment today, he or she would be able to offer their amendment in the morning with time equally divided between those for and against it, 2 minutes each—the usual 1 minute on each side to explain that amendment and a vote.

Mr. DOMENICI. Mr. Leader, they would have 1 minute on a side tomorrow?

Mr. LOTT. Yes. Right.

Mr. DOMENICI. Mr. Leader, we have worked with everybody that had process amendments. They don't have to offer them, and I am not asking especially for them to offer them, but I wonder if we couldn't get an agreement that would set in motion, so everybody would understand, these process amendments? Could I try a request on for you and see if you can agree?

I ask consent that the withdrawn amendment No. 537, that withdrawal be vitiated—that is the one I offered—and that a motion to waive with respect to amendment 537 be made and that it not be amendable, the motion to waive is agreed to the amendment, and if it is, it be treated as original text. Then I ask consent that the following Senators, if they choose, be authorized to offer amendments for budget process: BIDEN, GRAMM—Senator GRAMM of Texas, Senator BUMPERS, Senator GREGG, Senators BROWNBACK, FRIST, and ABRAHAM. And if they offer them they would be taken up in that order tomorrow.

Mr. LOTT. These are the amendments having to do strictly with process questions. I know there is a lot of interest in these process amendments. I am not familiar with the content of all of them.

Several Senators addressed the Chair.

Mr. LOTT. Our understanding is Senator BYRD is going to offer his separately.

Mr. President, I renew my request based on the three-unanimous consent request paragraphs I read, with the addition of the Domenici request.

Mr. REID. Reserving the right to object.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I direct the question to both leaders. I have some trouble understanding why there would be amendments in order in the morning. It would seem to me this process has gone on for several days and there should come a time when you make a decision whether you are going to offer an amendment. The leaders have been very generous, they are going to allow amendments to be offered after the time has expired. But I would think that should end sometime tonight. I don't think we should come in here in the morning, fresh as daisies, with a big pile of new amendments.

Mr. LOTT. The Senator's point is well taken and I certainly agree. Senator DASCHLE and I would hope there would not be a long series of amendments offered tomorrow.

Some Senators will feel very strongly and feel like they should have that opportunity. Under the rules as they now exist we could not cut them off. We have had a good debate. We have had the alternative amendment offered by the Democratic leader. We have had other good amendments and debates that occurred. We hope we could bring it to a conclusion at a reasonable time tomorrow.

I remind my colleagues we had 16 votes yesterday, I believe it was. We started at 9:30 and we finally concluded that at about 5 o'clock yesterday afternoon. Now I believe we can do a better job. We'll start earlier tomorrow and we will stick to the 10-minute vote after the first vote. And we will try to move it right along. But we found the other night that when we said OK, just leave your amendment with the managers of the bill, when we came in in the morning we had 61 amendments. Then the leadership, Senator DASCHLE and his whip team, as we were, were running around trying to find out which amendments really—what they do. You know, will the Senator insist on offering it? Can we get them accepted? It really complicated the process.

We really believe by this process Senators will be able to debate these amendments and other amendments tonight. Then they, based on their thinking tomorrow, they would have the opportunity or perhaps would choose not to offer the amendments tomorrow. But if they do we cannot—we cannot cut off the Senators' right to offer an amendment.

Mr. REID. Reserving the right to object, continuing my reservation, I say

to my friend the majority leader, I am going to withdraw my reservation. But I do say this. I want everyone to hear, including the senior Senator from West Virginia. If we don't get a change in the process by next year I am going to object to everything. This is a ridiculous process. I don't think it is good for the system and I hope we change it.

Mr. LOTT. I agree and I appreciate the Senator's comment on that. I have been thinking that for several years. I remember one day here we had, what, 39 votes and set a record, a historical record Senator BYRD told us. It is just not a good process.

We are committed to coming up, by September 8, within the next couple of months, with a way to change the process. In fact, Senator BYRD has some good ideas. But I just want to make sure that we have thought it through and we don't start and change it without thinking about unintended consequences. I don't believe anybody intended 10 years ago, when reconciliation was set up, that it would lead to this type of voting process. We are committed on both sides, the leadership and our senior Members, to coming up with a better process. We are going to do that. We certainly would like the input of the Senator from Nevada, too.

Mr. DASCHLE. Mr. President, reserving the right to object?

Mr. ALLARD. Mr. President, I say to the majority leader, I did not hear my name listed on that list of amendments, it is the Allard-4Abraham-Brownback amendment.

Mr. DOMENICI. We have Senator BROWNBACK. Do you have a separate one from Senator BROWNBACK?

Mr. ALLARD. It's under my name actually, Allard-Brownback; Senator ABRAHAM is a cosponsor.

Mr. LOTT. It's ALLARD-BROWNBACK. OK. We got that.

Mr. DASCHLE. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. For purposes of clarification, let me first say I subscribe to what the majority leader is attempting to do here. We hope that we can accommodate the largest number of Senators with this process. I think there are some questions, however, about what happens tomorrow morning beginning with what time we vote. I think the majority leader has now indicated 9 o'clock.

Mr. LOTT. Yes, 9 o'clock, so we will start earlier and we will start voting—we would have the brief explanation and we would start voting immediately after that. We would then vote one after the other until we completed the process.

Mr. DASCHLE. The second question has to do with the request made by the distinguished Senator from New Mexico. As I understand it, what he is attempting to do is sequence a series of amendments. I guess the question would be, at what point tomorrow does that sequencing begin?

Mr. DOMENICI. I think that's up to the floor manager as he sequences over the evening. He'll go over all the amendments and I assume he'll sequence the way we did and put the whole list together. We are not seeking any special preference in that list.

Mr. DASCHLE. It doesn't preclude any other Senator from offering amendments?

Mr. LOTT. Not at all. It would not preclude other Senators from offering amendments. I want to say to the Senator—

Mr. DASCHLE. The question would be—I'm sorry, if I can just interject? If there was an amendment on one of the amendments offered, would the sequencing preclude an amendment to one of the amendments?

Mr. DOMENICI. I did not make that request.

Mr. DASCHLE. I ask consent that be considered. I don't think that would matter, but I think we need to protect Senators in that regard.

Mr. DOMENICI. If a Senator wants an up-or-down vote on his process I would not object to that request.

Mr. LOTT. I have not had a chance to get into the specifics of each one of these amendments, but I hope we could pursue the possibility of not going through the long list of process amendments. At least half of these are on our side of the aisle. So I hope we could find another time, another day, another way to do these process amendments. I will certainly be working on that later on tonight and in the morning.

Since we have the first 3 votes already lined up that would give us time to do some work on exactly whether or not this is essential. I will work with Senator DASCHLE on that.

Mr. DOMENICI. Mr. President, there are points of order not waived on any of these. The points of order—if people want to make them you have to get 60 votes and everybody knows that.

The PRESIDING OFFICER. Is there objection? The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, this is not an objection. I am not going to object. But just the question, if I could ask it. My understanding is—I mean, there are a number of us—all of us would like to finish. Some of us have been waiting a long time, many, to have amendments and to discuss them and I don't think we want to prolong the matter. My understanding is as opposed to the beginning of the week, we don't actually have to lay the amendment down tonight in order to have that amendment up tomorrow; am I correct? My second question is, wouldn't it be a little bit more expeditious if in fact the amendment could be laid down so we don't have to go through that process at all tomorrow morning with the requirement if they are not laid down tonight they would be out of order?

Mr. LOTT. We have discussed that back and forth. We tried to again, in a bipartisan way, figure the best way to deal with this, the fairest way, and also the way that would hopefully not lead to the largest number of amendments. We really think that we may actually wind up having fewer amendments finally voted on tomorrow by doing it this way. We tried it the other way. Bear with us as we try it this way.

Again I urge, unless you just really feel you have to have a vote on your amendment tomorrow I urge you, and I will be saying it on this side—but but if you feel strongly, you can talk about it tonight and offer your amendment tomorrow.

Mr. DODD. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. I inquire of our leader or our friend from New Mexico, is it necessary the process amendments be considered as part of this budget agreement, or would it not be better to deal with that as a side issue and deal with the amendments that bear directly on the tax bill and then bring up the process amendments on a separate occasion? Is there reason that has to be a part of this, I inquire of the leader or distinguished Senator from New Mexico?

Mr. DOMENICI. I could have offered a process amendment that I think is needed and other Senators think are needed. I could have offered it on the first bill that went through here, the reconciliation bill. I chose to wait for this bill. It is just as in order on this bill and just as subject to a point of order on this bill as on the other bill, but there is no other reconciliation bill coming down the field.

Mr. DODD. I understand. If my colleague will yield, I understand this. Time is running out. If we don't debate it this evening or during morning business, tomorrow we will be limited to a 1-minute explanation of process amendments that have to do with the budget process that I think are rather significant.

I am concerned that something as profound as dealing with the budget process is left to seconds to debate them, and unnecessarily so. I raise the issue of whether we ought to set that for a separate time, rather than deal with this?

Mr. LOTT. Mr. President, if I can respond again, I share a lot of the Senator's feelings. We will work to see if there is some way we can get an agreement on these process amendments to limit the number or to find another time and opportunity for them to be offered.

I remind you that yesterday, one unanimous consent agreement that we worked out took nine amendments off the board in one swoop, and we agreed to something that was passed by voice vote. I am not sure we can do that here. Part of what we need is a little time to work with what we have left.

Mr. DODD. I understand.

Mrs. BOXER. Reserving the right to object, and I shall not object, I have a

question for the majority leader. If we were able to work out amendments cleared on both sides, is it necessary for us to personally offer it, or can one of the managers offer it in our name if it has been cleared, because that would speed things along.

Mr. LOTT. The UC specifically says ''other than agreed upon amendments to be offered by the managers.''

Mrs. BOXER. I want to make sure they will be offered in the name of the Senator who wrote them rather than the manager.

Mr. LOTT. I believe that is the way they do them.

Mrs. BOXER. I have no objection.

Mr. COATS. Reserving the right to object.

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. Mr. President, I have a question for the majority leader. He listed three amendments to be debated this evening, I believe those of Senator NICKLES, Senator GRAMM of Texas, and Senator KERRY. Is there a time limitation on the debate of those? The reason I ask is because for those who want to stay afterward and take the 10 minutes to describe an amendment that will be offered tomorrow, it will be good to know that there is some limitation on the time for debate for those three particular amendments.

Mr. LOTT. In answer to the Senator, I say there was no time agreement worked out, partially because the Senators didn't want that time agreement. I am hoping they will be actually relatively short in time. I know Senator NICKLES doesn't need a lot of time. I believe these amendments will go relatively quickly, and there will be time left for other Members to address the Senate on their amendments. And then after that, when all time has expired, Senators can still talk in morning business for up to 10 minutes. We did not get a time agreement in our effort to get the UC worked out, but I think we are talking about a relatively short period time of time.

Mr. BYRD. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. My reservation, Mr. President—

The PRESIDING OFFICER. May we have order in the Senate, please? The Senator from West Virginia.

Mr. BYRD. While I have submitted a reservation, may I offer a parliamentary inquiry? Will a motion to recommit, either a straight motion to recommit or a motion to recommit with instructions, still be in order, even though a Senator has not reserved a spot on this list?

The PRESIDING OFFICER. Under the Budget Act, the only motion to recommit that can be considered is one that occurs within 3 days; it specifies the bill be reported back in 3 days.

Mr. BYRD. And is that motion in order any time prior to the conclusion of action on the bill?

The PRESIDING OFFICER. That is correct.

Mr. BYRD. Mr. President, reserving the right to object—I will not object—I am concerned about these process amendments. I am particularly concerned that there may be a process amendment that would wipe out the Byrd rule. I am also concerned that there might be a process amendment that would wipe out all 60-vote points of order. Either of those would be pretty fatal to this process.

And I hope that while we have both leaders here and a good size attendance, that we will be very aware, very alert to the possibility of either of those, which would mean that the reconciliation process, as we know it—perhaps we don't like it as we know it—but it will be gone. Period. I hope it won't happen. Would the Senator include me as a Senator who might offer a process amendment or a motion?

Mr. DOMENICI. I so request. May I say to Senator BYRD, we very carefully looked at these amendments with the view that you have in mind, and I can tell you that none of the process amendments that are listed in the unanimous-consent request address either the Byrd rule, nor do any of those amendments—what was your other?

Mr. BYRD. Wipe out 60-vote points of order.

Mr. DOMENICI. Nor do they attempt to permit us to vote with less than 60 votes on any of these matters that are subject to a point of order.

Mr. BYRD. Mr. President, I am greatly relieved, and I thank the Senator.

Mr. LOTT. Mr. President, before I put forth the unanimous-consent request one more time, we did add the Byrd resolution or amendment to the process list of amendments, and I renew my unanimous-consent request.

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

Mr. LOTT. For the information of all Senators, then, there will be no further votes tonight. Following debate on the three amendments, any Senator wishing to discuss an amendment that may be offered tomorrow may do so. The Senate would then begin voting at 9 a.m. on Friday, on or in relation to the three listed amendments and any amendments offered tomorrow. If Senators do intend to offer amendments tomorrow, I urge them to please give a copy to the managers, since there will be no debate time other than the 2-minute-equally-divided time. It will be very helpful to all Senators to have these amendments available so they can be given to interested Senators.

I yield the floor. We have approximately 1 hour and 5 minutes left of time on the bill.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, the Senate is still not in order.

The PRESIDING OFFICER. May we have order in the Senate so we can continue on the 1 hour and 5 minutes that is rapidly dissolving? If staff will please take their seats and if conversations will please cease, we can continue with the business of the Senate.

The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank you for getting order in the Senate.

Mr. KOHL addressed the Chair.

Mr. NICKLES. Mr. President, I will be happy to yield to the Senator from Wisconsin for 2 minutes without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 524

Mr. KOHL. Mr. President, tomorrow I will up amendment No. 524 which I believe is at the desk. This amendment creates a tax incentive for companies that provide child care for the dependents of their employees. The amendment is also cosponsored by Senators DASCHLE, DEWINE, BOXER, D'AMATO, MOSELEY-BRAUN, SNOWE, SPECTER, and JOHNSON.

Our amendment creates a tax credit for employers who get involved in increasing the supply of quality child care. The credit is limited to 50 percent of $150,000 per company per year.

The amendment is based on S. 82, the Child Care Infrastructure Act, which has received praise from businesses, parents, and day care workers alike. Working Mother magazine gave the initiative its ''Lollipops'' award in the January issue, and the Children's Defense Fund has endorsed it. S. 82 is also endorsed by the National Center for the Early Childhood Work Force and the National Child Care Association.

The amendment responds to a great need, a great challenge, and a great opportunity. The need is to provide a safe and stimulating place for our youngest children to spend their time while their parents are at work. The challenge is to make the American workplace more productive by making it more responsive to the needs of the American family. And the opportunity is to take what we are learning about the importance of early childhood education and use it to help our children become the best educated adults of the 21st century.

The credit is offset by authorizing an anti-fraud program that will keep parents who do not have custody of their children from unlawfully claiming child-related tax benefits.

Child care is an investment that is good for children, good for business, good for our States, and good for the Nation. We need to involve every level of government—and private communities and private businesses—in building a child care infrastructure that is the best in the world. Our amendment is a first, essential and deficit neutral step toward that end, and I urge all my colleagues to support it.

Mr. HATCH. Mr. President, I rise to support Senator KOHL's amendment. This amendment would provide tax credits to encourage businesses and other institutions to provide child care for their employees.

This proposal, which is similar to one that I included in my original child care bill several years ago, would provide a tax credit for businesses that build on- or near-site day care centers, jointly participate with other businesses in running child care centers, or contract with child care facilities. This amendment is important in order to meet the rapidly increasing demand for child care. I recognize the importance of finding safe places for our children while their parents are at work, preferably places where they can learn and have wholesome fun. We use the Tax Code to encourage a variety of private endeavors; we should not hesitate to use the tax code to encourage private businesses to become involved in providing child care for dependents of their employees.

This tax credit would be equal to 50 percent of the qualified child care expenditures up to a maximum of $150,000, paid or incurred by the employer during the taxable year to acquire, construct, rehabilitate, expand, or operate a qualified child care facility.

Parents of young children are joining the work force in record numbers, leading to more young children in the need of care as their parents go off to work. There are more single parents today than ever before. In has been reported that up to 62 percent of working mothers have children under 6 years old and 59 percent had children under 3 years of age. This amendment would give incentives for any company, small or large, to provide child care to its employees.

Studies have shown that organizations that provide child care benefits to their employees attract and retain better qualified applicants and experience reductions in employee absenteeism. But, the argument goes that if the employer benefits from providing child care benefits, why should we subsidize the costs with a tax credit. That is not a bad question.

But, I suggest that society has a stake in this as well. Not only will our workforce respond positively given the peace of mind that comes from knowing that your children are safe and thriving, but also, we must be concerned with the health and safety of our children. It is disturbing whenever we read about children left alone or children in inadequate or unsafe facilities. I believe that the small innovation of a tax credit to defray the costs of employer-sponsored child care will do wonders to address this increasing need of American families.

Mr. President, child care is an investment for the future. It is good for business, good for our communities, and good for the Nation. There certainly is a need for quality child care. As a nation, we have made significant increases in the education of our older children, aged 5 to 25. We have increased Headstart. But, we need to do more. And, we need to create more options.

This tax credit proposal made by Senator KOHL is the least intrusive and least expensive way I can think of to stimulate private sector investments in child care. It is now time to set the infrastructure in place for the most important years in the development of our children. There is an increasing struggle to balance work and family. How well we respond will determine the success of our future.

I encourage my colleagues to support this important amendment, and I commend Senator KOHL for his work on it.

Mr. KOHL. I ask unanimous consent that this be the first amendment taken up tomorrow morning for a vote after the three amendments laid down tonight.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Can I ask a question about whether we can at least get an understanding about the sequence? I don't mind whether I am fourth or eighth.

Mr. NICKLES. Mr. President, I think I have the floor.

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

Mr. NICKLES. Mr. President, I yielded to the Senator from Wisconsin for 2 minutes, and now I wish to reclaim the floor.

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

AMENDMENT NO. 551

(Purpose: To increase the deduction for self-employed health insurance costs, and for other purposes)

Mr. NICKLES. Mr. President, tonight I offer an amendment on behalf of myself, Senator HAGEL, Senator CLELAND, and Senator DOMENICI which would increase the deductibility of health insurance for self-employed individuals. I will not take long. I mentioned it a couple of times during debate on the Durbin amendment.

The current law allows for self-employed persons to deduct 40 percent in 1997. We actually increased that—if I remember, Senator Dole, Senator ROTH and several of us last year in the last Congress increased that—over several years, and eventually by the year 2004, it would be at 60 percent. We would like to accelerate that. That is what this amendment does. It would improve it from 1997, the year we are in, from 40 percent to 50 percent. In 1999, it improves it from 45 percent to 60 percent, and in the year 2003, it improves it from 50 percent to 80 percent, and so on. We want to improve and accelerate health insurance deductibility for the self-employed.

Mr. President, I used to be self-employed, and it always bothered me that I used to manage a corporation and the corporation could deduct 100 percent of health care premiums, but my company, when I was self-employed—it was a janitor service—could only deduct 40 percent. I would like parity, and, hopefully, eventually we will get there.

In this amendment, we don't get there for several years, but at least we will accelerate it and make a better deal for self-employed persons at a more rapid rate.

On behalf of my colleagues cosponsoring this amendment, I send the amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oklahoma [Mr. NICKLES], for himself, Mr. HAGEL, Mr. CLELAND, Mr. DOMENICI, and Mr. THURMOND, proposes an amendment numbered 551.

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

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

The amendment is as follows:

On page 212, between lines 11 and 12, insert:

**SEC. ___. INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—The table contained in section 162(l)(1)(B) is amended to read as follows:

| "For taxable years beginning in calendar year— | The applicable percentage is— |
|---|---|
| 1997 | 50 |
| 1998 | 55 |
| 1999 through 2001 | 60 |
| 2002 | 65 |
| 2003 through 2005 | 80 |
| 2006 | 90 |
| 2007 or thereafter | 100." |

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

On page 159, line 15, strike "December 31, 1999" and insert "May 31, 1999".

On page 159, line 18, strike "42-month" and insert "35-month".

On page 159, line 19, strike "42 months" and insert "35 months".

On page 160, lines 10 and 11, strike "December 31, 1999" and insert "May 31, 1999".

On page 160, lines 19 and 20, strike "December 31, 1999" and insert "May 31, 1999".

On page 400, between lines 14 and 15, insert:

**SEC. ___. MODIFICATION OF RULES FOR ALLOCATING INTEREST EXPENSE TO TAX-EXEMPT INTEREST.**

(a) PRO RATA ALLOCATION RULES APPLICABLE TO CORPORATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 265(b) is amended by striking "In the case of a financial institution" and inserting "In the case of a corporation".

(2) ONLY OBLIGATIONS ACQUIRED AFTER JUNE 8, 1997, TAKEN INTO ACCOUNT.—Subparagraph (A) of section 265(b)(2) is amended by striking "August 7, 1986" and inserting "June 8, 1997 (August 7, 1986, in the case of a financial institution)".

(3) SMALL ISSUER EXCEPTION NOT TO APPLY.—Subparagraph (A) of section 265(b)(3) is amended by striking "Any qualified" and inserting "In the case of a financial institution, any qualified".

(4) EXCEPTION FOR CERTAIN BONDS ACQUIRED ON SALE OF GOODS OR SERVICES.—Subparagraph (B) of section 265(b)(4) is amended by adding at the end the following new sentence: "In the case of a taxpayer other than a financial institution, such term shall not include a nonsalable obligation acquired by such taxpayer in the ordinary course of business as payment for goods or services provided by such taxpayer to any State or local government."

(5) LOOK-THRU RULES FOR PARTNERSHIPS.—Paragraph (6) of section 265(b) is amended by adding at the end the following new subparagraph:

''(C) LOOK-THRU RULES FOR PARTNERSHIPS.—In the case of a corporation which is a partner in a partnership, such corporation shall be treated for purposes of this subsection as holding directly its allocable share of the assets of the partnership.''

(6) APPLICATION OF PRO RATA DISALLOWANCE ON AFFILIATED GROUP BASIS.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

''(7) APPLICATION OF DISALLOWANCE ON AFFILIATED GROUP BASIS.—

''(A) IN GENERAL.—For purposes of this subsection, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer.

''(B) TREATMENT OF INSURANCE COMPANIES.—This subsection shall not apply to an insurance company, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.''

(6) DE MINIMIS EXCEPTION FOR NONFINANCIAL INSTITUTIONS.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

''(8) DE MINIMIS EXCEPTION FOR NONFINANCIAL INSTITUTIONS.—In the case of a corporation, paragraph (1) shall not apply for any taxable year if the amount described in paragraph (2)(A) with respect to such corporation does not exceed the lesser of—

''(A) 2 percent of the amount described in paragraph (2)(B), or

''(B) $1,000,000.

The preceding sentence shall not apply to a financial institution or to a dealer in tax-exempt obligations.''

(7) CLERICAL AMENDMENT.—The subsection heading for section 265(b) is amended by striking ''FINANCIAL INSTITUTIONS'' and inserting ''CORPORATIONS''.

(b) APPLICATION OF SECTION 265(a)(2) WITH RESPECT TO CONTROLLED GROUPS.—Paragraph (2) of section 265(a) is amended after ''obligations'' by inserting ''held by the taxpayer (or any corporation which is a member of a controlled group (as defined in section 267(f)(1)) which includes the taxpayer)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

Mr. NICKLES. Mr. President, for the information of all my colleagues, I think under the unanimous-consent request, already agreed to by the leader, it has been agreed upon that we will vote on this amendment, I believe it will be the first amendment we will vote on at 9 o'clock tomorrow morning.

Mr. MOYNIHAN. Mr. President, might the Senator from Illinois have 1 minute to comment at this point?

Mr. NICKLES. Certainly.

Mr. DURBIN. Mr. President, I thank the Senator from New York.

I will be supporting the Senator from Oklahoma. He is improving the process. I will continue to fight for 100 percent. Maybe the day will come when he and I can both agree on a way to do it.

Mr. NICKLES. I hope so.

Mr. HARKIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are not in morning business yet. We have some time remaining yet on the actual debate of the bill.

Mr. HARKIN. Further parliamentary inquiry.

Under the rules of the Senate, under the rules of which we are debating this bill, if someone is recognized, since there is no time limit, can that Senator yield time to other Senators for purposes other than asking a question?

The PRESIDING OFFICER. It is my understanding that when there is no time limit, that each Senator would have to get his own time on the bill.

Mr. HARKIN. Therefore, a Senator may only yield for a question; is that correct?

The PRESIDING OFFICER. He could yield for a question provided it were a question and not another speech.

Mr. GRAMM. Regular order, Mr. President.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. I have completed my statement.

I ask unanimous consent that Senator THURMOND be added as a cosponsor.

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

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

AMENDMENT NO. 552

(Purpose: To let families decide for themselves how best to use their child tax credit)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Texas [Mr. GRAMM], for himself, Mr. COATS, Mr. NICKLES, Mr. HUTCHINSON, Mr. GRAMS, Mr. SMITH of New Hampshire, Mr. SESSIONS, and Mr. ABRAHAM, proposes an amendment numbered 552.

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

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

The amendment is as follows:

**SECTION 1. CHILD TAX CREDIT FLEXIBILITY.**

On page 12, line 13, strike all through page 13, line 8, and on page 16, line 3, strike all through page 17, line 6.

Mr. GRAMM. Mr. President, I have sent this amendment to the desk on behalf of myself, Senator COATS, Senator NICKLES, Senator HUTCHINSON of Arkansas, Senator GRAMS, Senator SMITH of New Hampshire, Senator SESSIONS of Alabama, and Senator ABRAHAM of Michigan. I am going to try to be very brief. I have a couple of my cosponsors here who have waited to speak on this amendment, and I hope we can accommodate them. We will all try to be brief.

This is a very simple amendment. For the last 4 years we have been talking about a $500-per-child tax credit. Our argument has always been the same: We want to let families decide how to invest their own money in their own children and for their own futures.

The whole purpose of a $500 tax credit was to allow families to invest their own money—which after all they earned—in the education, housing, nutrition, nurturing, and health care of their children.

This is what the whole tax debate is about: It was in the Contract With America and even President Clinton has endorsed it. Nobody ever disputed the fact that the purpose here was a clear-cut tax cut to let families decide how to spend their own money on their own children. Remember, this is not all of their money; only $500 per child.

Out of the Finance Committee has come a provision that says for children 13 to 16, in order to get the tax credit, you have to put it into an education account. And remarkably, it saves money for one, and only one, reason: because some people will not take the tax credit.

Mr. President, if there has ever been an effort to go back on a deal, this is it. I think families ought to be able to invest in an individual retirement account. I think they ought to be able to set aside the money for that purpose. But the idea of making them do it is Government paternalism in its worst form.

So what I am asking that we do is live up to what we said. I am asking that we give the $500 tax credit and that we give it for every age of a child covered, and that we let that child's father and that child's mother decide what is in their best interest.

I think what we are trying to do here is dissuade people from taking their $500 tax credit by playing God with what they are supposed to use that money for. I know the intentions are good. I know they were aimed at trying to bring people together. But a deal is a deal. I have heard everybody here talk about a budget deal and what the President got and what we got and what we agreed to; but we had a deal with the American family. The deal with the American family was a $500 tax credit that the family got to spend.

If we were reneging on a deal with the President, oh, people would be jumping up and down screaming, hollering, ''But we promised the President,'' or if the Democrats were trying to do something that was not in the budget deal, some would say, ''Well, the President promised us.'' This does not have to do with the President. This does not have to do with us—it has to do with the families of America.

We are not living up to the deal. This is a lousy provision, and it should be removed. I am not saying there are not good intentions and I am not saying this is not part of some political deal. I am saying it is an unacceptable provision. It should not be in here. It fails to live up to the deal we made with the American people, and it needs to come out.

Mr. President, I ask unanimous consent to have two letters printed in the RECORD.

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

CONCERNED WOMEN FOR AMERICA,
*June 25, 1997.*

DEAR SENATOR: The over 500,000 members of Concerned Women for America (CWA), many of whom reside in your state, urge you to pass an unencumbered $500-per-child tax credit for children.

We strongly oppose the current Senate Finance Committee version of the $500-per-child tax credit because it requires parents of teens 13–17 to put their tax refund into an Individual Retirement Account (IRA). This credit was created to give needed tax relief to American families; it was never intended to become a new way for the government to tell families how they should and should not spend their own money.

Therefore, CWA urges you to support the Gramm Amendment. This amendment will remove the IRA restrictions and allow parents of teens to use the child credit for immediate needs, such as food and healthcare. Only families are capable of deciding the best use of family funds.

Thank you for your attention to this important matter. The over half million members of CWA appreciate your support for the Gramm Amendment.

Sincerely,

BEVERLY LAHAYE,
*Chairman and Founder.*

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CHRISTIAN COALITION,
*Washington, DC, June 25, 1997.*

TAX BILL KEY VOTES

VOTE FOR THE GRAMM MOTION TO STRIKE WHICH WILL QUALIFY TEENAGERS FOR THE $500 PER CHILD TAX CREDIT

VOTE AGAINST THE DASCHLE AMENDMENT

VOTE FOR FINAL PASSAGE IF THE GRAMM AMENDMENT PASSES

DEAR SENATOR: Sen. Phil Gramm and many others intend to offer a motion to strike that will restore teenagers to the $500 per child tax credit. We strongly urge you to vote for the Gramm motion.

Family tax relief in the form of a $500 per child tax credit has been our highest legislative priority since 1993. We are pleased that the Finance Committee has included the credit in the tax bill. However, we cannot support the bill in its current form. The single biggest disagreement we have with the Finance Committee version of the $550 per child tax credit is the exclusion of teenagers. Under the bill, only children up to age 12 qualify for the credit. The Gramm motion will restore teenagers to coverage of the $500 per child tax credit.

Excluding teenagers would be a deep disappointment for the families of teenagers that struggle to meet the financial pressures they must endure during the costly teenage years. Indeed, caring for children reaches its most expensive point during these years. The high cost of teenagers has been well documented by the Clinton Administration's recent 1996 report, titled ''Expenditures on Children by Families'' published by the Department of Agriculture. This report compares the cost of food, clothing, health care, housing, child care, education, and transportation by age group.

This report documents that teenagers are by far the most expensive age group. It concludes that it costs between $710 and $1,140 more to raise a child age 15–17, than it does to raise a child age 9–11.

Cutting off teenagers from the child tax credit would be a double blow to the families of eleven million teenagers. These families will already spend dramatically more than previously to raise their children. Under the bill, they would also begin paying an extra $500 in taxes once the child credit is taken away from them. Added together, families with teenagers would face a whopping $1,210 to $1,640 in extra out of pocket costs.

Here is how the Gramm motion would operate vis-a-vis the Finance Committee provision. Instead of a $500 per child tax credit for teenagers, the Finance bill creates a second education IRA for teenagers. It mandates that a tax credit worth $500 be placed into an education IRA. If the money is not put into the IRA, the $500 is forfeited. The Gramm motion strikes the mandatory language, making the IRA optional. In other words, parents who don't choose the IRA would then have an unrestricted $500 per child tax credit. This makes much more sense. Parents are the only ones who should make these decisions. The federal government should not mandate the choice of saving for education over other more pressing needs. There are many financial needs families must meet apart from the worthy goal of saving for education.

We strongly urge you to vote against the Daschle amendment. The amendment diminishes the value of the $500 per child tax credit in several ways. It cuts the amount of $350, phases it in unnecessarily, exempts teenagers for five years, and eliminates the tax credit all together for some middle class families by drastically lowering the income caps.

If the Gramm motion prevails (and no amendments are passed which would weaken the $500 per child tax credit), we certainly urge you to vote for the tax bill on final passage. If the Gramm motion fails, we regrettably will not be able to support the tax bill at this time. We would actively work to add coverage of teenagers in conference, and reserve judgment on the conference report until it is finalized. We certainly hope that in the end, we will be able to support the report. That certainly is our goal.

We will select a vote to be included in our Congressional Scorecard relating to the $500 per child tax credit. At this time, we can not predict which vote will be selected. Thank you for your consideration of our views.

Sincerely,

BRIAN LOPINA,
*Director,*
*Governmental Affairs Office.*

Mr. GRAMM. Mr. President, I ask unanimous consent to add Senator THURMOND as a cosponsor to the amendment.

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

Mr. MOYNIHAN. I wonder if my friend from Texas would wish to modify the term ''rotten.''

Mr. GRAMM. This abrogates the deal with the working men and women of America. Some may see it as rotten and some may not. Some may see it—

Mr. MOYNIHAN. Surely the Senator does not mean it as rotten.

Mr. GRAMM. Some may see it as an acceptable deal and some may see it as a rotten deal. But the point is—I am happy to strike the word if it offends our dear colleague. But I feel strongly about it because the tax cut, after all, is about families. That is what it has been about to begin with.

I have several of my colleagues here. If I could just let them all speak for 2 or 3 minutes, we would all be happy.

I ask unanimous consent that each of them may have 2 minutes each.

Mr. KERREY. Reserving the right to object.

Mr. MOYNIHAN. I know they will be kind and thoughtful and even benevolent remarks.

Mr. KERREY. No. Mr. President, reserving the right to object, I would like the Senator to be a little more specific. He said, ''I have a number of colleagues.''

Mr. GRAMM. We have one, two, three, four; and they will speak 2 minutes each.

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

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I commend Chairman ROTH for the great leadership he has demonstrated in bringing this legislation before us. And I commend Senator GRAMM for this amendment tonight.

My good friend and colleague from Arkansas, Senator TIM HUTCHINSON, and I were freshman Members of the House in 1993 when we came together with Senator COATS of Indiana to develop a budget proposal called Family First that could serve as the taxpayer's alternative to the higher taxes and bigger Government plan offered by President Clinton.

The key component of our legislation was family tax relief through a $500 per child tax credit.

We convinced the House and Senate leadership to make our Families First bill—with the $500 per child tax credit as its centerpiece—the Republican budget alternative in 1994.

For overtaxed American families, 1997 looks to be the year this long-promised, long-overdue middle-class tax relief is finally delivered.

As you know, working families today need tax relief more than ever.

Factor in State and local taxes and the hidden taxes that result from the high cost of Government regulations, and a family today gives up more than 50 percent of its annual income to the Government. So all we are saying is let us let the working people of this Nation keep a little bit more of their own money.

The $500 per child tax credit proposal in the bill before us goes a long way toward delivering tax relief to working families raising children. However, it imposes restrictions that will significantly dilute the purpose of the child tax credit.

The legislation before us tells families that, yes, we will give you a tax credit, but if your children are between the ages of 13 and 16, you are going to have to spend it the way Washington thinks it should be spent. In this case, it would have to be spent on education. By mandating how the tax credit must be spent, we are in effect denying it to teenagers, leaving 11 million children out in the cold.

And if your child is 17 or 18, you do not get it at all.

Mr. President, I applaud the parents that take the $500 per child tax credit and dedicate it to an IRA or their child's college education.

But that is a decision that belongs with parents, not with Washington. It is not our place to tell families how they can spend their money.

The family tax relief provisions in the bill before us can be greatly improved by striking the mandate that the tax credit be dedicated to education. I am pleased to be joining my colleagues in offering this amendment to give that choice back to families. And I urge all my colleagues to support this amendment.

Thank you, Mr. President.

Mr. HUTCHINSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. HUTCHINSON. Mr. President, I also want to commend Senator ROTH. The $500 per child tax credit is truly the heart of this tax relief bill. I especially want to thank Senator GRAMM for taking the lead in solving this problem, which is a very serious problem.

There are 382,000 families in Arkansas who benefit from the $500 per child tax credit, but there are many teenaged children who are excluded because of the provision that is in the Finance Committee's bill. I believe parents should have the right to decide. They are better arbiters, they are better decisionmakers on the use of that money than bureaucrats and even lawmakers in Washington, DC. And no matter how good educational savings for teenagers may be, it is better to let the parents make that decision.

I think I will have a hard time explaining to those parents of that 13-year-old why, when their child was 12 he was eligible or she was eligible for the $500 per child tax credit, but at the age of 13 they are not. Perhaps that 13-year-old will have an emergency. Perhaps that 13-year-old needs braces. Perhaps that 13-year-old needs a math tutor to enable that child to ensure that he or she is ready to go to college when they graduate from high school. The parents will not have the option, will not have the opportunity, will not have the eligibility under the current bill. That is why this amendment is so important that we ensure that the parents have the ultimate decisionmaking authority.

Forty percent of young people who graduate from high school do not go straight on to college. They should not be excluded from the benefits of this tax bill. Parents should decide, not Washington, DC.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I compliment my colleague, Senator GRAMM. We tried to do this in the Finance Committee. Unfortunately, we fell a couple votes short. But the basic principle is we want to tell everybody their kids are going to get the $500 tax credit, not to say, well, it only applies to people 13 or younger, that if you are older you have to put it into an educational IRA.

I think educational IRA's are a good idea. I compliment Senator ROTH because he has been the champion of IRA's, but it should be an option. It should not be mandatory. We should allow them to have this choice. I hope a lot of them choose it before age 13. I think it would be a great idea for a parent, if they can do it, if they can afford it, to put the $500 into an IRA for their child and let that accumulate and do that every year so they have a nest egg for their college expenses. It would be a positive thing for them and our country.

But we should not mandate it. Presently, under the bill we mandate it for kids that are 14, 15, 16, 17 years old. I compliment my colleague from Texas and the cosponsors.

I urge my colleagues to vote for this amendment to allow parents to choose whether they get the $500 tax credit to spend as they choose or whether or not to put it into an IRA. They should make that choice. We should not mandate it from Washington, DC.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I want to thank Senator ROTH for his outstanding leadership that he has given on this important issue. But I feel very, very strongly that we need to do more for working families. Working middle-class American families today are struggling to get by.

My youngest son will start college this fall. But I will tell you, I have children; three of them under age 13 and three of them over age 13. It costs more for a 14- or 15- or 16-year-old than it does for a 12- or 10-year-old. Anybody who has raised a family knows that.

The demands on those families are fierce today. They are struggling to get by. This is the heart and soul of a family middle-class tax cut. Many kids will not be going off to college. They will never be going to college. But even if they are, many of those families need the money now. They have a flat tire and they need to replace a tire. They need shoes or to go on a school trip. They need to make their own decision about how to spend their money.

This is important to me. It is important to American families. I salute Senator GRAMM for raising this issue, and I am in support of this amendment.

I yield the floor.

Mr. MOYNIHAN. Mr. President, I yield to the Senator from Louisiana such time as he may require.

The PRESIDING OFFICER. Under the previous order, the Senator from Massachusetts has the floor.

Mr. MOYNIHAN. Would the Senator from Massachusetts, who has been Joblike—he has been No. 2 since 9:30—would he allow 3 minutes to the Senator from Louisiana and 3 minutes to the Senator from Nebraska to respond, and the remainder of the time is his?

Mr. KERRY. Mr. President, could I inquire how much the remainder of the time is?

The PRESIDING OFFICER. There is approximately a half an hour in total time.

Mr. KERRY. I would be very content with that.

Mr. MOYNIHAN. You have been very patient. We thank you, sir.

The PRESIDING OFFICER. That would require unanimous consent.

Mr. MOYNIHAN. I ask unanimous consent that that may occur.

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

Mr. BREAUX addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. BREAUX. My friend from Texas would refer to this provision as the ''rotten'' provision. I am sure what he meant to say was the ''forgotten'' provision, because he obviously forgot what we did to this in the Finance Committee when we greatly improved it. If anyone wants to have a $500-per-child tax cut, we presume that it is for the children.

Under the suggestion of the Senator from Texas, we would give the family a $500 tax rate to use for whatever they want. If they want to use it to go to the casino, fine. If they want to use it to buy a six-pack of booze every week, fine. It is about $9.66 a week, so under the provision of the Senator from Texas they could take it, put it in their pocket, and don't use it for children at all—just do whatever you want with it.

Interestingly, the Citizen Council, a respected voice of both parties, says, ''In our view, a no-strings child credit is a cruel hoax on the very children who are supposed to benefit from it. We expect that most of the credits would disappear into the family's general budgets, or be used to pay bills''—and I add, not for the children, that the tax credit is supposed to be for.

What we have done is to craft a compromise from zero to 13, the family can use it for anything they would like, no strings attached, but from 13 to 17, when children need to be educated, there is an obligation that the tax credit be used to educate the children. For all of us who want to help children and our families and help parents raise those children, what is better than to give that family help and assistance in educating that child?

Some say the Tax Code should not tell people what to do. The Tax Code is full of examples—a mortgage deduction is only available if you buy a house; a charitable contribution is only available if, in fact, you give to charity. So what I think the Finance Committee was able to do was to erect a compromise, a blending of what that suggestion was coming from this side, blending it with what many of our people said, use it for educating children. If we are going to have a tax credit for children, let's at least ensure that part of the time it is used for one of the basic functions that a family has as an

obligation to those children, and that is to educate those children.

So I think that what we have come forward with makes a great deal of sense. It is a legitimate compromise. It adds to the education package which I think everyone is for, and it helps families with small children.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. This proposal began in 1995. I heard the Senator from Texas describe it as a sacred part of the Contract With America.

In 1995, Senator LIEBERMAN and I introduced KIDSAVE as a modification to this $500 per child tax credit, and it set up a savings account for children. It was mandatory. The idea was that Americans are not saving enough money, they are struggling to put aside savings, and that is especially revealed when you look at one of the most important parts of this tax proposal, which is the reduction of tax on estates.

Mr. President, about 1 percent or 2 percent of Americans have estates over $600,000. It is a provision that affects a relatively small number of Americans. I appreciate my colleagues on the other side of the aisle saying that is one of their top concerns, that 1 percent or 2 percent of Americans who have estates over $600,000. KIDSAVE is put together as a consequence of our concern for the 98 percent of Americans that do not. The only way that you will be able, particularly for middle-income people, to acquire that wealth is to save a little bit of money over a long period of time.

So I say we are not breaking any deal. We introduced this bill in 1995. It was endorsed at the time by the Heritage Foundation. The only thing that is going on here, in my judgment, is the Christian Coalition is arguing that this is a violation of something they want. So they are rallying the troops and trying to get it changed. I appreciate the Senator from Texas does not like the proposal, but it was introduced in 1995, and its purpose is to help Americans generate wealth. We know we cannot redistribute wealth. We are trying to enable Americans to create wealth by saving their money.

The $500 child tax credit goes from 0 to 17. That is the law. It ends at age 17. I would have preferred 0 to 4, frankly, for this thing to go into effect. It was a compromise. We agreed to do this as a consequence of the desire to increase the amount of money that Americans have, not only for education but this money, particularly for those that are not going to school, would be better off staying in a savings account until retirement so those individuals can look to their retirement and say in addition to having Social Security there for them they will have a source of wealth.

So in my view, this is an amendment that would deny Americans the opportunity to acquire wealth. I think it is a very important provision in this Tax Code.

I hope my colleagues will vote against the Gramm motion to strike.

Mr. MOYNIHAN. I endorse wholeheartedly the position that the Senators from Louisiana and Nebraska have stated on behalf of the committee bill. I thank them.

I yield the balance of our time to the distinguished Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I thank the distinguished party manager. I will probably not use all the time but I ask unanimous consent that the balance of the time I have be divided between Senator DODD and Senator KENNEDY.

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

Mr. KERRY. Mr. President, we just heard a debate about the $500 tax credit. We heard a number of Senators state what a critical component of the effort to restore families this is and how important it was to the early efforts of the contract. The fact is that the committee bill will deny 38 percent of the children in the United States with the lowest incomes access to a tax credit. In Massachusetts, as a matter of fact, 46 percent of all children would be excluded from receiving this important tax credit. That means about 850,000 children, plus, in my State, will not receive a tax credit.

Now, I ask my colleagues what kind of profamily policy takes $81 billion over the next 5 years but completely denies this help to the 9.5 percent of all children in families with the lowest 20 percent of incomes, and denies the tax credit to 86.6 percent of all the families in the second 20 percent of income.

I direct my colleagues' attention to this chart. These are the percentage of children ineligible for the child tax credit, the way it has been structured by the Finance Committee. Fully 99.5 percent of the lowest 20 percent, and 86.6 percent of the children in the second fifth will not get the benefit of this credit.

I propose, therefore, a very simple amendment so that working families could have access to this credit. My amendment that I will send to the desk momentarily lets those families whose net Federal taxes are greater than zero get a full or partial children's tax credit, and the amount accomplishes this in a very simple way. It makes the credit refundable to the full extent of the family's Federal payroll taxes once it has offset all of the family's income tax liability.

This refundability, I want to emphasize, is not my idea. The refundability was a provision of the Republican's Contract With America. It was in the child tax credit bill which was sponsored by the Senator from Texas, who a few moments ago was talking about the virtues of providing a $500 tax credit to children. In fact, Senator COATS, Senator LOTT, Senator GRAMM and others on the Republican side supported the very proposal that I am now offering which would, indeed, allow those children to be able to get that credit.

My colleagues on the other side of the aisle were right when they proposed a refundable credit. And Speaker GINGRICH was right when he called the refundable credit in the Contract With America the ''crown jewel'' of the contract.

As Marshall Wittman, the Legislative Affairs Director for the Christian Coalition, said, ''Allowing families with children to retain a larger share of their hard earned income will be a first step toward freeing America's parents from the national treadmill of working long hours at the expense of time with their children.'' The Heritage Foundation endorsed the children's tax credit in the contract, which was a refundable tax credit.

Mr. President, I am proposing that we adopt the Contract With America's refundable tax credit which would provide 7 million more children with access to the credit, to the tax credit. The simple question is, why would you want to deny those people who work—we are not talking about people who are solely relying on welfare, or people who get the earned-income tax credit; we are talking about two-parent families with two children who are working and paying taxes, who still will not get credit the way it has been structured under the Republican proposal. These children live in families that pay income or payroll taxes, and payroll taxes are a reflection of work. Work, after all, is what we are trying to put a premium on—both in the welfare reform bill, as well as, I think, in a $500 credit.

My amendment would take the refundability against payroll taxes from the Contract With America and it lowers the income phaseout more slowly and phases in the credit by the age of the child. The reason we phase in the credit and the reason we do the income difference is to keep this revenue neutral. It is revenue neutral. I want to emphasize, this amendment takes the Contract With America payroll provisions but it remains revenue neutral.

It would seem to me, Mr. President, that all of us would want to try to find a way to guarantee that families earning $110,000 are not going to get a $500 tax credit, while a family working and earning $20,000 gets nothing—nothing. That is exactly what happens under this proposal the way it is done.

My credit would begin to phase out at $60,000 and it would finish at $75,000. By doing that, we manage to spread it to those people at the lower end of the income scale, most of whose income goes into the payroll tax but who nevertheless are working and deserve as much of a break as anybody else. My amendment would allow the bottom 80 percent of American families to get a full or partial credit, and the richest 20 percent would not. A very simple tradeoff.

Mr. President, I think it is critical to understand that the tax bill, as it

comes out of the Finance Committee, which we are voting on, that the tax bill credit for children as currently written, most of the children who would be denied the credit or have the credit reduced live in families who are working and paying Federal taxes. It is just that their tax burden often amounts to several thousand dollars, even after the effects of the earned-income tax credit are accounted for. The claims that these peoples pay no taxes is simply incorrect.

The Joint Tax Committee data issued this week shows that taxpayers with incomes between $10,000 and $20,000 will owe an estimated $191 billion in Federal taxes. Taxpayers with incomes between $20,000 and $30,000 will owe $442 billion in Federal taxes between 1997 and the year 2002. These figures from the Joint Tax Committee reflect the fact that these taxes are owed after the EITC benefits are subtracted.

Mr. President, the vast majority of the taxes that these families pay—we have to acknowledge, if they are working and they are playing by the rules and they are trying to climb up the economic ladder, why should they be denied access to the $500 credit—the taxes that they pay consist mostly of payroll taxes because that is the way life is for people at that end of the income scale.

I hope my colleagues who say that this is a fair way to adjust more appropriately what has happened in the committee mark —I want to emphasize that a two-parent family, the kind of family that most people in the Christian Coalition or in the Heritage Foundation or others feel have been the most hard hit in America in the recent years, a two-parent family with two children with an income of $20,000, under my proposal, would get the full $1,000 credit, $500 for each child under this proposal, which is the contract proposal. They would not get that under the proposal of the Finance Committee.

Mr. President, I think if we are going to accept the notion that we will provide the children's credit for as many working taxpaying families as possible, it is important to change the base and to guarantee we are reaching those kids.

Everybody knows what has happened to income distribution in America in the last 15 years, how the bottom has not been the part of America that has grown. I might add, here is a chart that shows the percentage of working families whose payroll taxes exceed their income taxes. They are all in the bottom three-fifths of America. You have 99 percent in the bottom fifth, 97 percent in the second fifth, and 90 percent in the next fifth—all work, all have payroll taxes that exceed their income tax, and, therefore, do not get the full benefit of the credit.

Finally, I simply point out to my colleagues that income for young working families has not increased in over 20 years. These are the young families of America earning $18,000 in the lowest quintile on average, and $30,000 in the second quintile on average. Look at what happened to payroll taxes during that period of time. Payroll taxes in 1975 were $374 for that family. But, in 1985, they were $2,171. In 1995, they were $2,523. So the payroll taxes went up, but at the same time in both quintiles and, yet, their income went down and they are not going to get the credit.

So I respectfully hope that my colleagues will join in an effort to rectify what I hope is simply an oversight in distribution and help to guarantee that every family in America that works, that is struggling to raise their children, can actually have the benefit of this $500 credit, and that would, I think, be deemed a benefit to the Senate and to the country if we were to make that happen.

Mr. President, under the previous agreement, I yield the balance of time divided equally to Senator DODD and Senator KENNEDY.

The PRESIDING OFFICER. There are 10 minutes left on the Democratic side.

Mr. DODD. On the bill?

The PRESIDING OFFICER. There are 10 minutes on the proponents' side.

Mr. COATS. Parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. COATS. Mr. President, I don't understand why we are allocating time here because in the unanimous-consent request—I specifically asked the Chair and asked in the request if the three amendments agreed to under the unanimous-consent request were on any kind of a time limit. The answer was, no, they are not on any kind of a time limit.

I further raised the statement saying that there are a number of Senators under the agreement that would stay beyond the three to offer and discuss their amendments this evening. They would be allowed to speak for up to 10 minutes in support of their amendments. I don't believe we are under a time agreement and that there needs to be allocation of a time agreement. This Senator has not yet spoken on the Gramm amendment, which I would like to do. I don't feel there is any constraint on the amount of time I have to speak.

The PRESIDING OFFICER. Under the consent agreement, there was still time remaining on the bill. The time remaining on the bill could be used by each side presenting their amendments. There was an order to the amendments. We are on the third one, which was the Kerry amendment. Senator KERRY was allotted the time on the proponents' side, which was 20 minutes. There is an opponent side of 20 minutes that would be allocated, which would be the majority party side.

Following the expiration of all time, which would be the remaining 38 minutes, then there will be a period for morning business where any Senator can be recognized for up to 10 minutes to introduce his motion, which would put it in order for tomorrow, but in no particular order for tomorrow.

The Senator from Massachusetts is recognized.

Mr. KERRY. If I could say to my colleague, I had the full amount of time under the unanimous-consent agreement. I chose to truncate my remarks in order to accommodate my colleague within that. I don't mean to upset the order.

Mr. COATS. No. Mr. President, I am perfectly content to let the Senator take whatever time he wants. It is this Senator's understanding that the unanimous-consent agreement supersedes the reconciliation instructions regarding time under the agreement. The Senator from Massachusetts can offer any amount of time he wants to his colleagues. I am more than willing to wait for that.

The PRESIDING OFFICER. We have already ruled that, as far as allocating time to anybody else, there would have to be a unanimous consent agreement by that particular person who is speaking; otherwise, the time is up for grabs.

Mr. COATS. Further parliamentary inquiry. That is not my understanding of what the unanimous consent request was. The reason I am stating this is that I specifically asked the majority leader if my interpretation was correct, and he specifically said yes and included it in the unanimous-consent agreement. The Parliamentarian may not have heard that. I don't believe there is a ruling of that. In any event, I don't want to split hairs. I think everybody will have an opportunity to speak. He doesn't have to limit the Senator from Connecticut to 2 minutes. He can talk for 20, as I understand the unanimous-consent agreement.

Mr. KERRY. Mr. President, if I can simply clarify something. But before I do, I will send my amendment to the desk.

AMENDMENT NO. 554

(Purpose: To allow payroll taxes to be included in the calculation of tax liability for receiving the children's tax credit, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KERRY], for himself, Mr. CONRAD, and Mr. JOHNSON, proposes an amendment numbered 554.

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

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

The amendment is as follows:

On page 13, beginning with line 9, strike all through page 17, line 12, and insert the following:

''(2) LIMITATION BASED ON ADJUSTED GROSS INCOME.—The dollar amount in subsection (a)

shall be reduced (but not below zero) ratably for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds $60,000 but does not exceed $75,000. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate credit allowed by subsection (a) (determined after paragraph (2)) shall not exceed the sum of—

''(A) the excess (if any) of—

''(i) the taxpayer's regular tax liability for the taxable year reduced by the credits allowable against such tax under this subpart (other than this section), over

''(ii) the taxpayer's tentative minimum tax for such taxable year (determined without regard to the alternative minimum tax foreign tax credit), plus

''(B) the excess (if any) of—

''(i) the sum of—

''(I) the taxpayer's liability for the taxable year under sections 3101 and 3201,

''(II) the amount of tax paid on behalf of such taxpayer for the taxable year under sections 3111 and 3221, plus

''(III) the taxpayer's liability for such year under sections 1401 and 3211, over

''(ii) the credit allowed for the taxable year under section 32.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means any individual if—

''(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

''(B) such individual has not attained the applicable age as of the close of the calendar year in which the taxable year of the taxpayer begins, and

''(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).

''(2) APPLICABLE AGE.—For purposes of paragraph (1), the applicable age is 13 in calendar year 1997, and increased by 1 year for each of the next 4 succeeding calender years.

''(3) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

''(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

''(e) RECAPTURE OF CREDIT.—

''(1) IN GENERAL.—If—

''(A) during any taxable year any amount is withdrawn from a qualified tuition program or an education individual retirement account maintained for the benefit of a beneficiary and such amount is subject to tax under section 529(f) or 530(c)(3), and

''(B) the amount of the credit allowed under this section for the prior taxable year was contingent on a contribution being made to such a program or account for the benefit of such beneficiary,

the taxpayer's tax imposed by this chapter for the taxable year shall be increased by the lesser of the amount described in subparagraph (A) or the credit described in subparagraph (B).

''(2) NO CREDITS AGAINST TAX, ETC.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit under this subpart or subpart B or D of this part, and

''(B) the amount of the minimum tax imposed by section 55.

''(f) OTHER DEFINITIONS.—For purposes of this section, the terms 'qualified tuition program' and 'education individual retirement account' have the meanings given such terms by section 529 and 530, respectively.

''(g) PHASEIN OF CREDIT.—In the case of taxable years beginning in 1997, subsection (a)(1) shall be applied by substituting '$250' for '$500'.''

Mr. ROTH. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. ROTH. Is it proper to offer an amendment under the unanimous-consent agreement?

The PRESIDING OFFICER. The Senator from Massachusetts, under the unanimous consent agreement that we had earlier, is allowed to offer one tonight.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KERRY. Mr. President, it may be that the Senator from Indiana missed it, but I asked unanimous consent at the opening of my comments, when I was yielded the full amount of time, that the balance of time that I didn't use be divided equally, and that consent order was entered into. I might add, if the Senator was correct, it was all of our understanding that after the expiration of all the time on the bill, the Senate would go into morning business, during which time Senators would have the opportunity to speak for as long as they wanted. So there is not in effect a time limitation with respect to the after period of the bill.

The PRESIDING OFFICER. A clarification on that. The consent order did call for 10 minutes per person in morning business.

Mr. KERRY. Well, Mr. President, I have been informed that Senator KENNEDY now does not wish to use his time. I ask unanimous consent that the balance now go to Senator DODD, at which point it would revert to the other side.

The PRESIDING OFFICER. The Senator from Indiana and those on this side have up to 20 minutes following the 8½ minutes of the Senator from Connecticut that will be allocated under the unanimous-consent agreement. The Senator from Connecticut is recognized for up to 8½ minutes.

Mr. DODD. Mr. President, rather than confuse this situation even further, I am going to yield for the purposes of offering an amendment to the distinguished Senator from Vermont. It is his amendment, and I am a cosponsor with him. I yield for that purpose. I ask unanimous consent that I may yield for that purpose.

The PRESIDING OFFICER. The Senator doesn't have the right to offer an amendment under this agreement. Only the managers can offer amendments under the agreement, until we get into the period for morning business, at which time—

Mr. DODD. I ask unanimous consent that I be allowed to offer an amendment.

Mr. JEFFORDS. I ask unanimous consent—

Mr. COATS. Mr. President, I hate to be a fly in the ointment here. I have been waiting to speak on one of the three designated amendments in the unanimous consent agreement, the GRAMM amendment. I have not yet had that opportunity. My understanding is that further amendments come after these three. I think if we just get going, we can get this done and get to the other amendments.

The PRESIDING OFFICER. The right to offer amendments is limited to the managers. The right to speak is not.

Who wishes recognition?

Mr. COATS. Mr. President, I would like to take just a few moments and I will be brief.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

AMENDMENT NO. 552

Mr. COATS. Mr. President, the hour is late and the week has been long. We all need our rest. I want to take a few moments to speak in support of the GRAMM amendment, the amendment we discussed just before the discussion of the KERRY amendment.

The reason I want to speak in favor of the GRAMM amendment is that, as someone who has been an original sponsor and long-time proponent of the child tax credit, we were surprised—first of all, we were delighted when, first, the President, and then the Budget Committee endorsed the concept of the $500-per-child tax credit. It is long overdue. It is only a partial step in remedying an inequity that has existed for a long, long time, in terms of giving families the ability to provide for their children.

Way back in the 1940s, Congress decided that raising families and raising children was a good thing. They provided a dependents exemption for that purpose. They did not index it for inflation. And over the years, because it was not indexed for inflation and because it was not raised by an act of Congress, the value of that particular exemption decreased—that is, the dependents exemption. Now, we finally doubled that exemption, and now index it, after the 1986 tax law. But it was still a third to a fourth of what it should have been if it had maintained pace with the cost of raising children. So families were squeezed and fell further and further behind other special interests that were granted benefits in the Tax Code.

We finally focused on the importance of raising children and the importance of families and the importance of providing support for the family. I am pleased that we are here discussing the $500 tax credit. I am pleased that the chairman of the Finance Committee incorporated the $500 tax credit in their mark. But I rise in support of the Gramm amendment because, in doing so, a provision was made whereby the credit would only be available up through the age of 12. At that point, the credit was available, but it was

conditioned on the fact that the money be put into an education savings account.

Now, it is ironic that, at the very time when the cost of raising children takes a dramatic jump, we take away the ability of parents to use that credit to pay for expenses related to those children.

As this chart shows, entitled ''Annual Child Rearing Costs; Children Ages 0 to 17,'' there is roughly a $7,850 cost per child for children, ages 0 to 2. It jumps to over $8,000 for children, ages 3 to 5. It goes to nearly $8,200 for children, ages 6 to 8. And it stays about that level through the age of 11. But at the age of 12—at no surprise to any parent in this room, or any parent trying to raise young children—there is a dramatic increase in the cost per child when you hit the ages of 12 to 14, and it continues to 15 to 17. Why is that? It is because no longer are you able to tell your children that the $5 Kmart tennis shoes are good enough to wear to school. All of a sudden, they discover the Michael Jordan tennis shoes, and it is now $140 a pair. All of a sudden, the dentist says it is time that you saw an orthodontist, because if you want your child to have straight teeth, this is the time. The baby teeth are gone, the new teeth have come in, and we all want our kids to have perfect smiles. Some might be for cosmetic reasons, and many might be for a misaligned jaw or an overbite, and so forth. And clothes begin to cost more. Kids start thinking about the opposite sex. So that involves the thought of beginning to date and, suddenly, you are buying movie tickets and, suddenly, they are going out for burgers, et cetera. It is no surprise to any parent that that is the point in time which the cost really escalates, particularly when they get into the 15 to 17 age range. Then they are starting to work after school and they need transportation. Heavens, what an embarrassment it would be to have to ride the school bus. You need a car, et cetera, et cetera. There are a lot of necessary costs at this particular time, also.

At that very time when it costs more, the Finance Committee has said, ''We recognize that it costs more, but you can't use the money for anything except the purpose we deem is acceptable.''

Now, it is a worthy thing to begin to save money for college, for secondary education, but not all children go to college. In fact, apparently, a large percentage don't go to college. So the education savings account that is begun or is mandated at the age of 13—they must use the child credit for that. I think that serves a purpose that we should not support.

Now, some have suggested that the reason all this was done was to make the budget numbers balance, that it was to save money because those families that would not send their children to college, or didn't have plans to send their children to college, or didn't have the funds to accumulate for college, would not take the $500 tax credit and, therefore, are a savings. I hope that is not the motivation. I don't think it was the motivation, but that may be the unintended result. So we have a situation here where, ultimately, what we come down to is that either the parents are going to decide how to use the funds on the child tax credit in the best interest of their children, or the Senate Finance Committee will decide.

Once again we continue the practice of Government knows best—not father knows best, not mothers know best, not family knows best, but Government knows best. We will tell you how you should spend or save money for your child. We will determine that it can only be used for one purpose. You have to continue a secondary education—a noble goal, a worthy goal, and one that I think we want to hold out as an option. But it should not be a mandate. It should not be limited to that particular goal.

There are a lot of families in this category that have expenses for their children at the ages of 13, 14, 15, and 16 that are more critical than forcing them to put the money into a savings account. Hopefully, they will be in a financial position, if we think they can put the money into a savings account. Again, I say it is a worthy goal. But it ought to be an option to those parents. It shouldn't be a mandate. We should not have a Government entity—whether it is an elected Government entity or a nonelected Government entity—making a decision as to how that money should be used.

It is almost humorous to say we know better about how a mother and father ought to spend money for their child than they do, that we know their family situation better, we know their education situation of their children better, we know their future plans better than the family knows its own plans.

So, as well-intended as this mark in the Finance Committee package might be, I think that the amendment of the Senator from Texas makes perfect sense because it simply says if you want to do that with a $500 tax credit, fine, you can do that. We will allow you to set up an education savings account.

One of the first bills I introduced when I came to Congress a long time ago was an education savings account. I think it is a worthy goal, a worthy idea. But if you deem that there are other purposes more appropriate, then we will allow you to do that also.

To suggest that at the age of 13 suddenly the 13-year old is given the money and the parents are going to say, ''I am going to take the money and go down to the casino,'' like the Concord Coalition suggested—talk about arrogance. Talk about an arrogant conclusion; that is, that parents don't care about their kids, that they are either going to spend the money on beer or they are going to spend the money at the casino almost defies belief.

Who do we trust here? Do we trust the parents? Do we trust the family? I am sure there will be examples. You can pick up the paper and read about some wayward father who took the tax credit and went down to the casino. Sure, that will happen. But that doesn't begin to describe the average American family who cares about their children, who want the best for their children, and are in the best position to make the decision as to how that money ought to be spent.

So I am a strong supporter of the Gramm amendment. I think that we ought to modify this. Whether this is put together to create a deal—it is a lousy deal. I won't call it a rotten deal. It is a lousy deal, and the wrong way to allocate these resources. Let's leave that decision in the hands of the parents and not in the hands of the Government.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Let's imagine a single mother who is teaching school with three children ages 17, 15, and 12 hoping to save money for college and just getting by. The transmission breaks on the car, and there is a $400 bill. Who should decide who ought to spend that money? The Members of this body, or that mother?

Mr. COATS. Maybe that mother needs that car to get to work so she can continue to make money so she can send her children to school, but we will be effectively telling her, ''You can't fix that transmission.'' We will tell that mother, ''You can't use that money to buy a computer because maybe your child needs special tutoring.'' And, ''You can't buy a software program to give that child better math tutoring so they will be able to go to college. You can't use that money for that. You can't use that money to hire a learning center or some other organization to help your child prepare for the SAT's so that they can get into college. No. You have to do what the Finance Committee says. The Finance Committee says you have to put it in an education savings account.''

I just think it is wrong. As I said, it may be well intended and well motivated, but the consequences are such that I don't think we have thought these things through.

That is why the amendment of the Senator from Texas ought to be supported.

I thank my colleague from Alabama for his contributions.

Mr. President, I yield the floor.

The PRESIDING OFFICER. There are approximately 8 minutes left on the debate.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, may I make an inquiry? Is it in order for me to ask unanimous consent to offer my amendment at this time?

The PRESIDING OFFICER. The Senator may ask.

I have been authorized to object.

CHILD CARE

Mr. JEFFORDS. We will discuss the amendment which we will be offering on the floor at the appropriate time.

Mr. President, it is difficult to find high quality child care that is appropriate, affordable, and convenient for children today. How government can help parents achieve that goal is a very difficult and compelling question. I have, with my cosponsors Senators DODD, ROBERTS, KOHL, SNOWE, LANDRIEU, and JOHNSON put together an amendment which we will be offering. On the one hand the amendment will make it easier to find better child care that is more affordable. At the same time the amendment does some engineering by making it possible for more child care facilities and individual providers to improve their services and receive higher tax deductions for those efforts. My amendment also to shifts the amount of money that is available to parents in the child care tax credit and the dependent care assistance program to help them afford a better quality of care they may now be available to them. This combination of assistance for providers and parents will encourage that the child care facilities and individual providers will provide better care for the 12 million children who are in child care.

How we accomplish this is: First of all, to help middle- and low-income families, the amendment increases the level of income which qualifies for the maximum amount of the child care tax credit benefits $10,000 to $20,000. We make the child care tax credit refundable for low-income working families who qualify for the EITC. Then we go to the other end of the scale and phase the tax credit down, but not out, for wealthier people with incomes over $70,000, then we can pay for the increases at the lower end.

I also feel strongly that it is important to assist those businesses that are providing child care for their employees. The amendment creates an incentive which will allow businesses to receive a 50 percent tax credit for up to $150,000 in expenses to operate, improve, and develop appropriate child care for their employees.

As we all know from recent studies, the healthy development of children can very dramatically enhance, including their potential for future educational and social achievement, depending upon the kind of nurturing and affection they receive early in life, and the developmental and educational activities they are exposed to at birth. In order to make sure that kind of care is available for those children who need to be in child care while their parents work. This amendment provides the necessary incentives so they can find and afford to receive the care that will be safe and provide their children with a better chance for healthy development. That will be required if we expect to have a skilled workforce in the new world of the future.

What we are trying to do here is to balance the need to reduce the deficit and get the budget under control, with the need to improve the quality of child care for all children who must use it. Keeping in mind the funds that are available. We have offsets to pay for this child care amendment, which I think are very appropriate.

I yield to the Senator from Connecticut for a further explanation.

Mr. DODD. Mr. President, first of all, I want to commend my colleague from Vermont. This is an amendment which will be offered by the distinguished Senator from Vermont, along with myself, Senator ROBERTS of Kansas, Senator KOHL of Wisconsin, Senator LANDRIEU, Senator SNOWE, Senator JOHNSON, and others.

Mr. President, this is a modest proposal that is designed to do what all of us agree needs to be done.

We have provided over the last number of years some significant support for child care in this country. For example, there is the Child Care Development Block Grant program which Senator HATCH and I authored back in the mid-1980's. There is also the Head Start program, which has been very, very helpful to so many families in this country in providing a positive learning environment for children. There is also the current child care tax credit. All of these are designed to provide assistance to those families today who are trying to juggle the very difficult task of providing an income for their families and also a safer environment for their children.

Good quality child care can no longer be considered a luxury. There are 13 million children every day in this country who are placed in child care settings. There are an awful lot of single parents out there raising families. There are two-income families that are providing for their children. These families want to be sure that their children are in a safe place.

We have done a great deal to help families with the affordability of child care. We have done a lot to increase the availability of child care.

What Senator JEFFORDS, Senator ROBERTS, Senator KOHL, myself, Senator SNOWE, Senator LANDRIEU, Senator JOHNSON, and others are trying to do is to use the Tax Code to try to do a better job of dealing with quality.

I want to be very clear that there is nothing in this amendment which sets national standards for quality—as our colleagues over the years have had some serious reservations about setting national child care quality standards. This amendment simply defines a quality setting as one that meets standards or certification set by States, local governments or private, non-profit entities—we don't specify any standards—what those standards must be. With this amendment we just try to create incentives so that child care settings will get some encouragement to improve quality.

Let me just enumerate what some of those incentives are.

We expand the tax deductions for businesses who contribute educational equipment and supplies to public child care providers.

We provide tax incentives to families who seek out higher quality care, realizing that such care is more expensive.

Let me step back, if I can, for a minute.

Mr. President, earlier this year, national magazines had cover stories on early childhood development. We now know that in the earliest stages of a child's life—zero to 36 months—it is absolutely critical that they be nurtured and cared for so that they can develop to their fullest potential. We've all heard by now about how the synapses in the brain of a child are formed —1,000 trillion of them just in those earliest years. Now we have scientific evidence of how important it is to read to children, to hold children, and to play with children in order to wire their brains for the skills they'll need later.

Obviously, the best caretakers of children are loving parents. That is the best child care—be cared for by prepared parents. No one can argue against that. But we also know that there are a lot of these parents who can't be there all day with their children.

So what do we do to proximate that caring, prepared parent situation when the parent is unable to be there? What are we trying to do? Do we leave the situation to chance and say to parents, ''Good luck. Do what you can. Hopefully you can find the kind of care you would provide if you were there.'' That is a difficult statement to make to parents since we all understand that not every setting is a safe one or a healthy one, that in fact there are vast differences in the quality of child care.

Rather than applying any rigid standards here, however, we will leave to the States and to communities to decide what works best. And then we provide the tax incentives to businesses to contribute equipment and supplies to help to improve the quality child care. We provide the incentives to those parents who seek out quality child care because it can cost a bit more. In doing all this we will hopefully encourage other child care providers to improve their own quality and to ultimately raise the levels of quality around the country.

With this amendment we also make the child care tax credit refundable because we realize that as we go from welfare to work that we are going to have a lot of these poorer families out there who are going to have difficulty affording quality child care. Refundability is critical—if we only provide tax credits to those who pay

taxes, then we miss helping a lot of these poorer families who can truly use the assistance.

It is certainly a lot more expensive to provide child care than it is to provide welfare in most States. So as people move from welfare to work, do we want them leaving kids in the street, where hopefully a neighbor or someone else is around to keep an eye on them, or should they be in a quality environment? I think all of us agree they should be in a quality environment and one that their parents hopefully can afford.

Senator JEFFORDS has provided us with a way to reach this goal by using the Tax Code. It is not a direct appropriation. We realize how difficult it is to get funding for child care programs. Through the largess of our membership here over the last number of years, we have increased the child care block grant to $1 billion. That amount of money, but it does not even approximate the demand. And only 4 percent of that total amount is there for quality—hardly enough, really, when you think of the tremendous increase in demand for child care that is now going to occur across the country as a result of the enactment of welfare reform.

This proposal is designed to provide incentives to businesses to set up quality child care center and to families to seek quality care. We pay for this by making minor adjustments for those receiving the tax credit at the highest income levels by reducing the credit progressively by 1 percent, but never going below a credit of 10 percent of allowable expenses. So by just adjusting the benefit a bit we can provide the resources here to promote quality.

I urge our colleagues' support. This is going to need 60 votes, and that is a hard number to reach, but we ought to be doing everything we can to improve the quality of child care. This ought not to be a partisan debate. We have come up with an offset. We pay for this with minor adjustments to the Tax Code. This is a bipartisan amendment. With my colleagues from Vermont, Kansas, from Maine, from Louisiana, from Wisconsin and South Dakota, we have come up with a good proposal that we think meets the concerns that some have raised and still provides a way to ensure through the Tax Code that child care is not only available and affordable but also high quality.

And so, at the appropriate time, Mr. President, when the amendment is offered by the distinguished Senator from Vermont, we would urge our colleagues to be supportive.

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

Mr. DODD. I thank my colleague from Vermont.

AMENDMENT NOS. 556, 557, 558, 559, 560, 561, 562, 563, 564, AND 565, EN BLOC, AND 553

Mr. ROTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. ROTH. I ask unanimous consent that the following amendments be considered and agreed to en bloc: first, MCCAIN-LEVIN: Sense of the Senate regarding stock options with a statement; 2. ENZI: Sense of the Senate regarding estate tax with a statement; 3. DODD: Forgiveness of student loans; 4. GRAMS: Exception to UBIT for charitable giving; 5. DORGAN: Disaster relief. 6. DORGAN: IRA withdrawal for disaster relief; 7. BIDEN: Survivors' benefits/public safety officials; 8. DODD-D'AMATO: Disability benefits for firefighters and officers; 9. BOXER: Section 401(k) and employer stock; and No. 10. DASCHLE: Non-Amtrak States. I urge their adoption.

In addition, I ask that amendment 553 be called up and agreed to.

Mr. COATS. Mr. President, reserving the right to object—

The PRESIDING OFFICER. Is there objection?

Mr. COATS. Reserving the right to object—

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. I am only inquiring from the standpoint that I am a little lost again on procedure. How much time is left under the bill? Because I would like to respond to the arguments on the amendment of the Senator from Vermont.

The PRESIDING OFFICER. There are 3 minutes remaining on the bill. If the Senator will wait until the 3 minutes have expired, then he can have up to 10 minutes in his own right.

Mr. COATS. Further reserving the right to object, I asked relative to the unanimous consent request of the Senator from Delaware. I just wanted to make sure it didn't include—maybe I misunderstood, but it didn't include a request to go immediately to those amendments.

The PRESIDING OFFICER. These are amendments on which there appears to be agreement on both sides of the aisle.

Mr. COATS. To be accepted en bloc.

Mr. ROTH. I asked they be—

Mr. COATS. I withdraw my reservation.

The PRESIDING OFFICER. If there is no objection, the clerk will report the amendments en bloc.

The legislative clerk read as follows:

The Senator from Delaware [Mr. ROTH] proposes amendment No. 556 for Mr. MCCAIN, amendment No. 557 for Mr. ENZI, amendment No. 558 for Mr. DODD, amendment No. 559 for Mr. GRAMS of Minnesota, amendment No. 560 for Mr. DORGAN, amendment No. 561 for Mr. DORGAN, amendment No. 562 for Mr. BIDEN, amendment No. 563 for Messrs. DODD and D'AMATO, amendment No. 564 for Mrs. BOXER, and amendment No. 565 for Mr. DASCHLE.

The PRESIDING OFFICER. If there is no objection, the amendments are considered and agreed to en bloc.

The amendments considered and agreed to en bloc are as follows:

AMENDMENT NO. 556

(Purpose: To express the sense of the Senate that the Finance Committee should hold hearings on the tax treatment of stock options)

On page 267, between lines 15 and 16, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING TAX TREATMENT OF STOCK OPTIONS.**

(a) FINDINGS.—The Senate finds that—

(1) currently businesses can deduct the value of stock options as a business expense on their income tax returns, even though the stock options are not treated as an expense on the books of those same businesses; and

(2) stock options are the only form of compensation that is treated in this way.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.

Mr. MCCAIN. Mr. President, I am pleased to join my colleague from Michigan, Senator LEVIN, in offering an amendment regarding the current double standard employed by corporations today in accounting for stock options.

The amendment expresses the sense of the Senate that hearings should be held on S. 576, a bill sponsored by Senator LEVIN and myself.

S. 576 would close a tax loophole by requiring companies to treat stock options granted as compensation to employees as an expense for bookkeeping purposes, if they want to claim this expense as a deduction for tax purposes. The bill protects average workers by exempting companies from the requirements of the amendment if they provide stock options to substantially all of their employees, with more than half the stock options going to nonmanagement personnel and not more than 20 percent going to a single employee. The bill does not require a particular accounting treatment; that decision is left to the company. It simply requires companies to treat stock options the same way for both accounting and tax purposes.

The Joint Committee on Taxation provided an estimate of the revenue that is being lost because of this tax loophole. If this loophole is not closed, over the next 10 years, from 1998 to 2007, the U.S. Treasury will lose $1.6 billion. That's real money that could be used to reduce our ever-increasing $5.4 trillion national debt.

A great deal of attention has been focused recently on the outrageously high levels of executive compensation paid by some companies. The New York Times printed an article on March 30, 1997, that listed the compensation levels of several top corporate executives in 1996. For example:

IBM's Chairman, Louis V. Gerstner, Jr., received a compensation package worth $20.2 million.

General Electric gave its Chairman, John F. Welch, Jr., a package worth $30 million.

And Michael Eisner, Chairman of Walt Disney Corporation, got $8.7 million in salary and bonuses, plus stock options worth $181 million in today's market—the largest single grant in corporate history, according to the article.

Under current law, corporations can easily hide these multimillion dollar executive compensation plans from their stockholders or other investors. That is because the stock options that make up a large and increasing portion of these packages need not be counted

as an expense when calculating company earnings.

Simply put, if a company pays $100 to an employee as salary, that $100 is deducted from the company's total profits. That seems logical. But if a company gives that same employee 100 dollars' worth of stock options as part of their compensation package, the company's total profits are unaffected. And the actual value of those stock options may very well increase several fold over time.

Stock options given as compensation to company employees are simply mentioned in a footnote in the annual report to shareholders—which, by the way, is a much-needed yet inadequate change in the accounting rules required by the Federal Accounting Standards Board starting this year. The result is the shareholders are given an inflated picture of the company's profits, and the top executives can take credit for those artificially inflated profits.

An article in the Wall Street Journal, dated January 14, 1997, stated these new rules could reduce some companies' annual earnings by as much as 11 to 32 percent. Yet, the required footnote could be overlooked by all but the most astute of stockholders.

One might reasonably ask how an arcane accounting rule could have such a large effect on the bottom line of corporations. The answer lies in the growth and value of stock options as a means of executive compensation.

Stock option plans in 1996 accounted for almost 45 percent of total executive compensation at 56 of our Nation's largest corporations, an increase of 5 percent in just 1 year. The portion of compensation made up of actual cash salary declined by 5 percent in just 1 year.

At the same time, the value of stock options increased dramatically as overall market performance soared in the last few years. The New York Times piece cited earlier also estimated the future value of stock options to those top executives, based on the most likely time the options would be exercised. The most impressive gain would be realized by Mr. Eisner, whose $181 million in Disney options received last year would be worth $583.7 million in 2007.

Yet, if any Disney shareholder looked at the annual report, all they will find is a footnote about the value of stock options granted to Mr. Eisner and other top executives. The bottom line—the profit statement—will be overstated by at least $181 million.

Why shouldn't the true value of Mr. Eisner's compensation package be included in calculating Disney's earnings? How can stockholders evaluate the true value of executive compensation if the value is just buried in a footnote somewhere in the annual report?

I recognize that there is a serious opposition to S. 576 in the business community. And I fully understand why. Companies save millions every year by claiming the value of stock options granted to employees as a deductible expense on their taxes. The Wall Street Journal article states that companies saved hundreds of millions of dollars in 1996 taxes because of this loophole:

Microsoft saves $352 million.
Intel saved 196 million.
Disney Corporation saved $44 million.

No other type of compensation can be treated as an expense for tax purposes, without also being treated as an expense on the company books. This double standard is exactly the kind of inequitable corporate benefit that makes the American people irate and must be eliminated. If companies do not want to fully disclose on their books how much they are compensating their executives, then they should not be able to claim a tax benefit for it.

S. 576 would end an inequitable corporate subsidy and restore fairness in the treatment of stock options. It would provide an additional $1.6 billion in deficit reduction by closing this corporate tax loophole.

The amendment Senator LEVIN and I are offering today is intended to urge full and open hearings on this issue. Industry will have an opportunity to express their views and explain their opposition to S. 576. I urge my colleagues to vote for the amendment, and I look forward to the hearings.

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

**SEC. . SENSE OF THE SENATE ON ESTATE TAXES.**

(a) The Senate finds that whereas—

(1) The Federal estate tax punishes hard working small business owners and discourages savings and growth; and

(2) The Federal estate tax imposes an unfair economic burden on small businesses and reduces their ability to survive and complete with large corporations; and

(3) A reduction in Federal estate taxes for family-owned farms and enterprises will help to prevent the liquidation of small businesses that strengthen American communities by providing jobs and security;

(b) It is the Sense of the Senate that—

(1) The estate tax relief provided in this bill is an important step that will enable more family-owned farms and small businesses to survive and continue to provide economic security and job creation in American communities; and

(2) Congress should eliminate the Federal estate tax liability for family-owned businesses by the end of 2002 on a deficit-neutral basis.

Mr. ENZI. Mr. President, I rise to offer a sense of the Senate amendment that calls for a repeal of the Federal estate tax on family owned businesses by 2002. I commend Chairman ROTH and the Finance Committee on the progress they have made by increasing the estate tax exemption for individuals and by excluding the first $1 million family owned businesses from Federal death tax liability. I look forward to working with my colleagues toward repealing the death tax on family businesses.

I introduce this resolution because I believe there is still much work to be done. The Federal death tax on family owned business tax punishes those who have worked hard their entire life building up a small business or a family farm only to have their children see it disappear in order to pay the Federal death taxes. The death tax discourages thrift and pierces the very heart of the American economy—small businesses.

Mr. President, small businesses are the backbone of the American economy. The simple fact is that most businesses in this country are small businesses. Out of the nearly 5½ million employers in this country, 99 percent are businesses with fewer than 500 employees. Almost 90 percent of those businesses employ fewer than 20 employees. Since the early 1970's, small businesses have created two out of every three net new jobs in this country. This remarkable job growth continued even during periods of slow national growth and downturns when most large corporations were downsizing and laying off workers. Small businesses employ more than half of the private sector workforce and are responsible for producing roughly half our Nation's gross domestic product. By punishing small businesses, the Federal death tax stifles our economy, discourages ingenuity, and threatens the economic security of many of our families.

The Federal death tax also tears at the bonds that unite parents and children and families and communities. The family business has historically been one of the primary means for children to learn skills and virtues that help throughout their entire lives. Many of the small business in Wyoming are ranches and farms, and I know many of the hard-working men and women in Wyoming who run these family ranches and farms. The whole family pitches in to harvest the crops, feed the livestock, mend the fences, fix the irrigation ditches, plow the roads, herd the sheep and cattle, and plan for next year's yield. Children learn that hard work and responsible planning are necessary ingredients for success in work as in life. They learn respect for the land that is their livelihood. They learn to appreciate the labor of their parents and grandparents and they realize their own labor is an investment in their future and the future of their children.

I myself ran a small family owned shoe store in Gillette, WY. We didn't have a separate division for merchandising and marketing. We didn't have an accounting department to sort out the complicated Tax Code. We all wore many hats. We had to sell the shoes, balance the books, keep track of our inventory, and straighten out the shelves. Let me tell you that we all learned to pitch in to get the job done. We learned to work together and we learned to appreciate the hard work and sacrifices each of us made to keep the store running smoothly. We also learned firsthand the importance of living by the golden rule. If you don't treat your customers well in the retail business they don't forget. This is especially true of folks in small towns

where there are always a few people who remember what you did as a kid and who can even tell you stories about your parents and grandparents. The joy is, they also remember you when you treat them well. The family owned business is an important medium through which we pass on our heritage from one generation to the next.

Mr. President, our Tax Code represents our tax policy and we should be ashamed at a code which punishes families and stifles our economy. Every year our Tax Code forces thousands of families to sell their businesses just to pay the repressive Federal death tax. It is time we correct this injustice by providing meaningful relief for America's families and their small businesses. I commend the chairman for his diligent work in crafting a tax bill that takes an important first step toward reforming the death tax. I look forward to working with my colleagues in repealing this burdensome tax in the near future. This sense of the Senate resolution expresses our firm intent to work together toward this end. I ask for your support in this important endeavor.

I thank the chair and yield the floor.

AMENDMENT NO. 558

(Purpose: To amend the Internal Revenue Code of 1986 regarding the treatment of cancellation of student loans)

On page 77, between lines 11 and 12, insert the following:

**SEC. . TREATMENT OF CANCELLATIION OF CERTAIN STUDENT LOANS.**

(a) CERTAIN LOANS BY EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Paragraph (2) of section 108(f) (defining student loan) is amended by striking ''or'' at the end of subparagraph (b) and by striking subparagraph (D) and inserting the following:

''(D) any educational organization described in section 170(b)(1)(A)(ii) 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 which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

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) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Subsection (f) of section 108 is amended by adding at the end the following new paragraph:

''(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) (or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D)) if the discharge is on account of services performed by either such organization.''

(b) CERTAIN STUDENT LOANS THE REPAYMENT OF WHICH IS INCOME CONTINGENT.—Paragraph (1) of section 108(f) is amended by striking ''any student loan if'' and all that follows and inserting ''any student loan if—

''(A) such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers, or

''(B) in the case of a loan made under part D of title IV of the Higher Education Act 1965 which has a repayment schedule establish under section 455(e)(4) of such Act (relating to income contingent repayments), such discharge is after the maximum repayment period under such loan (as prescribed under such part).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

Mr. DODD. Mr. President, I rise today to offer a modest amendment that will make a major difference to thousands of young men and women who chose careers in community service.

As is well-known, the rewards of a community service job are not the salaries. Few choose teaching in Head Start, working for the Jesuit Volunteer Corps, or a career in nursing with the expectation of riches, big houses or luxurious vacations. In fact, for too many in these fields the salaries are substandard and pension and other benefits are questionable. The rewards come from knowing at the end of the day that they have made a difference in the lives of children and others in their communities.

Many of these careers require post-secondary education, and today, higher education means debt. In 1995–96, total federal student loan debt rose to over $24 billion dollars; $264 million in my home state of connecticut. Nearly 7 million students borrowed to meet the costs of college.

Mr. President, I believe we must do more about this problem of rising student debt. Not only are students deterred from pursuing rewarding, community-related work, but they and their families are also being scared off from pursuing the dream of higher education at all. This undermines our economy and nation as a whole; it is clear we will not be able to meet the challenges of the next century without harnessing and nurturing the talents of all Americans.

For nearly 40 years, this is what federal higher education policy has been about—from the GI bill to Pell grants, the federal government has provided the means for millions of Americans to attend college. Rising costs, and the increasing reliance on loans to finance them, is beginning to undermine our central federal commitment.

There are some good things, but many missed opportunities, In the bill before us today. The modified HOPE Scholarship should be improved and I support amendments to do so. The tax deduction for student loan interest, and some of the family savings provisions will also assist families in meeting the costs of higher education.

But there is a great deal missing. Most notably, the President's proposal to support lifelong learning through a $10,000 tax deduction for tuition. This tax relief is critical to America's families and others pursuing higher education beyond the first two years. Continuing education is vitally important for nurses, teachers, technical workers and others. Yet this package does little for them to assist in these efforts. The Democratic alternative rightly restored this critical benefit.

In addition, few of these tax advantages go to the neediest students and their families, despite the fact that this is the group with the most limited access to higher education. I hope that we can make progress on these fronts during today's consideration of this bill.

Mr. President, this amendment also helps fill in the gaps in this bill. With rising student indebtedness, students literally cannot afford to take jobs as Head Start teachers, nurses or police officers. As a result, we and all our communities lose the talents and energies of these trained and motivated young people.

The DODD amendment supports the work of students who chose a career in community service by ensuring that they are not disadvantaged in the treatment of loan forgiveness associated with their work.

It is not uncommon that public and private non-profit student loan programs provide for the forgiveness of a student's loans should that student chose to go into certain community service fields. For instance, the Federal Perkins Loan programs provides forgiveness for Head Start teachers, teachers in certain urban and rural areas, police officers, nurses, members of the Armed Forces and certain others.

However, the Tax Code currently disadvantages those students who receive loan forgiveness from the private sector. The amount forgiven by nonpublic entities is currently treated as income, which can result in much higher tax liability for the student, undermining the effect of this important benefit.

Specifically, this amendment would expand section 108(f) of the Internal Revenue Code so that an individual's gross income does not include forgiveness of loans made by tax-exempt charitable organizations, such as universities or private foundations, if the proceeds of such loans are used to pay costs of attendance at an educational institution or to refinance outstanding student loans and the student is not employed by the lender organization. As under present law, the Section 108 (f) exclusion would apply only if the forgiveness is contingent on the student's working for a certain period of time in certain professions for any of a broad class of employers, so long as a public service requirement is met.

The exclusion also corrects an oversight in the enactment of the income

contingent repayment option under the current student loan program, which provides low-income, high-debt students with the option of stretching out their payments over 25 years. This program allows students to pursue interests in lower paying fields while continuing to meet their obligations to the tax payers to repay their student loans. If the student makes payments for 25 years and still has a remaining balance, the Government forgives their loan. Unfortunately, when we enacted this vital program, we neglected to clarify that this forgiveness should not be taxable. This amendment would make this correction and fulfill the Government's promise to needy students.

This initiative has been scored by the Joint Tax Committee to have a minimal impact on revenue and therefore this amendment does not require offsetting revenues. The administration supports this initiative and it is also included in Chairman ARCHER's house bill.

Mr. President, I believe this is a simple step we can take to assist thousands of young people who chose careers in community service, and I urge my colleagues to support it.

AMENDMENT NO. 559

(Purpose: To exclude from unrelated business taxable income for certain charitable gambling)

''(j) QUALIFIED GAMES OF CHANCE.—

(1) IN GENERAL.—The term ''unrelated trade or business'' does not include the activity of qualified games of chance.

(2) QUALIFIED GAMES OF CHANCE.—For purposes of this subsection, the term ''qualified games of chance means any game of chance, other than provided in subsection (f), conducted by an organization if—

''(A) such organization is licensed pursuant to State law to conduct such game,

''(B) only organizations which are organized as nonprofit corporations or are exempt from tax under section 501(a) may be so licensed to conduct such game within the State, and

''(C) the conduct of such game does not violate State or local law.''

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On page 211, between lines 5 and 6, insert the following:

**SEC. 724. DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS MAY BE USED WITHOUT PENALTY TO REPLACE OR REPAIR PROPERTY DAMAGED IN PRESIDENTIALLY DECLARED DISASTER AREAS.**

(a) IN GENERAL.—Section 72(t)(2) (relating to exceptions to 10-percent additional tax on early distributions), as amended by sections 203 and 303, is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FOR DISASTER-RELATED EXPENSES.—Distributions from an individual retirement plan which are qualified disaster-related distributions.''

(b) QUALIFIED DISASTER-RELATED DISTRIBUTIONS.—Section 72(t), as amended by sections 203 and 303, is amended by adding at the end the following new paragraph:

''(9) QUALIFIED DISASTER-RELATED DISTRIBUTIONS.—For purposes of paragraph (2)(E)—

''(A) IN GENERAL.—The term 'qualified disaster-related distribution' means any payment or distribution received by an individual to the extent that the payment or distribution is used by such individual within 60 days of the payment or distribution to pay for the repair or replacement of tangible property which is disaster-damaged property.

''(B) LIMITATIONS.—

''(i) ONLY DISTRIBUTIONS WITHIN 2 YEARS.—The term 'qualified disaster-related distribution' shall only include any payment or distribution which is made during the 2-year period beginning on the date of the determination referred to in subparagraph (D).

''(ii) DOLLAR LIMITATION.—Such term shall not include distributions to the extent the amount of such distributions exceeds $10,000 during the 2-year period described in clause (i).

''(C) DISASTER-DAMAGED PROPERTY.—The term 'disaster-damaged property' means property—

''(i) which was located in a disaster area on the date of the determination referred to in subparagraph (C), and

''(ii) which was destroyed or substantially damaged as a result of the disaster occurring in such area.

''(D) DISASTER AREA.—The term 'disaster area' means an area determined by the President during 1997 to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1996, with respect to disasters occurring after such date.

**SEC. 725. ELIMINATION OF 10 PERCENT FLOOR FOR DISASTER LOSSES.**

(a) GENERAL RULE.—Section 165(h)(2)(A) (relating to net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income) is amended by striking clauses (i) and (ii) and inserting the following new clauses:

''(i) the amount of the personal casualty gains for the taxable year,

''(ii) the amount of the federally declared disaster losses for the taxable year (or, if lesser, the net casualty loss), plus

''(iii) the portion of the net casualty loss which is not deductible under clause (ii) but only to the extent such portion exceeds 10 percent of the adjusted gross income of the individual.

For purposes of the preceding sentence, the term 'net casualty loss' means the excess of personal casualty losses for the taxable year over personal casualty gains.''

(b) FEDERALLY DECLARED DISASTER LOSS DEFINED.—Section 165(h)(3) (relating to treatment of casualty gains and losses) is amended by adding at the end the following new subparagraph:

''(C) FEDERALLY DECLARED DISASTER LOSS.—

''(i) IN GENERAL.—The term 'federally declared disaster loss' means any personal casualty loss attributable to a disaster occurring during 1997 in an area subsequently determined 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.

''(ii) DOLLAR LIMITATION.—Such term shall not include personal casualty losses to the extent such losses exceed $10,000 for the taxable year.''

(c) CONFORMING AMENDMENT.—The heading for section 165(h)(2) is amended by striking ''NET CASUALTY LOSS'' and inserting ''NET NONDISASTER CASUALTY LOSS''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to losses attributable to disasters occurring after December 31, 1996, including for purposes of determining the portion of such losses allowable in taxable years ending before such date pursuant to an election under section 165(i) of the Internal Revenue Code of 1986.

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AMENDMENT NO. 561

(Purpose: To authorize the Secretary of the Treasury to abate the accrual of interest on income tax underpaymnets by taxpayers located in Presidentially declared disaster areas if the Secretary extends the time for filing returns and payment of tax (and waives any penalties relating to the failure to so file or so pay) for such taxpayers)

Ordered to lie on the table and to be printed.

Amendment intended to be proposed by Mr. DORGAN.

Viz:

On page 211, between lines 5 and 6, insert the following:

**SEC. 724. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.**

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by adding at the end the following:

''(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

''(1) IN GENERAL.—If the Secretary extends for any period of time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 (and waives any penalties relating to the failure to so file or so pay) for any individual located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

''(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term 'Presidentially declared disaster area' means, with respect to any individual, any area which the President has determined during 1997 warrants assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

''(3) INDIVIDUAL.—For purposes of this subsection, the term 'individual' shall not include any estate or trust.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters declared after December 31, 1996.

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AMENDMENT NO. 562

At the appropriate place, insert the following:

**SEC. SURVIVOR BENEFITS FOR PUBLIC SAFETY OFFICERS KILLED IN THE LINE OF DUTY.**

IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

**''SEC. 138. SURVIVOR BENEFITS ATTRIBUTABLE TO SERVICE BY A PUBLIC SAFETY OFFICER WHO IS KILLED IN THE LINE OF DUTY.**

''(A) IN GENERAL.—Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

''(1) if such annuity is provided under a governmental plan which meets the requirements of section 401(1) to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

''(2) to the extent such annuity is attributable to such officer's service as a public safety officer.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Subsection (a) shall not apply with respect to the death of any public safety officer if—

''(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

''(B) the officer was voluntarily intoxicated (as defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) at the time of death; or

''(C) the officer was performing such officer's duties in grossly negligent manner at the time of death.

''(2) EXCEPTION FOR BENEFITS PAID TO CERTAIN INDIVIDUALS.—Subsection (a) shall not apply to any payment to an individual whose actions were a substantial contributing factor to the death of the officer.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date.

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AMENDMENT NO. 563

(Purpose: To clarify the tax treatment of certain disability benefits received by former police officers or firefighters)

On page 267, between lines 15 and 16, insert the following:

**SEC. . 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—

(A) 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

(B) under a State law (as in existence on July 1, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees separating from service before such date; 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.

(c) WAIVER OF STATUTE OF LIMITATIONS.—If, on the date of the enactment of this Act (or at any time within the 1-year period beginning on such date of enactment) credit or refund of any overpayment of tax resulting from the provisions of this section is barred by any law or rule of law, credit or refund of such overpayment shall, nevertheless, be allowed or made if claim therefore is filed before the date 1 year after such date of enactment.

**SEC. . REMOVAL OF DOLLAR LIMITATION ON BENEFIT PAYMENTS FROM A DEFINED BENEFIT PLAN MAINTAINED FOR CERTAIN POLICE AND FIRE EMPLOYEES.**

(a) IN GENERAL.—Subparagraph (G) of section 415(b)(2) of the Internal Revenue Code of 1986 is amended by striking ''participant—'' and all that follows and inserting ''participant, subparagraphs (C) and (D) of this paragraph and subparagraph (B) of paragraph (1) shall not apply.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1996.

AMENDMENT NO. 564

(Purpose: To provide for diversification in section 401(k) plan investments)

On page 208, between lines 16 and 17, insert the following:

**SEC. . DIVERSIFICATION IN SECTION 401(k) PLAN INVESTMENTS.**

(a) LIMITATIONS ON INVESTMENT IN EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CASH OR DEFERRED ARRANGEMENTS.—Section 407(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following:

''(D)(i) the term 'eligible individual account plan' does not include that portion of an individual account plan that consists of elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) pursuant to a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code of 1986 (and earnings allocable thereto), if such elective deferrals (or earnings allocable thereto) are required to be invested in qualifying employer securities or qualifying employer real property or both pursuant to the documents and instruments governing the plan or at the direction of a person other than the participant on whose behalf such elective deferrals are made to the plan (or the participant's beneficiary).

''(ii) For purposes of subsection (a), such portion shall be treated as a separate plan.

''(iii) This subparagraph shall not apply to an individual account plan if the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans maintained by the employer.

''(iv) This subparagraph shall not apply to an individual account plan that is an employee stock ownership plan as defined in section 409(a) or 4975(e)(7) of the Internal Revenue Code.''.

(v) This subparagraph shall not apply to an individual account plan if not more than 1 percent of an employees eligible compensation deposited to the plan as an elective deferral (as so defined) is required to be invested in the qualifying employer securities.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to employer securities and employer real property acquired after the beginning of the first plan year beginning after the 90th day after the date of enactment of this Act.

(2) SPECIAL RULE FOR CERTAIN ACQUISITIONS.—Employer securities and employer real property acquired pursuant to a binding written contract to acquire such securities and real property in effect on the date of enactment of this Act and at all times thereafter, shall be treated as acquired immediately before such date.

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AMENDMENT NO. 565

(Purpose: To expand non-Amtrak States' use of the Intercity Passenger Rail Funds)

Beginning on page 189, line 24, strike ''and'' and all that follows through page 190, line 1, and insert the following:

''(III) capital expenditures related to rail operations for Class II or Class III rail carriers in the State,

''(IV) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code.

''(V) any project that is eligible to receive funding under section 130 of title 23, United States Code, and

''(VI) the payment of interest.

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AMENDMENT NO. 553

The PRESIDING OFFICER. And amendment No. 553 as a part of that agreement is agreed to.

The amendment (No. 553) was agreed to, as follows:

AMENDMENT NO. 553

(Purpose: To express the sense of the Senate that the Internal Revenue Code of 1986 needs reform)

At the end of page 11, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING REFORM OF THE INTERNAL REVENUE CODE OF 1986.**

(a) FINDINGS.—The Senate finds that—

(1) the Internal Revenue Code of 1986 (''tax code'') is unnecessarily complex, having grown from 14 pages at its inception to 3,458 pages by 1995;

(2) this complexity resulted in taxpayers spending about 5,300,000,000 hours and $225,000,000,000 trying to comply with the tax code in 1996;

(3) the current congressional budgetary process is weighted too heavily toward tax increases, as evidenced by the fact that since 1954 there have been 27 major bills enacted that increased Federal income taxes and only 9 bills that decreased Federal income taxes, 3 of which were de minimis decreases;

(4) the tax burden on working families has reached an unsustainable level, as evidenced by the fact that in 1948 the average American family with children paid only 4.3 percent of its income to the Federal Government in direct taxes and today the average family pays about 25 percent;

(5) the tax code unfairly penalizes saving and investment by double taxing these activities while only taxing income used for consumption once, and as a result the United States has one of the lowest saving rates, at 4.7 percent, in the industrialized world;

(6) the tax code stifles economic growth by discouraging work and capital formation through excessively high tax rates;

(7) Congress and the President have found it necessary, on 2 separate occasions, to enact laws to protect taxpayers from the abuses of the Internal Revenue Service and a third bill has been introduced in the 105th Congress; and

(8) the complexity of the tax code has increased the number of Internal Revenue Service employees responsible for administering the tax laws to 110,000 and this costs the taxpayers $9,800,000,000 each year.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Internal Revenue Code of 1986 needs broad-based reform; and

(2) the President should submit to Congress a comprehensive proposal to reform the Internal Revenue Code of 1986.

The PRESIDING OFFICER. Who seeks the floor?

Mr. COATS addressed the Chair.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. COATS. May I inquire now what the time situation is?

## MORNING BUSINESS

The PRESIDING OFFICER. We are now in a period of morning business with Senators being recognized for up to 10 minutes.

Mr. COATS. Mr. President, I would ask to speak as if in morning business.

The PRESIDING OFFICER. The Senator has that right.

QUALITY CHILD CARE

Mr. COATS. Mr. President, in responding to the amendment of the Senator from Vermont, as also addressed by the Senator from Connecticut, let me state that I share the goal of seeking ways to provide quality child care. This is something that I have supported, have worked on with the Senators. Clearly, as we are looking particularly at welfare reform, we are going to have increasing need for child care. We all want that to be quality child care.

The goal that I had when we worked on the ABC bill several years ago was to make sure that the options available to parents for child care were not limited in any particular way. I was concerned about certification requirements. I was concerned about quality standard requirements because, clearly, at that time, and it is still the case today, the choice of the majority of parents relative to child care for their children is not a child care center but taking care of that child in the home, often by a neighbor, by a friend, by a relative, placing their child in a family child care situation, whether it is a church or a home or some other entity.

Several Senators on this floor have talked in the welfare debate about training welfare mothers in projects or allowing them to be child care providers as other people under welfare will be seeking work. All that makes a great deal of sense. My concern with the Jeffords amendment is that it gives preferential treatment to just one choice, and therefore places those other forms of child care at a disadvantage. It doesn't take away options, I concede that, but it does place them at a disadvantage because you are biasing the choice.

Now, it is a worthy goal to attempt to encourage a better quality care. But, of course, every time we get into this debate and discussion, it is always the State that defines what the quality care is, and the concern is that what is quality care to a State agency or a State bureaucracy is not the same standards of quality care that a parent might choose for their child.

In a sense we are getting back to the same argument as we had before, and that is who is in a better position to determine what is best for the child in the interest of the child. Is it the parent who is in a better position to determine what their child needs in terms of child care and what the quality of that care is, or is a Government entity in a better position, or a piece of legislation able to describe what a better quality child care would be?

So in this provision we are giving a preferential treatment to only one kind of child care, and that is child care selected by less than a majority of parents who place their children in child care. The latest figures I have are that 32.9 percent of parents place their children with relatives for child care, and those parents will not qualify, necessarily qualify for a bonus. They may not have the education, meet the educational criteria. They might not meet what the State determines as the quality criteria for their child, but as a parent I can tell you I would much rather place my child with a relative than I would with a child care center.

Mr. DODD. Will my colleague yield for a second?

Mr. COATS. I would be happy to yield.

Mr. DODD. We are very sensitive to these concerns, as my colleague has raised these issue on numerous occasions. I should have stated at the outset that the Senator from Indiana chairs the Subcommittee on Children and Families, on which I have been proud to serve as ranking member. He has been instrumental for so many years in helping children and families. I hold him in high regard on this issue.

If I can read this briefly from the amendment for my colleague from Indiana—the terms credentialing and accreditation are used to refer to formal credentialing and accreditation processes by a private nonprofit or public entity that is State recognized (minimum requirements: age-appropriate health and safety standards, age-appropriate developmental and educational activities as an integral part of the program, outside monitoring of the program/individual accreditation/credentialing instruments based on peer-validated research programs/facilities meet any applicable state and local licensing requirements, and ongoing staff development/training which includes related skills testing). There are several organizations and a few states that currently provide accreditation and/or credentialing for early childhood development programs, child care and child care providers.

That language was drafted with help by religious and non-profit groups. We specifically provide that they may create standards. We have really gotten away from the notion that standards must be set at the Federal level. Centers and providers certified and accreditated by private nonprofits would qualify for the tax credit.

Mr. COATS. But the Senator would agree, would he not, that it does provide a preference that is not available to many providers of child care that might be perfectly acceptable providers of child care for the children of those parents?

Mr. DODD. I do not disagree. There is an incentive. You still get the credit for using a non-accredited provider, but you simply get a larger one if you use one that has been accredited or certified. Our goal here is to try and get standards up for all child care setting, whether a home-based care program, a church-based care program, or a public setting.

I am not arguing that a parent or a grandparent can't provide terrific child care. But, we just want to make sure that at least we are encouraging quality standards, whether State established or private nonprofit standards, to increase the opportunity for that child to get the proper kind of care.

Mr. COATS. I understand the motivation. My concern is that there will be a large number of child care providers who will not meet those standards, will be put in a position that is less preferential than those who do meet the standards, and yet the standards might not necessarily be what the parent determines to be the best care and the best nurturing for that particular child.

For instance, let us say a child care provider does not read, cannot read. Would that person ever be able to qualify for the standards? Probably not, because we are talking about a developing child. Yet, if the Senator had the privilege, as I and many of us did, of attending the national prayer breakfast this year, Dr. Ben Carson, head of neurosurgery at Johns Hopkins University, one of the world's foremost neurosurgeons, was raised by a mother who could not read. After I saw what product came out of that child rearing, I would want my child raised by his mother. Yet, obviously, the Senator's bill would not take away that choice, but clearly that individual would not qualify, with those standards, for the preference given under the Jeffords amendment.

You used the words ''nurturing'' and ''caring.'' Nurturing and caring, as we learned in our hearing on development of the brain and other hearings on child care, is the most important aspect of early child care. It is not flash cards, it is not introducing kids to computers, it is the one-on-one bonds that are formed. Yet, we are putting those people at a different level. We are saying they really don't qualify for the higher accountability standards because they have not had the training, they have not had the education, they have not met the standards of whatever group sets those standards.

I am simply saying I think the parents ought to set the standards. I think the parents ought to determine what is in the best interests of the child without a bias against someone who they deem is best in favor of someone who happens to meet the standard set by a particular group.

It is a dilemma. I understand what the Senators are trying to do because that is a goal I think we ought to work toward. But I think it does so by sending a message that this level of child care that meets the standards is better for your child than the determination that you might make in terms of having a relative, of having a neighbor, of having someone down the street who doesn't necessarily qualify. That is my concern.

Mr. JEFFORDS. Will the Senator yield?

Mr. COATS. I will be happy to yield to the Senator.

Mr. JEFFORDS. There is nothing the Senator says that we disagree with. But if you take a look at the studies that give you an idea of children who

are being placed in situations which do not have that kind of care, the question is whether you should reward them the same as you do others that do have good health care. In this study, 40 percent of the health care provided infants in child care centers was potentially injurious. Fifteen percent of center-based child care for all preschoolers was so bad that the child's health and safety were threatened; 70 percent were mediocre. This is the study.

If you are faced with those, and you understand the dramatic problems that can cause in a child, then you ought to have some way to give the parents of children a means of determining that they can be assured they are not going to have their child damaged. Granted, family situations or whatever else is some of the best care, obviously, and loving and nurturing. A parent is probably better than most child care things you can do. But at least people ought to know that there is someone who is saying your child is not going to be injured in that care. That is all we are trying to do.

Mr. COATS. We can all quote studies. I could also pull out the study that shows that children are at a much higher risk of infection and illness and even accidents in child care centers than they are in the arms of a next-door neighbor.

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

Mr. DODD. Mr. President, I ask unanimous consent for time just to make one quick point to my colleague here.

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

Mr. DODD. Just a quick point. I want to point out this amendment of ours is phased in over 5 years, so there will be plenty of notice and time here for providers to try to get themselves ready to met quality standards. We do not rush this in; we allow time for providers and families to learn about and to prepare for higher quality care.

My second point is that accredited or certified settings cost a bit more. If parents want to place their children in those situations, given the fact it costs more, our providing a tax incentive with a bit more of a break makes sense. I thank my colleague for allowing me to make those points to my colleague.

Mr. JEFFORDS. If I may follow on that just very briefly, again, studies say—

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

Mr. COATS. Mr. President, I ask unanimous consent for 1 additional minute so the Senator can finish his point and I can.

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

Mr. JEFFORDS. I would like to point out that one-quarter of all parents contacted in a nationwide survey said they would like to change their present child care arrangements, but they cannot find or afford better quality care. This is big reason for this amendment. We are trying to help people with limited resources by shifting the money where it will do best, provide access to best child care.

Mr. COATS. Mr. President, just in response, I would say I think it sends a signal. It sends a signal if you have a State stamp of approval or certified group stamp of approval that your child is going to get better quality care there than if you do not have that. Yet, we know parents' preferences are, for a majority of parents, to place their children in situations where they don't have any State or certifying agency stamp of approval, but they are going to be looked at potentially as secondary care when it is not secondary care. It is in many cases superior care. Because they trust a relative, they trust a neighbor, they trust a family home care, even though it doesn't necessarily qualify for the certification standards. That is my concern with the amendment.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. CHAFEE. Mr. President, before he starts, I wonder if I might just make a point. As I understand it, each Senator has 8 minutes, is that correct?

The PRESIDING OFFICER. Ten minutes.

Mr. CHAFEE. The hour is late. I hope everybody will stick by their assigned 10 minutes.

The PRESIDING OFFICER. The Senator from New Jersey.

## TAXING SEVERANCE PAY

Mr. TORRICELLI. Mr. President, throughout the course of this day, Members of the Senate have offered amendments which on occasion were of considerable benefit to people of great wealth, to encourage them to make investments for the benefit of our economy. As we have just witnessed, on occasion during the day, Members of the Senate have offered amendments for people of modest incomes, to encourage their savings, help them with the high cost of living and raising children. Indeed, many segments of society will find in this tax legislation various forms of benefits—to help with retirement and health and the rearing of children.

Tomorrow, I will offer an amendment to the bill, not designed for those of high income and not specifically for those of moderate income. More particularly, it is designed for those of no income.

The leading cause of unemployment in America for the last decade remains large-scale corporate downsizing. Even in a healthy economy, because of the introductions of new technologies, requirements of new skills, changes in trading patterns, acquisitions, mergers, people who are competitive, people who get up every day and work hard and are devoted to their communities, their families and their professions, their jobs, through no fault of their own, can find themselves in a situation without employment.

Indeed, in the last decade 20 million Americans have been excused from their employment because of a large-scale corporate downsizing. But, in a considerable and rising tide of corporate responsibility, many of these companies have adopted the modern practice of giving severance pay to their employees. It is a chance, by the corporation, to give to the employee modest amounts of money upon their departure to reorganize their lives, seek new skills, move to a new location, start a business or go into retirement.

Indeed, in a recent experience in my own State of New Jersey, one of the largest corporations in America, AT&T, only a year ago laid off 40,000 employees in a single announcement. A third of those employees decided to start their own businesses. A third went into retirement. Indeed, only a minority ever found employment in the short term under similar circumstances, and they were all offered severance pay.

The problem, and it is the subject of my amendment tomorrow, is that while corporate America is offering this severance pay for people to continue and reorganize their lives in this competitive economic environment, the Government responds by taxing the severance pay up to a third, as if it were income. Imagine the circumstances. You have worked in a company all of your life and because of a merger or acquisition, a skill you may no longer possess, a change in the economy, even in good times you are excused from your employment, given $5,000 or $10,000, which you think goes best to continuing your education or opening a small business. Yet, when it is time to pay your Federal taxes, the Government takes a third of it from you, money that can make the difference in whether or not you can reorganize your life, move to a different place in the country to seek new employment, pay a tuition, or start your business.

The amendment I offer tomorrow is as simple as it is important. The first $3,000 of any severance package offered to any employee in America whose severance package is less than $150,000, if that person does not get reemployment in 6 months, up to 95 percent of their previous compensation, that $3,000 is tax-free. The person should use it for what is best for themselves, their own families and their own future.

I know at a time when our economy is growing, unemployment is low, a time of relative economic prosperity, few people are thinking about those who are without employment. In which State in this country, in what community have we not witnessed, through these extraordinary economic changes that indeed are the signature of our time, the dislocations of the marketplace? The times when many Americans would gain employment at the age of 18 or 22 or 25 or 30 and remain with a corporation most of their lives, those

times have passed. The times when you gain skills in high school or college, and sought and obtained and retained employment all of your life with those skills, those times have passed. Even in good economic times, the length of employment with a single employer is shrinking. The consistency of employment with any employer is being reduced.

What I offer is a response, a chance to make this tax bill relevant to those 20 million Americans who may in the next decade find themselves in similar circumstances. There is not a Member of this Senate who faces this amendment tomorrow who does not have a chance to address the people of their own State in a critical way, not just the 40,000 people of AT&T in my native State of New Jersey, but the 2,000 employees of IBM in New York State who are suing at this moment, trying to establish by law that their severance package is not income.

In the State of Alaska, 1,200 people in the fourth quarter of 1996 were laid off; 88,000 people in the State of California; 22,000 people in the State of Illinois; 5,700 people in the State of Minnesota; 2,800 people in the State of Montana; 27,000 in Pennsylvania; 11,000 in West Virginia. In every State, in thousands of communities across this Nation, these dislocations have become a part of American life.

I am very proud that tomorrow this Senate will adopt a tax bill, one that I am proud to vote for, that addresses so many different economic concerns of this country. It has a reduction in capital gains taxes for middle- and high-income people that is needed to encourage investment. I am for it. I am going to vote for it. It has a change in the inheritance tax to allow families to retain family businesses in higher incomes, upper-middle-class families; IRA's to encourage families to save for education for their children's welfare. Each and every one a legitimate response to a real problem.

Mr. President, this is a problem, too. What is it we say to these people who want only to keep the money given them to reorganize their lives but are forced to share it with the Federal Government?

Tomorrow I will offer this amendment and ask for the support of my colleagues. Thank you for the time, Mr. President, and I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

## BALANCED BUDGET ENFORCEMENT AMENDMENT

Mr. FRIST. Mr. President, I rise to discuss an important balanced budget enforcement amendment that I will offer on behalf of myself, Senators CONRAD, ABRAHAM, and SESSIONS, tomorrow morning.

This amendment evolves from a very simple principle, and that is, once we get a balanced budget, that it stays balanced well into the future.

This amendment, based on existing enforcement mechanisms, has two key provisions:

First, it establishes a 60-vote point of order in the Senate against any bill that provides or would cause a deficit in the year 2002 or in any year thereafter.

Second, it requires that the President submit a balanced budget in the year 2002 and every year thereafter. To retain appropriate flexibility, this amendment suspends this point of order in times of war or in times of recession. This exact same exception is provided for in the existing enforcement mechanisms under the current law.

This amendment is also—I should add, because I think this is important as we bring forth amendments tomorrow—consistent with the bipartisan budget agreement.

The text of the bipartisan budget agreement specifically states that ''agreed upon budget levels are shown on the tables included in this agreement.'' Under the long-range summary table in the agreement, the agreement shows a budget surplus of $1 billion in the year 2002 and $34 billion in the year 2007. This means that we are projecting a balanced budget in 5 years and in 10 years. My amendment will strengthen our ability to abide by this agreement and keep spending under control in the future.

In the bipartisan budget agreement, the Congress, the President, Republicans and Democrats, joined together to balance the budget in the year 2002. But I believe that everyone would agree that we don't just want to balance the budget in just that 1 year, 2002, but we want to maintain balance every year thereafter. That includes the years 2003, 2005, 2010, 2020.

We must keep focusing on our long-term budget picture for one very important reason: to prepare for the baby boomers' retirement which is just over a decade away. We know that the budget agreement does not go far enough in addressing this long-term challenge.

In fairness, the authors of the agreement never claimed that it does. But as we approach this new demographic era that all of us know is sitting out there just about a decade away, we must be acutely aware of the situation. In fact, we know that right now, 200,000 Americans will turn 65 this year. But in 15 years, in 14 years, in fact, by the year 2011, 1.5 million Americans will turn 65 just that year and that trend will continue over the next two decades.

Simultaneously, as the elderly population is increasing, the number of younger workers who are working to support that elderly population is decreasing. In fact, today, there are 4.9 workers supporting every single retiree's benefits, that is today, that includes Social Security and Medicare. But in the year 2030, there will only be 2.8 workers supporting the benefits of a single retiree.

This dramatic demographic shift will bring significant economic, political, social and cultural changes that will transform our society. If we continued on our current spending course, entitlements—that is our automatic spending programs—coupled with interest on the debt would consume all revenues in just 15 years, leaving not a single dollar left over for roads, for infrastructure, for medical science, for the national parks, for medical research and for defense of the country. I believe our balanced budget agreement will help ease this demographic pressure, but much more work lies ahead. We must begin sooner, rather than later, to deal with these problems fairly and effectively. This amendment addresses that problem.

It will keep pressure on Congress and the President to confront these inevitable challenges, this inevitable demographic shift. To those not familiar with the Federal budget process, this amendment will create a procedural hurdle, called a point of order, to prevent the Senate from considering bills that will increase the deficit. If a Senator raises this point of order, it will take a three-fifths vote of the Senate, that is 60 votes, to waive the point of order and pass the legislation, rather than the normal 51-vote majority.

After we have all worked so hard and so long to rein in spending, we should not allow the deficit to balloon out of control once again after that year, 2002. It is imperative that we preserve this achievement and restrict Congress' ability to overspend taxpayer dollars. We will offer this amendment tomorrow morning and, at that time, I will urge all of my colleagues to support this important amendment which addresses the inevitable demographic changes. I yield the floor.

Mr. CONRAD. Mr. President, I am pleased to be a cosponsor of Senator FRIST's budget process amendment.

The Frist amendment seeks to establish a more stringent enforcement mechanism for the bipartisan budget agreement. I think it's important for Congress and the President to continue working after enactment of this year's two reconciliation bills to ensure that at least the unified budget is balanced in 2002 and years thereafter. The amendment would also require the President to submit budgets each year which do not cause a unified deficit in fiscal year 2002 or any year thereafter.

Specifically, the Frist amendment would establish a 60-vote point of order against any resolution or bill—including the budget resolution—that provides or would cause a deficit in fiscal year 2002 or any year thereafter. I think such a point of order will help Congress and the President remain vigilant about the deficit, particularly in years after 2002.

Frankly, I would have supported much more ambitious deficit reduction efforts this year. I would like to see the federal budget moving towards true balance—that is without counting the Social Security surpluses. I believe that is the real way to balance the

budget. But I also must acknowledge that the President and the bipartisan congressional leadership did not seek to balance the budget without counting Social Security. The bipartisan budget agreement balances only the unified budget. I don't believe we've truly balanced the budget with enactment of this year's reconciliation bills. But perhaps at least we have taken a modest step in the right direction.

One of the reasons I support the Frist amendment is that I am concerned about whether this bipartisan budget deal will accomplish its intended goal—balance of the unified deficit within five years. When I first became aware of the details of the 1997 budget agreement, I viewed it largely as a missed opportunity.

In my view, the budget was not truly balanced. It only claimed balance by using Social Security trust fund surpluses. In fact, in the year 2002 the real deficit will probably still be over $100 billion.

In addition, under this bipartisan budget deal the deficit is larger for the next three years than it is this year. This year's deficit is currently projected to be about $67 billion. The deficits for 1998–2000 will range from $80 billion to $100 billion.

Of most concern to me, budget negotiators failed to correct the upward bias that currently exists in the Consumer Price Index. There is overwhelming evidence that the Consumer Price Index, currently used to adjust tax brackets and various spending programs for inflation, overstates the actual change in the cost-of-living in the United States. The budget deal should have corrected this mistake which will add nearly $1 trillion to our national debt over the next 12 years.

Some of the economic assumptions underlying the budget deal are highly suspect. CBO's last minute revenue adjustment of $45 billion per year may be credible for the years 1997 and 1998. Its credibility for the period 1999–2007 is unclear. In addition, the balanced budget fiscal dividend assumed in the budget agreement is based on the theory that lower interest rates will result from balancing the budget with a credible deficit reduction plan and path. The real debate with regard to the Federal Reserve's interest rate policy right now is whether the Fed will raise, not lower, interest rates in the next few months, particularly since this proposal contains dramatically less savings—only $200 billion—than other proposals offered this year.

Finally, I am concerned that enactment of the tax package before the Senate will blow the progress we have made on reducing the deficit. Over the longer term, I am concerned that since many of the tax cuts are back-end loaded, they will explode in the outyears. The individual alternative minimum tax relief provisions are a perfect example. These provisions don't take effect until 2001. The cost over 1998–2002 is $350 million. The cost over 10 years is $15 billion, a 4000-percent increase. By 2007, the AMT provisions will cost the Treasury $6 billion per year.

Another example involves the Individual Retirement Account provisions in the Senate's tax bill. I know there is strong support for providing incentives for people to save. But the various IRA provisions in the Senate tax bill, particularly the new back loaded IRAs, have serious deficit implications. The IRA proposals lose about $9 billion over 1998 to 2002. Over the second five years the revenue loss is $36 billion. These types of back-end loaded tax cuts may prevent our nation from achieving long-term fiscal balance.

For all these reasons, I support careful monitoring of the federal budget deficit in 2002 and years thereafter. I believe a 60-vote point of order will force Congress and the President to immediately get back on track if our fiscal situation changes dramatically and the unified budget deficit begins to rise in 2002 and years thereafter.

If we can at least maintain unified balance of the budget, then perhaps Congress and the President will have the courage to move toward truly balancing the budget. We can perhaps then achieve the kinds of structural changes in entitlements that will put our nation on a sustainable fiscal course over the long term, as we prepare our nation and our economy for the retirement of the baby boom generation around the year 2012.

Mr. LEVIN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Michigan.

Mr. LEVIN. Mr. President, I thank the Chair and I thank my good friend from Rhode Island for his understanding at this late hour.

## STOCK OPTIONS

Mr. LEVIN. Mr. President, a few minutes ago, we passed by voice vote amendment No. 556. It was an amendment which Senator MCCAIN and I authored, and I want to spend a moment describing what that amendment does.

The amendment provides that it is the sense of the Senate, based on findings that, ''(1) currently businesses can deduct the value of stock options as business expense on their income tax returns, even though the stock options are not treated as an expense on the books of those same businesses; and (2) stock options are the only form of compensation that is treated that way. It is the sense of the Senate that the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.''

Mr. President, for the past several years, the Wall Street Journal has published a special pull-out section of the newspaper with an annual analysis of the compensation of top corporate executives. Last year's section had this headline: ''The Great Divide: CEO Pay Keeps Soaring—Leaving Everybody Else Further and Further Behind.''

Business Week featured this cover story on its 47th annual pay survey: ''Executive Pay: It's Out of Control.''

Both publications analyze the pay of top executives at approximately 350 major American corporations, and their analysis shows that the pay of chief executive officers continues to outpace inflation, others workers' pay and the pay of CEO's in other countries, as well as company profits. According to Business Week, CEO's total average compensation rose 54 percent last year to over $5.5 million, which came on top of 1995 CEO pay increases averaging 30 percent.

Meanwhile, the average 1996 raise for the average worker, both blue collar and white collar, was about 3 percent. In 1996 the average pay of the top executive was 209 times the pay of a factory worker. Little known corporate tax loopholes are fueling these increases in executive pay with taxpayer dollars. This loophole allows companies to deduct from their taxes multimillion-dollar pay expenses that never show up on the company books as an expense. Every other form of compensation is shown as an expense on company books. There is only one exception, and that is stock options.

There is a link of all this to taxpayer dollars. Suppose a corporate executive exercises stock options to purchase company stocks and makes a profit of $10 million. Right now, the company employing the executive can claim the full $10 million as a compensation expense and deduct it on the company's income tax return.

Someone might say, so what? All companies deduct pay expenses from their taxes. That's true. But there is an important difference here. Every other type of employee pay shows up on the company books as an expense and reduces company earnings. Stock option pay is the only kind of compensation that companies can claim as an expense for tax purposes without ever showing it as an expense on their books. That's because current accounting rules encourage, but do not require, companies to treat stock option pay as a company expense, so companies can continue to game the system.

A single corporate executive exercising stock options can provide a company with a $10 million, $50 million, or even a $100 million expense which the company can deduct when reporting company earnings to Uncle Sam, but omit it when reporting company earnings to stockholders and the public. That is not right. Either stock option pay is a company expense or it isn't. Either this expense lowers a company's earnings or it doesn't. Something is clearly out of whack in a tax law when a company can say one thing at tax time and something else to investors and the public, and it is a double standard which should end.

Senator MCCAIN and I introduced legislation in April to put an end to the double standard. It simply says that a company can claim stock option pay as

an expense for tax purposes to the same extent that the company treats that stock option pay as an expense on its books. Companies would no longer be able to claim that stock options cost them large amounts of money when claiming a tax benefit, but then turn around and claim that it cost them nothing when reporting them to stockholders and the public.

Opponents of the legislation claim that it would tax stock options. That is simply not true. Companies will continue to get a tax deduction, not a tax increase, on the options they claim as an expense on their books. For the options that they don't count on their books, they couldn't continue to receive a tax benefit in the form of a deduction. The choice is theirs.

Others argue that this amendment will hurt the average employees who receive stock options from the company's stock option plan. Right now, stock option pay is overwhelmingly executive pay. In 1994, in the most extensive stock option review to date which covered 6,000 publicly traded U.S. companies, Institutional Shareholders Services found that only 1 percent of the companies issued stock options to anyone other than management and 97 percent of the stock options issued went to 15 or fewer individuals per company.

Nevertheless, there are a few companies that issue stock options to all employees and do not disproportionately favor top executives. Our bill would allow those companies that provide broad-based stock option plans to continue to claim existing stock option tax benefits, even if they exclude stock option pay expenses from their books. By making this limited exception, we would ensure that average worker pay would not be affected by closing the stock option loophole. We might even encourage a few more companies to share stock option benefits with average workers.

Still others argue that there is no way to estimate what the cost of stock options plans are and that we're basing a tax deduction on estimates. But there are a number of places in the tax code that use estimates to determine the amount of a deduction.

The bottom line is that the bill that Senate MCCAIN and I introduced is not intended to stop the use of stock options. It is not aimed at capping stock options or limiting them in any way. It would not limit the level of executive pay. That is an issue between the executives and shareholders of the company. Our bill is aimed only at those companies that are trying to have it both ways—claiming stock option pay as an expense at tax time, but not when reporting company earnings to shareholders and the public. It is aimed at ending a stealth tax benefit that is fueling the wage gap, favoring one group of companies over another, and feeding public cynicism about the fairness of the federal tax code.

According to the Joint Committee on Taxation, closing this tax loophole generates $181 million over 5 years and $1.57 billion over 10 years all of which will be dedicated to reducing the deficit.

Mr. President, I ask unanimous consent that a letter from Warren Buffett, Chairman of Berkshire Hathaway, to Senator DODD dated October 18, 1993, be printed in the RECORD.

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

BERKSHIRE HATHAWAY INC.,
*Omaha, NE, October 18, 1993.*

Hon. CHRISTOPHER DODD,
*Chairman, Securities Subcommittee, Committee on Banking,Housing, and Urban Affairs, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I regret that I will not be able to attend your subcommittee meeting on October 21.

Could I have appeared there, I would have wished to make certain points, which I will distill here. First among these is the fact that I do not object to the intelligent use of stock options. I have often voted for their issuance, both as a director and as a substantial owner of the issuing corporations making use of them.

I do, however, object to the improper stock-option accounting now practiced. I summarized my views on that subject in the 1992 Annual Report of Berkshire Hathaway and I would like to repeat those comments here:

''Managers thinking about accounting issues should never forget one of Abraham Lincoln's favorite riddles: How many legs does a dog have if you call his tail a leg? the answer: Four, because calling a tail a leg does not make it a leg. It behooves manager to remember that Abe's right even if an auditor is willing to certify that the tail is a leg.

''The most egregious case of let's-not-face-up-to-reality behavior by executives and accountants has occurred in the world of stock options. The lack of logic is not accidental: For decades much of the business world has waged war against accounting rulemakers, trying to keep the costs of stock options from being reflected in the profits of the corporations that issue them.

''Typically, executives have argued that options are hard to value and therefore their costs should be ignored. At other times managers have said that assigning a cost to options would injure small start-up businesses. Sometimes they have even solemnly declared that 'out-of-the-money' options (those with an exercise price equal to or above the current market price) have no value when they are issued.

''Oddly, the Council of Institutional Investors has chimed in with a variation on that theme, opining that options should not be viewed as a cost because they 'aren't dollars out of a company's coffers.' I see this line of reasoning as offering exciting possibilities to American corporations for instantly improving their reported profits. For example, they could eliminate the cost of insurance by paying for it with options. So if you're a CEO and subscribe to this 'no cash-no cost' theory of accounting, I'll make you an offer you can't refuse: Give us a call at Berkshire and we will happily sell you insurance in exchange for a bundle of long-term options on your company's stock.

''Shareholders should understand that companies incur costs when they deliver something of value to another party and not just when cash changes hands. Moreover, it is both silly and cynical to say that an important item of cost should not be recognized simply because it can't be quantified with pinpoint precision. Right now, accounting abounds with imprecision. After all, no manager or auditor knows how long a 747 is going to last, which means he also does not know what the yearly depreciation charge for the plane should be. No one knows with any certainty what a bank's annual loan loss charge ought to be. And the estimates of losses that property-casualty companies make are notoriously inaccurate.

''Does this mean that these important items of cost should be ignored simply because they can't be quantified with absolute accuracy? Of course not. Rather, these costs should be estimated by honest and experienced people and then recorded. When you get right down to it, what other item of major but hard-to-precisely-calculate cost—other, that is, than stock options—does the accounting profession say should be ignored in the calculation of earnings?

''Moreover, options are just not that difficult to value. Admittedly, the difficulty is increased by the fact that the options given to executives are restricted in various ways. These restrictions affect value. They do not, however, eliminate it. In fact, since I'm in the mood for offers, I'll make one to any executive who is granted a restricted option, even though it may be out of the money: On the day of issue, Berkshire will pay him or her a substantial sum for the right to any future gains he or she realizes on the option. So if you find a CEO who says his newly-issued options have little or no value, tell him to try us out. In truth, we have far more confidence in our ability to determine an appropriate price to pay for an option than we have in our ability to determine the proper depreciation rate for our corporate jet.

''It seems to me that the realities of stock options can be summarized quite simply: If options aren't a form of compensation, what are they? If compensation isn't an expense, what is it? And, if expenses shouldn't go into the calculation of earnings, where in the world should they go?''

With over six months having passed since those questions were posed, I have had no one heap answers upon me.

Instead, as the debate about option accounting has gone forward, ''sweep-the-costs-under-the-rug'' proponents have argued fervently for disclosure—for the presentation of all relevant information about options in the footnotes to the financial statements, rather than in the statements themselves. In that manner, they say, investors can be informed about the costs of options without these costs actually hurting net income and earnings per share.

This approach, so the argument proceeds, is especially needed for young companies: They will find new capital too expensive if they must charge against earnings the full compensation costs implicit in the value of the options they issue. In effect, the people making this argument want managers at those companies to tell their employees that the options given them are immensely valuable while they simultaneously tell the owners of the corporation that the options are cost-free. This financial schizophrenia, so it is argued, fosters the national interest, in that it aids entrepreneurs and the start-up companies we need to reinvigorate the economy.

Let me point out the absurdities to which that line of thought leads. For example, it is also in the national interest that American industry spend significant sums on research and development. To encourage business to increase such spending, we might allow these costs, too, to be recorded only in the footnotes so that they do not reduce reported earnings. In other words, once you adopt the idea of pursuing social goals by mandating

bizarre accounting, the possibilities are endless.

Indeed, I would argue that the ''national-interest'' theory is not only misguided, but wrong. True international competitiveness is achieved by reducing costs, not ignoring them. Over time, capital markets will also function more rationally when logical and even-handed accounting standards, rather than the ''feel-good'' variety, are followed.

Back in 1937, Benjamin Graham, the father of Security Analysis and, in my opinion, the best thinker the investment profession has ever had, wrote a satire on accounting. In it, he described the gimmicks that companies could employ to inflate reported earnings, even though economic reality changed not at all. Among Graham's most hilarious suggestions—because the thought seemed so far fetched—was a proposition that all employees of a company be paid in options. He pointed out that this arrangement would eliminate all labor costs (or, more precisely, eliminate the need to record them) and do wonders for the bottom line.

Today, in the world of stock options, we have life imitating satire. So far, of course, companies have largely substituted option compensation for cash compensation only when paying managers. But there is no reason that this substitution can't spread, as corporate executives catch on to the possibility of inflating earnings without actually improving the economics of their businesses.

One close-to-home example, involving Berkshire Hathaway and its 20,000 employees: I would have no problem inducing each of them to accept an annual grant of out-of-the-money options worth $3,000 at issuance in exchange for a $2,000 reduction in annual cash compensation. Were we to effect such an exchange, our pre-tax earnings would improve by $40 million—but our shareholders would be $20 million poorer. Would someone care to argue that would be in the national interest?

Many years ago, I heard a story—undoubtedly apocryphal—about a state legislator who introduced a bill to change the value of pi from 3.14159 to an even 3.0 so that mathematics could be made less difficult for the children of his constituents. If a well-intentioned Congress tries to pursue social goals by mandating unsound accounting principles, it will be following in the footsteps of that well-intentioned legislator.

Sincerely,

WARREN E. BUFFETT,
*Chairman.*

Mr. LEVIN. Finally, Mr. President, I just want to make sure that the clerk has the amendment in the same form that I do. I will simply read this amendment, and if there is any problem, the clerk can correct me. It has already been adopted, but I want to double check to make sure, and make a parliamentary inquiry, that the amendment reads as follows:

That it is the sense of the Senate the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.

The PRESIDING OFFICER. That is subsection (b) of the amendment?

Mr. LEVIN. That is correct.

The Senator is correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. LEVIN. I thank the Chair.

Again, I thank my good friend from Rhode Island for his patience.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

## REVENUE RECONCILIATION ACT OF 1997

AMENDMENT NO. 551, AS MODIFIED

Mr. CHAFEE. On behalf of Senator NICKLES, I send a modification of his amendment No. 551 to the desk and ask unanimous consent that it be so modified.

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

The modification is as follows:

On page 212, between lines 11 and 12, insert:

**SEC. . INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—The table contained in section 162(l)(1)(B) is amended to read as folllows:

| ''For taxable years beginning in calendar year— | The applicable percentage is— |
|---|---|
| 1997 | 50 |
| 1998 | 50 |
| 1999 through 2001 | 60 |
| 2002 | 60 |
| 2003 | 70 |
| 2004 | 80 |
| 2005 | 85 |
| 2006 | 90 |
| 2007 | 100 |

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

On page 159, line 15, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 159, line 18, strike ''42-month'' and insert ''35-month''.

On page 159, line 19, strike ''42 months'' and insert ''35 months''.

On page 160, lines 10 and 11, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 160, lines 19 and 20, strike ''December 31, 1999'' and insert ''May 31, 1999''.

## HEART AND HYPERTENSION BENEFITS

Mr. DODD. Mr. President, I wish to speak briefly about an amendment that I have submitted with my colleague from New York, Senator D'AMATO, to benefit firefighters and law enforcement officers in our respective states of Connecticut and New York.

For the firefighters and police officers of Connecticut, this amendment seeks simply to correct a wrong that, while unintentional, has cost these committed public servants a great deal of money and anguish. It has always been the intention of the state of Connecticut to provide its police officers and firefighters heart and hypertension benefits tax-free by considering them workmen's compensation for tax purposes. Based on that intention, these individuals accepted benefits with the understanding that they were not taxable.

However, the original version of Connecticut's Heart and Hypertension law contained language which made the benefits from the statute taxable under a ruling by the IRS in 1991. As a result of the problem with the state law, and through no fault of their own, these citizens have been charged with millions of dollars in back taxes, interest, and penalties by the IRS.

Connecticut has since amended its law, but that change does not help those police officers and firefighters who received benefits prior to the amendment. This legislation would remove their tax liability for heart and hypertension benefits for the years prior to the IRS ruling (1989, 1990, and 1991). The bill is narrowly drafted to accomplish that limited purpose, and would not affect the tax treatment of benefits awarded after January 1, 1992.

Mr. President, the police officers and firefighters of Connecticut serve our state's citizens with courage and compassion. The least we can do is provide them with this small measure in recognition of their bravery and commitment. I urge my colleagues to support this amendment.

The measure has been scored to cost $11 million for FY98 only.

## LOUISIANA CONTESTED ELECTION

Mr. WARNER. Mr. President, on April 17 the Committee on Rules and Administration voted, along party lines, to conduct an investigation into allegations that fraud, irregularities, and other errors affected the outcome of the 1996 election for United States Senator from Louisiana. The vote was taken after a very thorough discussion. Periodically I have reported to the Senate with floor statements; today is my third.

On May 8, I reported that the committee was about to embark on a bipartisan investigation, as a result of efforts by both the majority and minority to agree to a ''Investigative Protocol'' regarding the joint conduct of the investigation. From the inception, I have believed a joint investigation could better serve the Senate.

On May 23, I provided a second status report to the Senate on the following: on efforts to secure the detail of FBI agents to the Committee, on assurances of cooperation by Louisiana officials, and on my agreement with Senator FORD, the ranking member on the Committee, on the issuance of over 130 subpoenas.

Last evening, Senator FORD announced that the ''Rules Committee Democrats will withdraw from the investigation of illegal election activities in the contested Louisiana Senate election''. Further, he asserted that the ''investigation was over budget, it's exceed the time frame agreed to, and none of Mr. Jenkin's (sic) claims have been substantiated by any credible witness.''

Since last Friday, Senator FORD and I had been working to resolve differences and develop a written outline of the work we jointly could agree on to complete our investigation. I had good reason to believe we had made progress, but I learned at approximately 6 p.m. yesterday that the minority had decided to terminate their participation.

A BRIEF HISTORY OF THE INVESTIGATION TO DATE

On April 17, 1997, when the Committee on Rules and Administration authorized me, ''in consultation with the ranking member'', to conduct an investigation into the 1996 Senate election in Louisiana (exhibit 1), I stated that I believed that a preliminary inquiry could be completed in approximately 45 days. Today is June 26, some 70 days later. This passage of time included: 20 days to first develop the Investigative Protocol required by the minority before we proceeded to finalizing contracts with our respective outside counsel; 53 days to secure from the Department of Justice the detail of FBI agents to the Committee.

As I stated at the April 17 hearing, it was my hope that this investigation could be conducted in a bipartisan manner, with the use of experienced investigative attorneys to direct the investigation, and with the assistance of experienced agents from the Federal Bureau of Investigation.

The majority proposed to retain the law firm of McGuire, Woods, Battle & Boothe as their outside counsel. Senator FORD proposed to retain the law firm of Perkins Coie. Under federal law, such consultants can only be hired pursuant to a joint agreement between the Chairman and Ranking Member of the Committee.

Senator FORD further conditioned the contracting of these firms on first reaching a joint Investigative Protocol. Among other matters this document had to detail the rights of the minority, the direction of the investigation, and the confidentiality of all aspects of the investigation. On April 21, our respective designated outside counsel began a long series of negotiations leading up to this Protocol, which counsel signed on May 1. The Protocol was approved not only by Senator FORD and his counsel, but also by the minority members of the Rules Committee. The contracts retaining the two law firms were signed on May 7. This process in total consumed 20 days, during which no investigation could take place. Copies of my letter to Senator FORD on this issue, the Investigative Protocol, and the letters of retainer are attached (exhibits 2–5).

We also agreed upon retaining the services of the General Accounting Office to assist in review of election documents. Two specialists, one a Certified Public Accountant, were detailed to the Committee on May 30, and are reviewing and assessing many of the thousands of election documents that were subpoenaed to assess the allegations of ''phantom votes''. That work is on going.

As the Investigative Protocol was being developed, committee staff had begun discussions with the Federal Bureau of Investigation and the Department of Justice to detail experienced FBI agents to the Committee. Initially, Senator FORD indicated that members of the minority had some concern in using FBI investigators. Accordingly, on my own initiative, I wrote the Attorney General on May 9 requesting the detailees (exhibit 6). After additional conversations with Senator FORD, on May 14 he then joined me in formalizing a Committee request for the use of FBI agents (exhibit 7).

Thereafter, more negotiations ensued with the Department and Bureau, including my personal consultation with Director Freeh, to have the request approved by Attorney General Reno. Her final approval, given by her Deputy, occurred on May. But, the Department and Bureau stated that they could only provide two agents rather than the four we requested.

These two agents were not actually detailed to the Committee until June 9. By this time, 53 days had passed since the Committee hearing on April 17.

In addition, the Department still has not formally approved a Memorandum of Understanding between the Bureau, Department, and the majority and minority sides of the committee. Our staffs submitted a draft several weeks ago to the Department of Justice. This document, which is required under normal Committee procedures, has not been formally approved by the Department. A copy of the draft memorandum is attached (exhibit 8).

As regards timing, the central fact is that not until June 9 could the Committee get in place, in Louisiana, the agents to begin the field investigation. Petitioner Jenkins delivered files and tapes in response to a Committee subpoena and the FBI agents promptly began their review. Since this field investigation began in Louisiana only 17 days ago, we have had inadequate time to complete a preliminary investigation for the Committee. Indeed, we have not even begun the investigation into fraudulent registration which was one of the three areas that the Democratic counsel specifically recommended should be investigated. But progress is being made in collecting evidence and assessing Petitioner's allegations.

Speaking for myself, I am of the opinion this joint investigation should continue until the full Committee, not just the minority members, have had the opportunity to evaluate the work done to date. The Committee, I believe, has this obligation to the Senate.

THE INVESTIGATIVE EXPENDITURES

At the time the investigation was authorized by the Committee, I believed that outside counsel could complete this preliminary investigation with an expenditure for outside counsel capped at $100,000 for the majority and an equal amount for the minority. This estimate assumed that the FBI and GAO would provide the Committee a sufficient number of detailees in a timely manner.

At this point the majority outside counsel is working within the limit authorized by contract, and the full expenditure limit of $100,000 for services has not been reached. In addition to lawyers, when the Bureau concluded it could only provide two FBI detailees, the Committee had to hire two retired FBI agents. This was an additional expense, but their costs are being met within the majority's share of the Committee's resources.

A large percentage of our legal expenses to date were incurred to keep this as a joint investigation. For example, these expenses included prolonged negotiations developing the protocol, extensive negotiation and meetings to agree on the issuance of over 100 subpoenas, the acquisition and briefing of FBI agents, and the designation of investigative priorities, and other related matters. To provide for a joint investigation, the majority has tried in an every way to meet minority requests (exhibit 9).

STATUS OF INVESTIGATION

Until the full Committee meets, I will defer any comment on the evidence collected to date from witness interviews involving allegations of fraud.

With regards to the work done by our GAO detailed auditors have been assessing a portion of the Petitioner's categories of ''phantom votes''. While this work is not complete, the auditors have provided the Committee with interim data indicating that there were very few ''phantom votes'' in the categories and precincts examined to date.

Now I turn to issues relating to the compliance, or non-compliance of the laws providing safeguards to ensure the integrity of the Louisiana election process. The investigation, thus far, has clearly revealed that the safeguards required under Louisiana law—designed to ensure an election free from fraud—were breached, broken, in many instances during the 1996 election. Crucial election records were never sealed and remained exposed to possible tampering in violation of state law. Other election records were destroyed. Documents were commingled within a single office instead of being forwarded to separate offices on election night as required by law, completely frustrating a safeguard designed to prevent fraudulent alteration of the records. In addition, voting machines were opened after the election, ahead of schedule and outside the presence of witnesses, again clearly in violation of state law. A detailed memorandum prepared by outside counsel is attached as exhibit 10.

In conclusion, this investigation, thus far, has established that in many instances election officials, entrusted with following the law, did not do so. Documents, statements of admission, and testimony taken by the Committee's field investigators establish these facts.

This non-compliance with these legal safeguards, particularly in Orleans Parish, provided the opportunity for persons to commit fraud. It is the responsibility of the Committee to determine from the evidence whether such fraud existed and whether it affected the outcome of the 1996 election.

Given the importance of this matter to the United States Senate, it is my intent to work with Senator FORD to schedule a full Committee meeting as promptly as possible upon the return of the Senate after recess.

I ask unanimous consent that the exhibits to which I referred be printed in the RECORD.

There being no objection, the exhibits were ordered to be printed in the RECORD, as follows:

EXHIBIT 1 AS PASSED BY THE COMMITTEE.

COMMITTEE ON RULES AND ADMINISTRATION

COMMITTEE MOTION

Wheras, the United States Constitution, Article I, Section 5 provides that the Senate is ''the Judge of the Elections, Returns, and Qualifications of its own Members . . .'';

Whereas, the United States Supreme Court has reviewed this Constitutional provision on several occasions and has held: ''[The Senate] is the judge of elections, returns and qualifications of its members. . . . It is fully empowered, and may determine such matters without the aid of the House of Representatives or the Executive or Judicial Department.'' [Reed et al. v. The County Comm'rs of Delaware County, Penn., 277 U.S. 376, 388 (1928)]; and

Whereas, in the course of Senate debate, it has been stated: ''The Constitution vested in this body not only the power but the duty to judge, when there is a challenged election result involving the office of U.S. Senator.'' [Congressional Record Vol. 121, Part 1, p. 440].

Therefore, the Committee on Rules and Administration, having been given jurisdiction over ''contested elections'' under Rule 25 of the Standing Rules of the Senate, authorized the Chairman, in consultation with the ranking minority member, to direct and conduct an Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the state of Louisiana in 1996.

This Committee Motion will operate in conjunction with and concurrent to the Standing Rules of the Senate. In addition, the following Rules of Procedure are applicable, as a supplement to the Committee Rules of Procedure:

A. Full Committee subpoenas: The chairman, with the approval of the ranking minority member of the Committee, is authorized to subpoena the attendance of witnesses or the production of memoranda, documents, records, or any other materials at a hearing or deposition, provided that the chairman may subpoena attendance or production without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the subpoena within 72 hours, excluding Saturdays and Sundays, of being notified of the subpoena. If a subpoena is disapproved by the ranking minority member as provided in this section, the subpoena may be authorized by vote of the members of the Committee. When the Committee or chairman authorizes subpoenas, subpoenas may be issued upon the signature of the chairman or any other member of the Committee designated by the chairman.

B. Quorum: One member of the Committee shall constitute a quorum for taking sworn or unsworn testimony.

C. Swearing Witnesses: All witnesses at public or executive hearings who testify to matters of fact shall be sworn. Any Member of the Committee is authorized to administer an oath.

D. Witness Counsel: Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing or deposition, and to advise such witness while he is testifying, of his legal rights. Provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Committee chairman may rule that representation by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during deposition by Committee staff or consultant or during testimony before the Committee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

E. Full Committee depositions: Depositions may be taken prior to or after a hearing as provided in this section.

(1) Notices for the taking of depositions shall be authorized and issued by the chairman, with the approval of the ranking minority member of the Committee, provided that the chairman may initiate depositions without the approval of the ranking minority member where the chairman or a staff officer designated by him has not received notification from the ranking minority member or a staff officer designated by him of disapproval of the deposition within 72 hours, excluding Saturdays and Sundays, of being notified of the deposition notice. If a deposition notice is disapproved by the ranking minority member as provided in this subsection, the deposition notice may be authorized by a vote of the members of the Committee. Committee deposition notices shall specify a time and place for examination, and the name of the Committee members(s) or Committee staff member(s) or consultant(s) who will take the deposition. Unless otherwise specified, the deposition shall be in private. The Committee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear or produce unless the deposition notice was accompanied by a Committee subpoena.

(2) Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Section D.

(3) Oaths at depositions may be administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Committee members(s) or Committee staff or consultant(s). If a witness objects to a question and refuses to testify, the objection shall be noted for the record and the Committee member(s) or Committee staff or consultant(s) may proceed with the remainder of the deposition.

(4) The Committee shall see that the testimony is transcribed or electronically recorded (which may include audio or audio/video recordings). If it is transcribed, the transcript shall be made available for inspection by the witness or his or her counsel under Committee supervision. The witness shall sign a copy of the transcript and may request changes to it. If the witness fails to sign a copy, the staff shall note that fact on the transcript. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the chief clerk of the Committee. The chairman or a staff officer designated by him may stipulate with the witness to changes in the procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his or her obligation to testify truthfully.

(5) The Chairman and the ranking minority member, acting jointly, or the Committee may authorize Committee staff or consultants to take testimony orally, by sworn statement, or by deposition. In the case of depositions, both the Chairman and ranking minority member shall have the right to designate Committee staff or consultants to ask questions at the deposition. This section shall only be applicable subsequent to approval by the Senate or authority for the Committee to take depositions by Committee staff or consultants.

F. Interviews and General Inquiry: Committee staff or consultants hired by or detailed to the Committee may conduct interviews of potential witnesses and otherwise obtain information related to this Investigation. The Chairman and the ranking minority member, acting jointly, or the Committee shall determine whether information obtained during this Investigation shall be considered secret or confidential under Rule 29.5 of the Standing Rules of the Senate and not released to any person or entity other than Committee Members, staff or consultants.

G. Federal, State, and Local authorities:

1. Referral: When it is determined by the chairman and ranking minority member, or by a majority of the Committee, that there is reasonable cause to believe that a violation of law may have occurred, the chairman and ranking minority member by letter, or the Committee by resolution, are authorized to report such violation to the proper Federal, State, and/or local authorities. Such letter or report may recite the basis for the determination of reasonable cause. This rule is not authority for release of documents or testimony.

2. Coordination: The Chairman is encouraged to seek the cooperation and coordination of appropriate federal, state, and local authorities, including law enforcement authorities in the conduct of this Investigation.

H. Conflict of Rules: To the extent there is conflict between the Rules of Procedure contained herein and the Rules of Procedure of the Committee, the Rules of Procedure contained herein apply, as it relates to the conduct of this Investigation authorized herein.

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U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION, WASHINGTON, DC, APRIL 29, 1997.

Hon. WENDELL H. FORD,

*Ranking Member, Committee on Rules and Administration, U.S. Senate, Washington, DC.*

DEAR WENDELL: As I announced at our Committee meeting on April 17, I would like to retain the law firm of McGuire Woods Battle & Boothe with Mr. Richard Cullen and Mr. George J. Terwilliger, III, serving as lead counsel, to conduct the initial investigation into the alleged fraudulent and improper activities that may have affected the outcome of the 1996 election for United States Senator from Louisiana. It was my intent then, and remains so today, that this investigation be

conducted in as fair a manner as possible, with the objective of determining the existence, or absence, of a body of fact that would justify the Senate in making a determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election.

Accordingly, McGuire Woods will designate attorneys with long-term affiliations with both political parties, including Mr. William G. Broaddus, a former Attorney General of Virginia under Governor Chuck Robb, Mr. James W. Dyke, Jr., a former Secretary of Education under Governor Doug Wilder, and Mr. Frank B. Atkinson, former counsel to Governor George Allen. It is my hope that this investigation will be conducted in coordination with a like team of counsel selected by the minority.

It is now my understanding that, after many hours of meetings over four days, an ''Investigative Protocol'' has been agreed to by both sets of outside counsel as well as by Committee counsel, and that you are to be briefed on this protocol today. I am hopeful that you will agree with me that his protocol will permit a full and fair investigation of the allegations and facts, with complete participation by counsel for the minority.

This investigation must begin as soon as possible. It does no service to either party to this contest, nor the Senate, to prolong this matter. I reiterate my statement at the hearing that I will agree to your contracting for counsel. Any counsel you deem appropriate will be agree to by me pursuant to 2 U.S.C. Sec. 72a(i)(3). Further, I will honor any reasonable requests for subpoenas that you might wish to issue.

I look forward to your acceptance of the Investigative Protocol and a joint investigation that will collect the facts upon which our Committee may make an informed decision concerning this matter.

With kind regards, I am

Sincerely,

JOHN WARNER,
*Chairman.*

EXHIBIT 3

INVESTIGATIVE PROTOCOL

*I. Process for Consultation and Review*

Counsel will agree to consult on an ongoing, regularly-scheduled basis on the progress of the investigation, including consultation before significant investigative decisions are made; the majority and minority counsel will participate in regular staff meetings with investigators regarding the agenda and results of the investigation.

Consultation will include timely evaluation of the evidence, consideration of new lines—or extension of existing lines—of investigation, review of the schedule for interviewing witnesses and taking depositions, and discussion, where necessary, of other issues or investigative leads which promote a more efficient and cooperative investigative effort.

The majority and minority will work together to achieve agreement on investigative issues and decisions. When agreement cannot be reached after reasonable, good faith efforts, the necessary decision will be made in accordance with the majority view. It is understood, however, that the majority and minority will endeavor in good faith to avoid majority rather than consensus decision-making and that the minority reserves the right to withdraw from further participation under this protocol.

*II. The Scope of the Investigation*

Committee counsel will prepare and conduct an investigation pursuant to Committee resolution as follows:

Allegations of fraud, in particular vote buying, multiple voting and fraudulent voter registration. These allegations will be investigated as appropriate with attention to areas such as ''mismatched signatures'' and ''phantom voting,'' taking into account also evidence of failure of safeguards against fraud in the administration of the election.

The initial investigation plan will require that the investigation proceed in the first instance with the collection of all affidavits, notes, memoranda, audiotapes, transcripts and other materials in the possession of the Contestant which were submitted to the Committee on a redated basis but which shall be submitted in their original form to majority and minority counsel on an equal basis, without redaction, deletion or other editing, including the scheduling and conduct of interviews with the investigators hired or used by Contestant and the witnesses whom they interviewed and, as jointly determined pursuant to III (Investigative Plan), other allegations or evidence of error or irregularity.

The Committee investigation into any and all allegations will be guided and conducted as follows as evidence and testimony is collected or received, or evaluated.

The objective of the investigative effort will be competent, credible evidence, which evidence tends to show that but for the fraud, error or irregularity, the outcome of the election would have been different or the result of the election cannot be reliably determined.

The use of standard and generally accepted investigative techniques.

Careful consideration of Senate precedent and other analogous legal principles established by the law of Louisiana and other states reflected in the Senate precedent.

*III. Investigative Plan*

Counsel will reasonably endeavor to adhere to the 45-day timetable for completing the investigation; the 45-day timetable shall commence after agreement on the terms of the protocol. Counsel will advise the Chairman and Ranking Member if, due to new leads and areas of investigation, additional time is necessary.

An investigative plan will be proposed by majority counsel, subject to consultation with minority counsel, for the purpose of establishing priorities with respect to witness interviews, obtaining documents, issuing subpoenas, and other investigative requirements.

Every effort will be made to agree on an initial investigative plan. As part of the initial investigation, majority and minority counsel agree that interviews may proceed with the parties to the contest and/or their agents, employees and volunteers, and witnesses with whom they had contact in preparing the Petition and response, within 10 days of the commencement of the investigation. In the event of any unresolved differences on other aspects of the conduct of the investigation, the necessary decision will be made in accordance with the majority view.

The majority counsel will promptly provide a draft of recommendations at the conclusion of the investigation. The minority counsel will promptly provide suggested amendments, corrections or deletions. If respective counsel cannot agree on one final report, minority counsel may submit a supplement or separate report.

A written recommendation will be provided to the Chairman and Ranking Member within 5 days after the conclusion of the investigative period.

*IV. Investigative Teams*

Different areas of investigation will be assigned to teams which include representatives from the majority and minority counsel.

As part of the consultation process, the investigative teams will regularly advise the majority and minority counsel as a whole on the progress of their investigations.

Investigators will identify themselves as committee investigators only. A standard introductory statement to be used by investigators when approaching witnesses for the first time will be developed and agreed upon by majority and minority counsel.

Majority and minority counsel will jointly develop and participate in a briefing of investigators as to the purpose, scope, planning, and conduct of the investigation.

Majority and minority counsel will consult as to what instructions are to be given to investigators before conducting witness interviews. Majority and minority counsel will both participate in the briefing of investigators in advance of a particular witness interview, though either side may decline participation at its option.

*V. Investigative Procedures*

*1. Subpoenas*

Counsel shall seek to avoid unreasonable objection on the issuance of subpoenas.

The request of a witness for confidential treatment of his or her identity under Section V(3) is not a reasonable basis for objection to any subpoena requests.

Majority and minority counsel will consult on the drafting and issuance of all subpoenas consistent with the need to protect the identities of confidential sources of information as described below.

*2. Depositions*

The same considerations of comity and cooperation which apply to the issuance of subpoenas, as described immediately above, will apply to the noticing of depositions.

Majority and minority counsel will consult on the issuances of notices of depositions; in any event, at least one member of the majority and one member of the minority counsel staff will attend and participate in each deposition. In the event that the Senate grants counsel staff deposition authority, such depositions will be conducted on the same terms.

*3. Witness Interviews*

Investigators may be requested by the majority or minority counsel to conduct interviews, and the assignments will be considered and made on a consultative basis to assure the avoidance of conflicts and undue burden in the use of available resources. At the request of the majority or minority counsel, counsel may assist in the conduct of the interview or be present, or the majority or minority may request to conduct the interviews through counsel, but it is understood that occasions may arise where one side or the other may wish to conduct the interview without the other in attendance. Majority counsel has the responsibility to reasonably resolve any conflicting requests. Agents will be properly instructed as set out below.

Subject to the provisions of Section VI, witnesses may request an interview to be conducted with only the majority or minority counsel present, but in this instance and in any other instance where a witness requests that his or her identity be withheld from either the majority or minority, the counsel from whom the identity may be withheld may request the identity and the opportunity to interview the witness where the credibility of the witness is relevant to the evidentiary weight of the testimony.

No follow-up interviews of previously interviewed witnesses, except by investigators, shall be conducted without consultation between majority and minority counsel about the appropriate timing for such follow-up.

Investigators will be instructed to make all reasonable efforts to provide written reports of all witness interviews to majority and minority counsel within 24 hours of the interview. Any oral communications regarding investigative findings or significant investigative issues shall be promptly reported and transmitted to counsel to both the majority and minority.

*VI. Policy Regarding Confidential Sources of Information*

Although a witness seeking confidentiality will be encouraged not to place any restrictions on the disclosure of his or her identity, the decision to keep the witness' identity confidential will be left to the witness; however, the witness will be informed that his or her identity will be revealed to the Chairman or Ranking Member of the Committee upon request. There shall be a presumption that no confidentiality shall be extended to a party to the contest or to any agent, employee or volunteer of a party to the contest; exceptions may be granted by agreement of majority and minority counsel for good cause shown or upon agreement of the Chairman and Ranking Member or at the direction of the Committee.

Information obtained from a confidential source will be provided to the other counsel through the prompt exchange of written reports; these reports will describe the source's information, and provide the basis for and an assessment of the reliability of the source and his or her information. Where the substance of the information provided reveals the identity of the source, the content of the written reports will be redacted to protect the confidentiality of the source's identity.

In the event that there are interviews of confidential sources, each counsel will maintain a list of those sources; where disclosure of a confidential source is necessary, the identity of the confidential source will only be disclosed to the Chairman and Ranking Member.

*VII. Evidence Integrity*

The parties, their agents or other persons with an interest in the investigation shall be advised against any contact or communication with witnesses on the substance, timing or on other material matters relating to the provision of testimony or interviews, or to the collection of evidence. This advice will include a request that the parties in particular commit to cooperation with this investigation and encourage those in their employ, their counsel and supporters to extend this same cooperation. The purpose of this advisory and request for commitment shall be to protect the integrity of the testimony and evidence and the majority and minority shall consider and implement as appropriate other means to assure the fulfillment of this purpose as the investigation proceeds.

*VII. Hearings/Quorum*

Hearings at which sworn testimony is taken will be conducted with proper notice under Committee rules with a view toward and expectation of both majority and minority member attendance. Such notice will normally be three days. All hearings shall be scheduled in good faith to accommodate reasonable opportunities of majority and minority member attendance.

*IX. Document Repository*

The originals of all subpoenaed documents or other documents received in connection with the investigation will be kept and maintained under safeguarded conditions on the premises of the Senate Rules Committee as required by the rules of the Senate. Majority and minority counsel will have access to all original documents.

Majority and minority counsel will jointly maintain copies of all subpoenaed documents in a central document repository; a documents custodian will be appointed to maintain and catalog all documents obtained during the course of the investigation; the documents room will be kept under lock and key at all times but will be available to all counsel on an equal basis.

Minority counsel may create and maintain a separate document storage facility for the keeping of duplicate documents.

*X. Press Policy*

Majority and minority counsel will decline comment to the press, except as agreed in extraordinary circumstances to address errors in public reporting that may compromise the integrity of the investigation or perceptions of its integrity of course. Otherwise, all press inquiries will be referred to the Senate Rules Committee.

The majority and minority counsel and staff will treat the investigative plan, all consultations, the development and recommendations, the identity of interviewees and deponent, and all evidence obtained through the investigation on a confidential basis.

*XI. Confidentiality of Investigation*

Majority and minority counsel agree that all information gathered in the course of this investigation, as well as any reports drafted by counsel, shall be treated as strictly confidential. Pursuant to this understanding, counsel agree that each consultant law firm will take reasonable measures to ensure that information gathered in the course of, or pertaining to, this investigation is treated confidentially, is not disclosed to individuals within the firm who do not have a direct need to know the information, and is not disseminated outside the firm except to the Members of the Senate Rules and Administration Committee and its staff, unless otherwise directed to do so by the Chairman or Ranking Member. Counsel further agree that the information gathered during this investigation will be used solely in connection with this matter and use for any other purpose is expressly forbidden. In order to ensure strict confidentiality in this matter, each firm will implement reasonable security measures for all documents and other materials related to this investigation and shall inform all individuals working on this matter of the requirements of this section.

RICHARD CULLEN,
*McGuire, Woods, Battle & Boothe, L.L.P.*
ROBERT F. BAUER,
*Perkins Coie.*
RICHARD CULLEN.
GEORGE J. TERWILLIGER, III,
*Counsel for the Majority, United States Senate Committee on Rules and Administration.*

EXHIBIT 4

U.S. SENATE,
*Washington, DC, May 16, 1997.*

RICHARD CULLEN, Esq.,
*McGuire Woods Battle & Boothe, Richmond, VA.*
GEORGE J. TERWILLIGER III, Esq.
*McGuire Woods Battle & Boothe, Washington, DC.*

DEAR RICHARD AND GEORGE: On behalf of the Senate Committee on Rules and Administration, this letter confirms our retention of your services to assist the committee in its Constitutional responsibility, pursuant to a petition filed by United States Senate candidate Louis ''Woody'' Jenkins, to review questions raised about the 1996 U.S. Senate race in Louisiana. This retainer letter also covers the retention of services of other McGuire Woods partners and associations.

In accordance with Senate procedures, this petition was filed with the Vice President of the United States, in his capacity as President of the Senate, and referred to this committee for consideration as we have jurisdiction over this matter. On April 17, 1997, the Committee authorized an ''Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the State of Louisiana in 1996.''

This investigation shall be conducted in conjunction with counsel for the minority, and an identical retainer has been extended to Robert F. Bauer and John Hume of Perkins Cole.

Pursuant to your discussions with Committee counsel, please sign the original enclosed contract and return it for our records.

Sincerely,

JOHN WARNER.
WENDELL H. FORD.

EXHIBIT 5

U.S. SENATE,
*Washington, DC, May 16, 1997.*

ROBERT F. BAUER, Esq.,
JOHN P. HUME, Esq.,
*Perkins Coie, Washington, DC.*

DEAR BOB AND JOHN: On behalf of the Senate Committee on Rules and Administration, this letter confirms our retention of your services to assist the committee in its Constitutional responsibility, pursuant to a petition filed by United States Senate candidate Louis ''Woody'' Jenkins, to review questions raised about the 1996 U.S. Senate race in Louisiana. This retainer letter also covers the retention of services of other Perkins Coie partners and associates.

In accordance with Senate procedures, this petition was filed with the Vice President of the United States, in his capacity as President of the Senate, and referred to this committee for consideration as we have jurisdiction over this matter. On April 17, 1997, the Committee authorized an ''Investigation of such scope as deemed necessary by the Chairman, into illegal or improper activities to determine the existence or absence of a body of fact that would justify the Senate in making the determination that fraud, irregularities or other errors, in the aggregate, affected the outcome of the election for United States Senator in the State of Louisiana in 1996.''

This investigation shall be conducted in conjunction with counsel for the majority, and an identical retainer has been extended to Richard Cullen and George Terwilliger of McGuire Woods Battle & Boothe.

Pursuant to your discussions with Committee counsel, please sign the original enclosed contract and return it for our records.

Sincerely,

JOHN WARNER.
WENDELL H. FORD.

EXHIBIT 6

U.S. SENATE,
*Washington, DC, May 9, 1997.*

Hon. JANET RENO,
*The Attorney General of the United States, Washington, DC.*
Hon. LOUIS J. FREEH,
*The Director of the Federal Bureau of Investigation, Washington, DC.*

DEAR MADAM ATTORNEY GENERAL AND DIRECTOR FREEH: As you know, the 1996 Senate race in Louisiana is being contested. Under Article I, section 5, of the U.S. Constitution,

the Senate has exclusive responsibility to judge the final results of this election.

The Committee on Rules and Administration has initial jurisdiction over this matter for the Senate, and I am privileged to serve as its Chairman. The Committee met three times in open session to discuss the election contest and has authorized me by Committee Motion to conduct an investigation, in consultation with the Ranking Member, Senator Wendell Ford. Senator Ford and I have each retained counsel from outside law firms to assist the Committee, and we executed contracts with these attorneys on May 7.

In my opinion, there is no more serious responsibility of the Senate than to determine the validity or non-validity of an election for United States Senator. The freedom that we enjoy is predicated on the American people having confidence in our election laws and believing that they have been complied with in elections for the Congress.

I make no prejudgment as to the few facts that are before the Senate at this time. But there is a clear duty to conduct such investigation as we deem necessary so that the full Senate can make an informed decision as to the election contest.

Given the importance of this matter to our federal system, I call on the Department of Justice to provide the United States Senate with the assistance of several investigators to work with our designated counsel and other persons engaged by the Committee to conduct this investigation. I believe that the credibility and experience of agents detailed from the Federal Bureau of Investigation will help to establish a like credibility in the outcome of the Senate's investigation.

I request that at your earliest opportunity we meet concerning this matter, hopefully to be joined by Senator Ford, to ascertain your willingness for the Department to assist the United States Senate.

Enclosed is copy of the authorizing Committee Motion, along with a recent floor statement I made concerning the contest and other relevant documents, which should allow your advisors to quickly understand the Committee's responsibilities and the specifics regarding the content.

The Committee point of contact is Bruce Kasold at (202) 224–3448. Thank you for your assistance in this matter.

Sincerely,

JOHN WARNER
*Chairman.*

EXHIBIT 7

U.S. SENATE,
*Washington, DC, May 14, 1997.*

Hon. JANET RENO,
*The Attorney General, Department of Justice, Washington, DC.*

Hon. LOUIS J. FREEH,
*Director, Federal Bureau of Investigation, Washington, DC.*

DEAR MADAM ATTORNEY GENERAL AND DIRECTOR FREEH: As you are aware, the Committee on Rules and Administration is conducting preliminary investigation into allegations of fraud and other irregularities which reportedly occurred in the 1996 U.S. Senate race in Louisiana. The Committee anticipates that this investigation will last approximately 45 days.

The Committee has hired outside counsel to advise the Committee and direct this investigation. It is their strong recommendation that the Committee augment our resources with professional investigators. In order to expedite and facilitate this investigation, and ensure the level of investigative professionalism required in such a case, the Committee respectfully requests the assistance of detailees from the Federal Bureau of Investigation.

The Committee has identified an immediate need for two detailees, preferably with a familiarity with Louisiana, and the New Orleans area specifically. As the investigation progresses, the Committee anticipates a need for at least two additional detailees. We ask that these detailees be provided to the Committee on a non-reimbursable basis, with the Committee bearing the associated travel expenses for these detailees, pursuant to Senate rules.

The Committee has secured space in the Hale Boggs Federal Building in New Orleans for the duration of this investigation with the exception that attorneys for the Committee will begin occupying that space by early next week. Due to the timeliness of this investigation, we would hope that two detailees could be made available to the Committee at the same time so that the Committee investigation could begin promptly.

It is important to the Committee that this investigation be conducted with the utmost professionalism and respect for the individuals involved, in particular, the elected officials and citizenry of Louisiana. The reputation and integrity of the Bureau make it the most appropriate source for such assistance. We anticipate that a memorandum of understanding regarding the deployment of these detailees will need to be signed between your office(s) and the Committee. We are prepared to execute that document immediately.

We greatly appreciate your assistance in this regard.

Sincerely,

WENDELL H. FORD,
*Ranking Member.*
JOHN WARNER,
*Chairman.*

EXHIBIT 8

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES SENATE COMMITTEE ON RULES AND ADMINISTRATION AND THE U.S. DEPARTMENT OF JUSTICE

I. This document is a Memorandum of Understanding (''MOU'') between the United States Senate Committee on Rules and Administration (''Committee'') and the U.S. Department of Justice regarding certain terms and procedures relating to the detail assignment of Special Agents of the Federal Bureau of Investigation (''FBI'') to the Committee for the purpose of assisting the Committee in its investigation (''Special Investigation'').

II. *Relation of FBI Special Agents detailed to the Committee to the FBI and other components of the Department of Justice.*

(A) FBI Special Agents to be detailed to the Committee (''Committee Investigators'') shall be selected by the FBI after consultation with the Criminal Division of the Department of Justice.

(B) Committee Investigators shall not report to or receive direction from the FBI or any other component of the Department of Justice regarding the investigative activities of the Committee, except as expressly authorized by the Chief Counsel for the Committee. The activities of the Committee Investigators shall be directed by the Chief Counsel and Minority Chief Counsel of the Committee acting directly or through designated lead counsel for the Special Investigations, as provided in Part III of this MOU.

(C) Committee Investigators shall not provide any oral or written account of information obtained as a result of the Agents' assignment to the Committee either to the FBI or to the personnel of any other Executive Branch agency without the express authorization of the Chief Counsel and the Minority Chief Counsel for the Committee. Approved communication of such information to the FBI or other components of the Department of Justice shall be through a designated point of contact, as provided in paragraph (F).

(D) Committee Special Agents shall not exercise any law enforcement authority granted them by law while executing the duties and responsibilities for which they have been detailed to the Committee.

(E) Committee Special Agents shall not be entitled, by virtue of their status as federal law enforcement officers, to have access to information developed through criminal investigation, including grand jury information.

(F) All communications [relating directly or indirectly to investigative matters] between Committee Special Agents and the FBI or any other component of the Department of Justice, shall be through a point of contact established by the Department of Justice. The Department of Justice will notify the Chief Counsel of the Committee of the name of that point of contact.

III. *Duties and Responsibilities of the Chief Counsel and Minority Chief Counsel to the Committee.*

(A) FBI Special Agents detailed to the Committee shall be a joint resource to both the Majority and Minority staffs of the Committee and outside counsel retained by the Committee.

(B) The Committee shall reimburse the FBI for all costs associated with the detail assignment of FBI Special Agents to the Subcommittee, including official travel expenses.

(C) The Chief Counsel and/or the Minority Chief Counsel shall furnish written or oral responses, if requested by the FBI, regarding the performance appraisal of FBI Special Agents detailed to the Committee.

(D) All assignments to the Committee Investigators shall be made by the lead attorney and the minority lead attorney, acting jointly, or by either attorney after consultation with the other. All assignments shall, for administrative purposes, be made either by or through the lead attorney for the Special Investigation, to the supervisory Committee Investigator designated by the FBI. The lead attorney for the Special Investigation shall provide timely notice to the minority lead attorney for the Special Investigation of all assignments to the agents.

(E) Unless directed otherwise by the lead counsel for the Special Investigation, the Committee Investigators may conduct interviews personally or by the telephone.

IV. *Duties and Responsibilities of the Committee Investigators.*

(A) The Committee Investigators shall assist the Committee in all tasks related to the objectives of the Committee in its investigation.

(B) Except as otherwise provided in this MOU, the Committee Investigators will remain subject to the personnel rules, regulations, laws and policies applicable to FBI employees. The Committee Investigators will also adhere to Committee rules and regulations which are applicable to the performance of their assigned duties at the Committee, so long as those rules do not conflict with FBI rules and regulations.

(C) Except in extraordinary circumstances, Committee Investigators shall provide the lead attorney for the Special Investigation, who shall in turn notify the minority lead attorney for the Special Investigation, sufficient advance notice of any pending appointments for interviews, so that either attorney for the Special Investigation can determine whether to assign an attorney to join the interview.

(D) With regard to all investigative activities performed for the Committee, Committee Investigators

(1) shall identify themselves as staff investigators of the Committee, and not as federal law enforcement agents;

(2) shall not possess a firearm nor display FBI credentials or badge during the conduct of any personal interviews or other investigative activity;

(3) shall inquire whether a witness to be interviewed is represented by counsel, and if so, inform the lead attorney for the Special Investigation accordingly, prior to scheduling the interview;

(4) shall take notes during all interviews and keep the originals of the same as a record of the Committee;

(5) shall reduce to writing, in memorandum form, the substance of all witness interviews within five working days, unless circumstances prevent that schedule and the lead attorney for the Special Investigations approves the delay;

(6) shall provide both the lead attorney and the minority lead attorney for Special Investigation a copy of the interview memorandum; and

(7) shall insure that any documents, records, exhibits, or other evidence obtained from the interviewed witness are turned over immediately to both the lead attorney and the minority lead attorney for the Special Investigation pursuant to the procedures relating to the same.

V. Termination

This agreement may be terminated by any of the undersigned upon written notice to the others.

Approved by the Committee on Rules and Administration of the United States Senate.

Chairman John Warner.

Ranking Member Wendell H. Ford.

Howard M. Shapiro, General Counsel, FBI.

Mark M. Richard, Acting Assistant Attorney General, Criminal Division, U.S. Department of Justice.

EXHIBIT 9

U.S. SENATE, COMMITTEE ON RULES AND ADMINISTRATION,
*Washington, DC, May 1, 1997.*

Hon. WENDELL H. FORD,
*Ranking Member, Committee on Rules and Administration, U.S. Senate, Washington, DC.*

DEAR WENDELL: Per our conversation, let me state my intent with regard to the rights of the Committee minority as they apply to the preliminary investigation into the contest of the 1996 Senate election in Louisiana.

First, as I understand to be reflected in the investigative protocol provision regarding the issuance of subpoenas, I agree that the subpoena power delegated to the Chairman, with the approval of the ranking minority member of the Committee, pursuant to Rule A of the Committee's supplemental rules of procedure adopted on April 17, 1997, shall be used reasonably and equitably to compel the attendance of any witness or the production of any documents requested by a majority of the minority members of the Committee.

Second, I agree that when majority and minority counsel cannot agree on investigative issues, decisions, or aspects of the conduct of the investigation, then they shall, at the request of either counsel, bring their disagreement to the immediate attention of the Chairman and ranking minority member. If the Chairman and ranking member cannot agree, then the full Committee will be asked to resolve the issue after an opportunity for discussion and comment.

Third, I agree that at any hearing held for the purpose of taking recorded, sworn, or unsworn testimony, at least three days' notice shall be given and any member or members of the Committee may attend and participate.

I hope this clarifies my position.

Sincerely yours,

JOHN WARNER,
*Chairman.*

EXHIBIT 10

MCGUIRE WOODS BATTLE & BOOTHE

MEMORANDUM

To: Senate Rules Committee
From: George J. Terwilliger and Frank Atkinson
Date: June 23, 1997
Re: Jenkins-Landrieu—Voting Procedures and Election Safeguards

BACKGROUND INFORMATION—VOTING PROCEDURES AND ELECTION SAFEGUARDS

Louisiana has been plagued by a history of election fraud, and the state therefore has enacted elaborate voting procedures and safeguards designed to guard the integrity of elections. The state legislature has expressly recognized the state's ''longstanding history of election problems, such as multiple voting, votes being recorded for persons who did not vote, votes being recorded for deceased persons, voting by non-residents, vote buying, and voter intimidation.'' La. R.S. 18:1463.

Secretary of State McKeithen is the ''chief election officer of the state.'' La R.S. 18:421.A. He has publicly sated: ''Our [election] law, if strictly followed, is probably the tightest law in the country. The problem was it wasn't followed [in the November 1996 election].''[1]*

Even where modern voting machines are used and post-election tampering with the machines is made generally impracticable by a combination of machine security features and procedural safeguards, the possibility of fraud still exists whenever one person (or several acting in concert) can gain access to precinct registers, poll lists, absentee voter lists, and other documentary materials used on or before election day.

Voting machines are devices for recording and tallying the number of votes, the accuracy of the tally is vitally important, but it is only one component of an honest election.

The integrity of the election also turns upon the validity of the votes cast, and this central facet of election administration is addressed in detail in Louisiana statutes that prescribe the preparation, use and post-election disposition and custody of various written election records. These written records provide an indispensable check that guards against improper manipulation of voting machines before, on, or after election day.[2]

SUMMARY : KEY PROCEDURAL PROVISIONS AND BREACHES OF SAFEGUARDS

*4. Key procedural provisions*

State law provides that a precinct register (together with a supplemental list of absentee voters) is to be used at each polling place.

The precinct register contains an alphabetical listing of all registered voters in the precinct. Voters must sign the precinct register when they vote, and an election commissioner also must sign (initial) opposite each voter's signature.

Election commissioners in each precinct are also required to prepare two (duplicate) poll lists.

The poll lists contain the names of actual voters recorded in the order that they vote. Election commissioners record the names of voters on sheets with consecutively numbered spaces.

Voters and election commissioners must execute certain other documents in prescribed circumstances, including Address Confirmation at Polls (ACP) forms, Affidavit of Voters (AV–33) forms, and Challenge of Voter (CV–56) forms.

When the polls close, election commissioners are required to follow specific procedures. With regard to the disposition of the written election records, each of the following must be accomplished by midnight on the day of the election and in the presence of commissioned poll watchers:

Election commissioners are required [a] to place certain specified records in a Registrar of Voters (ROV) envelope, [b] to then place the ROV envelope inside the precinct register and seal the precinct register,[3] [c] to then seal one copy of the poll list and certain other specified records inside the Put in Voting Machine (P–16) envelope, [d] to then place the sealed P–16 envelope and the precinct register inside the voting machine, and, finally, [e] to lock the voting machine and seal the key inside the Return Key Envelope (C–03).

Election commissioners are required to place certain other specified records, including the other copy of the poll list, in the Secretary of State (S–19) envelope and to mail the S–19 envelope to the Secretary of State.

Election commissioners are required to deliver the sealed Return Key Envelope and certain other specified records to the parish clerk of court.

Other provisions specifically govern the counting of absentee votes and the disposition of absentee vote records.

*B. Identified breaches of election safeguards*

Secretary of State Mckeithen and several staff members were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. They identified and/or confirmed the following breaches of election safeguards:

Election commissioners were required by law to mail one set of election records to the Secretary of State on election night. Commissioners in Orleans Parish and several other parishes were instructed by the parish clerk of court's office to—and did—deliver this set of records to the parish clerk of court instead of the Secretary of State, in violation of the state law.

Instructional materials prepared by the Commissioner of Elections, Jerry Fowler, and his office directed the parish election commissioners to deliver the Secretary of State's set of election records to the parish clerk of court instead of mailing them to the Secretary of State, as required by state law. These instructions were prepared unilaterally by Commissioner Fowler's office in violation of another state law which requires that such instructional materials be prepared jointly by the Commissioner of Elections and the Secretary of State and be approved by the Attorney General before distribution to election commissioners.

Voting machines in Orleans Parish were unsealed and opened before the appointed time and outside the presence of candidate representatives, in violation of state law.

Secretary of State McKeithen also made the general observation—not specific to any particular parish—that election commissioners routinely failed to require voters to prove their identity in accordance with state law.

District Attorney Doug Moreau of East Baton Rouge Parish and his assistant were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. From his office's review of election records obtained from Orleans Parish pursuant to subpoena, he has found the following:

Besides mailing one set of original precinct election records to the Secretary of State on election night (the ''S–19 envelope''), parish election commissioners are required by law to seal the other set of original records in an envelope (''the P–16 envelope''), seal the precinct register, and lock the sealed P–16 envelope and sealed precinct register in the precinct voting machine. Moreau subpoenaed

*Footnotes at end of article.

the P–16 envelopes and contents from Orleans Parish. After reviewing approximately half of these records, he found that none had ever been sealed in accordance with state law.

According to Moreau and his assistant, Sandra Ribes, the Orleans Parish P–16 envelopes appear to have many missing items and discrepancies, including irregularities in record-keeping for absentee voters. Rather than relying upon Moreau's review, however, we have requested these records so that we can conduct our own audit. Our request is pending, so Moreau still has these records.

In response to Moreau's subpoena, it was disclosed by the Clerk of Court in Baton Rouge that many original election records for East Baton Rouge Parish have been discarded, in apparent violation of state law.

Commissioner of Elections Jerry Fowler and staff members were interviewed by Senate Rules Committee outside co-counsel on May 13 and May 30, 1997. They confirmed the following:

Although Fowler's office prepared videotapes and instructional materials properly directing election commissioners to mail the S–19 envelopes and contents to the Secretary of State's office, they did also prepare certain ''customized'' videotapes and instructional materials—at the request of several parish clerks of court, including the Orleans clerk's office—directing the election commissioners in those parishes to send the S–19 records to the parish clerk of court instead of the Secretary of State.

Staff working for the Orleans Parish clerk's office did unlock and open voting machines and remove records outside the presence of designated candidate representatives a short time before the appointed hour for the opening of the machines three days after the election.

State employees reporting to Fowler were in control of the warehouse in which the locked voting machines in Orleans Parish were stored prior to the opening of them three days after the election. The clerk of court of Orleans Parish had ''legal custody'' of the voting machines during this period. It is unclear whether the clerk's staff had actual access to the voting machines during this time. They may have had access to an office within the warehouse, and the portion of the warehouse where the machines were stored was accessible from that office. There was no regular inspection of the storage area nor security check by any of Fowler's employees.

The rear of the AVC voting machines used in Orleans Parish contains a door that can be locked but has no ready means of sealing. This is the area where the election records (P–16 envelopes and precinct registers) were stored. Since the machines were locked but not sealed, a person with a key to the machines could gain access to these election records without it being physically evident that access was gained.

Also relevant to the investigation of breached election safeguards are the admissions by several Orleans Parish election commissioners that they accepted payments from gaming organizations interested in the outcome of questions on the November 1996 ballot. At least one election commissioner has admitted receiving such a payment for electioneering activity performed on election day.

PARTICULAR ISSUES

*Separation of election records; delivery to Secretary of State*

*Legal Requirement:* State law requires election commissioners to mail the Secretary of State (S–19) envelope containing one of the poll lists and other records directly to the Secretary of State's office before midnight. La. R.S. 18:572.A(2) and B.

Secretary of State McKeithen explained that this safeguard is designed to prevent tampering with the written election records by separating the poll lists and other important documents immediately upon their leaving the polling places. State law requires that one of the poll lists be mailed to the Secretary of State while the other is to be sealed in an envelope and locked in the voting machine. Mr. McKeithen stated that this is an important safeguard against election fraud, and he noted that it also is a means by which clerks of court can avoid vulnerability to fraud allegations by ensuring they do not have access to all copies of key election records.

Mr. McKeithen stated that, until the recent disclosure that a contrary practice existed in certain parishes, he was unaware of these election law violations. He further stated that, if he had been aware of the existence of this contrary practice, he would have acted decisively to prevent the violations.

*Violations:* Secretary of State McKeithen, Commission of Elections Fowler, and members of their respective staffs confirmed published reports that election commissioners in at least Orleans, Jefferson, and East Baton Rouge Parishes failed to comply with the legal requirement that they mail the S–19 envelopes and contents to the Secretary of State on election night. Instead, the commissioners delivered the envelopes and contents to their respective parish clerks of court. This placed the second copy of each precinct's poll list and other original records in the custody of the single local election official with access to the remainder of the original records.

Because the Secretary of State does not log in the envelopes upon receipt in his office, we do not know how long the S–19 envelopes and contents remained in the possession of the respective parish clerks of court before they were sent to the Secretary of State.[4]

We do not have authoritative information as to the other parishes in which this violation of state law occurred, when and where such violations have occurred in the past, or the reason or reasons given by the election commissioners-in-charge who took that action. We do know, however, that in the three parishes identified above, and apparently in others, the respective parish clerks of court instructed election commissioners to deliver the S–19 envelopes and contents to them rather than to mail them to the Secretary of State as required by state law.

Commissioner Fowler and his staff confirmed that instructional materials, including both written guidelines and video tapes, were used by the clerks of court to prepare election commissioners in their parishes. In Orleans and apparently other parishes, these materials expressly instructed election commissioners to send the S–19 envelopes and contents to the clerks of the court.

The proper procedure for disposition of the S–19 envelopes should have been clear to the clerks of court and the election commissioners. The Informational Pamphlet prepared jointly by the Secretary of State and the Commissioner of Elections, approved by the Attorney General, and distributed to election commissioners and clerks of court expressly instructs the commissioners to mail these envelopes, with the prescribed contents, to the Secretary of State by midnight on election night. The front of the S–19 envelope itself lists in bold print the items that must be enclosed and specifies that the envelope must be mailed to the Secretary of State.

Importantly, the S–19 envelopes were not sealed by activating adhesive on the envelop flaps or by any other method that would prevent undetectable access. Instead, when ultimately received in the Secretary of State's office, the S–19 envelopes generally were clasped using the metal clasp that is standard on manila-type envelopes.

Although there is no statutory requirement that the S–19 envelopes be ''sealed,'' the requirement that they be ''mail[ed]'' would seem to imply a more secure closing of the envelopes than that accomplished through use of the metal clasp alone. However, Secretary KcKeithen and his staff advised us that the S–19 envelopes have routinely been received by his office in a clasped but unsealed condition.

Regardless of the propriety of the practice of not sealing the S–19 envelopes, the significant point is that those envelopes were—while unlawfully in the possession of the clerks of court (and any others to whom they granted access)—in a condition that permitted easy and undetectable access to their contents.[5]

The significance of the unsealed condition of the S–19 envelopes and the accessibility of their contents is reflected in a published comment made by Alan Elkins, principal assistant to Commissioner of Elections Jerry Fowler. As described below, Elkins was one of the persons involved in preparing instructional materials that directed election commissioners in some parishes to send the S–19 envelopes to the parish clerks of court in violation of state law. Speaking shortly after the disclosure of these violations last month, Elkins was quoted as saying: ''What difference does it make? Those envelopes are sealed anyway. You can't open them without the appearance of them being opened.''[6] In our interview, Elkins acknowledged that the S–19 envelopes actually were not sealed; he now expresses the opinion that fastening the envelopes by clasp was sufficient.

*2. Instructions to election commissioners regarding voting procedures and disposition of records.*

*Legal Requirement:* State law assigns various responsibilities for election administration among the Secretary of State and the Commissioner of Elections. While the Commissioner of Elections has statutory authority over the voting machines, the Secretary of State is the chief election officer of the state. Accordingly, state law requires that written instructions to election commissioners regarding voting procedures be prepared jointly by the Secretary of State and the Commissioner of Elections, and that these instructions be approved by the Attorney General La. R.S. 18:421.C.

Secretary of State McKeithen described this provision to us as an important check and balance that is necessary in light of Louisiana's checkered election history.

*Violation:* The Commissioner of Elections and members of his staff acknowledged to us that, within the last four or five years, they have prepared written and videotape instructional materials that direct election commissioners to deliver the S–19 envelopes and the election records contained therein to the parish clerk of court, rather than by mail to the Secretary of State, as required under state law. The Commissioner's staff advised us that they produced a standard instructional videotape that directed precinct election commissioners to mail the S–19 envelopes and contents to the Secretary of State, but that, at the request of various parish clerks of court, they also ''customized'' some of the videotapes to direct that the S–19 envelopes and contents instead be delivered to the clerks of court. Corresponding written instructions also directed the delivery of the S–19 envelopes and contents to the clerks of court in those parishes.

Commissioner Fowler and his staff were unable to tell us with specificity which parishes requested and received instructional

tapes and written materials ''customized'' in this manner. He did indicate a general belief that the preparation of these instructional materials corresponded with the introduction and initial use of the new ''AVC'' (Sequoia) voting machines in Orleans and several of the other larger parishes. These tapes and written materials primarily were concerned with instructing commissioners in the use of these new and unfamiliar voting machines, but, for reasons Commissioner Fowler did not explain, they also included instructions on the disposition of the S–19 envelopes, which have nothing to do with the voting machines.

Secretary of State McKeithen expressed strong objections to the Commissioner's unilateral preparation of these instructional materials, of which the Secretary of State only became aware last month. McKeithen acknowledged that the Commissioner of Elections is responsible for instructing precinct commissioners in the use of voting machines and therefore could properly prepare those instructions unilaterally, but he stated that the inclusion of instructions regarding disposition of election records was clearly outside of the Commissioner's lawful authority. Secretary McKeithen called attention to the stark conflict between the Informational Pamphlet, which was jointly prepared by McKeithen and Fowler and approved by the Attorney General, and the videotape and accompanying written materials that were unilaterally prepared by Fowler's office in collaboration with local clerks of court. The Informational Pamphlet properly advises precinct commissioners to mail the S–19 envelopes to the Secretary of State; the other materials direct the local commissioners to send the S–19 envelopes to the clerk of court in violation of state law.

*3. Sealing of envelopes containing original records; locking of percent registers and envelopes in voting machines*

*Legal Requirement:* As noted above, state law requires that, in the presence of poll watchers and before midnight on election day, election commissioners must seal one copy of the poll list and certain other specified records inside the P–16 envelope, which is marked ''Put in Voting Machine.'' La R.S. 18:571(12). The election commissioner then must place the sealed P–16 envelope and the sealed precinct register in the voting machine, lock the machine, and seal the key in the Return of Key envelope. La. R.S. 18:571(11), (12), (13), (14).

*Violation:* We have been advised by District Attorney Moreau and his staff that they have examined approximately half of the P–16 envelopes from Orleans Parish, and that none of the envelopes are, or appear to ever have been, sealed in accordance with state law. The P–16 envelopes contained one of the two poll lists, and the failure to seal these envelopes as expressly mandated by state law represents another significant breach of the statutory safeguards relating to election records. We do not yet know whether the precinct registers were sealed.

Importantly, election commissioners in Orleans Parish placed the unsealed P–16 envelopes and the precinct registers in AVC voting machines that were themselves unsealed. State law required the commissioners to lock the door to the rear area of the machines where the records were placed, but, unlike other types of voting machines, the entire AVC machine is not sealed. On the AVC voting machines, the computer cartridge alone is sealed, and the rear area containing the precinct register and P–16 envelopes is merely locked. This circumstance aggravates the concern about the failure of Orleans Parish commissioners to seal the P–16 envelopes (and possibly the precinct registers). Since these crucial records were placed unsealed in a portion of the voting machines that was locked but not sealed, anyone with access to a machine key could have gained direct access to the election records without detection.

*4. Unlocking and unsealing of voting machines in the presence of candidates or their representatives*

*Legal Requirement:* State law provides that the voting machines are to be transferred from the precinct polling place to the custody of the parish clerk of court and are to be opened, in the presence of representatives of the candidates, three days after the election. La. R.S. 18:573.A, 18:573.B.

*Violation:* Secretary of State McKeithen, Commissioner of Elections Fowler, and members of their respective staffs confirmed to us that some significant number of voting machines in Orleans Parish were unlocked and unsealed outside the presence of candidate representatives and before the announced time for the supervised opening of the machines. Neither had direct knowledge of the particulars, but both indicated that Orleans Parish officials had acknowledged the improper action occurred.

McKeithen cited this improper action as a serious breach that, in tandem with other known violations such as the Clerk's receipt of the S–19 envelopes, rendered the Clerk of Court of Orleans Parish, Mr. Edwin Lombard, vulnerable to allegations of election irregularity.

In contrast, Fowler stated to us his understanding that this unlawful action was inconsequential since, according to the information relayed to him, the machines were opened at most fifteen minutes or so before they should have been. Commissioner Fowler further stated his understanding that Mr. Lombard had not personally authorized the improper action; he identified the Deputy Clerk, Mr. Broussard, as the senior official with the clerk of court's office who was present when the machines were opened. Both McKeithen and Fowler stated that the ceremonial opening of voting machines in the presence of witnesses three days after the election had traditionally been regarded as an important event and election safeguard. However, Fowler nevertheless ventured the opinion that the action of clerk's office personnel in opening the machines early, outside the presence of candidate representatives, and notwithstanding the close and contested nature of this particular election, was an incidental action taken for the innocent purpose of expediting the machine opening process.

While Louisiana law was violated by the opening of some or all Orleans Parish voting machines in the manner described above, the significance of this violation in terms of the opportunity for election fraud will not be clear until further investigation has been completed, with regard to access to the election records locked in the voting machines, the following facts are noteworthy:

The voting machines were in the legal custody of the clerk of court from the time they left the polling place until the unlocking and unsealing of the machines on the third day after the election.

The keys to the voting machines were in the possession of the clerk of court during this same period. They should have been contained in an envelope that remained sealed until the envelope was opened and the keys removed in the presence of witnesses three days after the election. However, because the clerk's employees began opening the machines early and outside the presence of witnesses, it is not known whether, and for how long, the key envelopes remained sealed while in the clerk's custody.

The precinct register, poll lists and other original election records were locked in the voting machines, but the rear area of the machines in which they were locked was not sealed; therefore, undetected access to the election records in the machines was possible for anyone possessing a key to the machines.

Prior to the opening of the machines, they were stored in a warehouse controlled by Commissioner Fowler and designated members of his staff. Clerk of Court Lombard had legal custody of the machines during this time, but the extent, if any, to which he and his staff had actual access to the machines is an issue for investigation. Clerk's office personnel may have had access at will to an office area within the warehouse where the machines were stored, and there was unobstructed access from the office area to the part of the warehouse containing the voting machines.

Taken together, the foregoing tends to confirm that the Clerk of Court of Orleans Parish, and presumably persons on his staff, may well have had the ready ability to gain access to the original election records in the voting machines if they so chose. This ability apparently existed for 2–3 days. In combination with the unlawful failure to seal the envelopes and election registers placed in the machines and the unlawful failure to send the other set of election records directly to the Secretary of State, the result in Orleans Parish appears to have been the very situation—a person or small group of persons enjoying access to all copies of crucial election records—that Louisiana law was designed to prevent.

*Payments to election commissioners; related issues*

*Legal Requirement:* State law prescribes the qualifications, powers, duties, compensation required training, and method of selection of the precinct election commissioner-in-charge and the other precinct election commissioners who administer the election at the polling places. See La. R.S. 18:424, 18:425, 18:426, 18:431, 18:431.1, 18:433, 18:434. Election commissioners are expressly prohibited from ''electioneer[ing], engag[ing] in political discussions, . . . or prepar[ing] a list of persons at the polling place'' (La. R.S. 18:425.C), and they may not ''in any manner attempt to influence any voter to vote for or against any candidate or election being held in that polling place'' (La. R.S. 18:1462. C). As a practical matter, these officials have virtually no opportunity to assist a candidate or ballot proposition at any other polling place on election day, since they are required to report to the polling place at which they serve no later than 5:30 a.m. on election day and to remain there for the duration of the voting and post-voting procedures; the clerk of court must approve the appointment of any replacement commissioner on election day. La. R.S. 18:433.E(2), 18:434.D, 18:434.E. The lawful compensation of election commissioners is prescribed by statute. La. R.S. 18:424.E. 425.E. State law specifically provides that no person shall ''[o]ffer money or anything of present or prospective value . . . to influence a commissioner . . . in the performance of his duties on election day.'' La. R.S. 18:1461.A(8). Election commissioners must be selected at random from a list of duly trained and certified persons. La. R.S. 18:433.B, 18:434.B.

*Possible Violation:* News media reports earlier this year disclosed that five election commissioners in Orleans Parish had been paid by gambling interests with issues on the November 5, 1996 ballot. They each received from $30 to $800 from Bally's Casino and Harrah's Jazz Co. for canvassing and distributing ballots. Three of the five were commissioners-in-charge. One of the commissioners-

in-charge was paid $120 for canvassing on election day. Harrah's and Bally's both denied any awareness that the recipients of these payments were election commissioners.[7]

Whether these, and any other, election commissioners received illegal payments or otherwise engaged in illegal activity, and the extent of any such activity, is unknown at this time. When viewed in the context of the opportunities for election fraud created by the breaches of election safeguards previously discussed, the prospect that the integrity and impartiality of election commissioners may have been compromised is obviously of significant concern. These published admissions by certain election commissioners in Orleans Parish suggest the need for close examination of the method of selection and conduct of other election commissioners, particularly in Orleans Parish where the above-described electoral irregularities occurred.

*6. Designation of absentee voters; related issues*

*Legal Requirement:* State law authorizes voters in certain circumstances to vote absentee by mail or absentee in person. Absentee in person voting is permitted from twelve days to six days prior to an election. Voters wishing to vote absentee in person must go to the parish registrar's office or other designated location during this time period, present proper identification, cast an absentee ballot, and sign the precinct register or other absentee voter list. Voters wishing to vote absentee by mail must submit a signed application letter and return their absentee ballots before election day. The registrar must enter the word ''absentee'' and the date of the election in the precinct register for each person who votes absentee in person or absentee by mail prior to the sixth day before the election. La. R.S. 18:1311.B After the sixth day, absentee by mail votes received in the registrar's office are recorded on a supplemental absentee voters list.

*Possible Violation:* Based on information provided to us by District Attorney Moreau and his staff, there reportedly are significant discrepancies in election records which suggest a failure to follow statutorily prescribed absentee voting procedures in at least some precincts in Orleans Parish.

Moreau reviewed some Orleans Parish precinct registers before they were produced in response to the Senate's subpoena, and his review found widespread instances where the registrar's office failed to note ''absentee'' on the precinct register by the names of persons who, according to records maintained by the Commissioner of Elections, did vote by absentee ballot. In the absence of some such identifying mark on the precinct register, it cannot be determined which signatures on the precinct register were supplied by voters on election day and which names were placed on the register before election day.

If our own review of the Orleans Parish election records reveals that election commissioners there did not receive precinct registers properly marked to identify absentee voters and/or did not receive supplemental lists of absentee voters, then a very important safeguard against multiple voting may have been compromised.

*7. Retention of election records*

*Legal Requirement:* All voting records and papers must be preserved for at least six months after a general election. La. R.S. 18:403. Certain registration records in federal elections must be preserved for twenty-two months after the election. La. R.S. 18:158.B. In addition, there are special record retention and handling provisions for certain voting records. For instance, the sealed envelope marked ''Put in Voting Machine'' (P–16) must be, after it is removed from the voting machine at the formal opening, preserved ''inviolate'' through the election challenge period. La. R.S. 18:573.D. Similarly, the election result cartridges from voting machines must not be disturbed until the election contest period has lapsed. If no contest is filed, the cartridges may be cleared. La. R.S. 18:1376.B(2).

*Possible Violation:* It is our understanding that local parish officials may have destroyed election records prior to the lapse of the six-month retention period, in violation of state law. East Baton Rouge Parish Clerk Doug Welborn has acknowledged that his office discarded 286 envelopes containing poll materials prior to the expiration of the six-month retention period. In addition, Allen Parish election records apparently were destroyed due to water damage in a leaky warehouse. We will have a clearer understanding of these and any other document retention/destruction issues after review of the documents and responses received recently from local parish registrars and clerks of court pursuant to the Senate's subpoenas.

*8. Identification of voters at polls*

*Legal Requirement:* State law requires that election commissioners identify each voter by requiring him or her to submit a current Louisiana driver's license, current registration certificate, other identification card, or by comparison with the descriptive information on the precinct register. La. R.S. 562.D.

*Violation:* In response to our query regarding the existence of any other known violations of state election laws in November 1996, Secretary of State McKeithen conveyed to us his general understanding that there were widespread violations of the voter identification requirement in the November 1996 election. Mr. McKeithen related that, in his experience, this provision is not vigorously enforced or complied with in many parishes throughout Louisiana.

FOOTNOTES

[1] ''Officials: Senate Investigators Told of Election Mistakes'', Associated Press, May 16, 1997.

[2] We have been supplied with a copy of the ''Informational Pamphlet for Commissioners-in-Charge and Commissioners on Election Day,'' a document prepared jointly by the Louisiana Secretary of State and Commissioner of Elections and approved by the Attorney General of Louisiana as required by state law. The document reflects that it was last revised in May 1996. This ''Informational Pamphlet'' is a useful reference for information about the requirements of state election law.

[3] There is an apparent discrepancy between the Louisiana election code, which expressly requires that the precinct registers be sealed (see La. R.S. 18:571(11); 18:573.E(1)), and the guidance given election commissioners in the Information Pamphlet, which nowhere instructs election commissioners to seal the precinct register (see pp. 14–16).

[4] The clerks of court in Orleans and Jefferson Parishes each wrote letters to the editor of the Times-Picayune that were published on May 21, 1997. Mr. Gegenheimer of Jefferson Parish assets in his letter that his practice conforms to state law because the envelopes are—and on November 5, 1996, were—mailed to the Secretary of State by the Jefferson Parish Clerk of Court before midnight on election day. Mr. Lombard of Orleans Parish apparently does not make the same assertion in his letter, though the wording is ambiguous. Mr. Lombard's letter does, however, respond to assertions by Jenkins workers that they found no Orleans Parish S–19 envelopes at the Secretary of State's office as late as November 12, 1997. Mr. Lombard states that ''the Post Office has assured [him] that delivery of all mail sacks was made to the secretary of state before Nov. 12, contrary to allegations by the Jenkins camp.''

[5] As noted in footnote 3, Clerks Lombard and Gegenheimer of Orleans and Jefferson Parishes, respectively, each wrote letters to the editor of the Times-Picayune that were published on May 21, 1997. Gegenheimer's letter asserted that the S–19 envelopes were ''sealed'' by the election commissioners at the precincts and that any tampering by the clerk of court ''would be readily discernible.'' Since we have been advised by Secretary of State McKeithen that none of the S–19 envelopes arrived in his office sealed (as opposed to clasped), we need to examine the S–19 envelopes from Jefferson Parish to test the accuracy of Mr. Gegenheimer's assertion. It is noteworthy that Mr. Lombard makes no similar assertion in his letter to the editor, though he does make the statement that ''the U.S. Postal Service provides mail sacks, and seals as well as pickup service for all secretary of state envelopes.'' Both members of Secretary McKeithen's staff and District Attorney Moreau's assistant advised us specifically that the Orleans Parish S–19 envelopes were not sealed.

[6] Walsh, Bill, ''Guide for Poll Workers Faulty, Parts of Policy Broke State Law,'' New Orleans Times-Picayune, May 17, 1997.

[7] Varney, James, ''Casinos Paid Poll Officials, Records Show Commissioner Got Money for Work on Election Day,'' New Orleans Times-Picayune, February 27, 1997.

Mr. FORD. Mr. President, I come to the floor to inform my colleagues that as ranking member on the Committee on Rules and Administration, committee Democrats can no longer participate in a joint investigation of allegations of election fraud in the 1996 Louisiana Senate race as alleged by Louis ''Woody'' Jenkins.

We reached this decision, because what we have learned to date suggests a possible fraud on the U.S. Senate and illegal tampering with witnesses by agents of Mr. Jenkins. This is nothing short of an embarrassment to the Senate and an affront to the people of Louisiana.

This investigation is over budget, it has exceeded the timeframe agreed to, and none of Mr. Jenkins' claims have been substantiated by any credible witnesses.

We come to this decision after waiting 7 months for Mr. Jenkins to provide the committee with credible evidence of multiple voting and of thousands phantom votes, which he has failed to do.

Not only have agents to the committee been unable to locate credible witnesses, but Government Accounting Office auditors have also been unable to substantiate Mr. Jenkins' claims of phantom votes.

Most disturbing, committee members have learned today that there has been continued interference with witnesses to the investigation in Louisiana by agents of Mr. Jenkins. I can't imagine any Member of the Senate, regardless of the party, who would not find this alarming, unacceptable, and certainly nothing the Senate should be party to.

On behalf of Democratic Rules Committee members, I have referred information to the U.S. Department of Justice and asked for an investigation into the incidents of witness tampering and interference with the U.S. Senate investigation.

The results to date have shown that the fraud on which Mr. Jenkins' allegations rest, were not only solicited by a convicted criminal, but involved payment for testimony and are otherwise not credible. There is no way that we, in good conscience, can or should proceed with this investigation.

Mr. President, the fraud has been committed against the U.S. Senate,

not against Mr. Jenkins, and the investigation should be terminated now and stop any waste of taxpayers dollars.

## TRIBUTE TO JESSE BROWN

Mr. WELLSTONE. Mr. President, I rise today to pay tribute to a dynamic leader, very capable public servant, tenacious veteran's advocate, and a good friend—Veterans' Affairs Secretary Jesse Brown.

I am saddened by the news that Secretary Brown is leaving after four productive and hard working years at the helm of the U.S. Department of Veterans' Affairs. Under his leadership, the VA and veterans have made tremendous progress.

Jesse Brown fought battle after battle to protect, reform, and fully fund veterans' health care. Jesse Brown won most of those battles.

Jesse Brown fought to strengthen benefits for Vietnam veterans exposed to Agent Orange. He fought for their children suffering from Spina Bifida. Jesse Brown won those battles.

Jesse Brown fought to improve the veterans' benefits claims process. He better than anyone knew the importance of timely, accurate, and fair decisions.

Jesse Brown worked hard for veterans with post-traumatic stress disorder, Persian Gulf war veterans, women veterans, homeless veterans, and many others.

Most importantly, Jesse Brown cares about people. I've seen him on many occasions stop what he's doing to visit one-on-one with a veteran in need or a grieving loved one. In an airport, on the street, in a hospital, at VFW post, Jesse always took the time to listen to people and to try to help them. That is what leadership is all about. That is what being an effective public servant is all about. That is what being a veterans' advocate is all about.

Jesse was never afraid to speak his mind and fight for veterans and their families—no matter the strength of the opposition or political risk to him. He did what he thought was right. He was proud to be their advocate and it should come as no surprise when said that being Secretary had been the high point of his life. Jesse Brown, a former Marine wounded in Vietnam, can feel good about his accomplishments and he can feel proud that his place in history is secure. He will be known forever as the Secretary for Veterans' Affairs. He will be known as one of the best veterans' advocates the country has ever seen.

Here are some of the comments that veterans, their families, and veterans' advocates have shared with me since learning the news that Jesse is leaving the VA.

Jesse brought to the VA real experience, knowledge, and wisdom to prepare the VA for the 21st Century. We'll miss him.''—Bernie Melter, Commissioner, Minnesota Department of Veterans' Affairs.

Jesse Brown's commitment to veterans will never be questioned and his tenure as Secretary for Veterans Affairs will go down in history as the greatest advocate for veterans we'll ever see.—Duane Krueger, Vietnam veteran and Anoka County Veterans Service Officer.

Secretary Brown's departure is a major loss for all veterans. His advocacy for veterans was without regard to political affiliation and was based upon the fact that as a veteran you had earned your entitlement.—Wayne Sletten, Vietnam era veteran and Lake County Veterans' Service officer.

In my personal opinion Secretary Jesse Brown was the best leader of the VA we've ever had.—Chuck Milbrandt, Director, Minneapolis VA Medical Center.

At a time when my family was struggling to obtain my late husband's benefits for Agent Orange, Jesse took the time to personally review the case and ensure that we received all the benefits to which we were entitled. We owe a great debt of gratitude to Jesse Brown and his commitment to helping people.—Leesa Gilmore, widow of Vietnam Veteran Tim Gillmore.

Secretary Jesse Brown will be sorely missed by all of us at the St. Paul VA Regional Office and Insurance Center. He was a strong and fair leader and served as an excellent role model on how we ought to serve veterans and their dependents. We will miss his guidance, candor, and wit. We wish him the best of luck in future endeavors and know that he will continue to be a strong advocate for all veterans.—Ron Henke, Director, St. Paul VA Regional Office and Insurance Center.

These are some of the many people who have expressed their admiration and respect for Jesse Brown and who want to recognize his many achievements during his tenure in office.

For me, I will dearly miss working side-by-side with Jesse fighting for veterans and their families. Like veterans in Minnesota, he has been my teacher and today here in the U.S. Senate I am proud to honor him and thank him for his incredible service and wonderful friendship.

Mr. President, I ask my colleagues to join me in paying tribute to VA Secretary Brown and properly recognize him for his many years of service and commitment to the Nation and her veterans.

## MEDICARE PROVISIONS VIOLATE BIPARTISAN BUDGET AGREEMENT

Mrs. MURRAY. Mr. President, as a Member of the Senate Budget Committee, I have spent the last four months in ongoing negotiations working towards the enactment of a real, balanced budget plan. I was part of the bipartisan negotiations that resulted in the historic balanced budget agreement. Getting to this agreement was not an easy task, but I realized that the need to get to balance was critical. I negotiated in good faith and believed that the final product was an equitable, fiscally sound agreement that did balance the budget without jeopardizing vital programs.

The agreement ensured the continued solvency of Medicare. It guaranteed that Medicare would remain an affordable health insurance program that provided quality health care for millions of senior citizens. The agreement also allowed for an expansion of health insurance for 10 million children that have no health insurance. It called for the largest investment in education in over 30 years and it would provide real tax relief for working families. While I still had some reservations about the agreement, I supported the package because I knew that in any good faith negotiation one can never expect to win on all points. It was not a perfect agreement and as I have said in the past, it is not the one that I would have produced. But, it was a bipartisan, fiscally sound balanced budget agreement.

The agreement called for $204 billion in net deficit reduction. This would be in addition to the over $200 billion in deficit reduction already accomplished as a result of the 1993 deficit reduction package. The agreement built on this successful deficit reduction package which resulted in 4 straight years of declining deficits. In 1993, the annual Federal deficit was close to $300 billion, for 1997 the Congressional Budget Office estimates that the deficit could fall to $70 billion. I was proud to be part of this deficit reduction effort and believed that we could get our fiscal house in order.

Following passage of S. Con. Res. 27, the FY98 Budget Resolution, which incorporated the balanced budget agreement, I was hopeful that a fair, equitable and fiscally sound balanced budget would be in place by the end of the year. I negotiated in good faith; I agreed to adhere to the agreement; and I was of the belief that my colleagues would do the same.

Unfortunately, the reconciliation spending measure adopted by the Senate, violates this bipartisan agreement. But, more importantly, it violates the commitment I made to my constituents when I was elected to the U.S. Senate.

One of the commitments I made to the people of Washington State was to work to expand affordable health care for all Americans. I am proud of the steps we have taken to improve access to health care for more Americans. Unfortunately, included in this reconciliation legislation is a provision that will deny affordable, quality health insurance for those Americans age 65 to 67. Increasing the Medicare eligibility age from 65 to 67 will deny affordable, quality health insurance for millions of Americans. I cannot in all good conscience support legislation that increases the number of uninsured Americans. We should be looking to reduce the numbers of Americans with no health security, not adding to it.

I did not come to this decision without a great deal of thought. I have listened to the debate on both sides of these issues. I cannot help but think about the impact that these provisions will have on senior citizens who have worked hard all of their lives and are now facing escalating health care costs and limited retirement income. I only need to think about my own parents to

truly understand what these changes mean to our senior citizens. When my father was diagnosed with M.S. my parents saw their insurance deductibles increase to $2,000 a piece overnight. Their premiums also increased dramatically every year. There was nothing that they could do as there were no other available health insurance plans that would cover my father. They were struggling to simply make their insurance payments and other basic life necessities. My father was desperate to turn 65 because he was not sure how much longer he could afford insurance or how much longer they would cover him. An additional two more years of skyrocketing premiums and deductibles would have financially devastated my parents. My father may have lost his insurance if he had to wait two additional years. He would have lost access to effective therapies for treating MS and slowing the progress of this crippling illness. As it was I know that there were times when my parents feared going to the doctors because of the impact on their deductible and premiums. Is this what we want for our parents?

My parents knew that once they reached 65 they would have some guarantee of affordable, quality health insurance. Prior to this, there simply was no guarantee. They knew that prior to 65 that were one illness away from financial disaster. If we act to increase the eligibility age to 67 there will be those seniors who face an even worse fate and will be at the mercy of insurance companies. They will see their retirement security jeopardized and their access to preventive health care gone. We should be encouraging greater access to preventive health care as it controls long term health care costs. Increasing the age to 67 will only make people sicker and poorer. I cannot support this type of outcome.

There is another troubling provision within the reconciliation package which, I might add was only introduced yesterday and was not part of the balanced budget agreement. With less than 24 hours to consider the implications, the Senate is ready to means test Part B premiums. Medicare premiums could climb to over $2,000 for senior citizens earning more than $50,000. The Social Security Administration would now have to know the exact income of every beneficiary for any given month.

The administrative burdens alone warrant further Congressional review. Additionally, adding to the cost of the administration of Social Security represents a direct attack on the Social Security Trust Fund. The means testing as proposed in the reconciliation package that the Senate adopted is unworkable.

There are simply too many questions regarding these provisions. We need more time and debate before we act to radically alter Medicare. Medicare remains one of the most successful antipoverty programs ever adopted by Congress. The popularity of this program speaks to the success of the program and the success of efforts to ensure health care security for our senior citizens. Enacting an increase in the eligibility age and means testing Part B premiums will do little to address the long term financial solvency issues. What it will do is undermine our commitment to senior citizens and jeopardize the success of the Medicare program.

We all know that real Medicare reforms are necessary. When the so-called baby boom generation begins to retire there will be a significant increase in Medicare enrollees. I am ready to face the challenge of enacting real comprehensive Medicare reforms. However, I am concerned that these two provisions including in the reconciliation package are being offered as some kind of panacea to real reform and will do little to address long term solvency concerns. Increasing the age for Medicare eligibility and the means testing proposal will do little to control Medicare costs, they will, however, devastate millions of senior citizens. This reconciliation bill is not the appropriate venue for significant Medicare changes. Reforming any program that serves over 33 million Americans requires a more cautious and thorough process.

I came to the debate hoping that at the very least we would remove these two provisions from the legislation. I supported amendment that would have conformed this reconciliation bill to the equitable provisions included in the balanced budget agreement. It now appears that this is unlikely and these two provisions will remain in the bill. I could not support any legislation that would jeopardize affordable, quality health care for millions of senior citizens.

It is truly unfortunate that we were not successful in eliminating these provisions as there are many aspects of this legislation that do adhere to the balanced budget agreement and could have positive fiscal, economic and social ramifications. But, I had to send the message that I could not support any legislation that jeopardizes Medicare.

It is difficult for me to vote no on this entire reconciliation package. This legislation will fix the devastating impact of welfare reform for disabled, low-income, legal immigrants. It provides an additional $16 billion for children's health care initiatives. It allows for an expansion of prevention benefits for Medicare beneficiaries. I am also pleased that the Managers accepted my amendment to clarify that States can waive victims of domestic violence from the punitive welfare reform requirements. I am grateful to the Chairman of the Budget Committee for accepting this important amendment and am disappointed that I cannot support the overall package.

I know that there is a very good chance that these problems could be addressed in Conference as they are not currently included in the reconciliation bill passed in the House. I will make every effort to ensure that these provisions do not survive Conference. I believe that if we can get back to the bipartisan agreement and good faith negotiations, we can still send to the President a balanced budget agreement that he can sign. If we have learned nothing else over the last two years, I sincerely hope that my Colleagues have learned that legislative accomplishments can only happen through honest, bipartisan efforts.

I reluctantly voted no on this reconciliation bill. I want my Colleagues to know that this bill is unacceptable and violates the bipartisan balanced budget agreement. If we can work in Conference to improve the bill and correct the unnecessary Medicare provisions I believe we would have a good balanced budget plan. I urge my Colleagues to put aside their philosophical differences and work to enact the historic balanced budget agreement.

## THE COMMUNICATIONS DECENCY ACT

Mr. COATS. Mr. President, the Supreme Court decision against the Communications Decency Act marks a departure from precedent on indecency, and weakens the protection of children by our laws.

The Court, even in this decision, recognizes that Congress has a compelling interest in protecting the physical and psychological well-being of children. In the past, they took that standard to include indecency restrictions on every communications medium of our society—telephones, radio, television, bookstores, video shops.

But with today's decision, the Supreme Court has refused to apply that standard to protect a child on a computer in his or her own home. It argues, instead, that unrestricted access to indecency by adults on the Internet overrides any community interest in the protection of children.

In the Communications Decency Act, we gave a definition of indecency that was upheld by the Courts in case after case. Now the Supreme Court has apparently decided that this definition cannot be applied to the Internet. In other words, though an image displayed on a television screen would be indecent, an image displayed on a computer screen would not. It is difficult to understand how a child would understand the difference. It is the content, not the technology, that should concern us.

The Supreme Court did leave some room for Congress to redraft the CDA along less restrictive lines, but, in the process, creates a privileged place for computer indecency, safe from the laws we apply everywhere else in our society. So, under the Supreme Court's guidelines, it is permissible for an adult to send indecent material directly to a child by e-mail, but not to

speak the same indecency over the telephone. What an adult may not send a child through the U.S. mail, he may send a child via e-mail. This is inconsistent and incomprehensible. It is also now the official position of the U.S. Supreme Court.

What this Court is saying is that it recognizes indecency when it hears it on the radio, sees it on television, views it on a magazine rack, or overhears it on the telephone, but it does not recognize it on-line. Computer technology may be confusing to many of us, but it is not that confusing. The confusion lies with a Court that protects children from indecency everywhere but the one place most children want to be.

I expect that Congress will revisit this issue, within the restrictions provided by the Court. But parents must understand that the Internet has been declared an exception to every other American law on the provision of indecency to children. It is a place where the predators against your children's innocence have legal rights, announced by distinguished judges. Whatever its virtues, the Internet is not a safe place, without a parent's constant supervision.

The Supreme Court has actually suggested that the very industry which profits from the provision of this material be the guardians of your children's minds—that it regulate itself. It is nice to have the Supreme Court's extra-constitutional advice on these policy matters—though I don't know why it should be more binding than the will of the Congress. I expect that we will have to live with this advice. But I hope that parents will understand that the Supreme Court has not taken your side, or the side of your children, or the side of decency.

There are consequences of giving children free access to an adult culture with coarsened standards—consequences for their minds and souls and futures. Both the Congress and the President took those consequences seriously. The Supreme Court has not.

This Court, which chose yesterday to undermine religious liberty and influence, has now chosen to defend immediate, unrestricted access of children to indecency. This is part of a disturbing pattern.

The Supreme Court is actively disarming the Congress in the most important conflicts of our time—in defense of religious liberty and the character of children.

## THE SUPREME COURT'S DECISION DECLARING UNCONSTITUTIONAL THE COMMUNICATIONS DECENCY ACT

Mr. LEAHY. Mr. President, The Supreme Court has made clear that we do not forfeit our First Amendment rights when we go on-line. This decision is a landmark in the history of the Internet and a firm foundation for its future growth. Altering the protections of the First Amendment for on-line communications would have crippled this new mode of communication.

The Communications Decency Act was misguided and unworkable. It reflected a fundamental misunderstanding of the nature of the Internet, and it would have unwisely offered the world a model of online censorship instead of a model of online freedom.

Vigilant defense of freedom of thought, opinion and speech will be crucially important as the Internet graduates from infancy into adolescence and maturity. Giving full-force to the First Amendment on-line is a victory for the First Amendment, for American technology and for democracy.

The Supreme Court posed the right question: ''Could a speaker confidently assume that a serious discussion about birth control practices, homosexuality . . . or the consequences of prison rape would not violate the CDA? This uncertainty undermines the likelihood that the CDA has been carefully tailored to the congressional goal of protecting minors from potentially harmful materials.''

Mixing government and politics with free speech issues often produces a corrosive concoction that erodes our constitutional freedoms. Congress should not be spooked by new technology into tampering with our old Constitution. Even well-intended laws for the protection of children deserve close examination to ensure that we are not stepping over constitutional lines. The Supreme Court observed:

> we have repeatedly recognized the governmental interest in protecting children from harmful materials. . . . But that interest does not justify an unnecessarily broad suppression of speech addressed to adults. As we have explained, the Government may not ''reduc[e] the adult population . . . to . . . only what is fit for children.' ''

As a recent editorial in Vermont's Times Argus succinctly noted: ''To obey this law, Internet users would have to avoid discussing matters routinely covered in books, magazines and newspapers. Who would want to drive on that kind of information superhighway?''

I sent child molesters to prison when I was a prosecutor, and I am a parent myself. I want no effort spared in finding and prosecuting those who exploit our children, and I want strong laws and strong enforcement to do that. But the CDA is the wrong answer, and I applaud the Court for its decision.

We can spend much time and energy in Congress trying to out-muscle each other to the most popular position on regulating the content of television programs or Internet offerings, and from all appearances, we probably will. We should take heed of the Supreme Court's decision today, however, and be wary of efforts to jump into regulating the content of any form of speech.

Congress did jump when confronted with the CDA. The Supreme Court takes pains in its decision to note at least three times in its opinion that this law was brought as an amendment on the floor of the Senate and passed as part of the Telecommunications Act, without the benefit of hearings, findings, or considered deliberation. As the Supreme Court noted in its decision, I cautioned against such speedy action at the time. Not surprisingly, the end result was passage of an unconstitutional law.

We should not be substituting the government's judgment for that of parents about what is appropriate for their children to access on-line. The Supreme Court pointed out excellent examples of how the CDA would have operated to do just that, noting:

> ''Under the CDA, a parent allowing her 17-year-old to use the family computer to obtain information on the Internet that she, in her parental judgment, deems appropriate could face a lengthy prison term . . . Similarly, a parent who sent his 17-year-old college freshman information on birth control via e-mail could be incarcerated even though neither he, his child, or anyone in their home community, found the material ''indecent'' or ''patently offensive,'' if the college town's community thought otherwise.''

I attended the Supreme Court's oral argument in this case and was concerned when several of the Justices asked about the ''severability'' clause in the CDA: They wanted to know how much of the statute could be stricken as unconstitutional and how much could be left standing. The majority of the Supreme Court resisted the temptation to do the job of Congress and judicially re-write the ''indecency'' and ''patently offensive'' provisions of the CDA to be constitutional. The Court said: ''This Court 'will not rewrite a . . . law to conform it to constitutional requirements.''

It is our job to write constitutional laws that address the needs and concerns of Americans. On this issue, our work is not done. There is no lack of criminal laws on the books to protect children on-line, including laws criminalizing the on-line distribution of child pornography and obscene materials and prohibiting the on-line harassment, luring and solicitation of children for illegal sexual activity. Protecting children, whether in cyberspace or physical space, depends on aggressively enforcing these existing laws and supervising children to ensure they do not venture where the environment is unsafe. This will do more—and more effectively—than passing feel-good, unconstitutional legislation.

But, as I said, our work is not done. The CDA became law because of the genuine concern of many Americans about the inappropriate material unquestionably accessible to computer-savvy children over the Internet. Parents, teachers, librarians, content providers, on-line service providers and policy-makers need to come together to find effective ways to address this concern. I have long believed that we need to put the emphasis where it would be most effective: on parental

and user empowerment tools to control the information that children may access on-line. I applaud the efforts already underway to bring concerned groups together to define steps we can take to make the on-line world a comfortable one for families.

Also, we should now remove the unconstitutional CDA provisions from our law books. At the beginning of this Congress, Senators FEINGOLD, JEFFORDS, KERRY and I introduced a bill, S. 213, to repeal the Internet censorship provisions of the CDA. We should move promptly to pass that measure.

One of the continuing challenges we will face in making the best use of our burgeoning information technologies is in adding value to all that they offer. Anyone who uses the Internet knows that there is a lot of junk out there. For example, student searching for background on the Holocaust may easily come across diatribes on the Internet claiming that the Holocaust never happened. In our classrooms, in our homes, in our libraries, we must teach our children to be discerning users of this powerful new tool.

We are blessed in the United States to enjoy the oldest and most effective constitutional protections of free speech anywhere. The struggle facing succeeding generations of Americans in preserving free speech liberties often is difficult, and it means standing firm in the face of sometimes fleeting but usually intense political pressures, and I am proud of the 15 Senators who joined with me to vote against the CDA. This is a vindication of that effort.

We have the technology and the temperament to show the world how the Internet can be used to its fullest. This decision has prevented us from succumbing to short-sighted political pressures by adopting a model of censorship instead.

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, June 25, 1997, the federal debt stood at $5,339,644,139,769.58. (Five trillion, three hundred thirty-nine billion, six hundred forty-four million, one hundred thirty-nine thousand, seven hundred sixty-nine dollars and fifty-eight cents)

One year ago, June 25, 1996, the federal debt stood at $5,114,149,000,000. (Five trillion, one hundred fourteen billion, one hundred forty-nine million)

Five years ago, June 25, 1992, the federal debt stood at $3,944,282,000,000. (Three trillion, nine hundred forty-four billion, two hundred eighty-two million)

Ten years ago, June 25, 1987, the federal debt stood at $2,292,504,000,000. (Two trillion, two hundred ninety-two billion, five hundred four million)

Fifteen years ago, June 25, 1982, the federal debt stood at $1,070,485,000,000 (One trillion, seventy billion, four hundred eighty-five million) which reflects a debt increase of more than $4 trillion—$4,269,159,139,769.58 (Four trillion, two hundred sixty-nine billion, one hundred fifty-nine million, one hundred thirty-nine thousand, seven hundred sixty-nine dollars and fifty-eight cents) during the past 15 years.

## DELAYING THE LOAN TO CROATIA

Mr. BIDEN. Mr. President, I rise today in support of delaying a World Bank loan to Croatia until that country fully meets the obligations it agreed to when it signed the Dayton Accords in November 1995.

Two days ago, the Clinton administration announced that it would attempt to block a $30 million World Bank loan to Croatia until Zagreb extradites Croats indicted on war crimes charges and allows Serbian refugees to return to their homes in Croatian territory.

It appears that we may have difficulty in persuading other countries on the World Bank's board to go along with this postponement, but I believe that the United States should stick to its principles.

Mr. President, the horrifying wars that took place in Bosnia and Croatia from 1991 to 1995 had many and complex causes. One of them was the thinly disguised desire of Serbian President Milosevic and Croatian President Tudjman to carve up Bosnia and Herzegovina. The revolt and temporary secession from Croatia by the Krajina Serbs—who themselves were led by extremely unsavory individuals who also carried out atrocities—interrupted the planned cooperation of the two rapacious strongmen in Belgrade and Zagreb.

There is also no doubt, Mr. President, that the Croatian army—trained by private Americans—played a valuable role in turning the tide in Bosnia and Herzegovina in the summer and fall of 1995 as part of its successful campaign to oust the Krajina Serbs from Croatia.

But, Mr. President, the behavior of President Tudjman since then has been deplorable. He has knowingly coddled indicted war criminals, despite his obligation under Dayton to turn them over to the International Tribunal at The Hague. On numerous other occasions, I have spoken out in this Chamber against the atrocities—murder, rape, and vile ''ethnic cleansing''—that were perpetrated against innocent civilians in Bosnia.

Most expert observers believe that Bosnian Serbs were responsible for the majority of these heinous acts. But several Bosnian Croats and some Croats from Croatia apparently were among the sadists, as were a few Muslims. That President Tudjman refuses to hand over the indicted who are living in Croatia is an affront to civilized people everywhere, and a direct slap in the face of the United States, which brokered the Dayton Accords.

Moreover, despite pretty rhetoric and laws on the books, Tudjman has thrown up practical roadblocks to the resettlement of ethnic Serb refugees, preferring instead to govern a Croatia that is now much more ethnically homogeneous. I should add, Mr. President, that ethnic Croats who were displaced by Serbs earlier in this decade should also be allowed to return to their homes. Our goal is a peaceful, multi-ethnic, democratic Croatia.

In Herzegovina, President Tudjman continues to rule through thuggish ethnic Croatian proxies headquartered in Mostar. These lawless types have refused all international attempts to integrate Mostar and have resorted to deadly violence against Muslims.

In addition, despite their Bosnian citizenship, the Croats of Herzegovina were allowed to vote in Croatia's national elections earlier this month, providing much of the support by which Tudjman was re-elected in a campaign distinguished by his nearly one-sided access to the media and violence against opposition candidates.

Mr. President, I firmly believe that Croatia will some day re-enter the Western European community to which it alleges it belongs. But Croatia cannot even think of becoming a member of Western institutions like the European Union or NATO until it lives up to its moral and legal commitments.

Postponing the World Bank loan to Croatia would serve as a useful warning to President Tudjman that he cannot escape the consequences of his authoritarian and duplicitous behavior.

I thank the Chair and yield the floor.

## JUDICIAL VACANCIES

Mr. LEAHY. Mr. President, last week I spoke at some length about the crisis being created by our failure to move forward expeditiously to fill long-standing judicial vacancies. This week, we have the opportunity to double our confirmations by taking up and approving the five judicial nominees on the Senate Executive Calendar. As the Senate approaches its fifth extended recess, it have found time to confirm only five Federal judges of the 38 nominees the President has sent to us. That is less than one judge per month.

We continue to fall farther and farther behind the pace established by Senator Dole and Senator HATCH in the last Congress. By this time 2 years ago, Senator HATCH had held six confirmation hearings involving 26 judicial nominees and the Senate had proceeded to confirm 26 Federal judges by the end of June—during one of the busiest periods ever, during the first 100 days of the Republicans' Contract with America.

I have spoken often about the crisis being created by the 100 vacancies that are being perpetuated on the Federal courts around the country, as has the Chief Justice of the United States. At the rate that we are currently going more and more vacancies are continuing to mount over longer and longer times to the detriment of greater numbers of Americans and the national cause of prompt justice.

There are another five highly-qualified judicial nominees on the Senate calendar. They should not be held hostage to the resolution of other disputes. I urge the Republican leadership not to use the judiciary as a political pressure point or to involve the judiciary in disagreement over other matters. I would hope that the Senate would move to confirm these five additional judges this week before we adjourn for the 4th of July.

## OCEAN SHIPPING REFORM ACT OF 1997

Mr. LOTT. Mr. President, the Ocean Shipping Reform Act of 1997 is a continuation and extension of work initiated in the last Congress by Representative BUD SHUSTER and former Senator Larry Pressler. Their goal was to build a fair and responsible balance in America's international container shipping maritime policy. The purpose was to better reflect the modern maritime marketplace. Unfortunately, it was not achieved because we ran out of time.

In the 105th Congress, a bipartisan group of Senators from the Commerce Committee introduced a modified version of the Ocean Shipping Reform bill. It addressed many of the concerns with last year's bill identified by affected stakeholders. Our plan to move this shipping reform legislation forward has been inclusive, simple, and direct. Under the leadership of Senator HUTCHISON, and working in a bipartisan way, we have developed a bill that reflects a broad consensus. Most stakeholders in this industry are comfortable with it. This doesn't mean they each got everything they wanted. It does mean that a balance was achieved between what they desired and what the other stakeholders would accept. A real compromise. In this Congress, we have worked hard to achieve a consensus, and we will work even harder to keep it.

This bill is not perfect. But the process has been excellent. The Commerce Committee held a hearing and a markup, and innumerable meetings with all affected parties. And throughout the process Senator MCCAIN's staff has made the various iterations of the legislation publicly available. This transparency was important to reaching the compromise.

Mr. President, I believe that it implements real change that will benefit America's ocean shipping industry. When passed and signed into law, S. 414 will help foster the many benefits of increased competition that this industry sorely needs and wants.

Mr. President, it will also merge the Federal Maritime Commission with the Surface Transportation Board to create the United States Transportation Board (USTB) which will ultimately provide an independent federal transportation regulatory board which thinks and acts on intermodal issues.

Mr. GORTON. Mr. President, I appreciate the Majority Leader's efforts to work with me on this important legislation. I also want to thank him for his efforts to address the concerns of all the interested parties involved in the ocean shipping industry. I identified three areas in the bill we passed in Committee that were of particular concern to me and that I wanted addressed before the bill was taken to the full Senate. The Leader has worked diligently to address my concerns. I too believe this reform is desperately needed. I am pleased that the committee took the extra time after the markup to complete the work on this bill. An agreement was reached that the majority of America's shipping stakeholders can accept: the ports, longshore labor, shippers, and carriers.

Mr. LOTT. The stakeholders wanted more. I wanted more. I know my colleagues wanted more. My friend Mr. GORTON was explicit in his desire for more reform.

Mr. GORTON. I agree with the Leader. This bill is not perfect and it does not accomplish every reform that I want to see for this industry. But I believe it is a significant improvement over the status quo. I do recognize that Mrs. HUTCHISON's approach was to make change incrementally and accept compromises to successfully move this bill forward and bring it to the floor.

Mr. LOTT. I appreciate Senator GORTON's candor and his support for both the process and the bill. And, I appreciated Senator GORTON's willingness to accept compromise in order to reach a consensus which enables this bill to move forward.

Mr. President, I know that during the markup, Senator GORTON expressed strong reservations about the bill. He made it clear that three issues needed to be addressed prior to a vote on the floor. And, a collaborative effort was used to try to accommodate these changes. Mr. President, two of the three issues were incorporated into the bill. The negotiations were tough, but all stakeholders worked together in an open and honest fashion to reach a consensus on this reform legislation.

Mr. GORTON. Let me take a moment to briefly review my concerns. First, I requested that certain discrimination prohibitions concerning service contracts be applied to carriers only when they are working together, not when they are operating as individual companies.

Second, I sought to amend the forest products definition to incorporate certain products, such as laminated beams or panels.

And third, I wanted shippers and carriers to be able to keep confidential the essential terms of their service contracts. Since the markup, there has been a sincere effort by all parties to work with me.

Mr. President, throughout this consensus building process, the Committee was dedicated to working through my concerns, and I believe that the Majority Leader did his best.

Common ground was found on the first two of my concerns. I appreciate the modification of the service contract discrimination provisions so that they apply only to carriers when they work collectively. This modification is particularly important to me and to my shippers in Washington state.

I also appreciate that the definition of forest products was modified as I requested.

Regrettably, we were unable to reach an agreement on the confidentiality for service contracts. We explored the idea of not requiring carriers to publish information regarding volume, but this, unfortunately, was rejected.

Mr. President, I would like to reserve the right to address the confidentiality issue in an amendment when the full Senate considers this bill.

Mr. LOTT. Mr. President, I appreciate Senator GORTON's kind words, and recognize his right to continue to advocate for the confidentiality provision. However, I am convinced that any further reduction in service contract reporting provisions would erode the broad consensus achieved by the Committee for this bill.

Mr. President, we must remember that when the Committee set out to develop this legislation, we agreed to move forward incrementally and work to keep a broad consensus.

And, I want more reform, but I also want a bill.

I look forward to a vigorous debate on the service contract reporting provision if Senator GORTON decides to bring an amendment to the floor. Let me be clear. I will not support such an amendment because I believe that in the end, it would erode support for final passage of this important maritime legislation.

Mr. President, I want all our colleagues to thank Senator GORTON for his fine work on this bill. He has challenged us to improve the bill, and in doing so, he has expanded the reforms it provides. This is good for America. This is good for America's container shipping industry. This is good for the great state of Washington.

Mr. President, I ask our colleagues to support our bill to accomplish meaningful reform in this important maritime industry.

Mr. President, one final comment, I pledge to bring this bill to the floor in this session of the 105th Congress. It is overdue. It is bipartisan. It is supported by all stakeholders of the maritime industry.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

### EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO LIBYA—MESSAGE FROM THE PRESIDENT—PM 48

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs.

*To the Congress of the United States:*

I hereby report to the Congress on the developments since my last report of January 10, 1997, concerning the national emergency with respect to Libya that was declared in Executive Order 12543 of January 7, 1986. This report is submitted pursuant to section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c); section 204(c) of the International Emergency Economic Powers Act (''IEEPA''), 50 U.S.C. 1703(c); and section 505(c) of the International Security and Development Cooperation Act of 1985, 22 U.S.C. 2349aa–9(c).

1. As previously reported, on January 2, 1997, I renewed for another year the national emergency with respect to Libya pursuant to the IEEPA. This renewal extended the current comprehensive financial and trade embargo against Libya in effect since 1986. Under these sanctions, virtually all trade with Libya is prohibited, and all assets owned or controlled by the Libyan government in the United States or in the possession or control of U.S. persons are blocked.

2. There have been no amendments to the Libyan Sanctions Regulations, 31 C.F.R. Part 550 (the ''Regulations''), administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury, since my last report on January 10, 1997.

3. During the last 6-month period, OFAC reviewed numerous applications for licenses to authorize transactions under the Regulations. Consistent with OFAC's ongoing scrutiny of banking transactions, the largest category of license approvals (68) concerned requests by non-Libyan persons or entities to unblock transfers interdicted because of what appeared to be Government of Libya interests. Two licenses authorized the provision of legal services to the Government of Libya in connection with actions in U.S. courts in which the Government of Libya was named as defendant. Licenses were also issued authorizing diplomatic and U.S. government transactions and to permit U.S. companies to engage in transactions with respect to intellectual property protection in Libya. A total of 75 licenses were issued during the reporting period.

4. During the current 6-month period, OFAC continued to emphasize to the international banking community in the United States the importance of identifying and blocking payments made by or on behalf of Libya. The office worked closely with the banks to assure the effectiveness in interdiction software systems used to identify such payments. During the reporting period, more than 100 transactions potentially involving Libya were interdicted.

5. Since my last report, OFAC collected 13 civil monetary penalties totaling nearly $90,000 for violations of the U.S. sanctions against Libya. Ten of the violations involved the failure of banks to block funds transferred to Libyan-controlled financial institutions or commercial entities in Libya. Three U.S. corporations paid the OFAC penalties for export violations as part of the global plea agreements with the Department of Justice. Sixty-seven other cases are in active penalty processing.

6. Various enforcement actions carried over from previous reporting periods have continued to be aggressively pursued. Numerous investigations are ongoing and new reports of violations are being scrutinized.

7. The expenses incurred by the Federal Government in the 6-month period from January 7 through July 6, 1997, that are directly attributable to the exercise of the powers and authorities conferred by the declaration of the Libyan national emergency are estimated at approximately $660,000,00. Personnel costs were largely centered in the Department of the Treasury (particularly in the Office of Foreign Assets Control, the Office of the General Counsel, and the U.S. Customs Service), the Department of State, and the Department of Commerce.

8. The policies and the actions of the Government of Libya continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. In adopting United Nations Security Council Resolution 883 in November 1993, the Security Council determined that the continued failure of the Government of Libya to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests and decisions of the Security Council in Resolutions 731 and 748, concerning the bombing of the Pan Am 103 and UTA 772 flights, constituted a threat to international peace and security. The United States will continue to coordinate its comprehensive sanctions enforcement efforts with those of other U.N. member states. We remain determined to ensure that the perpetrators of the terrorist acts against Pan Am 103 and UTA 772 are brought to justice. The families of the victims in the murderous Lockerbie bombing and other acts of Libyan terrorism deserve nothing less. I shall continue to exercise the powers at my disposal to apply economic sanctions against Libya fully and effectively, so long as those measures are appropriate, and will continue to report periodically to the Congress on significant developments as required by law.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 26, 1997.*

REPORT CONCERNING THE CORPORATION FOR PUBLIC BROADCASTING—MESSAGE FROM THE PRESIDENT—PM 49

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation.

*To the Congress of the United States:*

In accordance with the Communications Act of 1934, as amended (47 U.S.C. 396(i)), I transmit herewith the Annual Report of the Corporation for Public Broadcasting for Fiscal Year 1996 and the Inventory of the Federal Funds Distributed to Public Telecommunications Entities by Federal Departments and Agencies: Fiscal Year 1996.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 26, 1997.*

## MESSAGES FROM THE HOUSE

At 12:44 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 108. Concurrent resolution providing for an adjournment or recess of the two Houses.

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At 6:59 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2014. An act to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 105. Concurrent resolution expressing the sense of the Congress relating to the elections in Albania scheduled for June 29, 1997.

ENROLLED BILL SIGNED

At 7:37 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

H.R. 1553. An act to amend the President John F. Kennedy Assassination Records Collection Act of 1992 to extend the authorization of the Assassination Records Review Board until September 30, 1998.

## ENROLLED BILL SIGNED

The following enrolled bills, previously signed by the Speaker of the House, were signed on June 26, 1997, by the President pro tempore (Mr. THURMOND):

H.R. 1306. An act to amend the Federal Deposit Insurance Act to clarify the applicability of host State laws to any branch in such State of an out-of-State bank.

H.R. 1902. An act to immunize donations made in the form of charitable gift annuities and charitable remainder trusts from the antitrust laws and State laws similar to the antitrust laws.

## EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–2336. A communication from the Congressional Review Coordinator of the Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, a rule entitled ''Importation of Beef from Argentina'' (RIN0579-AA71) received on June 24, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2337. A communication from the Administrator, U.S. Agency for International Development, transmitting, pursuant to law, a report relative to the appropriated funds as of March 31, 1997; to the Committee on Foreign Relations.

EC–2338. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a report for the period April 1, 1996 to September 30, 1996; to the Committee on Foreign Relations.

EC–2339. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a notice of proposed issuance of an export license; to the Committee on Foreign Relations.

EC–2340. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed license for the export of defense articles; to the Committee on Foreign Relations.

EC–2341. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed Manufacturing License Agreement with the United Kingdom; to the Committee on Foreign Relations.

EC–2342. A communication from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report for H.R. 1871; to the Committee on the Budget.

EC–2343. A communication from the Chief of the Regulations Unit, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report of Revenue Rule 97–28, received on June 25, 1997; to the Committee on Finance.

EC–2344. A communication from the U.S. Trade Representative, Executive Office of the President, transmitting, a draft of proposed legislation entitled ''United States-Caribbean Basin Trade Enhancement Act''; to the Committee on Finance.

EC–2345. A communication from the U.S Trade Representative, Executive Office of the President, transmitting, a draft of proposed legislation relative to the Generalized System of Preferences Reauthorization Act; to the Committee on Finance.

EC–2346. A communication from the U.S. Trade Representative, Executive Office of the President, transmitting, a draft of proposed legislation relative to the OECD Shipbuilding Trade Agreement Act; to the Committee on Finance.

EC–2347. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report of a rule relative to Announcement 97-61; to the Committee on Finance.

EC–2348. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report of a rule relative to Notice 97-35; to the Committee on Finance.

EC–2349. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, a report of a rule relative to Revenue Procedure 97-30, received on June 23, 1997; to the Committee on Finance.

EC–2350. A communication from the Secretary of Labor, transmitting, pursuant to law, a report relative to funds under the Trade Act of 1974; to the Committee on Finance.

EC–2351. A communication from the Director of Regulations Policy, Management Staff, Office of Policy, Food and Drug Administration, Department of Health and Human Services, transmitting, pursuant to law, a rule entitled ''Thermally Processed Low-Acid Foods'' received on June 23, 1997; to the Committee on Labor and Human Resources.

EC–2352. A communication from the Administrator of the U.S. Environmental Protection Agency, transmitting, pursuant to law, a report on the implementation of the Waste Isolation Pilot Plant Land Withdrawal Act; to the Committee on Energy and Natural Resources.

EC–2353. A communication from the Director of the U.S. Office of Personnel Management, transmitting, pursuant to law, the report of a study to evaluate the use of sick leave for family care or bereavement purposes; to the Committee on Governmental Affairs.

EC–2354. A communication from the Secretary of Agriculture, transmitting, pursuant to law, a report relative to two violations of the Antideficiency Act; to the Committee on Appropriations.

EC–2355. A communication from the Secretary of Veterans Affairs, transmitting, a draft of proposed legislation relative to benefits for children of Vietnam Veterans born with spina bifida; to the Committee on Veterans' Affairs.

EC–2356. A communication from the Secretary of Veterans Affairs, transmitting, a draft of proposed legislation relative to the disability pension program; to the Committee on Veterans' Affairs.

EC–2357. A communication from the Office of the Secretary, U.S. Department of the Interior, transmitting, a draft of proposed legislation relative to reduce the fractioned ownership of Indian lands; to the Committee on Indian Affairs.

EC–2358. A communication from the Attorney for National Council of Radiation Protection and Measurements, transmitting, pursuant to law, the report of financial statements for calendar year 1996; to the Committee on the Judiciary.

EC–2359. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the rule entitled ''Regulation D'' received on June 24, 1997; to the Committee on Banking, Housing, and Urban Affairs.

EC–2360. A communication from the Director of the Office of the Secretary of Defense, transmitting, pursuant to law, a rule entitled ''DoD Freedom of Information Act Program'' received on June 24, 1997; to the Committee on Armed Services.

EC–2361. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–83 adopted by the Council on May 5, 1997; to the Commitee on Governmental Affairs.

EC–2362. A communication from the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 12–84 adopted by the Council on May 6, 1997; to the Commitee on Governmental Affairs.

EC–2363. A communication from the Inspector General, U.S. General Services Administration, transmitting, pursuant to law, a report under the Inspector General's Act for the period October 1, 1996 to March 31, 1997; to the Committee on Governmental Affairs.

EC–2364. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to the National Defense Stockpile Requirements for 1997; to the Committee on Armed Services.

EC–2365. A communication from the Secretary of Defense, transmitting, a notice relative to the retirement of Lieutenant General John E. Miller; to the Committee on Armed Services.

EC–2366. A communication from the Secretary of Defense, transmitting, pursuant to law, a report under the Cooperative Threat Reduction project; to the Committee on Armed Services.

EC–2367. A communication from the Secretary of Defense, transmitting, pursuant to law, a report relative to the National Defense Authorization Act for Fiscal Year 1995; to the Committee on Armed Services.

EC–2368. A communication from the Senior Deputy Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the report under the Freedom of Information Act for calendar year 1996; to the Committee on the Judiciary.

EC–2369. A communication from the Acting Administrator, Farm Service Agency, U.S. Department of Agriculture, transmitting, pursuant to law, a rule relative to the Livestock Indemnity Program (RIN0506–AF15), received on June 26, 1997; to the Committee on Agriculture, Nutrition, and Forestry.

EC–2370. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, transmitting, pursuant to law, a rule relative to scallop harvest and crab limits (RIN0648-AF81), received on June 26, 1997; to the Committee on Commerce, Science, and Transportation.

EC–2371. A communication from the Assistant General Counsel for Regulations, U.S. Department of Education, transmitting, pursuant to law, a report relative to funding priority for the Office of Special Education and Rehabilitative Services; to the Committee on Labor and Human Resources.

EC–2372. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, a report under the Old Americans Act relative to the Aging Annual Report for Fiscal Year 1996; to the Committee on Labor and Human Resources.

EC–2373. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed license relative to the export of defense equipment under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2374. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed manufacturing license relative to Saudi Arabia's armored vehicles under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2375. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed license for export defense equipment under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2376. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting, pursuant to law, a proposed license for the export of defense articles under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2377. A communication from the Assistant Secretary of Legislative Affairs, U.S. Department of State, transmitting pursuant to law, a proposed approval for exports to the United Kingdom under the Arms Export Control Act; to the Committee on Foreign Relations.

EC–2378. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the report on the youth programs of the Family and Youth Services Bureau for fiscal year 1995; to the Committee on the Judiciary.

EC–2379. A communication from the Secretary of Veterans' Affairs, transmitting, pursuant to law, the report on the valuation of VA's portfolio of loans, notes, and guarantees, and other collateralized debts; to the Committee on Veterans' Affairs.

EC–2380. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on highway signs for the National Highway System; to the Committee on Environment and Public Works.

EC–2381. A communication from the Director of the Office of Regulatory Management and Information, U.S. Environmental Protection Agency, transmitting, pursuant to law, five rules including a rule entitled Tebuconazole (FRL–5849–2, 5838–7, 5718–7, 5720–4, 5725–7) received on June 24, 1997; to the Committee on Environment and Public Works.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, without amendment:

S. 231. A bill to establish the National Cave and Karst Research Institute in the State of New Mexico, and for other purposes (Rept. No. 105–37).

S. 423. A bill to extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason (Rept. No. 105–38).

S. 669. A bill to provide for the acquisition of the Plains Railroad Depot at the Jimmy Carter National Historic Site (Rept. No. 105–39).

S. 731. A bill to extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes (Rept. No. 105–40).

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

H.R. 173. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize donation of surplus Federal law enforcement canines to their handlers.

H.R. 680. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize the transfer to States of surplus personal property for donation to nonprofit providers of necessaries to impoverished families and individuals.

S. 307. A bill to amend the Federal Property and Adminstrative Services Act of 1949 to authorize the transfer to States of surplus personal property for donation to nonprofit providers of assistance to impoverished families and individuals, and for other purposes.

By Mr. CHAFEE, from the Committee on Environment and Public Works, without amendment:

S. 833. A bill to designate the Federal building courthouse at Public Square and Superior Avenue in Cleveland, Ohio, as the ''Howard M. Metzenbaum United States Courthouse.''

By Mr. THOMPSON, from the Committee on Governmental Affairs, without amendment:

S. 861. A bill to amend the Federal Property and Administrative Services Act of 1949 to authorize donation of Federal law enforcement canines that are no longer needed for official purposes to individuals with experience handling canines in the performance of law enforcement duties.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

IN THE ARMY

The following-named officer for appointment in the U.S. Army, to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Maj. Gen. David J. Kelley, 0000

IN THE ARMY

The following-named officer for appointment in the U.S. Army to the grade indicated while assigned to a position of importance and responsibility under title 10, United States Code, section 601:

*To be lieutenant general*

Maj. Gen. Randolph W. House, 0000

(The above nominations were reported with the recommendation that they be confirmed.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. MURKOWSKI:

S. 964. A bill to direct a property conveyance in the State of California; to the Committee on Energy and Natural Resources.

S. 965. A bill to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. BREAUX:

S. 966. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 967. A bill to amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act to benefit Alaska natives and rural residents, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MACK:

S. 968. A bill to provide for special immigrant status for certain aliens working as journalists in Hong Kong; to the Committee on the Judiciary.

By Mr. D'AMATO (for himself, Mr. CHAFEE, and Mr. TORRICELLI):

S. 969. A bill ordering the preparation of a Government report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgement of such injustices by the President; to the Committee on the Judiciary.

By Mr. CONRAD (for himself and Mr. BUMPERS):

S. 970. A bill to amend the Immigration and Nationality Act to exempt certain aliens who work for the Department of Veterans Affairs from the requirement that they work only in areas designated as having a shortage of health-care professionals; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself and Mr. TORRICELLI):

S. 971. A bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes; to the Committee on Environment and Public Works.

By Mr. REED (for himself, Mr. CHAFEE, Mr. COATS, and Mr. INHOFE):

S. 972. A bill to amend the Internal Revenue Code of 1986 to prohibit any deduction for gambling losses; to the Committee on Finance.

By Mr. REED (for himself and Mr. CHAFEE):

S. 973. A bill to designate the United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, as the ''David B. Champagne Post Office Building''; to the Committee on Governmental Affairs.

By Mr. REED:

S. 974. A bill to amend the Immigration and Nationality Act to modify the qualifications for a country to be designated as a visa waiver pilot program country; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. MURKOWSKI:

S. 964. A bill to direct a property conveyance in the State of California; to the Committee on Energy and Natural Resources.

THE WARD VALLEY LAND TRANSFER ACT

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation designed to end an impasse that we've endured for far too long—the stalemate over the Ward Valley low-level radioactive waste facility and efforts to implement an important Federal law—the low level radioactive waste policy amendments.

I am doing this today because of documents that have recently come to light under the Freedom of Information Act and due to the continuing differences between the words spoken under oath by a Presidential nominee before my committee and his actions to date.

For more than 10 years, the State of California acting in complete accordance with Federal law and in cooperation with responsible Federal agencies, has been attempting to open a low-level radioactive waste repository at a Mojave Desert site in Ward Valley.

The long, tortured process costing more that $40 million has included a statewide search resulting in the selection of a virtually unpopulated desert valley; two environmental impact statements under the National Environmental Policy Act; two biological opinions under the Endangered Species Act; and judicial review including the California Supreme Court.

From the outset, the State has been dogged by the lawsuits and protests of a small fringe group of activists.

But in the end, California has met every test.

Ward Valley was found to be safe, and the State issued a license containing more than 130 carefully developed safety and environmental stipulations.

Consistent with its own independent evaluations, the Department of the Interior agreed to sell the land to California for the Ward Valley site in January 1993.

But shortly thereafter, the Department of the Interior abruptly reversed itself, demanding a series of discretionary studies and reviews that, 4 years later, still have no end in sight.

Specifically, the Department of the Interior asked the National Academy of Sciences to review seven technical issues related to the site.

In May 1995, the Academy's report was released. The report was highly favorable to the site selection and each of the seven issues. As a consequence, Interior Secretary Babbitt indicated that he intended to transfer the site.

Two more months passed.

On July 27, 1995, the President's nominee to be the Deputy Secretary of the Interior, Mr. John Garamendi, appeared before the Energy and Natural Resources Committee and testified under oath, that the Ward Valley issue ''will be satisfactorily culminated shortly * * * and I believe it should be.''

With that testimony in mind, I recently reviewed documents made available under the Freedom of Information Act.

With the benefit of those documents and other evidence of the systematic delay fostered by the Department of the Interior to block Ward Valley, I have reached the sad conclusion that Congress must intervene to end this stalemate.

Before I go into the disturbing history of this issue and the content of the documents uncovered by the Freedom of Information Act request, some background is important.

There is a tremendous difference between low level radioactive waste and the spent fuel issue the Senate has been debating over the past 2 weeks.

Spent fuel, of course, is the high level waste from nuclear power reactors.

Low level radioactive waste, on the other hand, is composed of items such as medical gowns, biomedical wastes, filters, resins and similar wastes generated from cancer treatment, biomedical research, and other activities.

Low level radioactive waste is generated during cutting-edge research that may help us find a cure for AIDS.

Low level radioactive waste is generated from the development of new drugs and cancer therapies.

Low level radioactive waste is generated by the high tech and biotech industry in the quest for new products and services that will be at the foundation of our 21st century economy.

While it also includes waste from nuclear power production, Congress wisely placed specific limits on the levels which are a State responsibility.

When the Senate was debating the fate of high-level spent fuel, we clearly had a situation where the State of Nevada opposed a repository. The Governor of Nevada opposed it.

But the low level waste issue is vastly different. Governor Wilson of California supports Ward Valley.

The State of California has been working on plans open a low level waste repository in California for the past decade.

They have done so in complete accordance with Federal law, which assigns responsibility for disposal of a specified portion of low level radioactive waste to the States.

Governor Wilson understands that thousands of jobs in California, particularly among the high-tech and biotech industries, absolutely depend on having dependable access to a safe, secure facility for low level radioactive waste.

Governor Wilson understands that countless lives might be saved through the cancer breakthrough or AIDS cure that the use of radioactive materials might bring.

Governor Wilson also understands that low level radioactive waste is currently being stored at hundreds of urban locations all across California.

It's being stored in basements and in parking lot trailers.

It's being stored in warehouses and temporary shelters.

It's on college campuses, in residential neighborhoods, and in hospitals.

And as long as the waste is in these temporary locations in populated areas, it is subject to accidental radioactive releases from fire, earthquakes, and floods.

Governor Wilson is understandably concerned about the health and safety of Californians. He is frustrated by the delays California has faced in trying to get this facility open.

So am I.

I am frustrated by the fact that the President's nominee to be the Deputy Secretary of the Interior, Mr. John Garamendi, appeared before the Energy and Natural Resources Committee on July 27, 1995 and testified under oath, that the Ward Valley issue should and would be quickly resolved.

After that testimony, seven months passed.

Nothing happened.

On February 15, 1996, Deputy Secretary Garamendi indicated that ''new information'' related to a different low-level radioactive waste site at Beatty, Nevada, required further testing at the Ward Valley site and the preparation of yet another Supplemental Environmental Impact Statement (SEIS).

Literally one day before his announcement, the Director of the U.S. Geological Survey said that linkages between the Beatty site and Ward Valley were ''too tenuous to have much scientific value.''

But the Deputy Secretary ignored the Director's scientific advice. In a public news conference, Deputy Secretary Garimendi indicated that the additional testing would take about four months, and that the preparation of a Supplemental Environmental Impact Statement (SEIS) would take about a year.

On August 5, 1996, months after we expected the testing to be complete, an official of the lab Interior selected to perform the testing said, ''Interior Department officials have yet to submit a work plan . . . on the testing they want done.''

During this same time frame, Interior Department officials were distributing documents to the public containing factually incorrect information taken verbatim from Ward Valley opponents, even though accurate information was readily available from the Department of Energy.

It now appears that Interior made no effort to check the facts with DOE with respect to the veracity of the information it was providing to the public.

Recently, the Governor of California made me aware of documents he obtained through Freedom of Information Act (FOIA) requests. These documents reveal the following:

Despite the understandable lack of radiological expertise resident in the Department of the Interior, the Department has made no effort to communicate with the federal agency with primary expertise and jurisdiction in the matter—the Nuclear Regulatory Commission.

The professional, non-political, radiological experts of the Department of Energy have indicated that: ''Interior's concern that the [Ward Valley] facility lacks an environmental monitoring system has no basis in fact;'' the Department of the Interior is attempting to subvert the National Academy of Sciences recommendations with respect to the timing of the tests and nature of the tests to be performed; the Department of the Interior has understated the costs and the time required for the conduct of the tests; and the tests the Department of the Interior has outlined will result in additional litigation regardless of their outcome.

Mr. President, these documents are plain on their face.

But they are particularly troubling since they show the vast difference between the words spoken by Mr. Garamendi in his confirmation hearing, and the actions he has taken since his confirmation.

Let's again review the facts:

Deputy Secretary Garamendi testified under oath that the Ward Valley issue would be, and should be, quickly resolved.

He then called for additional testing that did not conform to the recommendations of the National Academy of Sciences, creating a false linkage in the public's mind between the

Beatty site and the Ward Valley site, despite the fact that his own USGS Director said that such a linkage could not be justified by the science.

Deputy Secretary Garamendi spread misinformation about the composition of the radioactive waste stream in Department press materials supplied by project opponents, making no effort to check their veracity with the Department of Energy, the Nuclear Regulatory Commission, or any other agency with expertise in such matters.

Deputy Secretary Garamendi persistently failed to get the testing underway, which he later blamed on the threats of a lawsuit that were not, in fact, made until long after the time he said the tests would be complete.

Indeed, the Department of the Interior has designed a process specifically intended to foster further delay.

Mr. President, over the past month or so there has been a new twist that is frankly the straw that breaks the camel's back.

The State of California, in its continuing efforts to achieve a compromise, has agreed to perform additional testing pursuant to the National Academy of Sciences guidelines prior to the federal land transfer.

Let me make this clear: California has always agreed to do the additional testing . . . the issue of dispute is that Interior insisted the testing be done prior to the land transfer, while California and the National Academy of Sciences said the testing would be best accomplished after the land transfer.

So California has now agreed to perform additional testing prior to the land transfer. They have clearly made efforts to compromise.

I received a letter from Deputy Secretary Garamendi, dated February 27, 1997, which exclaimed that the delays at Ward Valley have gone on long enough, and that welcomed the decision by the State of California to undertake additional testing.

When I saw that letter. I thought to myself: Finally, this issue will be resolved.

I was shocked by what happened next:

The BLM produced an administrative determination, allegedly two years old that nobody had ever seen, that will not permit California to undertake the testing that Interior insists must be undertaken prior to the land transfer! They have California in a ''Catch-22.''

BLM informed the California Department of Health Services that they could not proceed with the testing without a new permit from the BLM and yet another biological consultation with the U.S. Fish and Wildlife Service with respect to the Desert Tortoise.

The BLM based this requirement for a new permit on an ''administrative determination,'' allegedly issued two years ago, which limits surface disturbance associated with pre-construction testing. But further examination revealed several points about this document:

This old administrative determination was unknown to the California Department of Health Services, U.S. Ecology, and even the local BLM District Office until weeks ago.

The local BLM office is unable to provide any evidence that this ''administrative determination'' was provided to any of the parties whose actions it supposedly limits.

The administrative determination is absurd on its face. The U.S. Fish and Wildlife Service has determined that the 90 acres of surface disturbance associated with the construction and operation of the Ward Valley facility will not jeopardize the desert tortoise or its habitat. Moreover, under current BLM guidelines, ten acre mining operations on other BLM land would not trigger the need for a biological consultation if certain desert tortoise protection measures were incorporated into the plan submitted to BLM. Indeed, five acre mining operations would not even require the applicant to submit a tortoise protection plan for approval. Yet, it is BLM's sudden contention that less than 5 acres of surface disturbance associated with testing will require yet another full biological consultation by the U.S. Fish and Wildlife Service.

Clearly, Mr. President, this latest obstruction, and the reasons cited for it, make no sense in the context of the various other permits and administrative determinations that have been previously granted at the site.

The fact that this administrative decision suddenly surfaced in the midst of state planning to undertake the new tests is highly unusual—perhaps even worthy of investigation by the Inspector General.

Mr. President, earlier this year I asked the General Accounting Office to investigate this matter. That investigation is now underway. At this very moment, GAO auditors are reviewing documents in the District BLM office in California and at Department of Interior headquarters here in Washington.

The GAO report will not be complete until July 15, but let me simply say that their preliminary findings appear to agree with my understanding of the facts.

What we are seeing at the Department of the Interior is a blatant display of bad faith and obstructionism with regard to California's efforts to implement Federal law through development of the Ward Valley site.

I am particularly distressed by this, particularly in light of the words spoken by Mr. Garamendi at his confirmation hearing.

Mr. President, the legislation I am introducing today would convey the BLM land at Ward Valley to California as soon as a check for the fair market value of the land plus $100 is tendered to the Secretary of the Treasury, after the State of California formally tenders a promise to conduct the additional testing as outlined by the National Academy of Sciences.

It's a simple bill. California agrees to do the testing outlined by the National Academy of Sciences, California gets its site, and the taxpayer gets fair market value for the land.

I am willing to consider alternative approaches, but my bottom line is a quick and satisfactory resolution to this issue by qualified experts rather than political activists.

I am willing to entertain negotiated compromises.

I am willing to entertain alternative legislative approaches.

I am not willing to entertain further delay.

In closing, Mr. President, let me share a story that I find particularly rich in irony:

Interior Secretary Babbitt, while the Governor of Arizona, was deeply concerned about the difficulty of the Federal Government to provide for adequate low-level radioactive waste disposal sites. He was asked by the National Governors' Association to chair a task force to look into the problem.

The Babbitt task force recommended that the responsibility for low-level radioactive waste management be given to the States. In 1981, Governor Babbitt wrote that ''the siting of a low level nuclear waste facility involves primarily state and local issues that are best resolved at the government level closest to those affected.''

There was another Governor at the time who was active in the National Governor's Association and supported this approach: The Governor of Arkansas. His name was Bill Clinton.

Congress listened to these Governors, and passed the Low Level Radioactive Waste Policy Act which gave the States the responsibility for low level radioactive waste management.

California is the first State to license a facility under the Low Level Radioactive Waste Policy Act.

And who are the Federal authorities who are today frustrating California's attempt to follow the law and open its site?

None other than Mr. Babbitt and his Deputy at the Department of the Interior, himself a former California state official.

What an irony that former State officials would declare a State unworthy of trust in carrying out its congressionally assigned duties and responsibilities.

What a difference a few years in Washington can make.

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By Mr. MURKOWSKI:

S. 965. A bill to amend title II of the Hydrogen Future Act of 1996 to extend an authorization contained therein, and for other purposes; to the Committee on Energy and Natural Resources.

AUTHORIZATION EXTENSION LEGISLATION

Mr. MURKOWSKI. Mr. President, today I offer a very simple bill with the hope that it can receive expedited consideration in the Senate and be sent over to the House of Representatives for further consideration.

Last year Congress authorized a program to explore the feasibility of integrating hydrogen fuel cells with systems to produce hydrogen from photovoltaic production or solid waste through gasification or steam reforming. This program is outlined in title II of Public Law 104–271, the Hydrogen Future Act of 1996.

The program was originally authorized through 1997 and 1998, with funds to remain available until 1999.

It has since become clear that the program will require a longer period of time to put into place. Accordingly, this bill simply extends the authorization through fiscal year 2001, with funds to remain available until September 30, 2002.

For those who are unfamiliar with the promise of hydrogen energy systems, let me simply add that hydrogen is widely regarded as an important potential energy carrier with the potential to join electricity as a key component of a future sustainable energy system. Unlike coal, oil, or gas, hydrogen cannot be directly mined or produced—it must be extracted from hydrogen-rich materials such as natural gas, biomass, or even water. While there are significant technical and economic barriers that prevent the near-term, widespread use of hydrogen as an energy carrier, the eventual promise of hydrogen is compelling. Thus, Congress and the Department of Energy has placed a high priority on hydrogen energy research and development.

I urge that my colleagues support the bill.

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By Mr. BREAUX:

S. 966. A bill to provide legal standards and procedures for suppliers of raw materials and component parts for medical devices and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE BIOMATERIALS ACCESS ASSURANCE AND HEALTH SAFETY ACT OF 1997

Mr. BREAUX. Mr. President, today I rise to introduce the Biomaterials Access Assurance and Health Safety act of 1997. While other legislation has been introduced that is intended to protect suppliers of raw materials used in the construction of important medical implants from liability, I believe that my legislation strikes the proper balance between the legitimate concerns of these suppliers and the health insurance and legal rights of patients.

The legislation I am introducing today is similar to biomaterials legislation that has been introduced independently by Senator LIEBERMAN and as a part of S. 5, the Product Liability Fairness Act. It does, however, differ on several important points. First, this bill would not immunize negligent suppliers or supplies who fail to warn of the harmful effects of their products. Second, this bill would be limited to the protection of suppliers of raw materials. Other biomaterials bills, while speaking only of the need to protect suppliers of raw materials, use overly broad language that immunizes a whole host of product manufacturers. Third, unlike the legislation sent to the President last year, this bill would not cover suppliers of materials used in breast implants.

Mr. President, there are two other important differences between this legislation and other biomaterials liability legislation that has been introduced. I believe that this bill can be passed by Congress. I'm not sure that other biomaterials bills can. We know too well that the larger product liability bill will be controversial, and that its passage and enactment are uncertain at best. This biomaterials bill has been introduced as a stand-alone measure and can move independently of the product liability bill.

I also believe that this legislation can be signed into law by President Clinton, and I'm not too sure that other biomaterials liability legislation can. When the President vetoed the product liability bill sent to him by the 104th Congress, H.R. 965, which included biomaterials language similar to that in Senator LIEBERMAN's bill, he noted that he wanted to enact fair and balanced biomaterials liability legislation. However, he felt that the language before him went too far, particularly because it immunized negligent biomaterials suppliers. I believe the President will find the provisions of my bill acceptable.

Mr. President, I think that this bill is the best hope we have of passing fair and meaningful biomaterials legislation, and I urge my colleagues to join me in support of its passage. I ask unanimous consent that the entire text of this bill be printed in the RECORD.

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

S. 966

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

**SECTION 1. SHORT TITLE.**

This title may be cited as the ''Biomaterials Access Assurance Act of 1997.''

**SEC. 2. FINDINGS.**

Congress finds that—

(1) each year millions of citizens of the United States depend on the availability of lifesaving or life enhancing medical devices, many of which are permanently implantable within the human body;

(2) a continued supply of raw materials and component parts is necessary for the invention, development, improvement, and maintenance of the supply of the devices;

(3) most of the medical devices are made with raw materials and component parts that—

(A) are not designed or manufactured specifically for use in medical devices; and

(B) come in contact with internal human tissue;

(4) the raw materials and component parts also are used in a variety of nonmedical products;

(5) because small quantities of the raw materials and component parts are used for medical devices, sales of raw materials and component parts for medical devices constitute an extremely small portion of the overall market for the raw materials and medical devices;

(6) under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), manufacturers of medical devices are required to demonstrate that the medical devices are safe and effective, including demonstrating that the products are properly designed and have adequate warnings or instructions;

(7) notwithstanding the fact that raw materials and component parts suppliers do not design, produce, or test a final medical device, the suppliers have been the subject of actions alleging adequate—

(A) design and testing of medical devices manufactured with materials or parts supplied by the suppliers; or

(B) warnings related to the use of such medical devices;

(8) even though suppliers of raw materials and component parts have very rarely been held liable in such actions, such suppliers have ceased supplying certain raw materials and component parts for use in medical devices because the costs associated with litigation in order to ensure a favorable judgment for the suppliers far exceeds the total potential sales revenues from sales by such suppliers to the medical device industry;

(9) unless alternate sources of supply can be found, the unavailability of raw materials and component parts for medical devices will lead to unavailability of lifesaving and life-enhancing medical devices;

(10) because other suppliers of the raw materials and component parts in foreign nations are refusing to sell raw materials or component parts for use in manufacturing certain medical devices in the United States, the prospects for development of new sources of supply for the full range of threatened raw materials and component parts for medical devices are remote;

(11) it is unlikely that the small market for such raw materials and component parts in the United States could support the large investment needed to develop new suppliers of such raw materials and component parts;

(12) attempts to develop such new suppliers would raise the cost of medical devices;

(13) courts that have considered the duties of the suppliers of the raw materials and component parts have generally found that the suppliers do not have a duty—

(A) to evaluate the safety and efficacy of the use of a raw material or component part in a medical device; and

(B) to warn consumers concerning the safety and effectiveness of a medical device;

(14) attempts to impose the duties referred to in subparagraphs (A) and (B) of paragraph (13) on suppliers of the raw materials and component parts would cause more harm than good by driving the suppliers to cease supplying manufacturers of medical devices; and

(15) in order to safeguard the availability of a wide variety of lifesaving and life-enhancing medical devices, immediate action is needed—

(A) to clarify the permissible bases of liability for suppliers of raw materials and component parts for medical devices; and

(B) to provide expeditious procedures to dispose of unwarranted suits against the suppliers in such manner as to minimize litigation costs.

**SEC. 3. DEFINITIONS.**

As use in this Act:

(1) BIOMATERIALS SUPPLIER.—

(A) IN GENERAL.—The term ''biomaterials supplier'' means an entity that directly or indirectly supplies raw material for use in the manufacture of an implant.

(B) PERSONS INCLUDED.—Such term includes any person who—

(i) has submitted master files to the Secretary for purposes of premarket approval of a medical device; or

(ii) licenses a biomaterials supplier to produce raw materials.

(2) CLAIMANT.—

(A) IN GENERAL.—The term ''claimant'' means any person who brings a civil action, or on whose behalf a civil action is brought, arising from harm allegedly caused directly or indirectly by an implant, including a person other than the individual into whose body, or in contact with whose blood or tissue, the implant is placed, who claims to have suffered harm as a result of the implant.

(B) ACTION BROUGHT ON BEHALF OF AN ESTATE.—With respect to an action brought on behalf of or through the estate of an individual into whose body, or in contact with whose blood or tissue the implant is placed, such term includes the decedent that is the subject of the action.

(C) ACTION BROUGHT ON BEHALF OF A MINOR OR INCOMPETENT.—With respect to an action brought on behalf of or through a minor or incompetent, such term includes the parent or guardian of the minor or incompetent.

(D) EXCLUSIONS.—Such term does not include—

(i) a provider of professional health care services, in any case in which—

(I) the sale or use of an implant is incidental to the transaction; and

(II) the essence of the transaction is the furnishing of judgment, skill, or services;

(ii) a person acting in the capacity of a manufacturer, seller, or biomaterials supplier; or

(iii) a person alleging harm caused by a breast implant.

(3) HARM.—

(A) IN GENERAL.—The term ''harm'' means—

(i) any injury to or damage suffered by an individual;

(ii) any illness, disease, or death of that individual resulting from that injury or damage; and

(iii) any loss to that individual or any other individual resulting from that injury or damage;

(B) COMMERCIAL LOSS.—The term includes any commercial loss or loss of or damage to an implant.

(4) IMPLANT.—The term ''implant'' means—

(A) a medical device that is intended by the manufacturer of the device—

(i) to be placed into a surgically or naturally formed or existing cavity of the body for a period of at least 30 days; or

(ii) to remain in contact with bodily fluids or internal human tissue through a surgically produced opening for a period of less than 30 days; and

(A) suture materials used in implant procedures.

(5) MANUFACTURER.—The term ''manufacturer'' means any person who, with respect to an implant—

(A) is engaged in the manufacture, preparation, propagation, compounding, or processing (as defined in section 510(a)(1)) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360)(a)(1)) of the implant; and

(B) is required—

(i) to register with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) to include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j) and the regulations issued under such section.

(6) MEDICAL DEVICE.—The term ''medical device'' means a device, as defined in section 1(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and includes any device component of any combination product as that term is used in section 503(g) of such Act (21 U.S.C. 353(g))

(7) RAW MATERIAL.—The term ''raw material'' means a substance or product that—

(A) has a generic use; and

(B) may be used in an application other than an implant.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(9) SELLER.—

(A) IN GENERAL.—The term ''seller'' means a person who, in the course of a business conducted for that purpose, sells, distributes, leases, packages, labels, or otherwise places an implant in the stream of commerce.

(B) EXCLUSIONS.—the term does not include—

(i) a seller or lessor of real property;

(ii) a provider of professional services, in any case in which the sale or use of an implant is incidental to the transaction and the essence of the transaction is the furnishing of judgment, skill, or services; or

(iii) any person who acts in only a financial capacity with respect to the sale of an implant.

**sec. 4. general requirements: applicability; preemption.**

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—In any civil action covered by this Act, a biomaterials supplier may raise any defense set forth in section 5.

(A) PROCEDURES.—Notwithstanding any other provision of law, the Federal or State court in which a civil action covered by this Act is pending shall, in connection with a motion for dismissal or judgment based on a defense described in paragraph (1), use the procedures set forth in section 6.

(b) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), notwithstanding any other provision of law, this Act applies to any civil action brought by a claimant, whether in a Federal or State court, against a manufacturer, seller, or biomaterials supplier, on the basis of any legal theory, for harm allegedly caused by an implant.

(2) EXCLUSION.—A civil action brought by a purchaser of a medical device for use in providing professional services against a manufacturer, seller, or biomaterials supplier for loss or damage to an implant or for commercial loss to the purchaser—

(A) shall not be considered an action that is subject to this Act; and

(B) shall be governed by applicable commercial or contract law.

(c) SCOPE OF PREEMPTION.—

(1) IN GENERAL.—This title supersedes any State law regarding recovery for harm caused by an implant and any rule of procedure applicable to a civil action to recover damages for such harm only to the extent that this Act establishes a rule of law applicable to the recovery of such damages.

(2) APPLICABILITY OF OTHER LAWS.—Any issue that arises under this Act and that is not governed by a rule of law applicable to the recovery of damages described in paragraph (1) shall be governed by applicable Federal or State law.

(d) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed to create a cause of action or Federal court jurisdiction pursuant to section 1331 or 1337 of title 28, United States Code, that otherwise would not exist under applicable Federal or State law.

**SEC. 5. LIABILITY OF BIOMATERIALS SUPPLIERS.**

(a) IN GENERAL.—

(1) EXCLUSION FROM LIABILITY.—Except as provided in paragraph (2), a biomaterials supplier shall not be liable for harm to a claimant caused by an implant.

(2) LIABILITY.—A biomaterials suppler that—

(A) is a manufacturer may be liable for harm to a claimant described in subsection (b);

(B) is a seller may be liable for harm to a claimant described in subsection (c);

(C) furnishes raw materials that fail to meet applicable contractual requirements or specifications may be liable for a harm to a claimant described in subsection (d).

(D) knows, or through reasonable inquiry could have known:

(i) of the application to which the raw material is to be put;

(ii) of the risks attendant to such use; and

(iii) that the buyer or user of the raw material is ignorant of such risks, but failed to warn such buyer or user of such risks, may be liable for harm to a claimant described in subsection (e); and

(E) furnishes raw materials that are defective may be liable for harm to a claimant as described in subsection (f).

(b) LIABILITY MANUFACTURER.—

(1) IN GENERAL.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant if the biomaterials supplier is the manufacturer of the implant.

(2) GROUNDS FOR LIABILITY.—

(A) The biomaterials supplier may be considered the manufacturer of the implant that allegedly caused harm to a claimant only if the biomaterials supplier—

(i) has registered with the Secretary pursuant to section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360) and the regulations issued under such section; and

(ii) included the implant on a list of devices filed with the Secretary pursuant to section 510(f) of such Act (21 U.S.C. 360(f)) and the regulations issued under such section;

(B) is the subject of a declaration issued by the Secretary pursuant to paragraph (3) that states that the supplier, with respect to the implant that allegedly caused harm to the claimant, was required to—

(i) register with the Secretary under section 510 of such Act (21 U.S.C. 360), and the regulations issued under such section, but failed to do so; or

(ii) include the implant on a list of devices filed with the Secretary pursuant to section 510(j) of such Act (21 U.S.C. 360(j)) and the regulations issued under such section, but failed to do so; or

(C) is related by common ownership or control to a person meeting all the requirements described in subparagraph (A) or (B), if the court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(i) finds, on the basis of affidavits submitted in accordance with section 6, that it is necessary to impose liability on the biomaterials supplier as a manufacturer because the related manufacturer meeting the requirements of a subparagraph (A) or (B) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(3) ADMINISTRATIVE PROCEDURES.—

(A) IN GENERAL.—The Secretary may issue a declaration described in paragraph (2)(B) on the motion of the Secretary or on petition by any person, after providing—

(i) notice to the affected persons; and

(ii) an opportunity for an informal hearing.

(B) DOCKETING AND FINAL DECISION.—Immediately upon receipt of a petition filed pursuant to this paragraph, the Secretary shall docket the petition. Not later than 180 days after the petition is filed, the Secretary shall issue a final decision on the petition.

(C) APPLICABILITY OF STATUTE OF LIMITATIONS.—Any applicable statute of limitations shall toll during the period during which a claimant has filed a petition with the Secretary under this paragraph.

(c) LIABILITY AS SELLER.—A biomaterials supplier may, to the extent required and permitted by any other applicable law be liable

as seller for harm to a claimant caused by an implant if—

(1) the biomaterials supplier—

(A) held little to the implant that allegedly caused harm to the claimant as a result of purchasing the implant after—

(i) the manufacture of the implant and

(ii) the entrance of the implant in the stream of commerce; and

(B) subsequently resold the implant; or

(2) the biomaterials supplier is related by common ownership or control to a person meeting all the requirements described in paragraph (1), if a court deciding a motion to dismiss in accordance with section 6(c)(3)(B)(ii) finds on the basis of affidavits submitted in accordance with section 6 that is necessary to impose liability on the biomaterials supplier as a seller because the related seller meeting the requirements of paragraph (1) lacks sufficient financial resources to satisfy any judgment that the court feels it is likely to enter should the claimant prevail.

(d) LIABILITY FOR VIOLATING CONTRACTUAL REQUIREMENTS OR SPECIFICATIONS.—A biomaterials supplier may, to the extent required and permitted by any other applicable law, be liable for harm to a claimant caused by an implant, if the claimant in an action shows, by a preponderance of the evidence, that—

(1) the raw materials or component parts delivered by the biomaterials supplier either—

(A) did not constitute the product described in the contract between the biomaterials supplier and the person who contracted for delivery of the product; or

(B) failed to meet any specifications that were—

(i) provided to the biomaterials supplier and not expressly repudiated by the biomaterials supplier prior to acceptance of delivery of the raw materials or component parts;

(I) published by the biomaterials supplier;

(II) provided to the manufacturer by the biomaterials supplier; or

(III) contained in a master file that was submitted by the biomaterials supplier to the Secretary and that is currently maintained by the biomaterials supplier for purposes of premarket approval of medical devices; or

(ii) included in the submissions for purposes of premarket approval or review by the Secretary under section 510, 513, 515, or 520 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360, 360c, 360e, or 360j), and received clearance from the Secretary if such specifications were provided by the manufacturer to the biomaterials supplier and were not expressly repudiated by the biomaterials supplier prior to the acceptance by the manufacturer of delivery of the raw materials or component parts; and

(2) such conduct was an actual and proximate cause of the harm to the claimant.

(e) LIABILITY FOR FAILURE TO WARN.—A biomaterials supplier may, to the extent required or permitted by any other applicable law, be liable for harm caused by an implant if the biomaterials supplier—

(1) knew, or through reasonable inquiry could have known;

(A) of the application to which the raw material was to be put;

(B) of the risks attendant to such use;

(C) that the buyer or user of the raw material was ignorant of such risks; and

(2) failed to warn such buyer or user of such risks.

(f) LIABILITY FOR DEFECTIVE MATERIAL.—A biomaterials supplier may, to the extent permitted by any other applicable law, be liable for harm caused by an implant if the harm was in whole or in part caused by a defect in the raw material supplied by the biomaterials supplier.

**SEC. 6. PROCEDURES FOR DISMISSAL OF CIVIL ACTIONS AGAINST BIOMATERIALS SUPPLIERS.**

(a) MOTION TO DISMISS.—In any action that is subject to this Act, a biomaterials supplier who is a defendant in such action may, at any time during which a motion to dismiss may be filed under an applicable law, move to dismiss the action against it on the grounds that—

(1) the defendant is a biomaterials supplier; and

(2)(A) the defendant should not, for the purposes of—

(i) section 5(b), be considered to be a manufacturer of the implant that is subject to such section; or

(ii) section 5(c), be considered to be a seller of the implant that allegedly caused harm to the claimant;

(iii) section 5(e), be found to have failed to warn the buyer or user of the raw material of its known risks;

(iv) section 5(f), be found to have supplied defective material; or

(B)(i) the claimant has failed to establish pursuant to section 5(d), that the supplier furnished raw materials or component parts in violation of contractual requirements or specifications; or

(ii) the claimant has failed to comply with the procedural requirements of subsection (b).

(b) PROCEEDING ON MOTION TO DISMISS.—The following rules shall apply to any proceeding on a motion to dismiss filed under this section:

(1) AFFIDAVITS RELATING TO LISTING AND DECLARATIONS.—

(A) IN GENERAL.—The defendant in the action may submit an affidavit demonstrating that defendant has not included the implant on a list, if any, filed with Secretary pursuant to section 510(j) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360(j)).

(B) RESPONSE TO MOTION TO DISMISS.—In response to the motion to dismiss, the claimant may submit an affidavit demonstrating that—

(i) the Secretary has, with respect to the defendant and the implant that allegedly caused harm to the claimant, issued a declaration pursuant to section 5(b)(2)(B); or

(ii) the defendant who filed the motion to dismiss is a seller of the implant who is liable under section 5(c).

(2) EFFECT OF MOTION TO DISMISS ON DISCOVERY.—

(A) IN GENERAL.—If a defendant files a motion to dismiss under paragraph (1) or (2) of subsection (a), no discovery shall be permitted connection to the action that is subject of the motion, other than discovery necessary to determine a motion to dismiss for lack of jurisdiction, until such time as the court rules on the motion to dismiss in accordance with the affidavits submitted the parties in accordance with section.

(B) DISCOVERY.—If a defendant files a motion to dismiss under subsection (a)(2)(B)(i) on the grounds that the biomaterials supplier did not furnish raw materials or component parts in violation of contractual requirements or specifications, the court may permit discovery, as ordered by the court. The discovery conducted pursuant to this subparagraph shall be limited to issues that are directly relevant to—

(i) the pending motion to dismiss; or

(ii) the jurisdiction of the court.

(3) AFFIDAVITS RELATING STATES OF DEFENDANT.—

(A) IN GENERAL.—Except as provided in clauses (i) and (ii) of subparagraph (B), the court shall consider a defendant to be a biomaterials supplier who is not subject to an action for harm to a claimant caused by an implant, other than an action relating to liability for a violation of contractual requirements or specifications described in subsection (d).

(B) RESPONSES TO MOTION TO DISMISS.—The court shall grant a motion to dismiss any action that asserts liability of the defendant under subsection (b) or (c) of section 5 on the grounds that the defendant is not a manufacturer subject to such section 5(b) or seller subject to section 5(c), unless the claimant submits a valid affidavit that demonstrates that—

(i) with respect to a motion to dismiss contending the defendant is not a manufacturer, the defendant meets the applicable requirements for liability as a manufacturer under section 5(b); or

(ii) with respect to a motion to dismiss contending that the defendant is not a seller, the defendant meets the applicable requirements for liability as a seller under section 5(c).

(4) BASIS OF RULING ON MOTION TO DISMISS.—

(A) IN GENERAL.—The court shall rule on a motion to dismiss filed under subsection (a) solely on the basis of the pleadings of the parties made pursuant to this section and any affidavits submitted by the parties pursuant to this section.

(B) MOTION FOR SUMMARY JUDGEMENT.—Notwithstanding any other provision of law, if the court determines that the pleadings and affidavits made by parties pursuant to this section raise genuine issues as concerning material facts with respect to a motion to dismiss to be a motion for summary judgment made pursuant to subsection (c).

(c) SUMMARY JUDGMENT.—

(1) IN GENERAL.—

(A) BASIS FOR ENTRY OF JUDGMENT.—A biomaterials supplier shall be entitled to entry of judgment without trial if the court finds there is a no genuine issue as concerning any material fact for each applicable element set forth in paragraphs (1) and (2) of section 5(d).

(B) ISSUES OF MATERIAL FACT.—With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

(2) DISCOVERY MADE PRIOR TO A RULING ON A MOTION FOR SUMMARY JUDGMENT.—If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment made pursuant to this subsection, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (92) of section 5(9)(d).

(3) DISCOVERY WITH RESPECT TO A BIOMATERIALS SUPPLIER.—A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 5(d) or the failure to establish the applicable elements of section 5(d) solely to the extent permitted by the applicable Federal or State rules for discovery against nonparties.

(d) STAY PENDING PETITION FOR DECLARATION.—If a claimant has filed a petition for a declaration pursuant to section 5(b)(3)(A) with respect to a defendant, and the Secretary has not issued a final decision on the petition, the court shall stay all proceedings with respect to that defendant until such time as the Secretary has issued a final decision on the petition.

(a) ATTORNEY FEES.—The court shall require the claimant to compensate the biomaterials supplier for a manufacturer appearing in lieu of a supplier pursuant to subsection (f) for attorney fees and costs, if

(1) the claimant named or joined the biomaterials supplier; and

(2) the court found the claim against the biolmaterials supplier was clearly without merit and frivolous at the time the claim was brought.

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By Mr. MURKOWSKI (for himself and Mr. STEVENS):

S. 967. A bill to amend the Alaska Native Claims Settlement Act and the Alaska National Interest Lands Conservation Act to benefit Alaska Natives and rural residents, and for other purposes; to the Committee on Energy and Natural Resources.

TECHNICAL CHANGES TO ANCSA AND ANILCA

Mr. MURKOWSKI. Mr. President, today I rise to introduce legislation on behalf of Alaska Natives and residents of rural Alaska. This legislation makes technical changes to both the Alaska Native Claims Settlement Act [ANCSA] and the Alaska National Interest Lands Conservation Act [ANILCA]. Most of the provisions are similar to those contained in H.R. 2505 passed by the House last year. These changes are the direct result of more than three days of hearings consisting of 14 panels and more than 155 witnesses, the Senate Committee on Energy and Natural Resources held throughout Alaska during the last Congress.

ANCSA CHANGES

Mr. President, ANCSA is 25 years old. This legislation is a living, working document being used to improve the lives of Alaska's Native residents and the future generations of Alaska Natives. We have amended this document numerous times with technical changes in order to make it a more effective piece of legislation.

The changes I am offering to ANCSA today would:

1. Allow Native Regional Corporations the option of retaining mineral estates of native allotments surrounded by ANCSA 12(a) and 12(b) selections.

2. Amend section 22(c) of ANCSA to include the Haida Corporation in the transfer of the administration of certain mining claims.

3. Codify an agreement reached between ANCSA Native corporations regarding revenue sharing on sales of rock, sand and gravel.

4. Direct the Secretary of Interior to determine the value of certain Calista Corporation lands and to complete the exchange authorized by Congress in 1991.

5. Authorize five southeast Alaska Native villages to organize as Native corporations.

There are two provisions that I would like to single out here in my remarks today.

Mr. President, section 5 of this legislation implements a land exchange with the Calista Corporation, an Alaska Native regional corporation organized under the authority of the Alaska Native Claims Settlement Act. This exchange, originally authorized in 1991, by Public Law 102–172, would provide for the United States to acquire approximately 225,000 acres of Calista and village corporation lands and interests in lands within the Yukon Delta National Wildlife Refuge in southwestern Alaska.

The Refuge serves as important habitat and breeding and nesting grounds for a variety of fish and wildlife, including numerous species of migratory birds and waterfowl. As a result, the Calista exchange will enhance the conservation and protection of these vital habitats and thereby further the purpose of ANCSA and the Alaska National Interest Lands Conservation Act.

In addition to conservation benefits, this exchange will also render much needed economic benefits to the Yupik Eskimo people of southwestern Alaska. The Calista region is burdened by some of the harshest economic and social conditions in the Nation. As a result of this exchange, the Calista Corporation will be better able to make the kind of investments that will improve the region's economy and the lives of the Yupik people. In this regard, this provision furthers and carries out the underlying purposes of ANCSA.

This provision is, in part, the result of discussions by the various interested parties. As a result of those discussions, a number of modifications were made to the original package of lands offered for exchange. Chief among these were the addition of another 27,000 acres of surface estate (fee and conservation casements) of village corporation lands, as well as the Calista subsurface estate lying underneath those lands, and the removal of the Tuluksak mineralized parcel from the exchange.

In a last minute agreement to move the bill through the House last year, the total value of the exchange package was reduced by 25% to $30 million. Such a reduction was unwarranted and seriously undermined the utility and benefit of the provision for the public and for Calista and the twelve village corporations involved. This legislation I introduce today restores the value to the Calista exchange portion of this bill.

Mr. President, it is time to move forward with this exchange.

Section 8 of this legislation provides long-overdue authorization to the Southeast Alaska Villages of Haines, Ketchikan, Petersburg, Tenakee, and Wrangell, Alaska that will permit them to establish Native Corporations under ANCSA. The history of these five villages clearly shows that the Alaska Natives who enrolled in them and their heirs have been inadvertently and wrongly denied the financial and cultural benefits of enrollment in a Village, Urban, or Group Corporation.

This section simply amends ANCSA to provide authorization for each of the five Unrecognized Communities to form a Native Corporation pursuant to ANCSA, and directs the Secretary of the Interior, in consultation with the Secretary of Agriculture, to submit to Congress a report regarding lands and other compensation that should be provided to the Corporations formed pursuant to this section. This section specifically requires further Congressional action to provide compensation for these communities.

ANILCA CHANGES

This legislation also addresses changes that need to be made to ANILCA to ensure that the Federal agencies are fairly implementing this legislation consistent with its written provisions and promises. These changes will ensure that its implementation is consistent with the intent of Congress. These are simple changes that among other things:

1. Require all public land managers in Alaska or in a region containing Alaska to take a training course in ANILCA.

2. Authorize continuation of traditional subsistence activities in Glacier Bay subject to reasonable regulations by NPS.

3. Protect traditional and inholder access in and across ANILCA lands.

4. Protect property owners from having to relinquish ownership interests in cabins and possessions within them on ANILCA lands.

Mr. President, seventeen years ago, Congress enacted the ANILCA. Despite the opposition of many Alaskans, over 100 million acres of land was set aside in a series of vast Parks, Wildlife Refuges, and Wilderness units. Much of the concern about the Act was the impact of these Federal units, and related management restrictions, on traditional activities and lifestyles.

To allay these concerns, ANILCA included a series of unique provisions designed to ensure that traditional activities and lifestyles would continue, that Alaskans would not be subjected to a ''permit lifestyle'', and that the agencies would be required to recognize the crucial distinction between managing small units surrounded by millions of people in the lower 48 and vast multi-million acre units encompassing a relative handful of individuals and communities in Alaska. The sponsors of ANILCA issued repeated assurances that the establishment of these units would in fact protect traditional activities and lifestyles and not place them in jeopardy.

Early implementation of the Act closely reflected these promises. However, as the years have passed, many of the Federal managers seem to have lost sight of these important representations to the people of Alaska. Agency personnel, trained primarily in lower 48 circumstances, have brought the mentality of restriction and regulation to Alaska. The critical distinctions between management of Parks, Refuges and Wilderness areas in the 49th State and the lower 48 have blurred. The result is the spread of restriction and regulation and the creation of the exact ''permit lifestyle'' which we were promised would never happen.

I have become increasingly aware of this disturbing trend. In my conversations with Alaskans, I hear many complaints about ever increasing restraints on traditional activities and requirements for more and more paperwork and permits. A whole new ''industry'' has sprung up to help Alaskans navigate the bureaucratic shoals that have built up during the past few years.

Let me cite a few of the incidents that have come to my attention. The U.S. Fish and Wildlife Service decides it wants to establish a ''wilderness management'' regime and eliminate motorboat use on a river. It proceeds with the plan until protests cause the Regional Solicitor to advise the Service that its plan violates Section 1110(a) of ANILCA. Owners of cabins built, occupied, and used long before ANILCA are told they must give up their interests in the cabins although Section 1303 expressly enables cabin owners to retain their possessory interests in their cabins. Visitor services contracts are awarded and then revoked because the agencies failed to adhere to the requirements of Section 1307. Small landowners of inholdings seek to secure access to their property and are informed that they must file for a right-of-way as a transportation and utility system and pay the U.S. hundreds of thousands of dollars to prepare a totally unnecessary environmental impact statement. An outfitter spends substantial time and money responding to a request for proposals, submits an apparently winning proposal, and has the agency arbitrarily change its mind and decide to withdraw its request—it does not offer to compensate the outfitter for his efforts.

Mr. President, the legislation I introduce today will ensure that agencies are fairly implementing ANILCA consistent with its written provisions and promises. These technical corrections to ANILCA will ensure that its implementation is consistent with the intent of Congress.

Mr. President, conditions have changed in the 17 years since the passage of ANILCA and we have all had a great deal of experience with the Act's implementation. It is time to make the law clearer and to make the federal manager's job easier.

Mr. President, I ask unanimous consent that a table be printed in the RECORD.

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

REVISED CALISTA LANDS PACKAGE

| Parcel name | Interest to be conveyed | Acreage | Per acre value | Total exchange value |
|---|---|---|---|---|
| Dall Lake | Fee—Surface | 10,000 | $325 | $3,250,000 |
| Hamilton | Fee—Surface | 7,135 | 325 | 2,318,875 |
| Section 14(h)(8) entitlement | Fee—Surface and Subsurface | 10,000 | 704 | 7,040,000 |
| Hooper Bay | Subsurface | 27,034 | 90 | 2,433,060 |
| Scammon Bay | Subsurface | 87,052 | 90 | 7,834,680 |
| Kusilvak | Subsurface | 57,284 | 90 | 5,155,560 |
| Calista subsurface on TKC surface | Subsurface | 17,000 | 90 | 1,530,000 |
| Calista subsurface on NIMA surface | Subsurface | 10,000 | 90 | 900,000 |
| TKC | Conservation easement | 17,000 | 243 | 4,131,000 |
| NIMA | Surface | 10,000 | 325 | 3,250,000 |
| Calista subsurface on Hamilton surface | Subsurface | 7,135 | 90 | 642,150 |
| Calista subsurface on Dall Lake surface | Subsurface | 10,000 | 90 | 900,000 |
| VALUATION SUMMARY | | | | |
| NIMA lands | Surface | 20,000 | | $6,500,000 |
| Hamilton lands | Surface | 7,135 | | 2,318,875 |
| TKC lands | Surface | 17,000 | | 4,131,000 |
| Total village surface | | 44,135 | | 12,949,875 |
| Calista | Surface and subsurface, all parcels | 225,505 | | 26,435,450 |
| Total exchange value | | | | 39,385,325 |

By Mr. MACK:

S. 968. A bill to provide for special immigrant status for certain aliens working as journalists in Hong Kong; to the Committee on the Judiciary.

THE HONG KONG PRESS FREEDOM ACT

Mr. MACK. Mr. President, I rise today to join my colleague, Senator LIEBERMAN, to introduce the Hong Kong Press Freedom Act.

Mr. President, as we consider China and Hong Kong in these final weeks before Hong Kong reversion, it is important for us to reflect on the facts, and what drives our behaviors toward China.

We fought the Cold War for freedom and democracy. The war is over, but we know of 1.2 billion people still wearing the yoke of communism—or at least nondemocratic oppression. On July 1, we might be forced to witness that number grow by 6 million as Hong Kong falls under control of the People's Republic of China. If the defining moment of the 1980s was the crumbling of the Berlin Wall and the spread of freedom and democracy, we should not allow this decade to be remembered most by the victory of totalitarianism over human dignity.

One essential element of freedom is press freedom. Until recently, Hong Kong enjoyed one of the freest presses in the world. But already, experts point to instances of self censorship occurring on the island. All indications are that this freedom will continue to deteriorate following Hong Kong's reversion.

Today, I am introducing a bill in the Senate to encourage press freedom in Hong Kong. A similar measure was introduced in the House by Representative Porter and 27 other members in February. The measure supports those Hong Kong journalists who chose to remain loyal to the standards of honest and open reporting. Specifically, this bill provides special immigration status to journalists and their families should they be threatened as a result of their reporting. When Senator LIEBERMAN and I visited Hong Kong earlier this year, we heard several stories of self-censorship occurring in the Hong Kong press. Many of the larger papers were losing circulation and the underground and small papers were growing. It is this free thought and competition which we seek to preserve.

Without press freedom, what other freedom can survive? While this is a small and specific measure, its impact can be profound. I urge immediate consideration and passage of this measure.

Mr. LIEBERMAN. Mr. President, I rise today to join my colleague, Senator MACK, in introducing the Hong Kong Press Freedom Act.

In a very few days, Hong Kong will revert to Chinese sovereignty. Already, there is evidence that China will not fully honor its commitment to preserve Hong Kong's democratic institutions and way of life under the rubric, one country, two systems. Beijing has announced it will eliminate Hong Kong's democratically elected legislative council and that it will reimpose several restrictive civil order statutes, including against certain types of political expression. Even more disturbing, there are indications that media self-censorship is replacing freedom of the press.

It is fitting and proper that we introduce this legislation now. Eight years ago, Chinese authorities, most of whom remain in power today, brutally massacred students and others who wanted assurances that their government would become more accountable to the will of the people. They were seeking democratic progress, not revolutionary license. Beijing answered them with tanks, and 8 years later, Tiananmen Square remains a vivid reminder of what autocrats can and will do even in full view of astonished world opinion.

This bill would not have prevented the evil of Tiananmen Square; and it is not intended as a warning to China. It is simply principle put into action. As Americans, we understand how important a free press is to preserving the rule of law and to protecting the rights and dignity of individuals against the

power of the state. Our action here will help assure that reporters in hong Kong will not be cowed by the memory of Tiananmen Square. This bill supports those who choose to put themselves at risk by reporting honestly and openly what they see and hear when the Chinese flag replaces the Union Jack. We owe them our gratitude and protection, and this bill will help us provide it.

Specifically, this measure offers special immigration status to journalists and their families if they are threatened with reprisal because of their work. A similar measure was introduced in the House by Representative PORTER and 27 other Members in February. I urge my Senate colleagues to join this effort and to pass the Hong Kong press freedom bill.

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By Mr. D'AMATO (for himself, Mr. CHAFEE and Mr. TORRICELLI):

S. 969. A bill ordering the preparation of a Government report detailing injustices suffered by Italian Americans during World War II, and a formal acknowledgement of such injustices by the President; to the Committee on the Judiciary.

THE WARTIME VIOLATION OF ITALIAN AMERICAN CIVIL LIBERTIES ACT

Mr. D'AMATO. Mr. President, thousands of Italian-Americans became innocent victims of wartime fever—a panicked and a paranoid reaction that all people of foreign extraction linked to belligerent countries were spies, sabatours and un-American. Fear of fifth columnists and quisling-type activities led government officials to abridge the civil rights of Americans who came from warring countries. Patriotic propaganda villifying the treachery of sneak attacks, blitzkrieg and totalitarian domination had an effect on the homefront view of Italian, German and Japanese immigrants as well as naturalized citizens, inducing discrimination. Initial mistakes were magnified by protective zeal into wholesale judgements about aliens, which led to the detainment, internment and harassment of these people.

That is why, Mr. President, I rise today to join with my colleagues Senator CHAFEE and TORRICELLI to right a terrible wrong that happened in this country over 50 years ago. In a country that so cherishes its equality among men and women, and boasts its democratic process, the United States has a dark spot in its history. Most Americans are not aware of the tragedy experienced by so many fellow citizens over half a century ago, a tragedy committed by the American government against people of Italian descent.

In early 1942, 600,000 aliens of Italian descent were deemed to be ''enemy aliens'' and were forced to re-register and carry identification. Our government restricted their travel to their neighborhoods and classified normal household items, such as shortwave radios, cameras, flashlights and weapons as contraband material in their possession.

On February 19, 1942, an Executive Order was issued giving the Secretary of War the authority to exclude American citizens as well as alien enemies, from such areas as the Secretary should designate. Americans now realize that this provision began a dark period of American history, authorizing the internment of immigrants residing in the United States as well as American citizens. While most Americans are aware of the internment of Japanese Americans during World War II, few are aware that Italians and German legal residents of the United States were also restricted.

Italian immigrants, Italian-Americans and their families were viewed as a genuine threat to American security at the beginning of World War II. Fear and ethnic bias led to the relocation of nearly 10,000 members of the Italian community from their homes on the West Coast. Hundreds of people were taken from their homes and brought to guarded army camp in areas as far east as Minnesota.

And all this effort and anxiety for naught- even by war's end, not a single act of sabotage was attributable to Italian-Americans. On the contrary, Italians fought in America's victorious forces in the European and Asian theater and thousands made the ultimate sacrifice for our nation's survival.

As one could imagine, the effects on these families were disastrous. Four men committed suicide. These men (Martini Battistessa, Guiseppe Micheli, Giovanni Sanguenetti and Stefano Terranova) suffered at the hands of government officials. Italian American fisherman were grounded, their livelihood gone.

Several experts have taken a look at the treatment of Italian Americans during the early 1940's. Stephen Fox wrote a book called The Unknown Internment: An Oral History of the Relocation of Italian Americans during World War II. In the preface, Stephen Fox describes the horrific treatment of people whose only crime was being of Italian descent in America during World War II.

Salvatore J. LaGumina, Professor of History and Director of the Center for Italian American Studies at Nassau Community College wrote an article in the Italian American Review called ''Enemy Alien: Italian Americans During World War II''. In the article he states:

''A ban on Italian language radio programs affected stations in New York City and Boston. Various Italian American newspapers suspended publication at least during the war years and in some instances ceased publication permanently. Customary Italian religious feast celebrations were likewise deferred or significantly diminished . . . In Westbury, Long Island, most Italian American organizations suspended their traditional feast celebrations for the duration of the war except for the Dell'Assunta Society which insisted it be allowed to march on the village streets during its festival, on the grounds that it was a religious not an ethnic celebration.

Robert Masulla, writing for the Italic Way Newsletter, cited that Italian immigrant fishermen were denied their livelihood and some ''even had their boats impounded by the U.S. government and utilized for patrol and minesweeping duties''.

It was not until October 12, 1942 that Italian immigrants were removed from the enemy alien category. Mr. Fox's historical study indicated that the internment effort was abandoned because the alien relocation would overly tax the U.S. Army's already over-extended logistical network, threaten the defense industry and lower civilian morale.

In 1988, this body finally faced a terrible past that we could no longer ignore—the internment of immigrants from Japan or Japanese-Americans. Now it is time to provide recognition and remorsefulness for the treatment of Italian aliens and Italian Americans who had to endure the horrific actions of our own government—a government that has stood for freedom, not oppression.

That is why I have joined with my colleagues in the House of Representatives, particularly its lead sponsors, Congressmen Engel and Lazio, to introduce this bill, the ''Wartime Violation of Italian American Civil Liberties Act''. Its provisions are clear and straight-forward:

It recognizes the treatment of Italian Americans during World War II.

It calls on the President to formally acknowledge that the civil liberties of Italian Americans were violated in the United States in the early 1940's.

It encourages federal agencies to support projects which increase the public's awareness of the internment of Italians during the Second World War.

It states that the President and Congress provide direct funding in order to educate the American public through a film documentary, particularly to document the testimony of the survivors of the internment.

It recommends the formation of an advisory committee to assist in the compilation of historical data, to accurately reflect the incidents that transpired.

It calls on the Department of Justice to publish a report on the U.S. Government's role in the internment.

The facts need to be told in order to acknowledge that these events happened, to remember those who lived through the humiliation and to discourage any similar injustices from occurring in the future.

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By LAUTENBERG (for himself and Mr. TORRICELLI):

S. 971. A bill to amend the Federal Water Pollution Control Act to improve the quality of coastal recreation waters, and for other purposes; to the

Committee on Environment and Public Works.

THE BEACHES ENVIRONMENTAL ASSESSMENT, CLOSURE, AND HEALTH ACT OF 1997

Mr. LAUTENBERG. Mr. President, on behalf of Senator TORRICELLI and myself, I rise to introduce the Beaches Environmental Assessment, Closure and Health (BEACH) Act.

Mr. President, coastal tourism generates billions of dollars every year for local communities nationwide. Moreover, our coastal areas provide immeasurable recreational benefits for millions of Americans who want to build sand castles, cool off in the water, take a walk with that special someone, or just relax. New Jersey's tourism sector is the second largest revenue-producing industry in the state. Without a doubt, the lure of my state's beaches generates most of this revenue—over $7 billion annually.

Mr. President, this heavily used natural resource can actually pose a threat to human health if it is not properly managed. Studies conducted during the past two decades show a definite and alarming relationship between the amount of indicator bacteria in coastal waters and the incidence of illnesses associated with swimming.

Water-borne viruses are the major cause of swimming-associated diseases—gastroenteritis and hepatitis are the most common ones worldwide. And because an individual afflicted with these diseases are contagious, the risk of sewage-borne illness does not end with the bather.

Nationwide, state and local governments reported almost 4,000 beach closings or warnings because of bacteria contamination.

New Jersey has been particularly aggressive in protecting public health at the beach. New Jersey is one of only a few states to have a mandatory beach protection program that includes a bacteria standard, a monitoring program, and mandatory beach closure requirements. The program is designed to address water quality from both a health and an environmental perspective. Beaches are closed when bacteria levels exceed the standard regardless of the pollution source.

Ironically, New Jersey is penalized because it does more to protect public health than most other states. In past years the annual losses from beach closures in New Jersey have ranged from $800 million to $1 billion while beaches remain open in competing states that do not publicize the questionable quality of their water.

I have introduced over this legislation several times over the past several years. The bill, the Beaches, Environmental Assessment, Closure and Health Act, is known by the acronym ''BEACH'' bill. The bill will address the uneven efforts to protect beach goers by establishing uniform testing and monitoring procedures for pathogens and floatables in marine recreation waters.

This bill requires the EPA to establish procedures to monitor coastal waters to detect short-term increases in pathogenicity and to set minimum standards to protect the public from pathogen contaminated beach waters. And it will assure that the public is notified when beach waters exceed the standards and public health may be at risk.

Going to the beach should be a healthy and rejuvenating experience. A day at the beach shouldn't be followed by a day at the doctor. Whether they go to the beach in the Carolinas or in California, in New Jersey or New York—Americans across the country have a right to know when the water is and is not safe for swimming. Beach goers should be able to wade or swim in the surf without the fear of getting sick.

I am very pleased that EPA has recognized the seriousness of this problem and the need for a federal solution. As a result of BEACH bills that I have introduced, the EPA announced its own Beaches Environmental Assessment, Closure and Health program. Under this program, EPA has begun to survey state and local health and environmental directors on the quality of coastal recreational waters for posting on the Internet next year. By next summer, the website will serve as a clearinghouse to provide the public access to health-related information available from states and other sources on the quality of recreational water. The goal is to expand the beach public's ''right to know'' on the quality of the nation's beaches. The aim is to encourage those beaches that keep their water quality from the public to make that information as readily available as is done in New Jersey.

However, without mandatory, uniform regulation these EPA programs will be ineffective. While some states use EPA guidelines, others have no programs for regularly monitoring their beach water for swimmer safety. The Natural Resources Defense Council (NRDC) found that only 7 states—New Jersey, Connecticut, Delaware, Illinois, New Hampshire, Ohio and Indiana —comprehensively monitor their beaches, and a mere 6 states consistently close beaches when bacteria water quality standards are violated. Additionally, NRDC found that while a high bacteria level cause beach closures in one state other sates may allow people to swim despite the identical health risks. This discrepancy threatens public health. That is why we need to pass this legislation as soon as possible.

Mr. President, I urge my colleagues to join me in recognizing the importance of protecting public health at our nation's beaches by cosponsoring this legislation.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

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

S. 971

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Beaches Environmental Assessment, Closure, and Health Act of 1997''.

**SEC. 2. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) the Nation's beaches are a valuable public resource used for recreation by millions of people annually;

(2) the beaches of coastal States are hosts to many out-of-State and international visitors;

(3) tourism in the coastal zone generates billions of dollars annually;

(4) increased population has contributed to the decline in the environmental quality of coastal waters;

(5) pollution in coastal waters is not restricted by State and other political boundaries;

(6) coastal States have different methods of testing the quality of coastal recreation waters, providing varying degrees of protection to the public;

(7) the adoption of consistent criteria by coastal States for monitoring the quality of coastal recreation waters, and the posting of signs at beaches notifying the public during periods when the standards are exceeded, would enhance public health and safety; and

(8) while the adoption of such criteria will enhance public health and safety, exceedances of such criteria should be addressed, where feasible, as part of a watershed approach to effectively identify and eliminate sources of pollution.

(b) PURPOSE.—The purpose of this Act is to require uniform criteria and procedures for testing, monitoring, and posting of coastal recreation waters at beaches open for use by the public to protect public safety and improve environmental quality.

**SEC. 3. ADOPTION OF COASTAL RECREATIONAL WATER QUALITY CRITERIA BY STATES.**

(a) GENERAL RULE.—A State shall adopt water quality criteria for coastal recreation waters which, at a minimum, are consistent with the criteria published by the Administrator under section 304(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1314(a)(1)) not later than 3½ years following the date of the enactment of this Act. Such water quality criteria shall be developed and promulgated in accordance with the requirements of section 303(c) of the Federal Water Pollution Control Act (33 U.S.C. 1313(c)). A State shall incorporate such criteria into all appropriate programs into which such State would incorporate other water quality criteria adopted under such section 303(c) and revise such criteria not later than 3 years following the date of publication of revisions by the Administrator under section 4(b) of this Act.

(b) FAILURE OF STATES TO ADOPT.—If a State has not complied with subsection (a) by the last day of the 3½-year period beginning on the date of the enactment of this Act, the water quality criteria issued by the Administrator under section 304(a)(1) of the Federal Water Pollution Control Act shall become applicable as the water quality criteria for coastal recreational waters for the State, and shall be deemed to have been promulgated by the Administrator pursuant to section 303(c)(4).

**SEC. 4. REVISIONS TO WATER QUALITY CRITERIA.**

(a) STUDIES.—After consultation with appropriate Federal, State, and local officials, including local health officials, and other interested persons, but not later than the last day of the 3-year period beginning on the date of the enactment of this Act, the Administrator shall conduct, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, studies to provide

additional information to the current base of knowledge for use in developing—

(1) a more complete list of potential health risks, including effects to the upper respiratory system;

(2) better indicators for directly detecting or predicting in coastal recreational waters the presence of pathogens which are harmful to human health; and

(3) more expeditious methods (including predictive models) for detecting in coastal recreation waters the presence of pathogens which are harmful to human health.

(b) REVISED CRITERIA.—Based on the results of the studies conducted under subsection (a), the Administrator, after consultation with appropriate Federal, State, and local officials, including local health officials, shall issue, within 5 years after the date of the enactment of this Act (and review and revise from time to time thereafter, but in no event less than once every 5 years) revised water quality criteria for pathogens in coastal recreation waters that are harmful to human health, including a revised list of indicators and testing methods.

**SEC. 5. COASTAL BEACH WATER QUALITY MONITORING.**

Title IV of the Federal Water Pollution Control Act (33 U.S.C. 1341–1345) is amended by adding at the end thereof the following new section:

**"SEC. 406. COASTAL BEACH WATER QUALITY MONITORING.**

''(a) MONITORING.—Within 18 months after the date of enactment of this section, the Administrator shall publish and revise regulations requiring monitoring of, and specifying available methods to be used by States to monitor, coastal recreation waters at beaches open for use by the public for compliance with applicable water quality criteria for those waters and protection of the public safety. Monitoring requirements established pursuant to this subsection shall, at a minimum—

''(1) specify the frequency of monitoring based on the periods of recreational use of such waters;

''(2) specify the frequency of monitoring based on the extent and degree of use during such periods;

''(3) specify the frequency and location of monitoring based on the proximity of coastal recreation waters to known or identified point and nonpoint sources of pollution and in relation to storm events;

''(4) specify methods for detecting levels of pathogens that are harmful to human health and for identifying short-term increases in pathogens that are harmful to human health in coastal recreation waters, including in relation to storm events; and

''(5) specify the conditions and procedures under which discrete areas of coastal recreation waters may be exempted by the Administrator from the monitoring requirements of this subsection, if the Administrator determines that an exemption will not impair—

''(A) compliance with the applicable water quality criteria for those waters; and

''(B) protection of the public safety.

''(b) NOTIFICATION REQUIREMENTS.—Regulations published pursuant to subsection (a) shall require States to provide prompt notification to local governments and the public of exceedance of applicable water quality criteria for State coastal recreation waters or the immediate likelihood of such an exceedance. Notification pursuant to this subsection shall include, at a minimum—

''(1) prompt communication of the occurrence, nature, and extent of such an exceedance, or the immediate likelihood of such an exceedance based on predictive models to a designated official of a local government having jurisdiction over land adjoining the coastal recreation waters for which an exceedance is identified; and

''(2) posting of signs for the period during which the exceedance continues, sufficient to give notice to the public of an exceedance of applicable water quality criteria for such waters and the potential risks associated with water contact activities in such waters.

''(c) FLOATABLE MATERIALS MONITORING PROCEDURES.—The Administrator shall—

''(1) issue guidance on uniform assessment and monitoring procedures for floatable materials in coastal recreation waters; and

''(2) specify the conditions under which the presence of floatable material shall constitute a threat to public health and safety.

''(d) STATE IMPLEMENTATION.—A State must implement a monitoring program that conforms to the regulations issued pursuant to subsection (a) not later than 3½ years after the date of the enactment of this section and revise such program not later than 2 years following the date of publication of revisions by the Administrator under subsection (f).

''(e) DELEGATION OF RESPONSIBILITY.—Not later than 18 months after the date of the enactment of this section, the Administrator shall issue guidance for the delegation of State testing, monitoring, and posting programs under this section to local government authorities. In the case that such responsibilities are delegated by a State to a local government authority, or have been delegated to a local government authority before such date of enactment, in a manner that, at a minimum, is consistent with the guidance issued by the Administrator, State resources shall be made available to the delegated authority for the purpose of program implementation.

''(f) REVIEW AND REVISION OF REGULATIONS.—The Administrator shall review and revise regulations published pursuant to this section periodically, but in no event less than once every 5 years.

''(g) DEFINITIONS.—In this section, the following definitions apply:

''(1) COASTAL RECREATION WATERS.—The term 'coastal recreation waters' means Great Lakes and marine coastal waters (including bays) used by the public for swimming, bathing, surfing, or other similar water contact activities.

''(2) FLOATABLE MATERIALS.—The term 'floatable materials' means any foreign matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood, bottles, and paper products.''.

**SEC. 6. REPORT TO CONGRESS.**

Not later than 4 years after the date of the enactment of this Act, and periodically thereafter, the Administrator shall submit to Congress a report including—

(1) recommendations concerning the need for additional water quality criteria and other actions needed to improve the quality of coastal recreation waters; and

(2) an evaluation of State efforts to implement this Act, including the amendments made by this Act.

**SEC. 7. GRANTS TO STATES.**

(a) GRANTS.—Subject to subsection (c), the Administrator may make grants to States for use in fulfilling requirements established pursuant to section 3 of this Act and section 406 of the Federal Water Pollution Control Act.

(b) COST SHARING.—The total amount of grants to a State under this section for a fiscal year shall not exceed 50 percent of the cost to the State of implementing requirements established pursuant to section 3 of this Act and section 406 of the Federal Water Pollution Control Act.

(c) ELIGIBLE STATE.—After the last day of the 3½-year period beginning on the date of the enactment of this Act, the Administrator may make a grant to a State under this section only if the State demonstrates to the satisfaction of the Administrator that it is implementing its monitoring and posting program under section 406 of the Federal Water Pollution Control Act.

**SEC. 8. DEFINITIONS.**

In this Act, the following definitions apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) COASTAL RECREATION WATERS.—The term ''coastal recreation waters'' means Great Lakes and marine coastal waters (including bays) used by the public for swimming, bathing, surfing, or other similar body contact purposes.

(3) FLOATABLE MATERIALS.—The term ''floatable materials'' means any foreign matter that may float or remain suspended in the water column and includes plastic, aluminum cans, wood, bottles, and paper products.

**SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Administrator—

(1) for use in making grants to States under section 7 not more than $4,500,000 for each of the fiscal years 1998 through 2002; and

(2) for carrying out the other provisions of this Act not more than $1,500,000 for each of the fiscal years 1998 through 2002.

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By Mr. REED (for himself, Mr. CHAFEE, Mr. COATS, and Mr. INHOFE):

S. 972. A bill to amend the Internal Revenue Code of 1986 to prohibit any deduction for gambling losses; to the Committee on Finance.

REPEAL THE GAMBLING LOSS TAX DEDUCTION

Mr. REED. Mr. President, this week the Senate has considered legislation to fundamentally change Medicare and other programs that are vital to millions of Americans. I realize that we must make difficult choices about these valuable initiatives as we move toward a balanced budget. However, as we seek to invest in our nation's future, we must also confront loopholes and subsidies that waste our limited resources.

The tax code contains many such loopholes, which fail to reflect our nation's true priorities. For example, the United States is subsidizing thousands of professional gamblers by allowing tax deductions for gambling losses to the extent of gambling winnings. The Joint Tax Committee reports that this deduction costs taxpayers $1.43 billion over five years.

The gambling loss tax deduction is an anomaly for individuals who frequent an industry that sells itself as providing entertainment. In general, the tax code does not allow deductions for discretionary spending on entertainment, and I believe that it is more than reasonable to hold gambling expenditures to this same standard. Repealing the gambling loss tax deduction merely increases the cost of one entertainment option, a factor that gamblers can consider in determining how to spend their discretionary income. Furthermore, while most business deductions are for investments—

and even losses—that could have created needed job opportunities for our nation's citizens, this is not the case for the losses claimed by professional gamblers on their personal income taxes.

Perhaps more importantly, the gambling loss tax deduction primarily benefits professional gamblers and wealthy individuals who spend large sums on gambling. In 1994 alone, $2.78 billion in gambling losses was deducted on some 427,000 tax returns. Individuals with adjusted gross incomes of at least $75,000 claimed nearly 55% of these gambling losses, and people with adjusted gross incomes of at least $100,000 claimed an astounding 40% of these deductions.

When Congress is cutting essential programs to balance the budget, it is simply unsound policy to subsidize gamblers. I urge my colleagues to join me, Senator Chafee, Senator Coats, and Senator Inhofe in supporting legislation to repeal the gambling loss tax deduction, and in taking a step to ensure that we balance the budget in a way that reflects our nation's priorities and invests in our nation's future.

Mr. President, I ask unanimous consent that a copy of this legislation to repeal the gambling loss tax deduction be included in the RECORD.

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

S. 972

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

**SECTION 1. PROHIBITION ON ANY DEDUCTION FOR GAMBLING LOSSES.**

(A) IN GENERAL.—Section 165(d) of the Internal Revenue Code of 1986 (relating to wagering losses) is amended to read as follows:

''(d) NO DEDUCTION FOR WAGERING LOSSES.—No deduction shall be allowed for losses from wagering transactions.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 21, 1997.

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By Mr. REED (for himself and Mr. CHAFEE):

S. 973. A bill to designate the United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, as the ''David B. Champagne Post Office Building''; to the Committee on Governmental Affairs.

THE DAVID B. CHAMPAGNE POST OFFICE ACT

Mr. REED. Mr. President, I rise today to pay tribute to Corporal David B. Champagne, USMC, who was posthumously awarded the Medal of Honor for service in Korea. In honor of the sacrifice made by this heroic young man, I am introducing a bill to name the new post office at 551 Kingstown Road in Wakefield, RI the ''David B. Champagne Post Office'' with my Rhode Island colleague Senator Chafee.

The son of Mr. and Mrs. Bernard L. Champagne, Corporal Champagne served in the National Guard before graduating from South Kingstown High School and enlisting in the Marines in March 1951. He was the only Rhode Island resident to receive this nation's highest award for valor, the Medal of Honor, for service in Korea. The citation accompanying the Medal read:

For conspicuous gallantry and intrepidity at the risk of his life above and beyond the call of duty while serving as a fire team leader of Company A, First Battalion, Seventh Marines, First Marine Division (Reinforced), in action against enemy aggressor forces in Korea on 28 May 1952. Advancing with his platoon in the initial assault of the company against a strongly fortified and heavily defended hill position, Corporal Champagne skillfully led his fire team through a veritable hail of intense enemy machine-gun, small-arms and grenade fire, overrunning trenches and a series of almost impregnable bunker positions before reaching the crest of the hill and placing his men in defensive positions. Suffering a painful leg wound while assisting in repelling the ensuing hostile counterattack, which was launched under cover of a murderous hail of mortar and artillery fire, he steadfastly refused evacuation and fearlessly continued to control his fire team. When the enemy counterattack increased in intensity, and a hostile grenade landed in the midst of the fire team, Corporal Champagne unhesitating seized the deadly missile and hurled it in the direction of the approaching enemy. As the grenade left his hand, it exploded, blowing off his hand and throwing him out of the trench. Mortally wounded by the enemy mortar fire while in this exposed position, Corporal Champagne, by his valiant leadership, fortitude and gallant spirit of self-sacrifice in the face of almost certain death, undoubtedly saved the lives of several of his fellow Marines. His heroic actions served to inspire all who observed him and reflect the highest credit upon himself and the United States Naval Service. He gallantly gave his life for his country.

In addition to the Medal of Honor, Corporal Champagne received the Korean Medal of Honor, the Rhode Island Cross, the Purple Heart, the National Defense Service Medal, the Korean Service Medal with 3 Battle Stars, the Korean Presidential Unit Citation, and the United Nation's Service Medal.

Corporal Champagne is truly an American hero. In the best spirit of this country, he volunteered to go to a foreign land and fight for people he had never met, so that they would not be subjected to the rule of a totalitarian regime.

In my home state of Rhode Island a Korean War Memorial is under construction at the State Veterans' Cemetery. Carved on that memorial will be the same words that are inscribed on the Korean War Memorial dedicated in Washington, DC: ''Freedom Is Not Free.'' Corporal Champagne understood the meaning of those words. He unhesitatingly paid the ultimate price to preserve the freedom of South Korea and to save the lives of his men.

This legislation would pay proper tribute to this remarkable young man and commemorate his incredible valor for future generations. I ask my colleagues to join Senator Chafee and me in honoring Corporal David B. Champagne by supporting this bill.

Mr. President, I ask unanimous consent that a copy of this legislation to name the new Wakefield post office after Corporal Champagne be included in the RECORD.

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

S. 973

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

**SECTION 1. DESIGNATION OF DAVID B. CHAMPAGNE POST OFFICE BUILDING.**

The United States Post Office building located at 551 Kingstown Road in Wakefield, Rhode Island, shall be known and designated as the ''David B. Champagne Post Office Building''.

**SEC. 2. REFERENCES.**

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States Post Office building referred to in section 1 shall be deemed to be a reference to the ''David B. Champagne Post Office Building''.

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By Mr. REED:

S. 974. A bill to amend the Immigration and Nationality Act to modify the qualifications for a country to be designated as a visa waiver pilot program country; to the Committee on the Judiciary.

VISA WAIVER PROGRAM LEGISLATION

Mr. REED. Mr. President, for the past 9 years the visa waiver pilot program has been a resounding success. Today, citizens from twenty-five countries are able to travel to the United States without the burden of obtaining a visa from a U.S. embassy before leaving home. Because the program makes travel so much easier, business has boomed, tourism has soared, and family members have been able to be with each other on occasions when it mattered. Cutting the bureaucratic red tape has strengthened our economic and cultural ties with participating countries. In addition, streamlining this administrative process has enabled the State Department to use its resources more efficiently and effectively, saving the American taxpayers thousands of dollars.

Today, I am introducing a bill which will extend the privilege of the visa waiver program to additional countries with strong ties to our Nation. This legislation will slightly modify the criteria that a country must meet in order to participate in the program. Under these modifications, one country which will gain admittance to the visa waiver program is Portugal. Portugal is one of only two members of the European Union which is not included in the visa waiver program. It is time for that inequity to be corrected.

The Portuguese were some of the earliest explorers and settlers of the United States and they have been contributing to our country ever since. Over one million U.S. citizens claim Portuguese descent and there are thriving Portuguese communities from New England to Hawaii. We owe these members of our American community the opportunity to see family members who live in Portugal when they need them, without the worry and hassle of obtaining a visa.

Inclusion in the visa waiver program will promote the economic exchange

between Portugal and the United States. Portugal is a valued trading partner and if members of the business community are able to travel to the U.S. without delaying to obtain a business, their contributions to this country will only increase. At a time when the U.S. economy is the wonder of the world and our market is truly global, our country should seek out and facilitate additional economic opportunities.

In 1974, the citizens of Portugal overthrew a dictatorship and established a democracy. Their brave actions began a wave of democratization that spread across the world and is still reverberating today. No other country reflects the principles of the United States better than Portugal. We should do everything possible to lower the barriers and strengthen the exchange between our two countries. Including Portugal in the visa waiver program is an important first step in this process.

Mr. President, I ask unanimous consent that a copy of this legislation be included in the RECORD.

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

S. 974

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

**SECTION 1. QUALIFICATIONS FOR DESIGNATION AS PILOT PROGRAM COUNTRY.**

Section 217(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(2)) is amended to read as follows:

''(2) QUALIFICATIONS.—Except as provided in subsection (g), a country may not be designated as a pilot program country unless the following requirements are met:

''(A) LOW NONIMMIGRANT VISA REFUSAL RATE.—Either—

''(i) the average number of refusals of nonimmigrant visitor visas for nationals of that country during—

''(I) the two previous full fiscal years was less than 2.0 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during those years; and

''(II) either of such two previous full fiscal years was less than 2.5 percent of the total number of nonimmigrant visitor visas for nationals of that country which were granted or refused during that year; or

''(ii) such refusal rate for nationals of that country during—

''(I) the previous full fiscal year was less than 3.5 percent; and

''(II) the two previous full fiscal years was at least 50 percent less than such refusal rate during fiscal year 1994.

''(B) MACHINE READABLE PASSPORT PROGRAM.—The government of the country certifies that it has or is in the process of developing a program to issue machine-readable passports to its citizens.

''(C) LAW ENFORCEMENT INTERESTS.—The Attorney General determines that the United States law enforcement interests would not be compromised by the designation of the country.''.

## ADDITIONAL COSPONSORS

S. 28

At the request of Mr. THURMOND, the name of the Senator from Oregon [Mr. SMITH] was added as a cosponsor of S. 28, a bill to amend title 17, United States Code, with respect to certain exemptions from copyright, and for other purposes.

S. 211

At the request of Mr. WELLSTONE, the name of the Senator from Oklahoma [Mr. INHOFE] was added as a cosponsor of S. 211, a bill to amend title 38, United States Code, to extend the period of time for the manifestation of chronic disabilities due to undiagnosed symptoms in veterans who served in the Persian Gulf War in order for those disabilities to be compensable by the Secretary of Veterans Affairs.

S. 422

At the request of Mr. DOMENICI, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 422, a bill to define the circumstances under which DNA samples may be collected, stored, and analyzed, and genetic information may be collected, stored, analyzed, and disclosed, to define the rights of individuals and persons with respect to genetic information, to define the responsibilities of persons with respect to genetic information, to protect individuals and families from genetic discrimination, to establish uniform rules that protect individual genetic privacy, and to establish effective mechanisms to enforce the rights and responsibilities established under this Act.

S. 497

At the request of Mr. COVERDELL, the name of the Senator from Minnesota [Mr. GRAMS] was added as a cosponsor of S. 497, a bill to amend the National Labor Relations Act and the Railway Labor Act to repeal the provisions of the Acts that require employees to pay union dues or fees as a condition of employment.

S. 657

At the request of Mr. DASCHLE, the names of the Senator from Maine [Ms. SNOWE], and the Senator from South Carolina [Mr. HOLLINGS] were added as cosponsors of S. 657, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive military retired pay concurrently with veterans' disability compensation.

S. 728

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 728, a bill to amend title IV of the Public Health Service Act to establish a Cancer Research Trust Fund for the conduct of biomedical research.

S. 830

At the request of Mr. JEFFORDS, the names of the Senator from Connecticut [Mr. DODD], the Senator from Indiana [Mr. COATS], the Senator from Maryland [Ms. MIKULSKI], and the Senator from Tennessee [Mr. FRIST] were added as cosponsors of S. 830, a bill to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes.

S. 852

At the request of Mr. LOTT, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of S. 852, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles.

SENATE JOINT RESOLUTION 24

At the request of Mr. KENNEDY, the name of the Senator from Oregon [Mr. WYDEN] was added as a cosponsor of Senate Joint Resolution 24, a joint resolution proposing an amendment to the Constitution of the United States relative to equal rights for women and men.

AMENDMENT NO. 423

At the request of Mr. INHOFE, the names of the Senator from Alabama [Mr. SESSIONS] and the Senator from Alabama [Mr. SHELBY] were added as cosponsors of amendment No. 423 proposed to S. 936, an original bill to authorize appropriations for fiscal year 1998 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

AMENDMENT NO. 518

At the request of Mr. BUMPERS, the names of the Senator from Hawaii [Mr. AKAKA], and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of amendment No. 518 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

AMENDMENT NO. 519

At the request of Mr. DURBIN, the names of the Senator from Missouri [Mr. BOND], the Senator from California [Mrs. BOXER], the Senator from Maryland [Ms. MIKULSKI], and the Senator from South Dakota [Mr. JOHNSON] were added as cosponsors of amendment No. 519 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

AMENDMENT NO. 520

At the request of Ms. LANDRIEU, her name was added as a cosponsor of amendment No. 520 proposed to S. 949, an original bill to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998.

## AMENDMENTS SUBMITTED

### THE TAX FAIRNESS ACT OF 1997

### KOHL (AND OTHERS) AMENDMENT NO. 524

(Ordered to lie on the table.)

Mr. KOHL (for himself, Mr. HATCH, and Mr. DASCHLE) submitted an amendment intended to be proposed by them to the bill, S. 949, to provide revenue reconciliation pursuant to section 104(b) of the concurrent resolution on the budget for fiscal year 1998; as follows:

On page 20, between lines 5 and 6, insert:

**SEC. 103. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE.**

(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. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.**

''(a) IN GENERAL.—For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified child care expenditures of the taxpayer for such taxable year.

''(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CHILD CARE EXPENDITURE.—The term 'qualified child care expenditure' means any amount paid or incurred—

''(A) to acquire, construct, rehabilitate, or expand property—

''(i) which is to be used as part of a qualified child care facility of the taxpayer,

''(ii) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

''(iii) which does not constitute part of the principal residence (within the meaning of section 1034) of the taxpayer or any employee of the taxpayer,

''(B) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training,

''(C) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer,

''(D) under a contract to provide child care resource and referral services to employees of the taxpayer, or

''(E) for the costs of seeking accreditation from a child care credentialing or accreditation entity.

''(2) QUALIFIED CHILD CARE FACILITY.—

''(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

''(i) the principal use of which is to provide child care assistance, and

''(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 1034) of the operator of the facility.

''(B) SPECIAL RULES WITH RESPECT TO A TAXPAYER.—A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

''(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

''(ii) the facility is not the principal trade or business of the taxpayer unless at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

''(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

''(d) RECAPTURE OF ACQUISITION AND CONSTRUCTION CREDIT.—

''(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

''(A) the applicable recapture percentage, and

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

''(2) APPLICABLE RECAPTURE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

| "If the recapture event occurs in: | The applicable recapture percentage is: |
|---|---|
| Years 1–3 | 100 |
| Year 4 | 85 |
| Year 5 | 70 |
| Year 6 | 55 |
| Year 7 | 40 |
| Year 8 | 25 |
| Years 9 and 10 | 10 |
| Years 11 and thereafter | 0. |

''(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

''(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

''(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

''(B) CHANGE IN OWNERSHIP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

''(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

''(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(f) NO DOUBLE BENEFIT.—

''(1) REDUCTION IN BASIS.—For purposes of this subtitle—

''(A) IN GENERAL.—If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

''(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

''(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1999.''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended—

(A) by striking out ''plus'' at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and ''plus'', and

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

''(13) the employer-provided child care credit determined under section 45D.''

(2) 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. 45D. Employer-provided child care credit.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. 104. EXPANSION OF COORDINATED ENFORCEMENT EFFORTS OF INTERNAL REVENUE SERVICE AND HHS OFFICE OF CHILD SUPPORT ENFORCEMENT.**

(a) STATE REPORTING OF CUSTODIAL DATA.—Section 454A(e)(4)(D) of the Social Security Act (42 U.S.C. 654(e)(4)(D)) is amended by striking ''the birth date of any child'' and inserting ''the birth date and custodial status of any child''.

(b) MATCHING PROGRAM BY IRS OF CUSTODIAL DATA AND TAX STATUS INFORMATION.—

(1) NATIONAL DIRECTORY OF NEW HIRES.—Section 453(i)(3) of the Social Security Act (42 U.S.C. 653(i)(3)) is amended by striking ''a claim with respect to employment in a tax return'' and inserting ''information which is required on a tax return''.

(2) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.—Section 453(h) of the such Act (42 U.S.C. 653(h)) is amended by adding at the end the following:

''(3) ADMINISTRATION OF FEDERAL TAX LAWS.—The Secretary of the Treasury shall

have access to the information described in paragraph (2), consisting of the names and social security numbers of the custodial parents linked with the children in the custody of such parents, for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support and residence provided dependent children.''

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1997.

## BOND AMENDMENTS NOS. 525–526

(Ordered to lie on the table.)

Mr. BOND submitted two amendments intended to be proposed by him to the bill, S. 949, supra; as follows:

AMENDMENT NO. 525

On page 192, strike lines 13 through 18.

AMENDMENT NO. 526

On page 212, between lines 11 and 12, insert the following:

**SEC. . CLARIFICATION OF DEFINITION OF PRINCIPAL PLACE OF BUSINESS.**

(a) IN GENERAL.—Section 280A(f) (relating to definitions and special rules) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) PRINCIPAL PLACE OF BUSINESS.—For purposes of subsection (c), a home office shall in any case qualify as the principal place of business if—

''(A) the office is the location where the taxpayer's essential administrative or management activities are conducted on a regular and systematic (and not incidental) basis by the taxpayer, and

''(B) the office is necessary because the taxpayer has no other location for the performance of the essential administrative or management activities of the business.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

## DASCHLE (AND OTHERS) AMENDMENT NO. 527

Mr DASCHLE (for himself, Mr. BINGAMAN, Mr. CONRAD, Ms. MIKULSKI, Ms. BOXER, Mr. DODD, Mr. KERRY, Ms. LANDRIEU, Mr. CLELAND, Mr. DURBIN, Mr. KENNEDY, Mr. FORD, Mr. LAUTENBERG, Mr. HARKIN, and Mr. JOHNSON) proposed an amendment to the bill, S. 949, supra; as follows:

Strike titles I through VII of the bill and insert the following:

**SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Revenue Reconciliation Act of 1997''.

(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.—The table of contents for this Act is as follows:



### TITLE I—REFUNDABLE CHILD TAX CREDIT

**SEC. 101. REFUNDABLE CHILD TAX CREDIT.**

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

**''SEC. 35. CHILD CREDIT.**

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year with respect to each qualifying child of the taxpayer an amount equal to the lesser of—

''(1) $350, or

''(2) $500, if such amount is contributed by the taxpayer for such taxable year for the benefit of such child to a KIDSAVE account (as defined in section 530).

''(b) LIMITATIONS.—

''(1) LIMITATION BASED ON ADJUSTED GROSS INCOME.—The dollar amounts in subsection

(a) shall be reduced (but not below zero) ratably for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds $70,000 but does not exceed $85,000. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(2) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate credit allowed by subsection (a) (determined after paragraph (1)) shall not exceed the sum of—

''(A) the excess (if any) of—

''(i) the taxpayer's regular tax liability for the taxable year reduced by the credits allowable against such tax under this subpart (other than this section), over

''(ii) the taxpayer's tentative minimum tax for such taxable year (determined without regard to the alternative minimum tax foreign tax credit), plus

''(B) the excess (if any) of—

''(i) the sum of—

''(I) the taxpayer's liability for the taxable year under sections 3101 and 3201,

''(II) the amount of tax paid on behalf of such taxpayer for the taxable year under sections 3111 and 3221, plus

''(III) the taxpayer's liability for such year under sections 1401 and 3211, over

''(ii) the credit allowed for the taxable year under section 32.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means any individual if—

''(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

''(B) such individual has not attained the age of 14 (age of 18 in the case of taxable years beginning after 2002) as of the close of the calendar year in which the taxable year of the taxpayer begins, and

''(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).

''(2) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

''(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

''(e) INFLATION ADJUSTMENTS.—

''(1) IN GENERAL.—In the case of a taxable year beginning after 2000, each dollar amount contained in 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 the calendar year in which the taxable year begins, determined by substituting 'calendar year 1999' for 'calendar year 1992' in subparagraph (B) thereof.

''(2) ROUNDING.—If an amount contained in subsection (a) as adjusted under paragraph (1) is not a multiple of $50, such amount shall be rounded to the next lower multiple of $50.

''(f) PHASEIN OF CREDIT.—In the case of taxable years beginning in 1997 through 1999—

''(1) subsection (a)(1) shall be applied by substituting '$250' for '$350', and

''(2) subsection (a)(2) shall be applied by substituting '$350' for '$500'.''

(b) CONFORMING AMENDMENTS.—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 35 and inserting the following new items:

''Sec. 35. Child credit.

''Sec. 36. Overpayments of tax.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

## TITLE II—TAX INCENTIVES FOR EDUCATION AND TRAINING

### Subtitle A—Tax Benefits Relating to Education Expenses

**SEC. 201. HOPE CREDIT FOR HIGHER EDUCATION TUITION AND RELATED EXPENSES.**

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 25 the following new section:

**''SEC. 25A. HIGHER EDUCATION TUITION AND RELATED EXPENSES.**

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount equal to the sum of—

''(A) the complete Hope Scholarship Credit, plus

''(B) the partial Hope Scholarship Credit.

''(2) COMPLETE CREDIT.—

''(A) IN GENERAL.—In the case of any individual to whom this paragraph applies for any taxable year, the complete Hope Scholarship Credit is an amount equal to the sum of—

''(i) 100 percent of so much of the qualified higher education expenses paid by the taxpayer during the taxable year (for education furnished to the individual during any academic period beginning in such taxable year) as does not exceed $1,000, plus

''(ii) 50 percent of such expenses so paid as exceeds $1,000 but does not exceed the applicable limit.

''(B) APPLICABLE LIMIT.—For purposes of subparagraph (A), the applicable limit is—

''(i) $1,100 for taxable years beginning in 1997, 1998, or 1999,

''(ii) $1,200 for taxable years beginning in 2000, or

''(iii) $1,500 for taxable years beginning in 2001 or thereafter.

''(3) PARTIAL HOPE SCHOLARSHIP CREDIT.—

''(A) IN GENERAL.—The partial Hope Scholarship Credit is 20 percent of the qualified higher education expenses paid by the taxpayer during the taxable year for education furnished to an individual during any academic period beginning in such taxable year. Education expenses with respect to an individual for whom a complete Hope Scholarship credit is determined for the taxable year shall not be taken into account under this paragraph.

''(B) DOLLAR LIMITATION.—The amount of qualified higher education expenses taken into account under subparagraph (A) for any taxable year shall not exceed—

''(i) $4,000 for taxable years beginning in 1997, 1998, or 1999,

''(ii) $7,500 for taxable years beginning in 2000, and

''(iii) $10,000 for taxable years beginning in 2001 or thereafter.

''(b) LIMITATIONS.—

''(1) ELECTION REQUIRED.—

''(A) IN GENERAL.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

''(B) COMPLETE CREDIT ALLOWED ONLY FOR 2 TAXABLE YEARS.—An election under this paragraph shall not take effect with respect to an individual for the complete Hope Scholarship Credit under subsection (a)(2) for any taxable year if such election under this paragraph (by the taxpayer or any other individual) is in effect with respect to such individual for any 2 prior taxable years.

''(C) COORDINATION WITH EXCLUSIONS.—An election under this paragraph shall not take effect with respect to an individual for any taxable year if there is in effect for such taxable year an election under section 529(c)(3)(B) or 530(c)(1) (by the taxpayer or any other individual) to exclude from gross income distributions from a qualified tuition program or KIDSAVE account used to pay qualified higher education expenses of the individual.

''(3) CREDIT ALLOWED FOR YEAR ONLY IF INDIVIDUAL IS AT LEAST ½ TIME STUDENT FOR PORTION OF YEAR.—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

''(4) COMPLETE CREDIT ALLOWED ONLY FOR FIRST 2 YEARS OF POSTSECONDARY EDUCATION.—No credit shall be allowed under subsection (a)(2) for a taxable year with respect to the qualified tuition and related expenses of an individual if the individual has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

''(c) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(1) IN GENERAL.—The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

''(2) AMOUNT OF REDUCTION.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

''(A) the excess of—

''(i) the taxpayer's modified adjusted gross income for such taxable year, over

''(ii) $50,000 ($80,000 in the case of a joint return), bears to

''(B) $20,000.

''(3) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED TUITION AND RELATED EXPENSES.—

''(A) IN GENERAL.—The term 'qualified tuition and related expenses' means tuition and fees required for the enrollment or attendance of—

''(i) the taxpayer,

''(ii) the taxpayer's spouse, or

''(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution and books required for courses of instruction of such individual at such institution.

''(B) EXCEPTION FOR EDUCATION INVOLVING SPORTS, ETC.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

''(C) EXCEPTION FOR NONACADEMIC FEES.—Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

''(2) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means an institution—

''(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

''(B) which is eligible to participate in a program under title IV of such Act.

''(3) ELIGIBLE STUDENT.—The term 'eligible student' means, with respect to any academic period, a student who—

''(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

''(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

''(e) TREATMENT OF EXPENSES PAID BY DEPENDENT.—If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

''(1) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

''(2) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

''(f) TREATMENT OF CERTAIN PREPAYMENTS.—If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

''(g) SPECIAL RULES.—

''(1) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

''(2) ADJUSTMENT FOR CERTAIN SCHOLARSHIPS, ETC.—The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b) and (c)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

''(A) a qualified scholarship which is excludable from gross income under section 117,

''(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

''(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

''(3) DENIAL OF CREDIT IF STUDENT CONVICTED OF A FELONY DRUG OFFENSE.—No credit shall be allowed under subsection (a) for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

''(4) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

''(5) NO CREDIT FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(6) NONRESIDENT ALIENS.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

''(h) INFLATION ADJUSTMENTS.—

''(1) DOLLAR LIMITATION ON AMOUNT OF CREDIT.—

''(A) IN GENERAL.—In the case of a taxable year beginning after 2001, applicable dollar amounts under each of the subsection (a) (2) and (3) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

''(2) INCOME LIMITS.—

''(A) IN GENERAL.—In the case of a taxable year beginning after 2000, the $50,000 and $80,000 amounts in subsection (c)(2) shall each be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2001' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

''(i) REGULATIONS.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.''

(b) EXTENSION OF PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking ''and'' at the end of subparagraph (G), by striking the period at the end of subparagraph (H) and inserting '', and'', and by inserting after subparagraph (H) the following new subparagraph:

''(I) an omission of a correct TIN required under section 25A(g)(1) (relating to higher education tuition and related expenses) to be included on a return.''

(c) RETURNS RELATING TO TUITION AND RELATED EXPENSES.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by inserting after section 6050R the following new section:

**''SEC. 6050S. RETURNS RELATING TO HIGHER EDUCATION TUITION AND RELATED EXPENSES.**

''(a) IN GENERAL.—Any person—

''(1) which is an eligible educational institution which receives payments for qualified tuition and related expenses with respect to any individual for any calendar year, or

''(2) which is engaged in a trade or business and which, in the course of such trade or business, makes payments during any calendar year to any individual which constitute reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual,

shall make the return described in subsection (b) with respect to the individual at such time as the Secretary may by regulations prescribe.

''(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

''(1) is in such form as the Secretary may prescribe,

''(2) contains—

''(A) the name, address, and TIN of the individual with respect to whom payments described in subsection (a) were received from (or were paid to),

''(B) the name, address, and TIN of any individual certified by the individual described in subparagraph (A) as the taxpayer who will claim the individual as a dependent for purposes of the deduction allowable under section 151 for any taxable year ending with or within the calendar year, and

''(C) the—

''(i) aggregate amount of payments for qualified tuition and related expenses received with respect to the individual described in subparagraph (A) during the calendar year, and

''(ii) aggregate amount of reimbursements or refunds (or similar amounts) paid to such individual during the calendar year, and

''(D) such other information as the Secretary may prescribe.

''(c) APPLICATION TO GOVERNMENTAL UNITS.—For purposes of this section—

''(1) a governmental unit or any agency or instrumentality thereof shall be treated as a person, and

''(2) any return required under subsection (a) by such governmental entity shall be made by the officer or employee appropriately designated for the purpose of making such return.

''(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be set forth in such return under subparagraph (A) or (B) of subsection (b)(2) a written statement showing—

''(1) the name, address, and phone number of the information contact of the person required to make such return, and

''(2) the aggregate amounts described in subparagraph (C) of subsection (b)(2).

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

''(e) DEFINITIONS.—For purposes of this section, the terms 'eligible educational institution' and 'qualified tuition and related expenses' have the meanings given such terms by section 25A.

''(f) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any amount received by any person on behalf of another person, only the person first receiving such amount shall be required to make the return under subsection (a).

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section. No penalties shall be imposed under section 6724 with respect to any return or statement required under this section until such time as such regulations are issued.''

(2) ASSESSABLE PENALTIES.—

(A) Subparagraph (B) of section 6724(d)(1) (relating to definitions) is amended by redesignating clauses (ix) through (xiv) as clauses (x) through (xv), respectively, and by inserting after clause (viii) the following new clause:

''(ix) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),''.

(B) Paragraph (2) of section 6724(d) is amended by striking ''or'' at the end of the next to last subparagraph, by striking the period at the end of the last subparagraph and inserting '', or'', and by adding at the end the following new subparagraph:

''(Z) section 6050S(d) (relating to returns relating to qualified tuition and related expenses).''

(3) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by inserting after the item relating to section 6050R the following new item:

''Sec. 6050S. Returns relating to higher education tuition and related expenses.''

(d) COORDINATION WITH SECTION 135.—Subsection (d) of section 135 is amended by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) COORDINATION WITH HIGHER EDUCATION CREDIT.—The amount of the qualified higher education expenses otherwise taken into account under subsection (a) with respect to the education of an individual shall be reduced (before the application of subsection (b)) by the amount of such expenses which are taken into account in determining the credit allowable to the taxpayer or any other person under section 25A with respect to such expenses.

(e) CLERICAL AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 25 the following new item:

''Sec. 25A. Higher education tuition and related expenses.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

**SEC. 202. DEDUCTION FOR INTEREST ON EDUCATION LOANS.**

(a) IN GENERAL.—Part VII of subchapter B of chapter 1 (relating to additional itemized deductions for individuals) is amended by redesignating section 221 as section 222 and by inserting after section 220 the following new section:

**''SEC. 221. INTEREST ON EDUCATION LOANS.**

''(a) ALLOWANCE OF DEDUCTION.—In the case of an individual, there shall be allowed as a deduction for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

''(b) MAXIMUM DEDUCTION.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the deduction allowed by subsection (a) for the taxable year shall not exceed $2,500.

''(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—The amount which would (but for this paragraph) be allowable as a deduction under this section shall be reduced (but not below zero) by the amount determined under paragraph (2).

''(B) AMOUNT OF REDUCTION.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

''(i) the excess of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $40,000 ($80,000 in the case of a joint return), bears to

''(ii) $10,000 ($20,000 in the case of a joint return).

''(C) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined—

''(i) without regard to this section and sections 135, 911, 931, and 933, and

''(ii) after application of sections 86, 219, and 469.

For purposes of sections 86, 135, 219, and 469, adjusted gross income shall be determined without regard to the deduction allowed under this section.

''(c) DEPENDENTS NOT ELIGIBLE FOR DEDUCTION.—No deduction shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

''(d) LIMIT ON PERIOD DEDUCTION ALLOWED.—A deduction shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancing of such loan shall be treated as 1 loan.

''(e) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' means any indebtedness incurred to pay qualified higher education expenses—

''(A) which are incurred on behalf of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer as of the time the indebtedness was incurred,

''(B) which are paid or incurred within a reasonable period of time before or after the indebtedness is incurred, and

''(C) which are attributable to education furnished during a period during which the recipient was an eligible student.

Such term includes indebtedness used to refinance indebtedness which qualifies as a qualified education loan. The term 'qualified education loan' shall not include any indebtedness owed to a person who is related (within the meaning of section 267(b) or 707(b)(1)) to the taxpayer.

''(2) QUALIFIED HIGHER EDUCATION EXPENSES.—The term 'qualified higher education expenses' means the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the day before the date of the enactment of this Act) at an eligible educational institution, reduced by the sum of—

''(A) the amount excluded from gross income under section 135, 529, or 530 by reason of such expenses, and

''(B) the amount of any scholarship, allowance, or payment described in section 25A(g)(2).

For purposes of the preceding sentence, the term 'eligible educational institution' has the same meaning given such term by section 25A(d)(2), except that such term shall also include an institution conducting an internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility which offers postgraduate training.

''(3) ELIGIBLE STUDENT.—The term 'eligible student' has the meaning given such term by section 25A(d)(3).

''(4) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

''(f) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any amount for which a deduction is allowable under any other provision of this chapter.

''(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the deduction shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.

''(g) INFLATION ADJUSTMENTS.—

''(1) DOLLAR LIMITATION ON AMOUNT OF CREDIT.—

''(A) IN GENERAL.—In the case of a taxable year beginning after 1998, the $2,500 amount in subsection (b)(1) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount as adjusted under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.

''(2) INCOME LIMITS.—In the case of a taxable year beginning in a calendar year after 2000, the $40,000 and $80,000 amounts in subsection (b)(2) shall each be increased in the same manner as amounts are increased under section 25A(h)(2) for taxable years beginning in such calendar year.''

(b) DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 is amended by inserting after paragraph (17) the following new paragraph:

''(18) INTEREST ON EDUCATION LOANS.—The deduction allowed by section 221.''

(c) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Section 6050S(a)(2) (relating to returns relating to higher education tuition and related expenses) is amended to read as follows:

''(2) which is engaged in a trade or business and which, in the course of such trade or business—

''(A) makes payments during any calendar year to any individual which constitutes reimbursements or refunds (or similar amounts) of qualified tuition and related expenses of such individual, or

''(B) except as provided in regulations, receives from any individual interest aggregating $600 or more for any calendar year on 1 or more qualified education loans,''.

(2) INFORMATION.—Section 6050S(b)(2) is amended—

(A) by inserting ''or interest'' after ''payments'' in subparagraph (A), and

(B) in subparagraph (C), by striking ''and'' at the end of clause (i), by inserting ''and'' at the end of clause (ii), and by inserting after clause (ii) the following:

''(iii) aggregate amount of interest received for the calendar year from such individual,''.

(3) DEFINITION.—Section 6050S(e) is amended by inserting '', and except as provided in regulations, the term 'qualified education loan' has the meaning given such term by section 221(e)(1)'' after ''section 25A''.

(d) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 is amended by striking the last item and inserting the following new items:

''Sec. 221. Interest on education loans.

''Sec. 222. Cross reference.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to—

(1) any loan interest payment due after December 31, 1996, and

(2) the portion of the 60-month period referred to in section 221(d) of the Internal Revenue Code of 1986 (as added by this section) after December 31, 1996.

**Subtitle B—Expanded Education Investment Savings Opportunities**

**PART I—QUALIFIED TUITION PROGRAMS**

**SEC. 211. EXCLUSION FROM GROSS INCOME OF EDUCATION DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS.**

(a) IN GENERAL.—Subparagraph (B) of section 529(c)(3) (relating to distributions) is amended to read as follows:

''(B) DISTRIBUTIONS FOR QUALIFIED HIGHER EDUCATION EXPENSES.—If a distributee elects the application of this subparagraph for any taxable year—

''(i) no amount shall be includible in gross income by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense, and

''(ii) the amount which (but for the election) would be includible in gross income by reason of any other distribution shall not be so includible in an amount which bears the same ratio to the amount which would be so includible as the amount of the qualified higher education expenses of the distributee bears to the amount of the distribution.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1997, for education furnished in academic periods beginning after such date.

**SEC. 212. ELIGIBLE EDUCATIONAL INSTITUTIONS PERMITTED TO MAINTAIN QUALIFIED TUITION PROGRAMS; OTHER MODIFICATIONS OF QUALIFIED STATE TUITION PROGRAMS.**

(a) ELIGIBLE EDUCATIONAL INSTITUTIONS PERMITTED TO MAINTAIN QUALIFIED TUITION PROGRAMS.—Paragraph (1) of section 529(b) (defining qualified State tuition program) is amended by inserting ''or by one or more eligible educational institutions'' after ''maintained by a State or agency or instrumentality thereof''.

(b) QUALIFIED HIGHER EDUCATION EXPENSES TO INCLUDE ROOM AND BOARD.—Paragraph (3) of section 529(e) (defining qualified higher education expenses) is amended to read as follows:

''(3) QUALIFIED HIGHER EDUCATION EXPENSES.—

''(A) IN GENERAL.—The term 'qualified higher education expenses' means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible education institution.

''(B) ROOM AND BOARD INCLUDED FOR STUDENTS WHO ARE AT LEAST HALF-TIME.—In the case of an individual who is an eligible student (as defined in section 25A(d)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 1087ll, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.''

(c) ADDITIONAL MODIFICATIONS.—

(1) MEMBER OF FAMILY.—Paragraph (2) of section 529(e) (relating to other definitions and special rules) is amended to read as follows:

''(2) MEMBER OF FAMILY.—The term 'member of the family' means—

''(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

''(B) the spouse of any individual described in subparagraph (A).''

(2) ELIGIBLE EDUCATIONAL INSTITUTION.—Section 529(e) is amended by adding at the end the following:

''(5) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' means an institution—

''(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

''(B) which is eligible to participate in a program under title IV of such Act.''

(3) NO CONTRIBUTIONS AFTER BENEFICIARY ATTAINS AGE 18; DISTRIBUTIONS REQUIRED IN CERTAIN CASES.—

(A) IN GENERAL.—Subsection (b) of section 529 is amended by adding at the end the following new paragraph:

''(8) RESTRICTIONS RELATING TO AGE OF BENEFICIARY; COMPLETION OF EDUCATION.—

''(A) IN GENERAL.—A program shall be treated as a qualified tuition program only if—

''(i) no contribution is accepted on behalf of a designated beneficiary after the date on which such beneficiary attains age 18, and

''(ii) any balance to the credit of a designated beneficiary (if any) on the account termination date shall be distributed within 30 days after such date to such beneficiary (or in the case of death, the estate of the beneficiary).

''(B) ACCOUNT TERMINATION DATE.—For purposes of subparagraph (A), the term 'account termination date' means whichever of the following dates is the earliest:

''(i) The date on which the designated beneficiary attains age 30.

''(ii) The date on which the designated beneficiary dies.''

(B) ROLLOVERS.—Section 529(c)(3) is amended by adding at the end the following:

''(E) ROLLOVERS TO INDIVIDUAL RETIREMENT ACCOUNTS AT AGE 30.—Subparagraph (A) shall not apply to any distribution to the designated beneficiary required under subsection (b)(8) by reason of the beneficiary attaining age 30 to the extent the beneficiary, within 60 days of the distribution, transfers such distribution to an individual retirement account established on the individual's behalf.''

(C) CONFORMING AMENDMENTS.—

(i) Section 408(a)(1) is amended by striking ''or 403(b)(8)'' and inserting ''403(b)(8), or 529(c)(3)(E)''.

(ii) Subparagraph (A) of section 4973(b)(1) is amended by striking ''or 408(b)(3)'' and inserting ''408(b)(3), or 529(c)(3)(E)''.

(4) ESTATE AND GIFT TAX TREATMENT.—

(A) GIFT TAX TREATMENT.—

(i) Paragraph (2) of section 529(c) is amended to read as follows:

''(2) GIFT TAX TREATMENT OF CONTRIBUTIONS.—For purposes of chapters 12 and 13, any contribution to a qualified tuition program on behalf of any designated beneficiary shall—

''(A) be treated as a completed gift to such beneficiary which is not a future interest in property, and

''(B) shall not be treated as a qualified transfer under section 2503(e).''

(ii) Paragraph (5) of section 529(c) is amended to read as follows:

''(5) OTHER GIFT TAX RULES.—For purposes of chapters 12 and 13—

''(A) TREATMENT OF DISTRIBUTIONS.—In no event shall a distribution from a qualified tuition program be treated as a taxable gift.

''(B) TREATMENT OF DESIGNATION OF NEW BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).''

(B) ESTATE TAX TREATMENT.—Paragraph (4) of section 529(c) is amended to read as follows:

''(4) ESTATE TAX TREATMENT.—

''(A) IN GENERAL.—No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

''(B) AMOUNTS INCLUDIBLE IN ESTATE OF DESIGNATED BENEFICIARY IN CERTAIN CASES.—Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.''

(5) LIMITATION ON CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS NOT MAINTAINED BY A STATE.—Subsection (b) of section 529 is amended by adding at the end the following new paragraph:

''(9) LIMITATION ON CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS NOT MAINTAINED BY A STATE.—In the case of a program not maintained by a State or agency or instrumentality thereof, such program shall not be treated as a qualified tuition program unless it limits the annual contribution to the program on behalf of a designated beneficiary to the sum of $2,000 plus the amount of the credit allowable under section 25A for 1 qualifying child.''

(d) ADDITIONAL TAX ON AMOUNTS NOT USED FOR HIGHER EDUCATION EXPENSES.—Section 529 is amended by adding at the end the following new subsection:

''(f) IMPOSITION OF ADDITIONAL TAX.—

''(1) IN GENERAL.—In the case of a qualified tuition program not maintained by a State or any agency or instrumentality thereof, the tax imposed by this chapter for any taxable year on any taxpayer who receives a payment or distribution from such program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply if the payment or distribution is—

''(A) made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary,

''(B) attributable to the designated beneficiary's being disabled (within the meaning of section 72(m)(7)), or

''(C) made on account of a scholarship, allowance, or payment described in section 25A(g)(2) received by the account holder to the extent the amount of the payment or distribution does not exceed the amount of the scholarship, allowance, or payment.

''(3) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—In the case of a qualified tuition program not maintained by a State or any agency or instrumentality thereof, paragraph (1) shall not apply to the distribution to a contributor of any contribution made during a taxable year on behalf of a designated beneficiary to the extent that such contribution exceeds the limitation in section 4973(e) if—

''(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such contributor's return for such taxable year, and

''(B) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in subparagraph (B) shall be included in the gross income of the contributor for the taxable year in which such excess contribution was made.''

(e) COORDINATION WITH EDUCATION SAVINGS BOND.—Section 135(c)(2) (defining qualified

higher education expenses) is amended by adding at the end the following:

''(C) CONTRIBUTIONS TO QUALIFIED TUITION PROGRAM.—Such term shall include any contribution to a qualified tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section) who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 72 by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph.''

(f) TAX ON EXCESS CONTRIBUTIONS.—

(1) IN GENERAL.—Subsection (a) of section 4973 is amended by striking ''or'' at the end of paragraph (2) and by inserting after paragraph (3) the following new paragraphs:

''(4) a qualified tuition program (as defined in section 529) not maintained by a State or any agency or instrumentality thereof, or

''(5) a KIDSAVE account (as defined in section 530),''.

(2) EXCESS CONTRIBUTIONS DEFINED.—Section 4973 is amended by adding at the end the following new subsection:

''(e) EXCESS CONTRIBUTIONS TO PRIVATE QUALIFIED TUITION PROGRAM AND KIDSAVE ACCOUNTS.—For purposes of this section—

''(1) IN GENERAL.—In the case of private education investment accounts maintained for the benefit of any 1 beneficiary, the term 'excess contributions' means the amount by which the amount contributed for the taxable year to such accounts exceeds the sum of $2,000 plus the amount of the credit allowed under section 25A for such beneficiary for such taxable year.

''(2) PRIVATE EDUCATION INVESTMENT ACCOUNT.—For purposes of paragraph (1), the term 'private education investment account' means—

''(A) a qualified tuition program (as defined in section 529) not maintained by a State or any agency or instrumentality thereof, and

''(B) a KIDSAVE account (as defined in section 530).

''(3) SPECIAL RULES.—For purposes of paragraph (1), the following contributions shall not be taken into account:

''(A) Any contribution which is distributed out of the KIDSAVE account in a distribution to which section 530(c)(3)(B) applies.

''(B) Any contribution to a qualified tuition program (as so defined) described in section 530(b)(2)(B) from any such account.

''(C) Any rollover contribution.''

(g) CLARIFICATION OF TAXATION OF DISTRIBUTIONS.—Subparagraph (A) of section 529(c)(3) is amended to read as follows:

''(A) IN GENERAL.—Any distribution from a qualified tuition program—

''(i) shall be includible in the gross income of the distributee to the extent allocable to income under the program, and

''(ii) shall not be includible in gross income to the extent allocable to the investment in the contract.

For purposes of the preceding sentence, rules similar to the rules of section 72(e)(3) shall apply.''

(h) TECHNICAL AMENDMENTS.—

(1) Paragraph (2) of section 26(b) is amended by redesignating subparagraphs (E) through (P) as subparagraphs (F) through (Q), respectively, and by inserting after subparagraph (D) the following new subparagraph:

''(E) section 529(f) (relating to additional tax on certain distributions from qualified tuition programs),''.

(2) The text of section 529 is amended by striking ''qualified State tuition program'' each place it appears and inserting ''qualified tuition program''.

(3)(A) The section heading of section 529 is amended to read as follows:

**''SEC. 529. QUALIFIED TUITION PROGRAMS.''**

(B) The item relating to section 529 in the table of sections for part VIII of subchapter F of chapter 1 is amended by striking ''State''.

(4)(A) The heading for part VIII of subchapter F of chapter 1 is amended to read as follows:

**''PART VIII—HIGHER EDUCATION SAVINGS ENTITIES''.**

(B) The table of parts for subchapter F of chapter 1 is amended by striking the item relating to part VIII and inserting:

''Part VIII. Higher education savings entities.''

(5)(A) Section 529(d) is amended to read as follows:

''(d) REPORTS.—Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

(B) Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) 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 adding at the end the following new subparagraph:

''(C) Section 529(d) (relating to qualified tuition programs).''

(C) The section heading for section 6693 is amended by striking ''individual retirement'' and inserting ''certain tax-favored''.

(D) The item relating to section 6693 in the table of sections for part I of subchapter B of chapter 68 is amended by striking ''individual retirement'' and inserting ''certain tax-favored''.

(i) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1998.

(2) EXPENSES TO INCLUDE ROOM AND BOARD, ETC.—The amendments made by subsection (b) and (c)(2) shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

(3) COORDINATION WITH EDUCATION SAVINGS BONDS.—The amendment made by subsection (e) shall apply to taxable years beginning after December 31, 1997.

(4) ESTATE AND GIFT TAX CHANGES.—

(A) GIFT TAX CHANGES.—Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act.

(B) ESTATE TAX CHANGES.—Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

(5) REPORTING.—The amendments made by subsection (g) shall apply after June 16, 1997.

## PART II—KIDSAVE ACCOUNTS

**SEC. 213. KIDSAVE ACCOUNTS.**

(a) IN GENERAL.—Part VIII of subchapter F of chapter 1 (relating to qualified State tuition programs) is amended by adding at the end the following new section:

**''SEC. 530. KIDSAVE ACCOUNTS.**

''(a) GENERAL RULE.—A KIDSAVE account shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, the KIDSAVE account shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) KIDSAVE ACCOUNT.—The term 'KIDSAVE account' means a trust created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the account holder, but only if the written governing instrument creating the trust meets the following requirements:

''(A) No contribution will be accepted—

''(i) unless it is in cash,

''(ii) after the date on which the account holder attains age 18, or

''(iii) except in the case of rollover contributions, if such contribution would result in aggregate contributions for the taxable year exceeding the amount of the credit allowable under section 35 for the taxable year for 1 qualifying child.

''(B) The trustee is a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section.

''(C) No part of the trust assets will be invested in life insurance contracts.

''(D) The assets of the trust shall not be commingled with other property except in a common trust fund or common investment fund.

''(E) Upon the death of the account holder, any balance in the account will be distributed as required under section 529(b)(8) (as if such account were a qualified tuition program).

''(2) QUALIFIED HIGHER EDUCATION EXPENSES.—

''(A) IN GENERAL.—The term 'qualified higher education expenses' has the same meaning given such term by section 529(e)(3).

''(B) QUALIFIED TUITION PROGRAMS.—Such term shall include amounts paid or incurred to purchase tuition credits or certificates, or to make contributions to an account, under a qualified tuition program (as defined in section 529(b)) for the benefit of the account holder.

''(3) ELIGIBLE EDUCATIONAL INSTITUTION.—The term 'eligible educational institution' has the meaning given such term by section 529(e)(5).

''(4) ACCOUNT HOLDER.—The term 'account holder' means the individual for whose benefit the KIDSAVE account is established.

''(c) TAX TREATMENT OF DISTRIBUTIONS.—

''(1) IN GENERAL.—Any amount paid or distributed out of a KIDSAVE account shall be includible in gross income to the extent required by section 529(c)(3) (determined as if the account were a qualified tuition program).

''(2) SPECIAL RULES FOR APPLYING ESTATE AND GIFT TAXES WITH RESPECT TO ACCOUNT.—Rules similar to the rules of paragraphs (2), (4), and (5) of section 529(c) shall apply for purposes of this section.

''(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT USED FOR EDUCATIONAL EXPENSES.—

''(A) IN GENERAL.—The tax imposed by section 529(f) shall apply to payments and distributions from a KIDSAVE account in the same manner as such tax applies to qualified tuition programs (as defined in section 529).

''(B) EXCESS CONTRIBUTIONS RETURNED BEFORE DUE DATE OF RETURN.—Subparagraph (A) shall not apply to the distribution to a contributor of any contribution paid during a taxable year to a KIDSAVE account to the

extent that such contribution exceeds the limitation in section 4973(e) if such distribution (and the net income with respect to such excess contribution) meet requirements comparable to the requirements of section 529(f)(3).

''(4) ROLLOVER CONTRIBUTIONS—Paragraph (1) shall not apply to any amount paid or distributed from a KIDSAVE account to the extent that the amount received is paid into another KIDSAVE retirement account for the benefit of the account holder or a member of the family (within the meaning of section 529(e)(2)) of the account holder not later than the 60th day after the date of such payment or distribution. The preceding sentence shall not apply to any payment or distribution if it applied to any prior payment or distribution during the 12-month period ending on the date of the payment or distribution.

''(5) CHANGE IN ACCOUNT HOLDER.—Any change in the account holder of a KIDSAVE account shall not be treated as a distribution for purposes of paragraph (1) if the new account holder is a member of the family (as so defined) of the old account holder.

''(6) SPECIAL RULES FOR DEATH AND DIVORCE.—Rules similar to the rules of paragraphs (7) and (8) of section 220(f) shall apply.

''(d) TAX TREATMENT OF ACCOUNTS.—Rules similar to the rules of paragraphs (2) and (4) of section 408(e) shall apply to any KIDSAVE account.

''(e) COMMUNITY PROPERTY LAWS.—This section shall be applied without regard to any community property laws.

''(f) CUSTODIAL ACCOUNTS.—For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

''(g) REPORTS.—The trustee of a KIDSAVE account shall make such reports regarding such account to the Secretary and to the account holder with respect to contributions, distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

(b) TAX ON PROHIBITED TRANSACTIONS.—

(1) IN GENERAL.—Paragraph (1) of section 4975(e) (relating to prohibited transactions) is amended by striking ''or'' at the end of subparagraph (D), by redesignating subparagraph (E) as subparagraph (F), and by inserting after subparagraph (D) the following new subparagraph:

''(E) A KIDSAVE account described in section 530, or''.

(2) SPECIAL RULE.—Subsection (c) of section 4975 is amended by adding at the end of subsection (c) the following new paragraph:

''(5) SPECIAL RULE FOR KIDSAVE ACCOUNTS.—An individual for whose benefit a KIDSAVE account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.''

(c) FAILURE TO PROVIDE REPORTS ON KIDSAVE ACCOUNTS.—Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph:

''(D) Section 530(g) (relating to KIDSAVE retirement accounts).''

(d) TECHNICAL AMENDMENTS.—

(1) Subparagraph (F) of section 26(b)(2), as added by the preceding section, is amended by inserting before the comma ''and section 530(c)(3) (relating to additional tax on certain distributions from KIDSAVE accounts)''.

(2) Subparagraph (C) of section 135(c)(2), as added by the preceding section, is amended by inserting '', or to a KIDSAVE account (as defined in section 530) on behalf of an account holder (as defined in such section),'' after ''(as defined in such section)''.

(3) The table of sections for part VIII of subchapter F of chapter 1 is amended by adding at the end the following new item:

''Sec. 530. KIDSAVE accounts.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

### Subtitle C—Other Education Initiatives

**SEC. 221. EXTENSION OF EXCLUSION FOR EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.**

(a) IN GENERAL.—Section 127 (relating to educational assistance programs) is amended by striking subsection (d) and by redesignating subsection (e) as subsection (d).

(b) REPEAL OF LIMITATION ON GRADUATE EDUCATION.—The last sentence of section 127(c)(1) is amended by striking '', and such term also does not include any payment for, or the provision of any benefits with respect to, any graduate level course of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree''.

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.

(2) GRADUATE EDUCATION.—The amendment made by subsection (b) shall apply with respect to expenses relating to courses beginning after December 31, 1996.

**SEC. 222. REPEAL OF LIMITATION ON QUALIFIED 501(c)(3) BONDS OTHER THAN HOSPITAL BONDS.**

Section 145(b) (relating to qualified 501(c)(3) bond) is amended by adding at the end the following new paragraph:

''(5) TERMINATION OF LIMITATION.—This subsection shall not apply with respect to bonds issued after the date of the enactment of this paragraph to finance capital expenditures incurred after such date.''

**SEC. 223. TAX CREDIT FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL CONSTRUCTION.**

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to general business credits) is amended by adding at the end the following new section:

**''SEC. 45B. CREDIT FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL CONSTRUCTION.**

''(a) IN GENERAL.—For purposes of section 38, the amount of the school construction credit determined under this section for an eligible taxpayer for any taxable year with respect to an eligible school construction project shall be an amount equal to the lesser of—

''(1) the applicable percentage of the qualified school construction costs, or

''(2) the excess (if any) of—

''(A) the taxpayer's allocable school construction amount with respect to such project under subsection (d), over

''(B) any portion of such allocable amount used under this section for preceding taxable years.

''(b) ELIGIBLE TAXPAYER; ELIGIBLE SCHOOL CONSTRUCTION PROJECT.—For purposes of this section—

''(1) ELIGIBLE TAXPAYER.—The term 'eligible taxpayer' means any person which—

''(A) has entered into a contract with a local educational agency for the performance of construction or related activities in connection with an eligible school construction project, and

''(B) has received an allocable school construction amount with respect to such contract under subsection (d).

''(2) ELIGIBLE SCHOOL CONSTRUCTION PROJECT.—

''(A) IN GENERAL.—The term 'eligible school construction project' means any project related to a public elementary school or secondary school that is conducted for 1 or more of the following purposes:

''(i) Construction of school facilities in order to ensure the health and safety of all students, which may include—

''(I) the removal of environmental hazards,

''(II) improvements in air quality, plumbing, lighting, heating and air conditioning, electrical systems, or basic school infrastructure, and

''(III) building improvements that increase school safety.

''(ii) Construction activities needed to meet the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) or of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

''(iii) Construction activities that increase the energy efficiency of school facilities.

''(iv) Construction that facilitates the use of modern educational technologies.

''(v) Construction of new school facilities that are needed to accommodate growth in school enrollments.

''(vi) Such other construction as the Secretary of Education determines appropriate.

''(B) SPECIAL RULES.—For purposes of this paragraph—

''(i) the term 'construction' includes reconstruction, renovation, or other substantial rehabilitation, and

''(ii) an eligible school construction project shall not include the costs of acquiring land (or any costs related to such acquisition).

''(c) QUALIFIED SCHOOL CONSTRUCTION COSTS; APPLICABLE PERCENTAGE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified school construction costs' means the aggregate amounts paid to an eligible taxpayer during the taxable year under the contract described in subsection (b)(1).

''(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means, in the case of an eligible school construction project related to a local educational agency, the higher of the following percentages:

''(A) If the local educational agency has a percentage or number of children described in clause (i)(I) or (ii)(I) of section 1125(c)(2)(A) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6335(c)(2)(A)), the applicable percentage is 10 percent.

''(B) If the local educational agency has a percentage or number of children described in clause (i)(II) or (ii)(II) of such section, the applicable percentage is 15 percent.

''(C) If the local educational agency has a percentage or number of children described in clause (i)(III) or (ii)(III) of such section, the applicable percentage is 20 percent.

''(D) If the local educational agency has a percentage or number of children described in clause (i)(IV) or (ii)(IV) of such section, the applicable percentage is 25 percent.

''(E) If the local educational agency has a percentage or number of children described in clause (i)(V) or (ii)(V) of such section, the applicable percentage is 30 percent.

''(d) ALLOCABLE AMOUNT.—For purposes of this section—

''(1) IN GENERAL.—Subject to paragraph (3), a local educational agency may allocate to any person a school construction amount with respect to any eligible school construction project.

''(2) TIME FOR MAKING ALLOCATION.—An allocation shall be taken into account under paragraph (1) only if the allocation is made at the time the contract described in subsection (b)(1) is entered into (or such later time as the Secretary may by regulation allow).

''(3) COORDINATION WITH STATE PROGRAM.—A local educational agency may not allocate school construction amounts for any calendar year—

''(A) which in the aggregate exceed the amount of the State school construction ceiling allocated to such agency for such calendar year under subsection (e), and

''(B) which is consistent with any specific allocation required by the State or this section.

''(e) STATE CEILINGS AND ALLOCATION.—

''(1) IN GENERAL.—A State educational agency shall allocate to local educational agencies within the State for any calendar year a portion of the State school construction ceiling for such year. Such allocations shall be consistent with the State application which has been approved under subsection (f) and with any requirement of this section.

''(2) STATE SCHOOL CONSTRUCTION CEILING.—

''(A) IN GENERAL.—The State school construction ceiling for any State for any calendar year shall be an amount equal to the State's allocable share of the national school construction amount.

''(B) STATE'S ALLOCABLE SHARE.—The State's allocable share of the national school construction amount for a fiscal year shall bear the same relation to the national school construction amount for the fiscal year as the amount the State received under section 1124 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333) for the preceding fiscal year bears to the total amount received by all States under such section for such preceding fiscal year.

''(C) NATIONAL SCHOOL CONSTRUCTION AMOUNT.—The national school construction amount is $750,000,000 for each of calendar years 1998, 1999, 2000, 2001, and 2002, reduced by any amount described in paragraph (3).

''(3) SPECIAL ALLOCATIONS FOR INDIAN TRIBES AND TERRITORIES.—

''(A) ALLOCATION TO INDIAN TRIBES.—The national school construction amount under paragraph (2)(C) shall be reduced by 1.5 percent for each calendar year and the Secretary of Interior shall allocate such amount among Indian tribes according to their respective need for assistance under this section.

''(B) ALLOCATION TO TERRITORIES.—The national school construction amount under paragraph (2)(C) shall be reduced by 0.5 percent for each calendar year and the Secretary of Education shall allocate such amount among the territories according to their respective need for assistance under this section.

''(4) REALLOCATION.—If the Secretary of Education determines that a State is not making satisfactory progress in carrying out the State's plan for the use of funds allocated to the State under this section, the Secretary may reallocate all or part of the State school construction ceiling to 1 or more other States that are making satisfactory progress.

''(e) STATE APPLICATION.—

''(1) IN GENERAL.—A State educational agency shall not be eligible to allocate any amount to a local educational agency for any calendar year unless the agency submits to the Secretary of Education (and the Secretary approves) an application containing such information as the Secretary may require, including—

''(A) an estimate of the overall condition of school facilities in the State, including the projected cost of upgrading schools to adequate condition;

''(B) an estimate of the capacity of the schools in the State to house projected student enrollments, including the projected cost of expanding school capacity to meet rising student enrollment;

''(C) the extent to which the schools in the State have the basic infrastructure elements necessary to incorporate modern technology into their classrooms, including the projected cost of upgrading school infrastructure to enable the use of modern technology in classrooms;

''(D) the extent to which the schools in the State offer the physical infrastructure needed to provide a high-quality education to all students; and

''(E) an identification of the State agency that will allocate credit amounts to local educational agencies within the State.

''(2) SPECIFIC ITEMS IN ALLOCATION.—The State shall include in the State's application the process by which the State will allocate the credits to local educational agencies within the State. The State shall consider in its allocation process the extent to which—

''(A) the school district served by the local educational agency has—

''(i) a high number or percentage of the total number of children aged 5 to 17, inclusive, in the State who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)); or

''(ii) a high percentage of the total number of low-income residents in the State;

''(B) the local educational agency lacks the fiscal capacity, including the ability to raise funds through the full use of such agency's bonding capacity and otherwise, to undertake the eligible school construction project without assistance;

''(C) the local area makes an unusually high local tax effort, or has a history of failed attempts to pass bond referenda;

''(D) the local area contains a significant percentage of federally owned land that is not subject to local taxation;

''(E) the threat the condition of the physical facility poses to the safety and well-being of students;

''(F) there is a demonstrated need for the construction, reconstruction, renovation, or rehabilitation based on the condition of the facility;

''(G) the extent to which the facility is overcrowded; and

''(H) the extent to which assistance provided will be used to support eligible school construction projects that would not otherwise be possible to undertake.

''(3) IDENTIFICATION OF AREAS.—The State shall include in the State's application the process by which the State will identify the areas of greatest needs (whether those areas are in large urban centers, pockets of rural poverty, fast-growing suburbs, or elsewhere) and how the State intends to meet the needs of those areas.

''(4) ALLOCATIONS ON BASIS OF APPLICATION.—The Secretary of Education shall evaluate applications submitted under this subsection and shall approve any such application which meets the requirements of this section.

''(g) REQUIRED ALLOCATIONS.—Notwithstanding any process for allocation under a State application under subsection (f), in the case of a State which contains 1 or more of the 100 school districts within the United States which contains the largest number of poor children (as determined by the Secretary of Education), the State shall allocate each calendar year to the local educational agency serving such districts that portion of the State school construction ceiling which bears the same ratio to such ceiling as the number of children in such district for the preceding calendar year who are counted for purposes of section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)) bears to the total number of children in such State who are so counted.

''(h) DEFINITIONS.—For purposes of this section—

''(1) ELEMENTARY SCHOOL; LOCAL EDUCATIONAL AGENCY; SECONDARY SCHOOL; STATE EDUCATIONAL AGENCY.—The terms 'elementary school', 'local educational agency', 'secondary school', and 'State educational agency' have the meanings given the terms in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

''(2) TERRITORIES.—The term 'territories' means the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(3) STATE.—The term 'State' means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.''

(b) INCLUSION IN GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Section 38(b) is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the school construction credit determined under section 45D(a).''

(2) TRANSITION RULE.—Section 39(d) is amended by adding at the end the following new paragraph:

''(8) NO CARRYBACK OF SECTION 45D CREDIT BEFORE ENACTMENT.—No portion of the unused business credit for any taxable year which is attributable to the school construction credit determined under section 45D may be carried back to a taxable year ending before the date of the enactment of section 45D.''

(c) CONFORMING 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. 45B. Credit for public elementary and secondary school construction.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. 224. CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.**

(a) CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.—Subsection (e) of section 170 is amended by adding at the end the following new paragraph:

''(6) SPECIAL RULE FOR CONTRIBUTIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT FOR ELEMENTARY OR SECONDARY SCHOOL PURPOSES.—

''(A) LIMIT ON REDUCTION.—In the case of a qualified elementary or secondary educational contribution, the reduction under paragraph (1)(A) shall be no greater than the amount determined under paragraph (3)(B).

''(B) QUALIFIED ELEMENTARY OR SECONDARY EDUCATIONAL CONTRIBUTION.—For purposes of

this paragraph, the term 'qualified elementary or secondary educational contribution' means a charitable contribution by a corporation of any computer technology or equipment, but only if—

''(i) the contribution is to—

''(I) an educational organization described in subsection (b)(1)(A)(ii), or

''(II) an entity described in section 501(c)(3) and exempt from tax under section 501(a) (other than an entity described in subclause (I)) that is organized primarily for purposes of supporting elementary and secondary education,

''(ii) the contribution is made not later than 2 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

''(iii) substantially all of the use of the property by the donee is for use within the United States for educational purposes in any of the grades K–12 that are related to the purpose or function of the organization or entity,

''(iv) the property is not transferred by the donee in exchange for money, other property, or services, except for shipping, installation and transfer costs,

''(v) the property will fit productively into the entity's education plan, and

''(vi) the entity's use and disposition of the property will be in accordance with the provisions of clauses (iii) and (iv).

''(C) CONTRIBUTION TO PRIVATE FOUNDATION.—A contribution by a corporation of any computer technology or equipment to a private foundation (as defined in section 509) shall be treated as a qualified elementary or secondary educational contribution for purposes of this paragraph if—

''(i) the contribution to the private foundation satisfies the requirements of clauses (ii) and (iv) of subparagraph (B), and

''(ii) within 30 days after such contribution, the private foundation—

''(I) contributes the property to an entity described in clause (i) of subparagraph (B) that satisfies the requirements of clauses (iii) through (vi) of subparagraph (B), and

''(II) notifies the donor of such contribution.

''(D) SPECIAL RULE RELATING TO CONSTRUCTION OF PROPERTY.—For the purposes of this paragraph, the rules of paragraph (4)(C) shall apply.

''(E) DEFINITIONS.—For the purposes of this paragraph—

''(i) COMPUTER TECHNOLOGY OR EQUIPMENT.—The term 'computer technology or equipment' means computer software (as defined by section 197(e)(3)(B)), computer or peripheral equipment (as defined by section 168(i)(2)(B)), and fiber optic cable related to computer use.

''(ii) CORPORATION.—The term 'corporation' has the meaning given to such term by paragraph (4)(D).''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after the calendar year in which this Act is enacted.

**SEC. 225. INCREASE IN ARBITRAGE REBATE EXCEPTION FOR GOVERNMENTAL BONDS USED TO FINANCE EDUCATION FACILITIES.**

(a) IN GENERAL.—Section 148(f)(4)(D) (relating to exception for governmental units issuing $5,000,000 or less of bonds) is amended by adding at the end the following new clause:

''(vii) INCREASE IN EXCEPTION FOR BONDS FINANCING PUBLIC SCHOOL CAPITAL EXPENDITURES.—Each of the $5,000,000 amounts in the preceding provisions of this subparagraph shall be increased by the lesser of $5,000,000 or so much of the aggregate face amount of the bonds as are attributable to financing the construction (within the meaning of subparagraph (C)(iv)) of public school facilities.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to bonds issued after December 31, 1997.

**SEC. 226. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS NOT TO APPLY TO CERTAIN CONTINUING EDUCATION EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.**

(a) IN GENERAL.—Section 67(b) (defining miscellaneous itemized deductions) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by adding at the end the following:

''(13) any deduction allowable for the qualified professional development expenses of an eligible teacher.''

(b) DEFINITIONS.—Section 67 is amended by adding at the end the following new subsection:

''(g) QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES OF ELIGIBLE TEACHERS.—For purposes of subsection (b)(13)—

''(1) QUALIFIED PROFESSIONAL DEVELOPMENT EXPENSES.—

''(A) IN GENERAL.—The term 'qualified professional development expenses' means expenses—

''(i) for tuition, fees, books, supplies, equipment, and transportation required for the enrollment or attendance of an individual in a qualified course of instruction, and

''(ii) with respect to which a deduction is allowable under section 162 (determined without regard to this section).

''(B) QUALIFIED COURSE OF INSTRUCTION.—The term 'qualified course of instruction' means a course of instruction which—

''(i) is at an institution of higher education (as defined in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this subsection), and

''(ii) is part of a program of professional development which is approved and certified by the appropriate local educational agency as directly related to the improvement of the individual's capacity to use learning technology in teaching.

''(C) LOCAL EDUCATIONAL AGENCY.—The term 'local educational agency' has the meaning given such term by section 14101 of the Elementary and Secondary Education Act of 1965, as so in effect.

''(2) ELIGIBLE TEACHER.—

''(A) IN GENERAL.—The term 'eligible teacher' means an individual who—

''(i) is a kindergarten through grade 12 teacher in an elementary or secondary school, and

''(ii) has completed at least 2 academic years as a teacher described in subparagraph (A) before the qualified professional development expenses of the individual have been incurred.

''(B) ELEMENTARY OR SECONDARY SCHOOL.—The terms 'elementary school' and 'secondary school' have the meanings given such terms by section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), as so in effect.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

## TITLE III—TAX RELIEF FOR FAMILY SAVINGS AND BUSINESS CAPITAL FORMATION

### Subtitle A—Tax Relief for Family Savings

**SEC. 301. CAPITAL GAINS DEDUCTION.**

(a) IN GENERAL.—Part I of subchapter P of chapter 1 (relating to treatment of capital gains) is amended by redesignating section 1202 as section 1203 and by inserting after section 1201 the following new section:

**''SEC. 1202. CAPITAL GAINS DEDUCTION.**

''(a) GENERAL RULE.—If for any taxable year a taxpayer other than a corporation has a net capital gain, there shall be allowed as a deduction an amount equal to 30 percent of the taxpayer's qualified 3-year gain for such taxable year.

''(b) QUALIFIED 3-YEAR GAIN.—For purposes of this section, the term 'qualified 3-year gain' means the lesser of—

''(1) net capital gain, or

''(2) the amount of gain from the sale or exchange of capital assets held more than 3 years.

''(c) ESTATES AND TRUSTS.—In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

''(d) COORDINATION WITH TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—For purposes of this section, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer takes into account as investment income under section 163(d)(4)(B)(iii).

''(e) ADJUSTMENTS TO NET CAPITAL GAIN.—For purposes of this section—

''(1) COLLECTIBLES.—

''(A) IN GENERAL.—Net capital gain shall be computed without regard to collectibles gain.

''(B) COLLECTIBLES GAIN.—

''(i) IN GENERAL.—The term 'collectibles gain' means gain from the sale or exchange of a collectible (as defined in section 408(m) without regard to paragraph (3) thereof) which is a capital asset held for more than 1 year but only to the extent such gain is taken into account in computing gross income.

''(ii) PARTNERSHIPS, ETC.—For purposes of clause (i), any gain from the sale of an interest in a partnership, S corporation, or trust which is attributable to unrealized appreciation in the value of collectibles shall be treated as gain from the sale or exchange of a collectible. Rules similar to the rules of section 751 shall apply for purposes of the preceding sentence.

''(2) GAIN FROM SMALL BUSINESS STOCK.—Net capital gain shall be computed without regard to any gain from the sale or exchange of any qualified small business stock (within the meaning of section 1203(c)) held more than 5 years which is taken into account in computing gross income.

''(3) PRE-EFFECTIVE DATE GAIN.—

''(A) IN GENERAL.—In the case of a taxable year which includes May 7, 1997, net capital gain shall be computed without regard to pre-effective date gain.

''(B) PRE-EFFECTIVE DATE GAIN.—The term 'pre-effective date gain' means the amount which would be net capital gain under subsection (a) for a taxable year if such net capital gain were determined by taking into account only gain or loss properly taken into account for the portion of the taxable year before May 7, 1997.

''(C) SPECIAL RULES FOR PASS-THRU ENTITIES.—

''(i) IN GENERAL.—In applying subparagraph (A) with respect to any pass-thru entity, the determination of when gains and losses are properly taken into account shall be made at the entity level.

''(ii) PASS-THRU ENTITY DEFINED.—For purposes of clause (i), the term 'pass-thru entity' means—

''(I) a regulated investment company,

''(II) a real estate investment trust,

''(III) an S corporation,
''(IV) a partnership,
''(V) an estate or trust, and
''(VI) a common trust fund.
''(f) MAXIMUM RATE ON NONDEDUCTIBLE CAPITAL GAIN.—
''(1) IN GENERAL.—If a taxpayer other than a corporation has a nondeductible net capital gain for any taxable year, then the tax imposed by section 1 for the taxable year shall not exceed the sum of—
''(A) a tax computed on the taxable income reduced by the amount of the nondeductible net capital gain, at the same rates and in the same manner as if this subsection had not been enacted, plus
''(B) a tax of 28 percent of the nondeductible net capital gain.
''(2) NONDEDUCTIBLE NET CAPITAL GAIN.—For purposes of paragraph (1), the term 'nondeductible net capital gain' means an amount equal to net capital gain, reduced by the amount of gain to which subsection (a) applies.''
(b) DEDUCTION ALLOWABLE IN COMPUTING ADJUSTED GROSS INCOME.—Subsection (a) of section 62 is amended by inserting after paragraph (16) the following new paragraph:
''(17) LONG-TERM CAPITAL GAINS.—The deduction allowed by section 1202.''
(c) TECHNICAL AND CONFORMING CHANGES.—
(1)(A) Section 1 is amended by striking subsection (h).
(B) Section 641(d)(2)(A) is amended by striking ''Except as provided in section 1(h), the'' and inserting ''The''.
(2) Paragraph (1) of section 170(e) is amended by striking ''the amount of gain'' in the material following subparagraph (B)(ii) and inserting ''the amount of gain (70 percent of such gain in the case of property other than a collectible held more than 3 years)''.
(3) Subparagraph (B) of section 172(d)(2) is amended to read as follows:
''(B) the deduction under section 1202 shall not be allowed.''
(4) The last sentence of section 453A(c)(3) is amended by striking all that follows ''long-term capital gain,'' and inserting ''the maximum rate on net capital gain under section 1201 or the deduction, or maximum rate under section 1202 (whichever is appropriate) shall be taken into account.''
(5) 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 from the sale or exchange of capital assets held for more than 3 years, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to capital gains deduction). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).''
(6) The last sentence of section 643(a)(3) is amended to read as follows: ''The deduction under section 1202 (relating to capital gains deduction) shall not be taken into account.''
(7) Subparagraph (C) of section 643(a)(6) is amended by inserting ''(i)'' before ''there shall'' and by inserting before the period '', and (ii) the deduction under section 1202 (relating to capital gains deduction) shall not be taken into account''.
(8)(A) Paragraph (2) of section 904(b) is amended by striking subparagraph (A), by redesignating subparagraph (B) as subparagraph (A), and by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:
''(B) OTHER TAXPAYERS.—In the case of a taxpayer other than a corporation, taxable income from sources outside the United States shall include gain from the sale or exchange of capital assets only to the extent of foreign source capital gain net income.''
(B) Subparagraph (A) of section 904(b)(2), as so redesignated, is amended—
(i) by striking all that precedes clause (i) and inserting the following:
''(A) CORPORATIONS.—In the case of a corporation—'', and
(ii) by striking in clause (i) ''in lieu of applying subparagraph (A),''.
(C) Paragraph (3) of section 904(b) is amended by striking subparagraphs (D) and (E) and inserting the following new subparagraph:
''(D) RATE DIFFERENTIAL PORTION.—The rate differential portion of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).''
(D) Clause (v) of section 593(b)(2)(D) is amended—
(i) by striking ''if there is a capital gain rate differential (as defined in section 904(b)(3)(D)) for the taxable year,'', and
(ii) by striking ''section 904(b)(3)(E)'' and inserting ''section 904(b)(3)(D)''.
(9) The last sentence of section 1044(d) is amended by striking ''1202'' and inserting ''1203''.
(10) Paragraph (1) of section 1402(i) is amended by inserting '', and the deduction provided by section 1202 shall not apply'' before the period at the end thereof.
(d) CLERICAL AMENDMENT.—The table of sections for part I of subchapter P of chapter 1 is amended by striking the item relating to section 1202 and by inserting after the item relating to section 1201 the following new items:

''Sec. 1202. Capital gains deduction.
''Sec. 1203. 50-percent exclusion for gain from certain small business stock.''

(e) EFFECTIVE DATE.—
(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply to taxable years ending after May 6, 1997.
(2) CONTRIBUTIONS.—The amendment made by subsection (c)(2) shall apply to contributions after May 6, 1997.

**SEC. 302. FAMILY DIVIDEND EXCLUSION.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to amounts specifically excluded from gross income) is amended by inserting after section 115 the following new section:

**''SEC. 116. PARTIAL EXCLUSION OF DIVIDENDS RECEIVED BY INDIVIDUALS.**

''(a) EXCLUSION FROM GROSS INCOME.—In the case of taxable years beginning after December 31, 2002, gross income does not include 30 percent of the amount of eligible dividends received during the taxable year by an individual.
''(b) ELIGIBLE DIVIDENDS.—For purposes of this section—
''(1) IN GENERAL.—The term 'eligible dividends' means, for any taxable year, the portion of the dividends from domestic corporations not in excess of $250 ($500 in the case of a joint return).
''(2) CERTAIN DIVIDENDS EXCLUDED.—Such term shall not include any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organization) or section 521 (relating to farmers' cooperative associations).
''(c) SPECIAL RULES.—For purposes of this section—
''(1) DISTRIBUTIONS FROM REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—Subsection (a) shall apply with respect to distributions by—
''(A) regulated investment companies to the extent provided in section 854(c), and
''(B) real estate investment trusts to the extent provided in section 857(c).
''(2) DISTRIBUTIONS BY A TRUST.—For purposes of subsection (a), the amount of eligible dividends properly allocable to a beneficiary under section 652 or 662 shall be deemed to have been received by the beneficiary ratably on the same date that the dividends were received by the estate or trust.
''(3) CERTAIN NONRESIDENT ALIENS INELIGIBLE FOR EXCLUSION.—In the case of a nonresident alien individual, subsection (a) shall apply only—
''(A) in determining the tax imposed for the taxable year pursuant to section 871(b)(1) and only in respect of eligible dividends which are effectively connected with the conduct of a trade or business within the United States, or
''(B) in determining the tax imposed for the taxable year pursuant to section 877(b).''
(b) CLERICAL AND CONFORMING AMENDMENTS.—
(1) The table of sections for part III of subchapter B of chapter 1 is amended by inserting after the item relating to section 115 the following new item:

''Sec. 116. Partial exclusion of dividends received by individuals.''

(2) Subsection (c) of section 584 is amended by adding at the end the following new flush sentence:
''The proportionate share of each participant in the amount of dividends received by the common trust fund and to which section 116 applies shall be considered for purposes of such section as having been received by such participant.''
(3) Subsection (a) of section 643 is amended by inserting after paragraph (6) the following new paragraph:
''(7) DIVIDENDS.—There shall be included the amount of any dividends excluded from gross income pursuant to section 116.''
(4) Section 854 is amended by adding at the end the following new subsection:
''(c) TREATMENT UNDER SECTION 116.—
''(1) IN GENERAL.—For purposes of section 116, in the case of any dividend (other than a dividend described in subsection (a)) received from a regulated investment company which meets the requirements of section 852 for the taxable year in which it paid the dividend—
''(A) the entire amount of such dividend shall be treated as a dividend if the aggregate dividends received by such company during the taxable year equal or exceed 75 percent of its gross income, or
''(B) if subparagraph (A) does not apply, a portion of such dividend shall be treated as a dividend (and a portion of such dividend shall be treated as interest) based on the portion of the company's gross income which consists of aggregate dividends.
''(2) NOTICE TO SHAREHOLDERS.—The amount of any distribution by a regulated investment company which may be taken into account as a dividend for purposes of the exclusion under section 116 shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later than 45 days after the close of its taxable year.
''(3) DEFINITIONS.—For purposes of this subsection—
''(A) the term 'gross income' does not include gain from the sale or other disposition of stock or securities, and

''(B) the term 'aggregate dividends received' includes only dividends received from domestic corporations other than dividends described in section 116(b)(2).

In determining the amount of any dividend for purposes of subparagraph (B), the rules provided in section 116(c)(1) (relating to certain distributions) shall apply.''

(5) Subsection (c) of section 857 is amended to read as follows:

''(c) LIMITATIONS APPLICABLE TO DIVIDENDS RECEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—For purposes of section 116 (relating to an exclusion for dividends received by individuals) and section 243 (relating to deductions for dividends received by corporations), a dividend received from a real estate investment trust which meets the requirements of this part shall not be considered as a dividend.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to amounts received after December 31, 2002, in taxable years ending after such date.

**SEC. 303. EXEMPTION FROM TAX FOR GAIN ON SALE OF PRINCIPAL RESIDENCE.**

(a) IN GENERAL.—Section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) is amended to read as follows:

**''SEC. 121. EXCLUSION OF GAIN FROM SALE OF PRINCIPAL RESIDENCE.**

''(a) EXCLUSION.—Gross income shall not include gain from the sale or exchange of property if, during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating 2 years or more.

''(b) LIMITATIONS.—

''(1) IN GENERAL.—The amount of gain excluded from gross income under subsection (a) with respect to any sale or exchange shall not exceed $250,000.

''(2) $500,000 LIMITATION FOR CERTAIN JOINT RETURNS.—Paragraph (1) shall be applied by substituting '$500,000' for '$250,000' if—

''(A) a husband and wife make a joint return for the taxable year of the sale or exchange of the property,

''(B) either spouse meets the ownership requirements of subsection (a) with respect to such property,

''(C) both spouses meet the use requirements of subsection (a) with respect to such property, and

''(D) neither spouse is ineligible for the benefits of subsection (a) with respect to such property by reason of paragraph (3).

''(3) APPLICATION TO ONLY 1 SALE OR EXCHANGE EVERY 2 YEARS.—

''(A) IN GENERAL.—Subsection (a) shall not apply to any sale or exchange by the taxpayer if, during the 2-year period ending on the date of such sale or exchange, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

''(B) PRE-MAY 7, 1997, SALES NOT TAKEN INTO ACCOUNT.—Subparagraph (A) shall be applied without regard to any sale or exchange before May 7, 1997.

''(c) EXCLUSION FOR TAXPAYERS FAILING TO MEET CERTAIN REQUIREMENTS.—

''(1) IN GENERAL.—In the case of a sale or exchange to which this subsection applies, the ownership and use requirements of subsection (a) shall not apply and subsection (b)(3) shall not apply; but the amount of gain excluded from gross income under subsection (a) with respect to such sale or exchange shall not exceed—

''(A) the amount which bears the same ratio to the amount which would be so excluded if such requirements had been met, as

''(B) the shorter of—

''(i) the aggregate periods, during the 5-year period ending on the date of such sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence, or

''(ii) the period after the date of the most recent prior sale or exchange by the taxpayer to which subsection (a) applied and before the date of such sale or exchange,

bears to 2 years.

''(2) SALES AND EXCHANGES TO WHICH SUBSECTION APPLIES.—This subsection shall apply to any sale or exchange if—

''(A) subsection (a) would not (but for this subsection) apply to such sale or exchange by reason of—

''(i) a failure to meet the ownership and use requirements of subsection (a), or

''(ii) subsection (b)(3), and

''(B) such sale or exchange is by reason of a change in place of employment, health, or, to the extent provided in regulations, unforeseen circumstances.

''(d) SPECIAL RULES.—

''(1) PROPERTY OF DECEASED SPOUSE.—For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, the period such unmarried individual owned such property shall include the period such deceased spouse owned such property before death.

''(2) PROPERTY OWNED BY SPOUSE OR FORMER SPOUSE.—For purposes of this section—

''(A) PROPERTY TRANSFERRED TO INDIVIDUAL FROM SPOUSE OR FORMER SPOUSE.—In the case of an individual holding property transferred to such individual in a transaction described in section 1041(a), the period such individual owns such property shall include the period the transferor owned the property.

''(B) PROPERTY USED BY FORMER SPOUSE PURSUANT TO DIVORCE DECREE, ETC.—Solely for purposes of this section, an individual shall be treated as using property as such individual's principal residence during any period of ownership while such individual's spouse or former spouse is granted use of the property under a divorce or separation instrument (as defined in section 71(b)(2)).

''(3) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—For purposes of this section, if the taxpayer holds stock as a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), then—

''(A) the holding requirements of subsection (a) shall be applied to the holding of such stock, and

''(B) the use requirements of subsection (a) shall be applied to the house or apartment which the taxpayer was entitled to occupy as such stockholder.

''(4) INVOLUNTARY CONVERSIONS.—

''(A) IN GENERAL.—For purposes of this section, the destruction, theft, seizure, requisition, or condemnation of property shall be treated as the sale of such property.

''(B) APPLICATION OF SECTION 1033.—In applying section 1033 (relating to involuntary conversions), the amount realized from the sale or exchange of property shall be treated as being the amount determined without regard to this section, reduced by the amount of gain not included in gross income pursuant to this section.

''(C) PROPERTY ACQUIRED AFTER INVOLUNTARY CONVERSION.—If the basis of the property sold or exchanged is determined (in whole or in part) under section 1033(b) (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

''(5) RECOGNITION OF GAIN ATTRIBUTABLE TO DEPRECIATION.—Subsection (a) shall not apply to so much of the gain from the sale of any property as does not exceed the portion of the depreciation adjustments (as defined in section 1250(b)(3)) attributable to periods after May 6, 1997, in respect of such property.

''(6) DETERMINATION OF USE DURING PERIODS OF OUT-OF-RESIDENCE CARE.—In the case of a taxpayer who—

''(A) becomes physically or mentally incapable of self-care, and

''(B) owns property and uses such property as the taxpayer's principal residence during the 5-year period described in subsection (a) for periods aggregating at least 1 year,

then the taxpayer shall be treated as using such property as the taxpayer's principal residence during any time during such 5-year period in which the taxpayer owns the property and resides in any facility (including a nursing home) licensed by a State or political subdivision to care for an individual in the taxpayer's condition.

''(7) DETERMINATION OF MARITAL STATUS.—In the case of any sale or exchange, for purposes of this section—

''(A) the determination of whether an individual is married shall be made as of the date of the sale or exchange, and

''(B) an individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

''(8) SALES OF REMAINDER INTERESTS.—For purposes of this section—

''(A) IN GENERAL.—At the election of the taxpayer, this section shall not fail to apply to the sale or exchange of an interest in a principal residence by reason of such interest being a remainder interest in such residence, but this section shall not apply to any other interest in such residence which is sold or exchanged separately.

''(B) EXCEPTION FOR SALES TO RELATED PARTIES.—Subparagraph (A) shall not apply to any sale to, or exchange with, any person who bears a relationship to the taxpayer which is described in section 267(b) or 707(b).

''(e) DENIAL OF EXCLUSION FOR EXPATRIATES.—This section shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) applies to such individual.

''(f) ELECTION TO HAVE SECTION NOT APPLY.—This section shall not apply to any sale or exchange with respect to which the taxpayer elects not to have this section apply.

''(g) RESIDENCES ACQUIRED IN ROLLOVERS UNDER SECTION 1034.—For purposes of this section, in the case of property the acquisition of which by the taxpayer resulted under section 1034 (as in effect on the day before the date of the enactment of this section) in the nonrecognition of any part of the gain realized on the sale or exchange of another residence, in determining the period for which the taxpayer has owned and used such property as the taxpayer's principal residence, there shall be included the aggregate periods for which such other residence (and each prior residence taken into account under section 1223(7) in determining the holding period of such property) had been so owned and used.''

(b) REPEAL OF NONRECOGNITION OF GAIN ON ROLLOVER OF PRINCIPAL RESIDENCE.—Section 1034 (relating to rollover of gain on sale of principal residence) is hereby repealed.

(c) EXCEPTION FROM REPORTING.—Subsection (e) of section 6045 (relating to return required in the case of real estate transactions) is amended by adding at the end the following new paragraph:

''(5) EXCEPTION FOR SALES OR EXCHANGES OF CERTAIN PRINCIPAL RESIDENCES.—

''(A) IN GENERAL.—Paragraph (1) shall not apply to any sale or exchange of a residence for $250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that—

''(i) such residence is the principal residence (within the meaning of section 121) of the seller,

''(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

''(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting '$500,000' for '$250,000'.

''(B) SELLER.—For purposes of this paragraph, the term 'seller' includes the person relinquishing the residence in an exchange.''

(d) CONFORMING AMENDMENTS.—

(1) The following provisions of the Internal Revenue Code of 1986 are each amended by striking ''section 1034'' and inserting ''section 121'': sections 25(e)(7), 56(e)(1)(A), 56(e)(3)(B)(i), 143(i)(1)(C)(i)(I), 163(h)(4)(A)(i)(I), 280A(d)(4)(A), 464(f)(3)(B)(i), 1033(h)(4), 1274(c)(3)(B), 6334(a)(13), and 7872(f)(11)(A).

(2) Paragraph (4) of section 32(c) is amended by striking ''(as defined in section 1034(h)(3))'' and by adding at the end the following new sentence: ''For purposes of the preceding sentence, the term 'extended active duty' means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.''

(3) Subparagraph (A) of 143(m)(6) is amended by inserting ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1997)'' after ''1034(e)''.

(4) Subsection (e) of section 216 is amended by striking ''such exchange qualifies for nonrecognition of gain under section 1034(f)'' and inserting ''such dwelling unit is used as his principal residence (within the meaning of section 121)''.

(5) Section 512(a)(3)(D) is amended by inserting ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1997)'' after ''1034''.

(6) Paragraph (7) of section 1016(a) is amended by inserting ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1997)'' after ''1034'' and by inserting ''(as so in effect)'' after ''1034(e)''.

(7) Paragraph (3) of section 1033(k) is amended to read as follows:

''(3) For exclusion from gross income of gain from involuntary conversion of principal residence, see section 121.''

(8) Subsection (e) of section 1038 is amended to read as follows:

''(e) PRINCIPAL RESIDENCES.—If—

''(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which gain was not recognized under section 121 (relating to gain on sale of principal residence); and

''(2) within 1 year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying section 121, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.''

(9) Paragraph (7) of section 1223 is amended by inserting ''(as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1997)'' after ''1034''.

(10)(A) Subsection (d) of section 1250 is amended by striking paragraph (7) and by redesignating paragraphs (9) and (10) as paragraphs (7) and (8), respectively.

(B) Subsection (e) of section 1250 is amended by striking paragraph (3).

(11) Subsection (c) of section 6012 is amended by striking ''(relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55)'' and inserting ''(relating to gain from sale of principal residence)''.

(12) Paragraph (2) of section 6212(c) is amended by striking subparagraph (C) and by redesignating the succeeding subparagraphs accordingly.

(13) Section 6504 is amended by striking paragraph (4) and by redesignating the succeeding paragraphs accordingly.

(14) The item relating to section 121 in the table of sections for part III of subchapter B of chapter 1 is amended to read as follows:

''Sec. 121. Exclusion of gain from sale of principal residence.''

(15) The table of sections for part III of subchapter O of chapter 1 of such Code is amended by striking the item relating to section 1034.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to sales and exchanges after May 6, 1997.

(2) SALES BEFORE DATE OF ENACTMENT.—At the election of the taxpayer, the amendments made by this section shall not apply to any sale or exchange before the date of the enactment of this Act.

(3) BINDING CONTRACTS.—At the election of the taxpayer, the amendments made by this section shall not apply to a sale or exchange after the date of the enactment of this Act, if—

(A) such sale or exchange is pursuant to a contract which was binding on such date, or

(B) without regard to such amendments, gain would not be recognized under section 1034 of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act) on such sale or exchange by reason of a new residence acquired on or before such date or with respect to the acquisition of which by the taxpayer a binding contract was in effect on such date.

This paragraph shall not apply to any sale or exchange by an individual if the treatment provided by section 877(a)(1) of the Internal Revenue Code of 1986 applies to such individual.

## Subtitle B—Business Capital Formation

### SEC. 311. ROLLOVER OF CAPITAL GAINS ON CERTAIN SMALL BUSINESS INVESTMENTS.

(a) IN GENERAL.—Part III of subchapter O of chapter 1 (relating to common nontaxable exchanges) is amended by adding at the end the following new section:

**''SEC. 1045. ROLLOVER OF GAIN ON SMALL BUSINESS INVESTMENTS.**

''(a) NONRECOGNITION OF GAIN.—In the case of the sale of any eligible small business investment with respect to which the taxpayer elects the application of this section, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds—

''(1) the cost of any other eligible small business investment purchased by the taxpayer during the 6-month period beginning on the date of such sale, reduced by

''(2) any portion of such cost previously taken into account under this section.

This section shall not apply to any gain which is treated as ordinary income for purposes of this subtitle.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) PURCHASE.—The term 'purchase' has the meaning given such term by section 1043(b)(4).

''(2) ELIGIBLE SMALL BUSINESS INVESTMENT.—Except as otherwise provided in this section, the term 'eligible small business investment' means any stock in a domestic corporation, and any partnership interest in a domestic partnership, which is originally issued after December 31, 1996, if—

''(A) as of the date of issuance, such corporation or partnership is a qualified small business entity,

''(B) such stock or partnership interest is acquired by the taxpayer at its original issue (directly or through an underwriter)—

''(i) in exchange for money or other property (not including stock), or

''(ii) as compensation for services (other than services performed as an underwriter of such stock or partnership interest), and

''(C) the taxpayer has held such stock or interest at least 6 months as of the time of the sale described in subsection (a).

A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this section.

''(3) ACTIVE BUSINESS REQUIREMENT.—Stock in a corporation, and a partnership interest in a partnership, shall not be treated as an eligible small business investment unless, during substantially all of the taxpayer's holding period for such stock or partnership interest, such corporation or partnership meets the active business requirements of subsection (c). A rule similar to the rule of section 1202(c)(2)(B) shall apply for purposes of this section.

''(4) QUALIFIED SMALL BUSINESS ENTITY.—

''(A) IN GENERAL.—The term 'qualified small business entity' means any domestic corporation or partnership if—

''(i) such entity (and any predecessor thereof) had aggregate gross assets (as defined in section 1202(d)(2)) of less than $25,000,000 at all times before the issuance of the interest described in paragraph (2), and

''(ii) the aggregate gross assets (as so defined) of the entity immediately after the issuance (determined by taking into account amounts received in the issuance) are less than $25,000,000.

''(B) AGGREGATION RULES.—Rules similar to the rules of section 1202(d)(3) shall apply for purposes of this paragraph.

''(c) ACTIVE BUSINESS REQUIREMENT.—

''(1) IN GENERAL.—For purposes of subsection (b)(3), the requirements of this subsection are met by a qualified small business entity for any period if—

''(A) the entity is engaged in the active conduct of a trade or business, and

''(B) at least 80 percent (by value) of the assets of such entity are used in the active conduct of a qualified trade or business (within the meaning of section 1202(e)(3)).

Such requirements shall not be treated as met for any period if during such period the entity is described in subparagraph (A), (B), (C), or (D) of section 1202(e)(4).

''(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future trade or business, an entity is engaged in—

''(A) startup activities described in section 195(c)(1)(A),

''(B) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

''(C) activities with respect to in-house research expenses described in section 41(b)(4),

such entity shall be treated with respect to such activities as engaged in (and assets used in such activities shall be treated as used in) the active conduct of a trade or business. Any determination under this paragraph shall be made without regard to whether the

entity has any gross income from such activities at the time of the determination.

''(3) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (5), (6), (7), and (8) of section 1202(e) shall apply for purposes of this subsection.

''(d) CERTAIN OTHER RULES TO APPLY.—Rules similar to the rules of subsections (f), (g), (h), and (j) of section 1202 shall apply for purposes of this section, except that a 6-month holding period shall be substituted for a 5-year holding period where applicable.

''(e) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any eligible small business investment which is purchased by the taxpayer during the 6-month period described in subsection (a).

''(f) STATUTE OF LIMITATIONS.—If any gain is realized by the taxpayer on the sale or exchange of any eligible small business investment and there is in effect an election under subsection (a) with respect to such gain, 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 other eligible small business investments which the taxpayer claims results in nonrecognition of any part of such gain,

''(B) the taxpayer's intention not to purchase other eligible small business investments within the 6-month period described in subsection (a), or

''(C) a failure to make such purchase within such 6-month period, and

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

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise and regulations to modify the application of section 1202 to the extent necessary to apply such section to a partnership rather than a corporation.''

(b) CONFORMING AMENDMENT.—Paragraph (23) of section 1016(a) is amended—

(1) by striking ''or 1044'' and inserting '', 1044, or 1045'', and

(2) by striking ''or 1044(d)'' and inserting '', 1044(d), or 1045(e)''.

(c) CLERICAL AMENDMENT.—The table of sections for part III of subchapter O of chapter 1 is amended by adding at the end the following new item:

''Sec. 1045. Rollover of gain on small business investments.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after December 31, 1996.

**SEC. 312. MODIFICATIONS TO EXCLUSION OF GAIN ON CERTAIN SMALL BUSINESS STOCK.**

(a) EXCLUSION AVAILABLE TO CORPORATIONS.—

(1) IN GENERAL.—Subsection (a) of section 1203, as redesignated by section 301(a), is amended by striking ''other than a corporation''.

(2) TECHNICAL AMENDMENT.—Subsection (c) of section 1203, as so redesignated, is amended by adding at the end the following new paragraph:

''(4) STOCK HELD AMONG MEMBERS OF CONTROLLED GROUP NOT ELIGIBLE.—Stock shall not be treated as qualified small business stock if such stock was at any time held by any member of the parent-subsidiary controlled group (as defined in subsection (d)(3)) which includes the qualified small business.''

(b) REPEAL OF MINIMUM TAX PREFERENCE.—

(1) IN GENERAL.—Section 57(a) is amended by striking paragraph (7).

(2) TECHNICAL AMENDMENT.—Section 53(d)(1)(B)(ii)(II) is amended by striking '', (5), and (7)'' and inserting ''and (5)''.

(c) SIZE OF BUSINESSES ELIGIBLE FOR EXCLUSION.—

(1) Section 1203(d)(1), as so redesignated, is amended to read as follows:

''(1) IN GENERAL.—The term 'qualified small business' means any domestic corporation which is a C corporation—

''(A) if—

''(i) the aggregate gross assets of such corporation (or any predecessor thereof) at all times on or after the date of the enactment of the Revenue Reconciliation Act of 1997 and before the issuance did not exceed $100,000,000, and

''(ii) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $100,000,000, and

''(B) such corporation agrees to submit such reports to the Secretary and to shareholders as the Secretary may require to carry out the purposes of this section.''

(2) Section 1203(d), as so redesignated, is amended by adding at the end the following new paragraph:

''(4) INFLATION ADJUSTMENT.—

''(A) IN GENERAL.—In the case of stock issued in any calendar year after 1998, each dollar amount referred to in subsection (d)(1)(A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

''(B) ROUNDING.—If any amount contained in subsection (d)(1)(A)(i) as adjusted under subparagraph (A) is not a multiple of $1,000,000, such amount shall be rounded to the next lower multiple of $1,000,000.''

(3) Section 1203(e)(3), as so redesignated, is amended by striking subparagraph (C) and redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively.

(d) PER-ISSUER LIMITATION.—Section 1203(b)(1)(A), as so redesignated, is amended by striking ''$10,000,000'' and inserting ''$20,000,000''.

(e) OTHER MODIFICATIONS.—

(1) WORKING CAPITAL LIMITATION.—Section 1203(e)(6), as so redesignated, is amended by striking ''2 years'' each place it appears and inserting ''5 years''.

(2) REDEMPTION RULES.—Section 1203(c)(3), as so redesignated, is amended by adding at the end the following new subparagraph:

''(D) WAIVER WHERE BUSINESS PURPOSE.—A purchase of stock by the issuing corporation shall be disregarded for purposes of subparagraph (B) if the issuing corporation establishes that there was a business purpose for such purchase and one of the principal purposes of the purchase was not to avoid the limitation of this section.''

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendments made by subsection (b), (d), and (e) shall apply to stock issued after August 10, 1993.

**SEC. 313. EXPANSION OF SMALL BUSINESS STOCK EXCLUSION TO FAMILY-OWNED BUSINESSES.**

(a) IN GENERAL.—Section 1203(a), as redesignated by section 301(a) and amended by section 312, is amended to read as follows:

''(a) 50-PERCENT EXCLUSION.—Gross income shall not include 50 percent of any gain from the sale or exchange of—

''(1) qualified small business stock held for more than 5 years, and

''(2) any qualified family-owned business interest held for more than 5 years.''

(b) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—Section 1203, as so redesignated, is amended by redesignating subsection (k) as subsection (*l*) and by inserting after subsection (j) the following new subsection:

''(k) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified family-owned business interest' means any interest—

''(A) which consists of—

''(i) stock in an S corporation,

''(ii) an interest in a partnership or other pass-through entity, or

''(iii) an interest as a sole proprietor in a trade or business,

which, as of the time the interest was acquired, constitutes a qualified family-owned business,

''(B) which was acquired after the date of the enactment of this subsection (and in the case of stock, which was originally issued after such date)—

''(i) in exchange for money or other property (not including such an interest), or

''(ii) as compensation for services provided to the entity.

''(2) ACTIVE BUSINESS REQUIREMENT.—An interest shall not qualify under paragraph (1) unless, during substantially all of the taxpayer's holding period for such interest, the qualified family-owned business meets the active business requirements of subsection (e) (without regard to paragraph (3)(C) thereof).

''(3) QUALIFIED FAMILY-OWNED BUSINESS.—

''(A) IN GENERAL.—The term 'qualified family-owned business' means a trade or business which—

''(i) is described in section 2033A(e) (determined by substituting 'taxpayer' for 'decedent' each place it appears), and

''(ii) except as provided in subparagraph (B), meets the aggregate gross assets tests described in subsection (d)(1).

''(B) SPECIAL RULE FOR FARMS.—In the case of a trade or business of farming (within the meaning of section 2032A)—

''(i) subparagraph (A)(ii) shall not apply, and

''(ii) such trade or business shall not be treated as a qualified family-owned business unless the average gross receipts of the trade or business (or any predecessor) for the 3 taxable years preceding the taxable year in which the interest is acquired did not exceed $2,000,000.

''(4) SPECIAL RULES.—For purposes of this subsection.—

''(A) AGGREGATION.—In applying the $2,000,000 limit under paragraph (3) all persons treated as 1 person under section 52 (a) or (b) shall be treated as 1 person and all trades or businesses of such person shall be treated as 1 trade or business.

''(B) INDEXING.—The $2,000,000 amount under paragraph (3) shall be indexed at the same time and manner as under subsection (d)(4), except that subparagraph (B) thereof shall be applied by substituting '$50,000' for '$1,000,000'.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to interests acquired after the date of enactment of this Act, in taxable years ending after such date.

## TITLE IV—ESTATE TAX RELIEF FOR FAMILY BUSINESSES AND FARMS

### SEC. 401. FAMILY-OWNED BUSINESS EXCLUSION.

(a) IN GENERAL.—Part III of subchapter A of chapter 11 (relating to gross estate) is amended by inserting after section 2033 the following new section:

**"SEC. 2033A. FAMILY-OWNED BUSINESS EXCLUSION.**

''(a) IN GENERAL.—In the case of an estate of a decedent to which this section applies, the value of the gross estate shall not include the lesser of—

''(1) the adjusted value of the qualified family-owned business interests of the decedent otherwise includible in the estate, or

''(2) $900,000, reduced by the amount of any exclusion allowed under this section with respect to the estate of a previously deceased spouse of the decedent.

''(b) ESTATES TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to an estate if—

''(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

''(B) the sum of—

''(i) the adjusted value of the qualified family-owned business interests described in paragraph (2), plus

''(ii) the amount of the gifts of such interests determined under paragraph (3),

exceeds 50 percent of the adjusted gross estate, and

''(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

''(i) such interests were owned by the decedent or a member of the decedent's family, and

''(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent or a member of the decedent's family in the operation of the business to which such interests relate.

''(2) INCLUDIBLE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—The qualified family-owned business interests described in this paragraph are the interests which—

''(A) are included in determining the value of the gross estate (without regard to this section), and

''(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)).

''(3) INCLUDIBLE GIFTS OF INTERESTS.—The amount of the gifts of qualified family-owned business interests determined under this paragraph is the excess of—

''(A) the sum of—

''(i) the amount of such gifts from the decedent to members of the decedent's family taken into account under subsection 2001(b)(1)(B), plus

''(ii) the amount of such gifts otherwise excluded under section 2503(b),

to the extent such interests are continuously held by members of such family (other than the decedent's spouse) between the date of the gift and the date of the decedent's death, over

''(B) the amount of such gifts from the decedent to members of the decedent's family otherwise included in the gross estate.

''(c) ADJUSTED GROSS ESTATE.—For purposes of this section, the term 'adjusted gross estate' means the value of the gross estate (determined without regard to this section)—

''(1) reduced by any amount deductible under paragraph (3) or (4) of section 2053(a), and

''(2) increased by the excess of—

''(A) the sum of—

''(i) the amount of gifts determined under subsection (b)(3), plus

''(ii) the amount (if more than de minimis) of other transfers from the decedent to the decedent's spouse (at the time of the transfer) within 10 years of the date of the decedent's death, plus

''(iii) the amount of other gifts (not included under clause (i) or (ii)) from the decedent within 3 years of such date, other than gifts to members of the decedent's family otherwise excluded under section 2503(b), over

''(B) the sum of the amounts described in clauses (i), (ii), and (iii) of subparagraph (A) which are otherwise includible in the gross estate.

For purposes of the preceding sentence, the Secretary may provide that de minimis gifts to persons other than members of the decedent's family shall not be taken into account.

''(d) ADJUSTED VALUE OF THE QUALIFIED FAMILY-OWNED BUSINESS INTERESTS.—For purposes of this section, the adjusted value of any qualified family-owned business interest is the value of such interest for purposes of this chapter (determined without regard to this section), reduced by the excess of—

''(1) any amount deductible under paragraph (3) or (4) of section 2053(a), over

''(2) the sum of—

''(A) any indebtedness on any qualified residence of the decedent the interest on which is deductible under section 163(h)(3), plus

''(B) any indebtedness to the extent the taxpayer establishes that the proceeds of such indebtedness were used for the payment of educational and medical expenses of the decedent, the decedent's spouse, or the decedent's dependents (within the meaning of section 152), plus

''(C) any indebtedness not described in clause (i) or (ii), to the extent such indebtedness does not exceed $10,000.

''(e) QUALIFIED FAMILY-OWNED BUSINESS INTEREST.—

''(1) IN GENERAL.—For purposes of this section, the term 'qualified family-owned business interest' means—

''(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

''(B) an interest in an entity carrying on a trade or business, if—

''(i) at least—

''(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

''(II) 70 percent of such entity is so owned by members of 2 families, or

''(III) 90 percent of such entity is so owned by members of 3 families, and

''(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

''(2) LIMITATION.—Such term shall not include—

''(A) any interest in a trade or business the principal place of business of which is not located in the United States,

''(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time within 3 years of the date of the decedent's death,

''(C) any interest in a trade or business not described in section 542(c)(2), if more than 35 percent of the adjusted ordinary gross income of such trade or business for the taxable year which includes the date of the decedent's death would qualify as personal holding company income (as defined in section 543(a)),

''(D) that portion of an interest in a trade or business that is attributable to—

''(i) cash or marketable securities, or both, in excess of the reasonably expected day-to-day working capital needs of such trade or business, and

''(ii) any other assets of the trade or business (other than assets used in the active conduct of a trade or business described in section 542(c)(2)), the income of which is described in section 543(a) or in subparagraph (B), (C), (D), or (E) of section 954(c)(1) (determined by substituting 'trade or business' for 'controlled foreign corporation').

''(3) RULES REGARDING OWNERSHIP.—

''(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

''(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

''(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

''(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

''(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a qualified family-owned business interest, and

''(ii) this section shall be applied separately in determining if such interest in any other trade or business is a qualified family-owned business interest.

''(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

''(f) TAX TREATMENT OF FAILURE TO MATERIALLY PARTICIPATE IN BUSINESS OR DISPOSITIONS OF INTERESTS.—

''(1) IN GENERAL.—There is imposed an additional estate tax if, within 10 years after the date of the decedent's death and before the date of the qualified heir's death—

''(A) the material participation requirements described in section 2032A(c)(6)(B) are not met with respect to the qualified family-owned business interest which was acquired (or passed) from the decedent,

''(B) the qualified heir disposes of any portion of a qualified family-owned business interest (other than by a disposition to a member of the qualified heir's family or through a qualified conservation contribution under section 170(h)),

''(C) the qualified heir loses United States citizenship (within the meaning of section 877) or with respect to whom an event described in subparagraph (A) or (B) of section 877(e)(1) occurs, and such heir does not comply with the requirements of subsection (g), or

''(D) the principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

''(2) ADDITIONAL ESTATE TAX.—

''(A) IN GENERAL.—The amount of the additional estate tax imposed by paragraph (1) shall be equal to—

''(i) the applicable percentage of the adjusted tax difference attributable to the

qualified family-owned business interest (as determined under rules similar to the rules of section 2032A(c)(2)(B)), plus

''(ii) interest on the amount determined under clause (i) at the underpayment rate established under section 6621 for the period beginning on the date the estate tax liability was due under this chapter and ending on the date such additional estate tax is due.

''(B) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined under the following table:

| "If the event described in paragraph (1) occurs in the following year of material participation: | The applicable percentage is: |
|---|---|
| 1 through 6 | 100 |
| 7 | 80 |
| 8 | 60 |
| 9 | 40 |
| 10 | 20. |

''(g) SECURITY REQUIREMENTS FOR NONCITIZEN QUALIFIED HEIRS.—

''(1) IN GENERAL.—Except upon the application of subparagraph (F) or (M) of subsection (h)(3), if a qualified heir is not a citizen of the United States, any interest under this section passing to or acquired by such heir (including any interest held by such heir at a time described in subsection (f)(1)(C)) shall be treated as a qualified family-owned business interest only if the interest passes or is acquired (or is held) in a qualified trust.

''(2) QUALIFIED TRUST.—The term 'qualified trust' means a trust—

''(A) which is organized under, and governed by, the laws of the United States or a State, and

''(B) except as otherwise provided in regulations, with respect to which the trust instrument requires that at least 1 trustee of the trust be an individual citizen of the United States or a domestic corporation.

''(h) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

''(1) QUALIFIED HEIR.—The term 'qualified heir'—

''(A) has the meaning given to such term by section 2032A(e)(1), and

''(B) includes any active employee of the trade or business to which the qualified family-owned business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

''(2) MEMBER OF THE FAMILY.—The term 'member of the family' has the meaning given to such term by section 2032A(e)(2).

''(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

''(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

''(B) Section 2032A(b)(5) (relating to special rules for surviving spouses).

''(C) Section 2032A(c)(2)(D) (relating to partial dispositions).

''(D) Section 2032A(c)(3) (relating to only 1 additional tax imposed with respect to any 1 portion).

''(E) Section 2032A(c)(4) (relating to due date).

''(F) Section 2032A(c)(5) (relating to liability for tax; furnishing of bond).

''(G) Section 2032A(c)(7) (relating to no tax if use begins within 2 years; active management by eligible qualified heir treated as material participation).

''(H) Section 2032A(e)(10) (relating to community property).

''(I) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

''(J) Section 2032A(f) (relating to statute of limitations).

''(K) Section 6166(b)(3) (relating to farmhouses and certain other structures taken into account).

''(L) Subparagraphs (B), (C), and (D) of section 6166(g)(1) (relating to acceleration of payment).

''(M) Section 6324B (relating to special lien for additional estate tax).''

(b) CLERICAL AMENDMENT.—The table of sections for part III of subchapter A of chapter 11 is amended by inserting after the item relating to section 2033 the following new item:

''Sec. 2033A. Family-owned business exclusion.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to estates of decedents dying after December 31, 1996.

**SEC. 402. PORTION OF ESTATE TAX SUBJECT TO 4-PERCENT INTEREST RATE INCREASED TO $2,500,000.**

(a) IN GENERAL.—Subparagraph (B) of section 6601(j)(2) (defining 4-percent portion) is amended by striking ''$345,800'' and inserting ''$1,025,800''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to estates of decedents dying after December 31, 1996.

**SEC. 403. 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 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 with respect to rentals occurring after December 31, 1976.

## TITLE V—EXTENSIONS

**SEC. 501. RESEARCH TAX CREDIT.**

(a) IN GENERAL.—Paragraph (1) of section 41(h) (relating to termination) is amended—

(1) by striking ''May 31, 1997'' and inserting ''December 31, 1998'', and

(2) by striking in the last sentence ''during the first 11 months of such taxable year.'' and inserting ''during the 30-month period beginning with the first month of such year. The 30 months referred to in the preceding sentence shall be reduced by the number of full months after June 1996 (and before the first month of such first taxable year) during which the taxpayer paid or incurred any amount which is taken into account in determining the credit under this section.''

(b) TECHNICAL AMENDMENTS.—

(1) Subparagraph (B) of section 41(c)(4) is amended to read as follows:

''(B) ELECTION.—An election under this paragraph shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.''

(2) Paragraph (1) of section 45C(b) is amended by striking ''May 31, 1997'' and inserting ''December 31, 1998''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after May 31, 1997.

**SEC. 502. CONTRIBUTIONS OF STOCK TO PRIVATE FOUNDATIONS.**

(a) IN GENERAL.—Clause (ii) of section 170(e)(5)(D) (relating to termination) is amended by striking ''May 31, 1997'' and inserting ''December 31, 1998''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to contributions made after May 31, 1997.

**SEC. 503. WORK OPPORTUNITY TAX CREDIT.**

(a) EXTENSION.—Subparagraph (B) of section 51(c)(4) (relating to termination) is amended by striking ''September 30, 1997'' and inserting ''September 30, 1998''.

(b) MODIFICATION OF ELIGIBILITY REQUIREMENT BASED ON PERIOD ON WELFARE.—

(1) IN GENERAL.—Subparagraph (A) of section 51(d)(2) (defining qualified IV–A recipient) is amended by striking all that follows ''a IV–A program'' and inserting ''for any 9 months during the 18-month period ending on the hiring date.''

(2) CONFORMING AMENDMENT.—Subparagraph (A) of section 51(d)(3) is amended to read as follows:

''(A) IN GENERAL.—The term 'qualified veteran' means any veteran who is certified by the designated local agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for at least a 3-month period ending during the 12-month period ending on the hiring date.''

(c) QUALIFIED SSI RECIPIENTS TREATED AS MEMBERS OF TARGETED GROUPS.—

(1) IN GENERAL.—Section 51(d)(1) (relating to members of targeted groups) is amended by striking ''or'' at the end of subparagraph (F), by striking the period at the end of subparagraph (G) and inserting '', or'', and by adding at the end the following new subparagraph:

''(H) a qualified SSI recipient.''

(2) QUALIFIED SSI RECIPIENTS.—Section 51(d) is amended by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively, and by inserting after paragraph (8) the following new paragraph:

''(9) QUALIFIED SSI RECIPIENT.—The term 'qualified SSI recipient' means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93–66) for any month ending within the 60-day period ending on the hiring date.''

(d) PERCENTAGE OF WAGES ALLOWED AS CREDIT.—

(1) IN GENERAL.—Subsection (a) of section 51 (relating to determination of amount) is amended by striking ''35 percent'' and inserting ''40 percent''.

(2) APPLICATION OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 400 HOURS OF SERVICES.—Paragraph (3) of section 51(i) is amended to read as follows:

''(3) INDIVIDUALS NOT MEETING MINIMUM EMPLOYMENT PERIODS.—

''(A) REDUCTION OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 400 HOURS OF SERVICES.—In the case of an individual who has completed at least 120 hours, but less than 400 hours, of services performed for the employer, subsection (a) shall be applied by substituting '25 percent' for '40 percent'.

''(B) DENIAL OF CREDIT FOR INDIVIDUALS PERFORMING FEWER THAN 120 HOURS OF SERVICES.—No wages shall be taken into account under subsection (a) with respect to any individual unless such individual has completed at least 120 hours of services performed for the employer.''

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after September 30, 1997.

**SEC. 504. ORPHAN DRUG TAX CREDIT.**

(a) IN GENERAL.—Section 45C (relating to clinical testing expenses for certain drugs for rare diseases or conditions) is amended by striking subsection (e).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts paid or incurred after May 31, 1997.

**TITLE VI—INCENTIVES FOR REVITALIZATION OF THE DISTRICT OF COLUMBIA**

**SEC. 601. TAX INCENTIVES FOR REVITALIZATION OF THE DISTRICT OF COLUMBIA.**

(a) IN GENERAL.—Chapter 1 is amended by adding at the end the following new subchapter:

**"Subchapter W—Incentives for the Revitalization of the District of Columbia**



**"SEC. 1400. FIRST-TIME HOMEBUYER CREDIT FOR DISTRICT OF COLUMBIA.**

''(a) ALLOWANCE OF CREDIT.—In the case of an individual who is a first-time homebuyer of a principal residence in the District of Columbia during any taxable year, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to so much of the purchase price of the residence as does not exceed $5,000.

''(b) FIRST-TIME HOMEBUYER.—For purposes of this section—

''(1) IN GENERAL.—The term 'first-time homebuyer' has the same meaning as when used in section 72(t)(8)(D)(i), except that 'principal residence in the District of Columbia during the 1-year period' shall be substituted for 'principal residence during the 2-year period' in subclause (I) thereof.

''(2) ONE-TIME ONLY.—If an individual is treated as a first-time homebuyer with respect to any principal residence, such individual may not be treated as a first-time homebuyer with respect to any other principal residence.

''(3) PRINCIPAL RESIDENCE.—The term 'principal residence' has the same meaning as when used in section 121.

''(4) DATE OF ACQUISITION.—The term 'date of acquisition' has the same meaning as when used in section 72t(8)(D)(iii).

''(c) CARRYOVER OF CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under subpart A of part IV of subchapter A (other than this section and section 25), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year.

''(d) SPECIAL RULES.—For purposes of this section—

''(1) ALLOCATION OF DOLLAR LIMITATION.—

''(A) MARRIED INDIVIDUALS FILING JOINTLY.—In the case of a husband and wife who file a joint return, the $5,000 limitation under subsection (a) shall apply to the joint return.

''(B) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of a married individual filing a separate return, subsection (a) shall be applied by substituting '$2,500' for '$5,000'.

''(C) OTHER TAXPAYERS.—If 2 or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed $5,000.

''(2) PURCHASE.—The term 'purchase' means any acquisition, but only if—

''(A) the property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267 (b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants), and

''(B) the basis of the property in the hands of the person acquiring it is not determined—

''(i) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

''(ii) under section 1014(a) (relating to property acquired from a decedent).

''(3) PURCHASE PRICE.—The term 'purchase price' means the adjusted basis of the principal residence on the date of acquisition.

''(d) REPORTING.—If the Secretary requires information reporting under section 6045 to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e)(5) shall not apply.

''(e) CREDIT TREATED AS NONREFUNDABLE PERSONAL CREDIT.—For purposes of this title, the credit allowed by this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of this chapter.

**"SEC. 1400A. CREDIT FOR EQUITY INVESTMENTS IN AND LOANS TO DISTRICT OF COLUMBIA BUSINESSES.**

''(a) GENERAL RULE.—For purposes of section 38, the DC investment credit determined under this section for any taxable year is—

''(1) the qualified lender credit for such year, and

''(2) the qualified equity investment credit for such year.

''(b) QUALIFIED LENDER CREDIT.—For purposes of this section—

''(1) IN GENERAL.—The qualified lender credit for any taxable year is the amount of credit specified for such year by the Economic Development Corporation with respect to qualified District loans made by the taxpayer.

''(2) LIMITATION.—In no event may the qualified lender credit with respect to any loan exceed 25 percent of the cost of the property purchased with the proceeds of the loan.

''(3) QUALIFIED DISTRICT LOAN.—For purposes of paragraph (1), the term 'qualified district loan' means any loan for the purchase (as defined in section 179(d)(2)) of property to which section 168 applies (or would apply but for section 179) (or land which is functionally related and subordinate to such property) and substantially all of the use of which is in the District of Columbia and is in the active conduct of a trade or business in the District of Columbia. A rule similar to the rule of section 1397C(a)(2) shall apply for purposes of the preceding sentence.

''(c) QUALIFIED EQUITY INVESTMENT CREDIT.—

''(1) IN GENERAL.—For purposes of this section, the qualified equity investment credit determined under this section for any taxable year is an amount equal to the percentage specified by the Economic Development Corporation (but not greater than 25 percent) of the aggregate amount paid in cash by the taxpayer during the taxable year for the purchase of District business investments.

''(2) DISTRICT BUSINESS INVESTMENT.—For purposes of this subsection, the term 'District business investment' means—

''(A) any District business stock, and

''(B) any District partnership interest.

''(3) DISTRICT BUSINESS STOCK.—For purposes of this subsection—

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

''(i) such stock is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash, and

''(ii) as of the time such stock was issued, such corporation was engaged in a trade or business in the District of Columbia (or, in the case of a new corporation, such corporation was being organized for purposes of engaging in such a trade or business).

''(B) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

''(4) QUALIFIED DISTRICT PARTNERSHIP INTEREST.—For purposes of this subsection, the term 'qualified District 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, and

''(B) as of the time such interest was acquired, such partnership was engaging in a trade or business in the District of Columbia (or, in the case of a new partnership, such partnership was being organized for purposes of engaging in such a trade or business).

A rule similar to the rule of paragraph (3)(B) shall apply for purposes of this paragraph.

''(5) RECAPTURE OF CREDIT UPON CERTAIN DISPOSITIONS OF DISTRICT BUSINESS INVESTMENTS.—

''(A) IN GENERAL.—If a taxpayer disposes of any District business investment (or any other property the basis of which is determined in whole or in part by reference to the adjusted basis of such investment) before the end of the 5-year period beginning on the date such investment was acquired by the taxpayer, the taxpayer's tax imposed by this chapter for the taxable year in which such distribution occurs shall be increased by the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from reducing to zero any credit determined under this section with respect to such investment.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply to any gift, transfer, or transaction described in paragraph (1), (2), or (3) of section 1245(b).

''(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.

''(6) BASIS REDUCTION.—For purposes of this title, the basis of any District business investment shall be reduced by the amount of the credit determined under this section with respect to such investment.

''(d) LIMITATION ON AMOUNT OF CREDIT.—

''(1) IN GENERAL.—The amount of the DC investment credit determined under this section with respect to any taxpayer for any taxable year shall not exceed the credit amount allocated to such taxpayer for such taxable year by the Economic Development Corporation.

''(2) OVERALL LIMITATION.—The aggregate credit amount which may be allocated by the Economic Development Corporation under this section shall not exceed $75,000,000.

''(3) CRITERIA FOR ALLOCATING CREDIT AMOUNTS.—The allocation of credit amounts under this section shall be made in accordance with criteria established by the Economic Development Corporation. In establishing such criteria, such Corporation shall take into account—

''(A) the degree to which the business receiving the loan or investment will provide job opportunities for low and moderate income residents of a targeted area, and

''(B) whether such business is within a targeted area.

''(4) TARGETED AREA.—For purposes of paragraph (3), the term 'targeted area' means—

''(A) any census tract located in the District of Columbia which is part of an enterprise community designated under subchapter U before the date of the enactment of this subchapter, and

''(B) any other census tract which is located in the District of Columbia and which has a poverty rate of not less than 35 percent.

''(e) ECONOMIC DEVELOPMENT CORPORATION.—For purposes of this section, the term 'Economic Development Corporation' means an entity which is created by Federal law in 1997 as part of the District of Columbia government.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out this section.

''(g) APPLICATION OF SECTION.—This section shall apply to any credit amount allocated for taxable years beginning after December 31, 1997, and before January 1, 2003.

**''SEC. 1400B. ZERO PERCENT CAPITAL GAINS RATE.**

''(a) EXCLUSION.—Gross income shall not include qualified capital gain from the sale or exchange of any DC asset held for more than 5 years.

''(b) DC ASSET.—For purposes of this section—

''(1) IN GENERAL.—The term 'DC asset' means—

''(A) any DC business stock,

''(B) any DC partnership interest, and

''(C) any DC business property.

''(2) DC BUSINESS STOCK.—

''(A) IN GENERAL.—The term 'DC business stock' means any stock in a domestic corporation which is originally issued after December 31, 1997, if—

''(i) such stock is acquired by the taxpayer, before January 1, 2003, at its original issue (directly or through an underwriter) solely in exchange for cash,

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

''(iii) during substantially all of the taxpayer's holding period for such stock, such corporation qualified as a DC business.

''(B) REDEMPTIONS.—A rule similar to the rule of section 1202(c)(3) shall apply for purposes of this paragraph.

''(3) DC PARTNERSHIP INTEREST.—The term 'DC partnership interest' means any capital or profits interest in a domestic partnership which is originally issued after December 31, 1997, if—

''(A) such interest is acquired by the taxpayer, before January 1, 2003, from the partnership solely in exchange for cash,

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

''(C) during substantially all of the taxpayer's holding period for such interest, such partnership qualified as a DC business.

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

''(4) DC BUSINESS PROPERTY.—

''(A) IN GENERAL.—The term 'DC business property' means tangible property if—

''(i) such property was acquired by the taxpayer by purchase (as defined in section 179(d)(2)) after December 31, 1997, and before January 1, 2003,

''(ii) the original use of such property in the District of Columbia 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 DC business of the taxpayer.

''(B) SPECIAL RULE FOR BUILDINGS WHICH ARE SUBSTANTIALLY IMPROVED.—

''(i) IN GENERAL.—The requirements of clauses (i) and (ii) of subparagraph (A) shall be treated as met with respect to—

''(I) property which is substantially improved by the taxpayer before January 1, 2003, and

''(II) any land on which such property is located.

''(ii) SUBSTANTIAL IMPROVEMENT.—For purposes of clause (i), property shall be treated as substantially improved by the taxpayer only if, during any 24-month period beginning after December 31, 1997, 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 of such property at the beginning of such 24-month period in the hands of the taxpayer, or

''(II) $5,000.

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

''(7) 5-YEAR SAFE HARBOR.—If any property ceases to be a DC asset by reason of paragraph (2)(A)(iii), (3)(C), or (4)(A)(iii) after the 5-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.

''(c) DC BUSINESS.—For purposes of this section, the term 'DC business' means any entity which is an enterprise zone business (as defined in section 1397B), determined—

''(1) by treating the District of Columbia as an empowerment zone and as if no other area is an empowerment zone or enterprise community, and

''(2) without regard to subsections (b)(6) and (c)(5) of section 1397B.

''(d) 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 gain recognized on the sale or exchange of—

''(A) a capital asset, or

''(B) property used in the trade or business (as defined in section 1231(b)).

''(2) GAIN BEFORE 1998 NOT QUALIFIED.—The term 'qualified capital gain' shall not include any gain attributable to periods before January 1, 1998.

''(3) 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.

''(4) INTANGIBLES AND LAND NOT INTEGRAL PART OF DC BUSINESS.—The term 'qualified capital gain' shall not include any gain attributable to real property, or an intangible asset, which is not an integral part of a DC business.

''(5) RELATED PARTY TRANSACTIONS.—The term 'qualified capital gain' shall not include any gain attributable, directly or indirectly, in whole or in part, to a transaction with a related person. For purposes of this paragraph, persons are related to each other if such persons are described in section 267(b) or 707(b)(1).

''(e) CERTAIN OTHER RULES TO APPLY.—Rules similar to the rules of subsections (g), (h), (i)(2), and (j) of section 1202 shall apply for purposes of this section.

''(f) SALES AND EXCHANGES OF INTERESTS IN PARTNERSHIPS AND S CORPORATIONS WHICH ARE DC BUSINESSES.—In the case of the sale or exchange of an interest in a partnership, or of stock in an S corporation, which was a DC 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 gain which is attributable to real property, or an intangible asset, which is not an integral part of a DC business, and

''(2) any gain attributable to periods before January 1, 1998.''

(b) CREDITS MADE PART OF GENERAL BUSINESS CREDIT.—

(1) Subsection (b) of section 38 is amended by striking ''plus'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', plus'', and by adding at the end the following new paragraph:

''(13) the DC investment credit determined under section 1400A(a).''

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

''(8) NO CARRYBACK OF DC CREDITS BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the credit under section 1400A may be carried back to a taxable year ending before the date of the enactment of such section.''

(3) Subsection (c) of section 196 is amended by striking ''and'' at the end of paragraph (6), by striking the period at the end of paragraph (7) and inserting '', and'', and by adding at the end the following new paragraph:

''(8) the DC investment credit determined under section 1400A(a).''

(c) CLERICAL AMENDMENT.—The table of subchapters for chapter 1 is amended by adding at the end the following new item:

''Subchapter W. Incentives for the Revitalization of the District of Columbia.''

(d) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

**SEC. 602. INCENTIVES CONDITIONED ON OTHER DC REFORM.**

The amendments made by section 601 shall not take effect unless an entity known as the Economic Development Corporation is created by Federal law in 1997 as part of the District of Columbia government.

## TITLE VII—MISCELLANEOUS PROVISIONS

### Subtitle A—Distressed Communities and Brownfields

### CHAPTER 1—ADDITIONAL EMPOWERMENT ZONES

**SEC. 701. ADDITIONAL EMPOWERMENT ZONES.**

(a) IN GENERAL.—Paragraph (2) of section 1391(b) (relating to designations of empowerment zones and enterprise communities) is amended—

(1) by striking ''9'' and inserting ''11'',

(2) by striking ''6'' and inserting ''8'', and

(3) by striking ''750,000'' and inserting ''1,000,000''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that designations of new empowerment zones made pursuant to such amendments shall be made during the 180-day period beginning on the date of the enactment of this Act.

### CHAPTER 2—NEW EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

**SEC. 711. DESIGNATION OF ADDITIONAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.**

(a) IN GENERAL.—Section 1391 (relating to designation procedure for empowerment

zones and enterprise communities) is amended by adding at the end the following new subsection:

''(g) ADDITIONAL DESIGNATIONS PERMITTED.—

''(1) IN GENERAL.—In addition to the areas designated under subsection (a)—

''(A) ENTERPRISE COMMUNITIES.—The appropriate Secretaries may designate in the aggregate an additional 80 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 50 may be designated in urban areas and not more than 30 may be designated in rural areas.

''(B) EMPOWERMENT ZONES.—The appropriate Secretaries may designate in the aggregate an additional 20 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 15 may be designated in urban areas and not more than 5 may be designated in rural areas.

''(2) PERIOD DESIGNATIONS MAY BE MADE.—A designation may be made under this subsection after the date of the enactment of this subsection and before January 1, 1999.

''(3) MODIFICATIONS TO ELIGIBILITY CRITERIA, ETC.—

''(A) POVERTY RATE REQUIREMENT.—

''(i) IN GENERAL.—A nominated area shall be eligible for designation under this subsection only if the poverty rate for each population census tract within the nominated area is not less than 20 percent and the poverty rate for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent.

''(ii) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if—

''(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

''(II) such tract is contiguous to 1 or more other population census tracts which have a poverty rate of not less than 25 percent (determined without regard to this clause).

''(iii) EXCEPTION FOR DEVELOPABLE SITES.—Clause (i) shall not apply to up to 3 noncontiguous parcels in a nominated area which may be developed for commercial or industrial purposes. The aggregate area of noncontiguous parcels to which the preceding sentence applies with respect to any nominated area shall not exceed 1,000 acres (2,000 acres in the case of an empowerment zone).

''(iv) CERTAIN PROVISIONS NOT TO APPLY.—Section 1392(a)(4) (and so much of paragraphs (1) and (2) of section 1392(b) as relate to section 1392(a)(4)) shall not apply to an area nominated for designation under this subsection.

''(v) SPECIAL RULE FOR RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.—The Secretary of Agriculture may designate not more than 1 empowerment zone, and not more than 5 enterprise communities, in rural areas without regard to clause (i) if such areas satisfy emigration criteria specified by the Secretary of Agriculture.

''(B) SIZE LIMITATION.—

''(i) IN GENERAL.—The parcels described in subparagraph (A)(iii) shall not be taken into account in determining whether the requirement of subparagraph (A) or (B) of section 1392(a)(3) is met.

''(ii) SPECIAL RULE FOR RURAL AREAS.—If a population census tract (or equivalent division under section 1392(b)(4)) in a rural area exceeds 1,000 square miles or includes a substantial amount of land owned by the Federal, State, or local government, the nominated area may exclude such excess square mileage or governmentally owned land and the exclusion of that area will not be treated as violating the continuous boundary requirement of section 1392(a)(3)(B).

''(C) AGGREGATE POPULATION LIMITATION.—The aggregate population limitation under the last sentence of subsection (b)(2) shall not apply to a designation under paragraph (1)(B).

''(D) PREVIOUSLY DESIGNATED ENTERPRISE COMMUNITIES MAY BE INCLUDED.—Subsection (e)(5) shall not apply to any enterprise community designated under subsection (a) that is also nominated for designation under this subsection.

''(E) INDIAN RESERVATIONS MAY BE NOMINATED.—

''(i) IN GENERAL.—Section 1393(a)(4) shall not apply to an area nominated for designation under this subsection.

''(ii) SPECIAL RULE.—An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body (as determined by the Secretary of Interior).''

(b) EMPLOYMENT CREDIT NOT TO APPLY TO NEW EMPOWERMENT ZONES.—Section 1396 (relating to empowerment zone employment credit) is amended by adding at the end the following new subsection:

''(e) CREDIT NOT TO APPLY TO EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—This section shall be applied without regard to any empowerment zone designated under section 1391(g).''

(c) INCREASED EXPENSING UNDER SECTION 179 NOT TO APPLY IN DEVELOPABLE SITES.—Section 1397A (relating to increase in expensing under section 179) is amended by adding at the end the following new subsection:

''(c) LIMITATION.—For purposes of this section, qualified zone property shall not include any property substantially all of the use of which is in any parcel described in section 1391(g)(3)(A)(iii).''

(d) CONFORMING AMENDMENTS.—

(1) Subsections (e) and (f) of section 1391 are each amended by striking ''subsection (a)'' and inserting ''this section''.

(2) Section 1391(c) is amended by striking ''this section'' and inserting ''subsection (a)''.

**SEC. 712. VOLUME CAP NOT TO APPLY TO ENTERPRISE ZONE FACILITY BONDS WITH RESPECT TO NEW EMPOWERMENT ZONES.**

(a) IN GENERAL.—Section 1394 (relating to tax-exempt enterprise zone facility bonds) is amended by adding at the end the following new subsection:

''(f) BONDS FOR EMPOWERMENT ZONES DESIGNATED UNDER SECTION 1391(g).—

''(1) IN GENERAL.—In the case of a new empowerment zone facility bond—

''(A) such bond shall not be treated as a private activity bond for purposes of section 146, and

''(B) subsection (c) of this section shall not apply.

''(2) LIMITATION ON AMOUNT OF BONDS.—

''(A) IN GENERAL.—Paragraph (1) shall apply to a new empowerment zone facility bond only if such bond is designated for purposes of this subsection by the local government which nominated the area to which such bond relates.

''(B) LIMITATION ON BONDS DESIGNATED.—The aggregate face amount of bonds which may be designated under subparagraph (A) with respect to any empowerment zone shall not exceed—

''(i) $60,000,000 if such zone is in a rural area,

''(ii) $130,000,000 if such zone is in an urban area and the zone has a population of less than 100,000, and

''(iii) $230,000,000 if such zone is in an urban area and the zone has a population of at least 100,000.

''(C) SPECIAL RULES.—

''(i) COORDINATION WITH LIMITATION IN SUBSECTION (c).—Bonds to which paragraph (1) applies shall not be taken into account in applying the limitation of subsection (c) to other bonds.

''(ii) CURRENT REFUNDING NOT TAKEN INTO ACCOUNT.—In the case of a refunding (or series of refundings) of a bond designated under this paragraph, the refunding obligation shall be treated as designated under this paragraph (and shall not be taken into account in applying subparagraph (B)) if—

''(I) the amount of the refunding bond does not exceed the outstanding amount of the refunded bond, and

''(II) the refunded bond is redeemed not later than 90 days after the date of issuance of the refunding bond.

''(3) NEW EMPOWERMENT ZONE FACILITY BOND.—For purposes of this subsection, the term 'new empowerment zone facility bond' means any bond which would be described in subsection (a) if only empowerment zones designated under section 1391(g) were taken into account under sections 1397B and 1397C.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to obligations issued after the date of the enactment of this Act.

**SEC. 713. MODIFICATIONS TO ENTERPRISE ZONE FACILITY BOND RULES FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.**

(a) MODIFICATIONS RELATING TO ENTERPRISE ZONE BUSINESS.—Paragraph (3) of section 1394(b) (defining enterprise zone business) is amended to read as follows:

''(3) ENTERPRISE ZONE BUSINESS.—

''(A) IN GENERAL.—Except as modified in this paragraph, the term 'enterprise zone business' has the meaning given such term by section 1397B.

''(B) MODIFICATIONS.—In applying section 1397B for purposes of this section—

''(i) BUSINESSES IN ENTERPRISE COMMUNITIES ELIGIBLE.—References in section 1397B to empowerment zones shall be treated as including references to enterprise communities.

''(ii) WAIVER OF REQUIREMENTS DURING STARTUP PERIOD.—A business shall not fail to be treated as an enterprise zone business during the startup period if—

''(I) as of the beginning of the startup period, it is reasonably expected that such business will be an enterprise zone business (as defined in section 1397B as modified by this paragraph) at the end of such period, and

''(II) such business makes bona fide efforts to be such a business.

''(iii) REDUCED REQUIREMENTS AFTER TESTING PERIOD.—A business shall not fail to be treated as an enterprise zone business for any taxable year beginning after the testing period by reason of failing to meet any requirement of subsection (b) or (c) of section 1397B if at least 35 percent of the employees of such business for such year are residents of an empowerment zone or an enterprise community. The preceding sentence shall not apply to any business which is not a qualified business by reason of paragraph (1), (4), or (5) of section 1397B(d).

''(C) DEFINITIONS RELATING TO SUBPARAGRAPH (B).—For purposes of subparagraph (B)—

''(i) STARTUP PERIOD.—The term 'startup period' means, with respect to any property being provided for any business, the period before the first taxable year beginning more than 2 years after the later of—

''(I) the date of issuance of the issue providing such property, or

''(II) the date such property is first placed in service after such issuance (or, if earlier, the date which is 3 years after the date described in subclause (I)).

''(ii) TESTING PERIOD.—The term 'testing period' means the first 3 taxable years beginning after the startup period.

''(D) PORTIONS OF BUSINESS MAY BE ENTERPRISE ZONE BUSINESS.—The term 'enterprise zone business' includes any trades or businesses which would qualify as an enterprise zone business (determined after the modifications of subparagraph (B)) if such trades or businesses were separately incorporated.''

(b) MODIFICATIONS RELATING TO QUALIFIED ZONE PROPERTY.—Paragraph (2) of section 1394(b) (defining qualified zone property) is amended to read as follows:

''(2) QUALIFIED ZONE PROPERTY.—The term 'qualified zone property' has the meaning given such term by section 1397C; except that—

''(A) the references to empowerment zones shall be treated as including references to enterprise communities, and

''(B) section 1397C(a)(2) shall be applied by substituting 'an amount equal to 15 percent of the adjusted basis' for 'an amount equal to the adjusted basis'.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

**SEC. 714. MODIFICATIONS TO ENTERPRISE ZONE BUSINESS DEFINITION FOR ALL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES.**

(a) IN GENERAL.—Section 1397B (defining enterprise zone business) is amended—

(1) by striking ''80 percent'' in subsections (b)(2) and (c)(1) and inserting ''50 percent'',

(2) by striking ''substantially all'' each place it appears in subsections (b) and (c) and inserting ''a substantial portion'',

(3) by striking '', and exclusively related to,'' in subsections (b)(4) and (c)(3),

(4) by adding at the end of subsection (d)(2) the following new flush sentence:

''For purposes of subparagraph (B), the lessor of the property may rely on a lessee's certification that such lessee is an enterprise zone business.'',

(5) by striking ''substantially all'' in subsection (d)(3) and inserting ''at least 50 percent'', and

(6) by adding at the end the following new subsection:

''(f) TREATMENT OF BUSINESSES STRADDLING CENSUS TRACT LINES.—For purposes of this section, if—

''(1) a business entity or proprietorship uses real property located within an empowerment zone,

''(2) the business entity or proprietorship also uses real property located outside the empowerment zone,

''(3) the amount of real property described in paragraph (1) is substantial compared to the amount of real property described in paragraph (2), and

''(4) the real property described in paragraph (2) is contiguous to part or all of the real property described in paragraph (1),

then all the services performed by employees, all business activities, all tangible property, and all intangible property of the business entity or proprietorship that occur in or is located on the real property described in paragraphs (1) and (2) shall be treated as occurring or situated in an empowerment zone.''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

(2) SPECIAL RULE FOR ENTERPRISE ZONE FACILITY BONDS.—For purposes of section 1394(b) of the Internal Revenue Code of 1986, the amendments made by this section shall apply to obligations issued after the date of the enactment of this Act.

## CHAPTER 3—EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS

**SEC. 721. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.**

(a) IN GENERAL.—Part VI of subchapter B of chapter 1 is amended by adding at the end the following new section:

**''SEC. 198. EXPENSING OF ENVIRONMENTAL REMEDIATION COSTS.**

''(a) IN GENERAL.—A taxpayer may elect to treat any qualified environmental remediation expenditure which is paid or incurred by the taxpayer as an expense which is not chargeable to capital account. Any expenditure which is so treated shall be allowed as a deduction for the taxable year in which it is paid or incurred.

''(b) QUALIFIED ENVIRONMENTAL REMEDIATION EXPENDITURE.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified environmental remediation expenditure' means any expenditure—

''(A) which is otherwise chargeable to capital account, and

''(B) which is paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

''(2) SPECIAL RULE FOR EXPENDITURES FOR DEPRECIABLE PROPERTY.—Such term shall not include any expenditure for the acquisition of property of a character subject to the allowance for depreciation which is used in connection with the abatement or control of hazardous substances at a qualified contaminated site; except that the portion of the allowance under section 167 for such property which is otherwise allocated to such site shall be treated as a qualified environmental remediation expenditure.

''(c) QUALIFIED CONTAMINATED SITE.—For purposes of this section—

''(1) QUALIFIED CONTAMINATED SITE.—

''(A) IN GENERAL.—The term 'qualified contaminated site' means any area—

''(i) which is held by the taxpayer for use in a trade or business or for the production of income, or which is property described in section 1221(1) in the hands of the taxpayer,

''(ii) which is within a targeted area, and

''(iii) which contains (or potentially contains) any hazardous substance.

''(B) TAXPAYER MUST RECEIVE STATEMENT FROM STATE ENVIRONMENTAL AGENCY.—An area shall be treated as a qualified contaminated site with respect to expenditures paid or incurred during any taxable year only if the taxpayer receives a statement from the appropriate agency of the State in which such area is located that such area meets the requirements of clauses (ii) and (iii) of subparagraph (A).

''(C) APPROPRIATE STATE AGENCY.— For purposes of subparagraph (B), the appropriate agency of a State is the agency designated by the Administrator of the Environmental Protection Agency for purposes of this section. If no agency of a State is designated under the preceding sentence, the appropriate agency for such State shall be the Environmental Protection Agency.

''(2) TARGETED AREA.—

''(A) IN GENERAL.—The term 'targeted area' means—

''(i) any population census tract with a poverty rate of not less than 20 percent,

''(ii) a population census tract with a population of less than 2,000 if—

''(I) more than 75 percent of such tract is zoned for commercial or industrial use, and

''(II) such tract is contiguous to 1 or more other population census tracts which meet the requirement of clause (i) without regard to this clause,

''(iii) any empowerment zone or enterprise community (and any supplemental zone designated on December 21, 1994), and

''(iv) any site announced before February 1, 1997, as being included as a brownfields pilot project of the Environmental Protection Agency.

''(B) NATIONAL PRIORITIES LISTED SITES NOT INCLUDED.—Such term shall not include any site which is on the national priorities list under section 105(a)(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as in effect on the date of the enactment of this section).

''(C) CERTAIN RULES TO APPLY.—For purposes of this paragraph, the rules of sections 1392(b)(4) and 1393(a)(9) shall apply.

''(D) TREATMENT OF CERTAIN SITES.—For purposes of this paragraph, a single contaminated site shall be treated as within a targeted area if—

''(i) a substantial portion of the site is located within a targeted area described in subparagraph (A) (determined without regard to this subparagraph), and

''(ii) the remaining portions are contiguous to, but outside, such targeted area.

''(d) HAZARDOUS SUBSTANCE.—For purposes of this section—

''(1) IN GENERAL.—The term 'hazardous substance' means—

''(A) any substance which is a hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and

''(B) any substance which is designated as a hazardous substance under section 102 of such Act.

''(2) EXCEPTION.—Such term shall not include any substance with respect to which a removal or remedial action is not permitted under section 104 of such Act by reason of subsection (a)(3) thereof.

''(e) DEDUCTION RECAPTURED AS ORDINARY INCOME ON SALE, ETC.—Solely for purposes of section 1245, in the case of property to which a qualified environmental remediation expenditure would have been capitalized but for this section—

''(1) the deduction allowed by this section for such expenditure shall be treated as a deduction for depreciation, and

''(2) such property (if not otherwise section 1245 property) shall be treated as section 1245 property solely for purposes of applying section 1245 to such deduction.

''(f) COORDINATION WITH OTHER PROVISIONS.—Sections 280B and 468 shall not apply to amounts which are treated as expenses under this section.

''(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.''

(b) CLERICAL AMENDMENT.—The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end the following new item:

''Sec. 198. Expensing of environmental remediation costs.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to expenditures paid or incurred after the date of the enactment of this Act, in taxable years ending after such date.

## Subtitle B—Puerto Rico Economic Activity Credit Improvement

**SEC. 731. MODIFICATIONS OF PUERTO RICO ECONOMIC ACTIVITY CREDIT.**

(a) CORPORATIONS ELIGIBLE TO CLAIM CREDIT.—Section 30A(a)(2) (defining qualified domestic corporation) is amended to read as follows:

''(2) QUALIFIED DOMESTIC CORPORATION.—For purposes of paragraph (1)—

''(A) IN GENERAL.—A domestic corporation shall be treated as a qualified domestic corporation for a taxable year if it is actively conducting within Puerto Rico during the taxable year—

''(i) a line of business with respect to which the domestic corporation is an existing credit claimant under section 936(j)(9), or

''(ii) an eligible line of business not described in clause (i).

''(B) LIMITATION TO LINES OF BUSINESS.—A domestic corporation shall be treated as a qualified domestic corporation under subparagraph (A) only with respect to the lines of business described in subparagraph (A) which it is actively conducting in Puerto Rico during the taxable year.

''(C) EXCEPTION FOR CORPORATIONS ELECTING REDUCED CREDIT.—A domestic corporation shall not be treated as a qualified corporation if such corporation (or any predecessor) had an election in effect under section 936(a)(4)(B)(iii) for any taxable year beginning after December 31, 1996.''

(b) APPLICATION ON SEPARATE LINE OF BUSINESS BASIS; ELIGIBLE LINE OF BUSINESS.—Section 30A is amended by redesignating subsection (g) as subsection (h) and by inserting after subsection (f) the following new subsection:

''(g) APPLICATION ON LINE OF BUSINESS BASIS; ELIGIBLE LINES OF BUSINESS.—For purposes of this section—

''(1) APPLICATION TO SEPARATE LINE OF BUSINESS.—

''(A) IN GENERAL.—In determining the amount of the credit under subsection (a), this section shall be applied separately with respect to each substantial line of business of the qualified domestic corporation.

''(B) EXCEPTIONS FOR EXISTING CREDIT CLAIMANT.—This paragraph shall not apply to a substantial line of business with respect to which the qualified domestic corporation is an existing credit claimant under section 936(j)(9).

''(C) ALLOCATION.—The Secretary shall prescribe rules necessary to carry out the purposes of this paragraph, including rules—

''(i) for the allocation of items of income, gain, deduction, and loss for purposes of determining taxable income under subsection (a), and

''(ii) for the allocation of wages, fringe benefit expenses, and depreciation allowances for purposes of applying the limitations under subsection (d).

''(2) ELIGIBLE LINE OF BUSINESS.—The term 'eligible line of business' means a substantial line of business in any of the following trades or businesses:

''(A) Manufacturing.

''(B) Agriculture.

''(C) Forestry.

''(D) Fishing.

''(3) SUBSTANTIAL LINE OF BUSINESS.—For purposes of this subsection, the determination of whether a line of business is a substantial line of business shall be determined by reference to 2-digit codes under the North American Industry Classification System (62 Fed. Reg. 17288 et seq., formerly known as 'SIC codes').''

(c) REPEAL OF BASE PERIOD CAP.—

(1) IN GENERAL.—Section 30A(a)(1) (relating to allowance of credit) is amended by striking the last sentence.

(2) CONFORMING AMENDMENT.—Section 30A(e)(1) is amended by inserting ''but not including subsection (j)(3)(A)(ii) thereof'' after ''thereunder''.

(d) APPLICATION OF CREDIT.—Section 30A(h) (relating to applicability of section), as redesignated by subsection (b), is amended to read as follows:

''(h) APPLICATION OF SECTION.—

''(1) IN GENERAL.—This section shall apply to taxable years beginning after December 31, 1995, and before the termination date.

''(2) TERMINATION DATE.—For purposes of paragraph (1)—

''(A) IN GENERAL.—The termination date is the first day of the 4th calendar year following the close of the first period for which a certification is issued by the Secretary under subparagraph (B).

''(B) CERTIFICATION.—

''(i) IN GENERAL.—The Secretary shall issue a certification under this subparagraph for the first 3-consecutive calendar year period beginning after December 31, 1997, for which the Secretary determines that Puerto Rico has met the requirements of clause (ii) for each calendar year within the period.

''(ii) REQUIREMENTS.—The requirements of this clause are met with respect to Puerto Rico for any calendar year if—

''(I) the average monthly rate of unemployment in Puerto Rico does not exceed 150 percent of the average monthly rate of unemployment for the United States for such year,

''(II) the per capita income of Puerto Rico is at least 66 percent of the per capita income of the United States, and

''(III) the poverty level within Puerto Rico does not exceed 30 percent.''

(e) CONFORMING AMENDMENTS.—

(1) Section 30A(b) is amended by striking ''within a possession'' each place it appears and inserting ''within Puerto Rico''.

(2) Section 30A(d) is amended by striking ''possession'' each place it appears.

(3) Section 30A(f) is amended to read as follows:

''(f) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED INCOME TAXES.—The qualified income taxes for any taxable year allocable to nonsheltered income shall be determined in the same manner as under section 936(i)(3).

''(2) QUALIFIED WAGES.—The qualified wages for any taxable year shall be determined in the same manner as under section 936(i)(1).

''(3) OTHER TERMS.—Any term used in this section which is also used in section 936 shall have the same meaning given such term by section 936.''

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. 732. COMPARABLE TREATMENT FOR OTHER ECONOMIC ACTIVITY CREDIT.**

(a) CORPORATIONS ELIGIBLE TO CLAIM CREDIT.—Section 936(j)(2)(A) (relating to economic activity credit) is amended to read as follows:

''(A) ECONOMIC ACTIVITY CREDIT.—

''(i) IN GENERAL.—In the case of a domestic corporation which, during the taxable year, is actively conducting within a possession other than Puerto Rico—

''(I) a line of business with respect to which the domestic corporation is an existing credit claimant under paragraph (9), or

''(II) an eligible line of business not described in subclause (I),

the credit determined under subsection (a)(1)(A) shall be allowed for taxable years beginning after December 31, 1995, and before January 1, 2002.

''(ii) LIMITATION TO LINES OF BUSINESS.—Clause (i) shall only apply with respect to the lines of business described in clause (i) which the domestic corporation is actively conducting in a possession other than Puerto Rico during the taxable year.

''(iii) EXCEPTION FOR CORPORATIONS ELECTING REDUCED CREDIT.—Clause (i) shall not apply to a domestic corporation if such corporation (or any predecessor) had an election in effect under subsection (a)(4)(B)(iii) for any taxable year beginning after December 31, 1996.''

(b) APPLICATION ON SEPARATE LINE OF BUSINESS BASIS; ELIGIBLE LINE OF BUSINESS.—

(1) IN GENERAL.—Section 936(j) is amended by adding at the end the following new paragraph:

''(11) APPLICATION ON LINE OF BUSINESS BASIS; ELIGIBLE LINES OF BUSINESS.—For purposes of this section—

''(A) APPLICATION TO SEPARATE LINE OF BUSINESS.—

''(i) IN GENERAL.—In determining the amount of the credit under subsection (a)(1)(A) for a corporation to which paragraph (2)(A) applies, this section shall be applied separately with respect to each substantial line of business of the corporation.

''(ii) EXCEPTIONS FOR EXISTING CREDIT CLAIMANT.—This paragraph shall not apply to a line of business with respect to which the qualified domestic corporation is an existing credit claimant under paragraph (9).

''(iii) ALLOCATION.—The Secretary shall prescribe rules necessary to carry out the purposes of this subparagraph, including rules—

''(I) for the allocation of items of income, gain, deduction, and loss for purposes of determining taxable income under subsection (a)(1)(A), and

''(II) for the allocation of wages, fringe benefit expenses, and depreciation allowances for purposes of applying the limitations under subsection (a)(4)(A).

''(B) ELIGIBLE LINE OF BUSINESS.—For purposes of this subsection, the term 'eligible line of business' means a substantial line of business in any of the following trades or businesses:

''(i) Manufacturing.

''(ii) Agriculture.

''(iii) Forestry.

''(iv) Fishing.''

(2) NEW LINES OF BUSINESS.—Section 936(j)(9)(B) is amended to read as follows:

''(B) NEW LINES OF BUSINESS.—A corporation shall not be treated as an existing credit claimant with respect to any substantial new line of business which is added after October 13, 1995, unless such addition is pursuant to an acquisition described in subparagraph (A)(ii).''

(3) SEPARATE LINES OF BUSINESS.—Section 936(j), as amended by paragraph (1), is amended by adding at the end the following new paragraph:

''(12) SUBSTANTIAL LINE OF BUSINESS.—For purposes of this subsection (other than paragraph (9)(B) thereof), the determination of whether a line of business is a substantial line of business shall be determined by reference to 2-digit codes under the North American Industry Classification System (62 Fed. Reg. 17288 et seq., formerly known as 'SIC codes').''

(c) REPEAL OF BASE PERIOD CAP FOR ECONOMIC ACTIVITY CREDIT.—

(1) IN GENERAL.—Section 936(j)(3) is amended to read as follows:

''(3) ADDITIONAL RESTRICTED REDUCED CREDIT.—

''(A) IN GENERAL.—In the case of an existing credit claimant to which paragraph (2)(B) applies, the credit determined under subsection (a)(1)(A) shall be allowed for any taxable year beginning after December 31, 1997, and before January 1, 2006, except that the aggregate amount of taxable income taken into account under subsection (a)(1)(A) for such taxable year shall not exceed the adjusted base period income of such claimant.

''(B) COORDINATION WITH SUBSECTION (a)(4)(B).—The amount of income described in subsection (a)(1)(A) which is taken into account in applying subsection (a)(4)(B) shall

be such income as reduced under this paragraph.''

(2) CONFORMING AMENDMENT.—Section 936(j)(2)(A), as amended by subsection (a), is amended by striking ''2002'' and inserting ''2006''.

(d) APPLICATION OF CREDIT.—

(1) IN GENERAL.—Section 936(j)(2)(A), as amended by this section, is amended by striking ''January 1, 2006'' and inserting ''the termination date''.

(2) SPECIAL RULES FOR APPLICABLE POSSESSIONS.—Section 936(j)(8)(A) is amended to read as follows:

''(A) IN GENERAL.—In the case of an applicable possession—

''(i) this section (other than the preceding paragraphs of this subsection) shall not apply for taxable years beginning after December 31, 1995, and before January 1, 2006, with respect to any substantial line of business actively conducted in such possession by a domestic corporation which is an existing credit claimant with respect to such line of business, and

''(ii) this section (including this subsection) shall apply—

''(I) with respect to any substantial line of business not described in clause (i) for taxable years beginning after December 31, 1997, and before the termination date, and

''(II) with respect to any substantial line of business described in clause (i) for taxable years beginning after December 31, 2006, and before the termination date.''

(3) TERMINATION DATE.—Section 936(j), as amended by subsection (b), is amended by adding at the end the following new paragraph.

''(13) TERMINATION DATE.—For purposes of this subsection—

''(A) IN GENERAL.—The termination date for any possession other than Puerto Rico is the first day of the 4th calendar year following the close of the first period for which a certification is issued by the Secretary under subparagraph (B).

''(B) CERTIFICATION.—

''(i) IN GENERAL.—The Secretary shall issue a certification for a possession under this subparagraph for the first 3-consecutive calendar year period beginning after December 31, 1997, for which the Secretary determines that the possession has met the requirements of clause (ii) for each calendar year within the period.

''(ii) REQUIREMENTS.—The requirements of this clause are met with respect to a possession for any calendar year if—

''(I) the average monthly rate of unemployment in the possession does not exceed 150 percent of the average monthly rate of unemployment for the United States for such year,

''(II) the per capita income of the possession is at least 66 percent of the per capita income of the United States, and

''(III) the poverty level within the possession does not exceed 30 percent.''

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

(2) NEW LINES OF BUSINESS.—The amendment made by subsection (b)(2) shall apply to taxable years beginning after December 31, 1995.

### Subtitle C—Revisions Relating to Disasters

**SEC. 741. 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, flood, or other weather-related conditions, and that such conditions''; and

(2) by inserting '', FLOOD, 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 '', flood, or other weather-related conditions'' before the period at the end thereof; and

(2) by inserting '', FLOOD, 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, 1996.

**SEC. 742. GAIN OR LOSS FROM SALE OF LIVESTOCK DISREGARDED FOR PURPOSES OF EARNED INCOME CREDIT.**

(a) IN GENERAL.—Section 32(i)(2)(D) (relating to disqualified income) is amended by inserting ''determined without regard to gain or loss from the sale of livestock described in section 1231(b)(3),'' after ''taxable year,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1995.

**SEC. 743. MORTGAGE FINANCING FOR RESIDENCES LOCATED IN DISASTER AREAS.**

Subsection (k) of section 143 (relating to mortgage revenue bonds; qualified mortgage bond and qualified veteran's mortgage bond) is amended by adding at the end the following new paragraph:

''(11) SPECIAL RULES FOR RESIDENCES LOCATED IN DISASTER AREAS.—In the case of a residence located in an area determined by the President to warrant assistance from the Federal Government under the Disaster Relief and Emergency Assistance Act (as in effect on the date of the enactment of the Revenue Reconciliation Act of 1997), this section shall be applied with the following modifications to financing provided with respect to such residence within 1 year after the date of the disaster declaration:

''(A) Subsection (d) (relating to 3-year requirement) shall not apply.

''(B) Subsections (e) and (f) (relating to purchase price requirement and income requirement) shall be applied as if such residence were a targeted area residence.

The preceding sentence shall apply only with respect to bonds issued after December 31, 1996, and before January 1, 1999.''

### Subtitle D—Provisions Relating to Small Businesses

**SEC. 751. WAIVER OF PENALTY THROUGH JUNE 30, 1998, ON SMALL BUSINESSES FAILING TO MAKE ELECTRONIC FUND TRANSFERS OF TAXES.**

No penalty shall be imposed under the Internal Revenue Code of 1986 solely by reason of a failure by a person to use the electronic fund transfer system established under section 6302(h) of such Code if—

(1) such person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and

(2) such failure occurs before July 1, 1998.

**SEC. 752. MINIMUM TAX NOT TO APPLY TO FARMERS' INSTALLMENT SALES.**

(a) IN GENERAL.—Subsection (a) of section 56 is amended by striking paragraph (6) (relating to treatment of installment sales).

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this section shall apply to dispositions in taxable years beginning after December 31, 1987.

(2) SPECIAL RULE FOR 1987.—In the case of taxable years beginning in 1987, the last sentence of section 56(a)(6) of the Internal Revenue Code of 1986 (as in effect for such taxable years) shall be applied by inserting ''or in the case of a taxpayer using the cash receipts and disbursements method of accounting, any disposition described in section 453C(e)(1)(B)(ii)'' after ''section 453C(e)(4)''.

### Subtitle E—Provisions Relating to Pensions and Fringe Benefits

**SEC. 761. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.**

(a) IN GENERAL.—Section 415(b)(11) is amended—

(1) by inserting ''or a multiemployer plan (as defined in section 414(f))'' after ''section 414(d))'', and

(2) by inserting ''AND MULTIEMPLOYER'' after ''GOVERNMENTAL'' in the heading thereof.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1997.

**SEC. 762. SPOUSAL CONSENT REQUIRED FOR CERTAIN DISTRIBUTIONS AND LOANS UNDER QUALIFIED CASH OR DEFERRED ARRANGEMENT.**

(a) IN GENERAL.—Section 401(k) is amended by adding at the end the following new paragraph:

''(13) SPOUSAL CONSENT REQUIRED.—

''(A) IN GENERAL.—An arrangement shall not be treated as a qualified cash or deferred arrangement unless—

''(i) a distribution under the plan of which such arrangement is a part, or

''(ii) a loan all or part of which is secured by the participant's interest in the plan of which such arrangement is a part,

may not be made without the written consent of the spouse.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply—

''(i) to distributions described in section 402(c)(4)(A) or 411(a)(11), or

''(ii) in any case described in section 417(a)(2) (relating to cases where spouse cannot be located).

''(C) OTHER RULES.—The Secretary shall prescribe rules similar to the rules under section 417 for the form and timing of any consent required by this paragraph.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply to plan years beginning after December 31, 1998.

(2) PLAN AMENDMENTS.—A plan shall not be treated as failing to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 merely because it is amended to meet the requirements of section 401(k)(4)(13) of such Code (as added by subsection (a)).

**SEC. 763. SECTION 401(k) INVESTMENT PROTECTION.**

(a) LIMITATIONS ON INVESTMENT IN EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CASH OR DEFERRED ARRANGEMENTS.—Paragraph (3) of section 407(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)) is amended by adding at the end the following new subparagraph:

''(D) The term 'eligible individual account plan' does not include that portion of an individual account plan that consists of elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) pursuant to a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code of 1986 (and earnings thereon), if such elective deferrals (or earnings thereon) are required to be invested in qualifying employer securities or qualifying employer real property or both pursuant to the documents and instruments governing the plan or at the direction of a person other than the participant (or the participant's beneficiary) on whose behalf such elective

deferrals are made to the plan. For the purposes of subsection (a), such portion shall be treated as a separate plan. This subparagraph shall not apply to an individual account plan if the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans maintained by the employer.''

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) TRANSITION RULE FOR PLANS HOLDING EXCESS SECURITIES OR PROPERTY.—

(A) IN GENERAL.—In the case of a plan which on the date of the enactment of this Act, has holdings of employer securities and employer real property (as defined in section 407(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)) in excess of the amount specified in such section 407, the amendment made by this section applies to any acquisition of such securities and property on or after such date, but does not apply to the specific holdings which constitute such excess during the period of such excess.

(B) SPECIAL RULE FOR CERTAIN ACQUISITIONS.—Employer securities and employer real property acquired pursuant to a binding written contract to acquire such securities and real property entered into and in effect on the date of the enactment of this Act, shall be treated as acquired immediately before such date.

**Subtitle F—Other Provisions**

**SEC. 771. ADJUSTMENT OF MINIMUM TAX EXEMPTION AMOUNTS FOR TAXPAYERS OTHER THAN CORPORATIONS.**

(a) IN GENERAL.—Subsection (d) of section 55 is amended by adding at the end the following new paragraph:

''(4) ADJUSTMENT OF EXEMPTION AMOUNTS FOR TAXPAYERS OTHER THAN CORPORATIONS.—

''(A) TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2000, AND BEFORE JANUARY 1, 2004.—In the case of any calendar year after 2000 and before 2004—

''(i) the dollar amount applicable under paragraph (1)(A) for such a calendar year shall be $600 greater than the dollar amount applicable under paragraph (1)(A) for the prior calendar year, and

''(ii) the dollar amount applicable under paragraph (1)(B) for such a calendar year shall be $400 greater than the dollar amount applicable under paragraph (1)(B) for the prior calendar year.

''(B) APPLICATION OF TAXABLE YEARS.—The dollar amount applicable under this paragraph to any calendar year shall apply to taxable years beginning in such calendar year.''

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 55(d)(1) is amended by striking ''$22,500'' and inserting ''the amount equal to ½ the dollar amount applicable under subparagraph (A) for the taxable year''.

(2) The last sentence of section 55(d)(3) is amended by striking ''$165,000 or (ii) $22,500'' and inserting ''the minimum amount of such income (as so determined) for which the exemption amount under paragraph (1)(C) is zero, or (ii) such exemption amount (determined without regard to this paragraph)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

**SEC. 772. TREATMENT OF COMPUTER SOFTWARE AS FSC EXPORT PROPERTY.**

(a) IN GENERAL.—Subparagraph (B) of section 927(a)(2) (relating to property excluded from eligibility as FSC export property) is amended by inserting '', and other than computer software (whether or not patented)'' before '', for commercial or home use''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to gross receipts attributable to periods after December 31, 1997, in taxable years ending after such date.

**SEC. 773. WELFARE-TO-WORK INCENTIVES.**

(a) ADDITIONAL TEMPORARY INCENTIVES FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—Section 51 (relating to amount of work opportunity credit) is amended by inserting after subsection (d) the following new subsection:

''(e) ADDITIONAL TEMPORARY INCENTIVES FOR EMPLOYING LONG-TERM FAMILY ASSISTANCE RECIPIENTS.—

''(1) TREATMENT AS MEMBER OF TARGETED GROUP.—A long-term family assistance recipient shall be treated for purposes of this section as a member of a targeted group.

''(2) MODIFICATION TO PERCENTAGE AND YEARS OF CREDIT.—In the case of a long-term family assistance recipient, the amount of the work opportunity credit determined under this section for the taxable year shall be equal to the sum of—

''(A) 50 percent of the qualified first-year wages, and

''(B) 50 percent of the qualified second-year wages.

''(3) MODIFICATION TO AMOUNT OF WAGES TAKEN INTO ACCOUNT.—In the case of a long-term family assistance recipient—

''(A) $10,000 OF WAGES MAY BE TAKEN INTO ACCOUNT.—In lieu of applying subsection (b)(3), the amount of the qualified first-year wages, and the amount of qualified second-year wages, which may be taken into account with respect to any individual shall not exceed $10,000 per year.

''(B) CERTAIN AMOUNTS TREATED AS WAGES.—The term 'wages' includes amounts paid or incurred by the employer which are excludable from such recipient's gross income under—

''(i) section 105 (relating to amounts received under accident and health plans),

''(ii) section 106 (relating to contributions by employer to accident and health plans),

''(iii) section 127 (relating to educational assistance programs) or would be so excludable but for section 127(d), but only to the extent paid or incurred to a person not related to the employer, or

''(iv) section 129 (relating to dependent care assistance programs).

The amount treated as wages by clause (i) or (ii) for any period shall be based on the reasonable cost of coverage for the period, but shall not exceed the applicable premium for the period under section 4980B(f)(4).

''(C) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If such recipient is an employee to which subparagraph (A) or (B) of subsection (h)(1) applies—

''(i) such subparagraph (A) shall be applied by substituting '$10,000' for '$6,000' and

''(ii) such subparagraph (B) shall be applied by substituting '$825' for '$500'.

''(D) TERMINATION.—In lieu of applying subsection (c)(4), this subsection shall not apply to amounts paid or incurred with respect to an individual who begins work for the employer after September 30, 2000.

''(4) LONG-TERM FAMILY ASSISTANCE RECIPIENT.—For purposes of this subsection, the term 'long-term family assistance recipient' means any individual who is certified by the designated local agency—

''(A) as being a member of a family receiving assistance under a IV-A program (as defined in subsection (d)(2)(B)) for at least the 18-month period ending with the month preceding the month in which the hiring date occurs,

''(B)(i) as being a member of a family receiving such assistance for 18 months beginning after the date of the enactment of this subsection, and

''(ii) as having a hiring date which is not more than 2 years after the end of the earliest such 18-month period, or

''(C)(i) as being a member of a family which ceased to be eligible after the date of the enactment of this subsection for such assistance by reason of any limitation imposed by Federal or State law on the maximum period such assistance is payable to a family, and

''(ii) as having a hiring date which is not more than 2 years after the date of such cessation.

''(5) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means, with respect to any individual, the qualified wages attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such individual determined under subsection (b)(2).''

(b) CERTAIN OLDER FOOD STAMP RECIPIENTS TREATED AS MEMBERS OF TARGETED GROUP.—Paragraph (8) of section 51(d) (defining qualified food stamp recipient) is amended to read as follows:

''(8) QUALIFIED FOOD STAMP RECIPIENT.—

''(A) IN GENERAL.—The term 'qualified food stamp recipient' means any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 25 on the hiring date, and

''(ii) as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for the 6-month period ending on the hiring date.

''(B) CERTAIN OLDER RECIPIENTS.—The term 'qualified food stamp recipient' includes any individual who is certified by the designated local agency—

''(i) as having attained age 18 but not age 50 on the hiring date,

''(ii) as being a recipient of benefits under the food stamp program who is affected by section 6(o) of the Food Stamp Act of 1977 but who has not been made ineligible for refusing to work in accordance with section 6(o)(2)(A) of such Act, or failing to comply with the requirements of a work program under subparagraph (B), (C), or (D) of section 6(o)(2)(A) of such Act, and

''(iii) as having a hiring date which is not more than 1 year after the date of such cessation.

''(C) TERMINATION.—In lieu of applying subsection (c)(4), this subsection shall not apply to amounts paid or incurred with respect to an individual who begins work for the employer after September 30, 2000.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work for the employer after the date of the enactment of this Act.

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## MC CAIN AMENDMENTS NOS. 528–529

(Ordered to lie on the table.)

Mr. MCCAIN submitted two amendments intended to be proposed by him to the bill, S. 949, supra; as follows:

AMENDMENT NO. 528

On page 183, beginning with line 22, strike through line 18 on page 192.

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AMENDMENT NO. 529

On page 192, line 18, after the period insert the following: ''This subsection shall not take effect until the first fiscal year beginning after the date on which an Act, enacted after the date of enactment of this Act, takes effect that provides for reform of Amtrak.''.

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## D'AMATO (AND DASCHLE) AMENDMENT NO. 530

(Ordered to lie on the table.)

Mr. D'AMATO (for himself and Mr. DASCHLE) submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

In section 1045, rollover of gain from qualified small business stock to another qualified small business stock, on page 106, line 12, strike ''5 years'' and in lieu of, insert ''6 months''

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## THOMAS AMENDMENT NO. 531

(Ordered to lie on the table.)

Mr. THOMAS submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . RESTORATION OF DEDUCTION FOR LOBBYING EXPENSES IN CONNECTION WITH STATE LEGISLATION.**

(a) IN GENERAL.—Paragraph (2) of section 162(e) (relating to denial of deduction for certain lobbying and political activities) is amended—

(1) by inserting ''any State legislature or of'' before ''any local council'' in the material preceeding subparagraph (A), and

(2) in subparagraph (B)(i), by striking ''such council'' and inserting ''such legislature, council,''.

(b) CLERICAL AMENDMENT.—The paragraph heading of paragraph (2) of section 162(e) is amended by inserting ''STATE OR'' before ''LOCAL''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

**SEC. . INCREASED MILEAGE REQUIREMENT FOR MOVING EXPENSES DEDUCTION.**

(a) IN GENERAL.—Paragraph (1) of section 217(c) (relating to moving expenses) is amended—

(1) in subparagraph (A), by striking ''50 miles'' and inserting ''55 miles''; and

(2) in subparagraph (B), by striking ''50 miles'' and inserting ''55 miles''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

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## LANDRIEU AMENDMENT NO. 532

(Ordered to lie on the table.)

Ms. LANDRIEU submitted an amendment intended to be proposed by her to the bill, S. 949, supra; as follows:

On page 13, beginning on line 9, strike all through page 17, line 23, and insert the following:

''(2) LIMITATION BASED ON ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—The $500 amount in subsection (a) shall be reduced (but not below zero) by $25 for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(B) THRESHOLD AMOUNT.—For purposes of subparagraph (A), the term 'threshold amount' means—

''(i) $90,000 in the case of a joint return,

''(ii) $60,000 in the case of an individual who is not married, and

''(iii) $45,000 in the case of a married individual filing a separate return.

For purposes of this subparagraph, marital status shall be determined under section 7703.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means any individual if—

''(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

''(B) such individual has not attained the age of 17 (age of 18 in the case of taxable years beginning after 2002) as of the close of the calendar year in which the taxable year of the taxpayer begins, and

''(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).

''(2) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States'.

''(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

''(e) RECAPTURE OF CREDIT.—

''(1) IN GENERAL.—If—

''(A) during any taxable year any amount is withdrawn from a qualified tuition program or an education individual retirement account maintained for the benefit of a beneficiary and such amount is subject to tax under section 529(f) or 530(c)(3), and

''(B) the amount of the credit allowed under this section for the prior taxable year was contingent on a contribution being made to such a program or account for the benefit of such beneficiary,

The taxpayer's tax imposed by this chapter for the taxable year shall be increased by the lesser of the amount described in subparagraph (A) or the credit described in subparagraph (B).

''(2) NO CREDITS AGAINST TAX, ETC.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit under this subpart or subpart B or D of this part, and

''(B) the amount of the minimum tax imposed by section 55.

''(f) OTHER DEFINITIONS.—For purposes of this section, the term 'qualified tuition program' and 'education individual retirement account' have the meanings given such terms by section 529 and 530, respectively.

''(g) PHASEIN OF CREDIT.—In the case of taxable years beginning in 1997—

''(1) subsection (a)(1) shall be applied by substituting '$250' for '$500', and

''(2) subsection (c)(1)(B) shall be applied by substituting 'age of 13' for 'age of 17'.''

(b) CONFORMING AMENDMENT.—The table of sections for supbart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 23 the following new item:

''Sec. 24. Child tax credit.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

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## FAIRCLOTH AMENDMENT NO. 533

(Ordered to lie on the table.)

Mr. FAIRCLOTH submitted an amendment intended to be proposed by him to bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . CURRENT REFUNDINGS OF CERTAIN TAX-EXEMPT BONDS.**

(a) IN GENERAL.—Subsection (c) of section 10632 of the Revenue Act of 1987 (relating to bonds issued by Indian tribal governments) is amended by adding at the end the following new sentence: ''The amendments made by this section shall not apply to any obligation issued after such date if—

''(1) such obligation is issued (or is part of a series of obligations issued) to refund an obligation issued on or before such date,

''(2) the average maturity date of the issue of which the refunding obligation is a part is not later than the average maturity date of the obligations to be refunded by such issue,

''(3) the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, and

''(4) the net proceeds of the refunding obligation are used to redeem the refunded obligation not later than 90 days after the date of the issuance of the refunding obligation.

For purposes of paragraph (2), average maturity shall be determined in accordance with section 147(b)(2)(A) of the Internal Revenue Code of 1986.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to refunding obligations issued after the date of the enactment of this Act.

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## BROWNBACK (AND OTHERS) AMENDMENT NO. 534

(Ordered to lie on the table.)

Mr. BROWNBACK (for himself, Mr. KOHL, and Mr. MCCAIN) submitted an amendment intended to be proposed by them to the bill, S. 949; as follows:

At the end of the pending Amendment, add the following:

**TITLE ____—BUDGET CONTROL**

**SEC. ___01. SHORT TITLE; PURPOSE.**

(a) SHORT TITLE.—This title may be cited as the ''Bipartisan Budget Enforcement Act of 1997''.

(b) PURPOSE.—The purpose of this title is—

(1) to ensure a balanced Federal budget by fiscal year 2002;

(2) to ensure that the Bipartisan Budget Agreement is implemented; and

(3) to create a mechanism to monitor total costs of direct spending programs, and, in the event that actual or projected costs exceed targeted levels, to require the President and Congress to address adjustments in direct spending.

**SEC. ___02. ESTABLISHMENT OF DIRECT SPENDING TARGETS.**

(a) IN GENERAL.—The initial direct spending targets for each of fiscal years 1998 through 2002 shall equal total outlays for all direct spending except net interest as determined by the Director of the Office of Management and Budget (hereinafter referred to in this title as the ''Director'') under subsection (b).

(b) INITIAL REPORT BY DIRECTOR.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this title, the Director shall submit a report to Congress setting forth projected direct spending targets for each of fiscal years 1998 through 2002.

(2) PROJECTIONS AND ASSUMPTIONS.—The Director's projections shall be based on legislation enacted as of 5 days before the report is submitted under paragraph (1). The Director shall use the same economic and technical assumptions used in preparing the concurrent resolution on the budget for fiscal year 1998 (H.Con.Res. 84).

**SEC. ___03. ANNUAL REVIEW OF DIRECT SPENDING AND RECEIPTS BY PRESIDENT.**

As part of each budget submitted under section 1105(a) of title 31, United States Code, the President shall provide an annual review of direct spending and receipts, which shall include—

(1) information on total outlays for programs covered by the direct spending targets, including actual outlays for the prior fiscal year and projected outlays for the current fiscal year and the 5 succeeding fiscal years; and

(2) information on the major categories of Federal receipts, including a comparison between the levels of those receipts and the levels projected as of the date of enactment of this title.

**SEC. ___04. SPECIAL DIRECT SPENDING MESSAGE BY PRESIDENT.**

(a) TRIGGER.—If the information submitted by the President under section ___03 indicates—

(1) that actual outlays for direct spending in the prior fiscal year exceeded the applicable direct spending target; or

(2) that outlays for direct spending for the current or budget year are projected to exceed the applicable direct spending targets,

the President shall include in his budget a special direct spending message meeting the requirements of subsection (b).

(b) CONTENTS.—

(1) INCLUSIONS.—The special direct spending message shall include—

(A) an analysis of the variance in direct spending over the direct spending targets; and

(B) the President's recommendations for addressing the direct spending overages, if any, in the prior, current, or budget year.

(2) ADDITIONAL MATTERS.—The President's recommendations may consist of any of the following:

(A) Proposed legislative changes to recoup or eliminate the overage for the prior, current, and budget years in the current year, the budget year, and the 4 outyears.

(B) Proposed legislative changes to recoup or eliminate part of the overage for the prior, current, and budget year in the current year, the budget year, and the 4 outyears, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, only some of the overage should be recouped or eliminated by outlay reductions or revenue increases, or both.

(C) A proposal to make no legislative changes to recoup or eliminate any overage, accompanied by a finding by the President that, because of economic conditions or for other specified reasons, no legislative changes are warranted.

(c) PROPOSED SPECIAL DIRECT SPENDING RESOLUTION.—If the President recommends reductions consistent with subsection (b)(2)(A) or (B), the special direct spending message shall include the text of a special direct spending resolution implementing the President's recommendations through reconciliation directives instructing the appropriate committees of the House of Representatives and Senate to determine and recommend changes in laws within their jurisdictions. If the President recommends no reductions pursuant to (b)(2)(C), the special direct spending message shall include the text of a special resolution concurring in the President's recommendation of no legislative action.

**SEC. ___05. REQUIRED RESPONSE BY CONGRESS.**

(a) IN GENERAL.—It shall not be in order in the House of Representatives or the Senate to consider a concurrent resolution on the budget unless that conference report fully addresses the entirety of any overage contained in the applicable report of the President under section ___04 through reconciliation directives.

(b) WAIVER AND SUSPENSION.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This section shall be subject to the provisions of section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985.

(c) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and controlled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

**SEC. ___06. RELATIONSHIP TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT.**

Reductions in outlays or increases in receipts resulting from legislation reported pursuant to section ___05 shall not be taken into account for purposes of any budget enforcement procedures under the Balanced Budget and Emergency Deficit Control Act of 1985.

**SEC. ___07. ESTIMATING MARGIN.**

For any fiscal year for which the overage is less than one-half of 1 percent of the direct spending target for that year, the procedures set forth in sections ___04 and ___05 shall not apply.

**SEC. ___08. EFFECTIVE DATE.**

This title shall apply to direct spending targets for fiscal years 1998 through 2002 and shall expire at the end of fiscal year 2002.

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## SANTORUM (AND OTHERS) AMENDMENT NO. 535

(Ordered to lie on the table.)

Mr. SANTORUM (for himself, Mr. ABRAHAM, Mr. COATS, Mr. COVERDELL, Mr. GRAMM, Mr. NICKLES, Mr. ENZI, Mr. HAGEL, Mr. ALLARD, and Mr. KYL) submitted an amendment intended to be proposed by them to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. —. SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate finds that—

(1) Congress has not provided a genuine tax cut for America's middle-class families since 1981;

(2) President Clinton promised middle-class tax cuts in 1992;

(3) President Clinton raised taxes by $240,000,000,000 in 1993;

(4) President Clinton vetoed middle-class tax cuts in 1995;

(5) the middle-class American worker had to work until May 9 in order to earn enough money to pay all Federal, State, and local taxes in 1997;

(6) the Joint Economic Committee reports that real total Government taxes per household in 1994 totaled $18,600;

(7) more than 70 percent of the tax cuts in both the House of Representatives and the Senate tax relief bills will go to Americans earning less than $75,000 annually;

(8) the Joint Economic Committee estimates that a family of 4 earning $30,000 will receive 53 percent of the tax relief under the reconciliation bill;

(9) the earned income tax credit was already expanded in President Clinton's 1993 tax bill;

(10) the fiscal year 1998 budget resolution does not make the $500-per-child tax credit refundable; and

(11) those who receive the earned income tax credit do not pay Federal income taxes but receive a substantial cash transfer from the Federal Government in the form of refund checks above and beyond income tax rebates.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that America's middle-class taxpayers shoulder the biggest tax burden and that only those who pay Federal income taxes should benefit from the tax cuts contained in the Revenue Reconciliation Act of 1997.

## SANTORUM (AND OTHERS) AMENDMENT NO. 536

(Ordered to lie on the table.)

Mr. SANTORUM (for himself, Mr. ABRAHAM, and Mr. ENZI) submitted an amendment intended to be proposed by them to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate finds that—

(1) the Department of the Treasury relies upon the Family Economic Income broad-based income concept to estimate family incomes and the impact of Federal income tax relief;

(2) the Family Economic Income is constructed by adding to adjusted gross income unreported and underreported income; nontaxable transfer payments such as social security payments and TANF payments; employer-provided fringe benefits; inside buildup on pensions, IRAs, Keoghs, and life insurance; tax-exempt interest; and imputed rent on owner-occupied housing;

(3) neither individual families nor the Internal Revenue Service (IRS) rely on or use Family Economic Income as a calculation of income;

(4) the Treasury Department, using Family Economic Income, estimates that 65.5 percent of the tax relief under the Revenue Reconciliation Act of 1997 will go to the top 20 percent of taxpayers;

(5) the Treasury Department, using Family Economic Income, estimates that the top 10 percent of taxpayers would get 42.8 percent of the tax relief under the Revenue Reconciliation Act of 1997;

(6) the Joint Committee on Taxation, using conventional income calculations, estimates that 74 percent of the tax relief under the reconciliation bill will actually benefit those families with income under $75,000;

(7) the Joint Committee on Taxation, using conventional income calculations, estimates that 93 percent of the tax relief under the Revenue Reconciliation Act of 1997 will actually benefit those families with income under $100,000; and

(8) the Joint Economic Committee, using conventional income calculations, estimates that a family of 4 earning $30,000 will receive 53 percent of the tax relief under the Revenue Reconciliation Act of 1997.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that Family Economic Income overstates and unfairly skews family incomes, making those with lower incomes appear to be rich.

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## DOMENICI (AND LAUTENBERG) AMENDMENT NO. 537

Mr. DOMENICI (for himself and Mr. LAUTENBERG) proposed an amendment to the bill. S. 949, supra; as follows:

At the end of the bill, add the following:

**TITLE XV—BUDGET ENFORCEMENT**

**SEC. 1500. TABLE OF CONTENTS.**

The table of contents for this title is as follows:

**Subtitle A—Amendments to the Congressional Budget and Impoundment Control Act of 1974**

**SEC. 1511. AMENDMENTS TO SECTION 201.**

Section 201 of the Congressional Budget Act of 1974 is amended by redesignating subsection (g) (relating to revenue estimates) as subsection (f).

**SEC. 1512. AMENDMENTS TO SECTION 202.**

(a) ASSISTANCE TO BUDGET COMMITTEES.—The first sentence of section 202(a) of the Congressional Budget Act of 1974 is amended by inserting ''primary'' before ''duty''.

(b) ELIMINATION OF EXECUTED PROVISION.—Section 202 of the Congressional Budget Act of 1974 is amended by striking subsection (e) and by redesignating subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively.

**SEC. 1513. AMENDMENT TO SECTION 300.**

The item relating to February 25 in the timetable set forth in section 300 of the Congressional Budget Act of 1974 is amended by striking ''February 25'' and inserting ''Within 6 weeks after President submits budget''.

**SEC. 1514. AMENDMENTS TO SECTION 301.**

(a) TERMS OF BUDGET RESOLUTIONS.—Section 301(a) of the Congressional Budget Act of 1974 is amended by striking '', and planning levels for each of the two ensuing fiscal years,'' and inserting ''and for at least each of the 4 ensuing fiscal years''.

(b) CONTENTS OF BUDGET RESOLUTIONS.—Paragraphs (1) and (4) of section 301(a) of the Congressional Budget Act of 1974 are amended by striking '', budget outlays, direct loan obligations, and primary loan guarantee commitments'' each place it appears and inserting ''and budget outlays''.

(c) ADDITIONAL MATTERS.—Section 301(b) of the Congressional Budget Act of 1974 is amended by—

(1) amending paragraph (7) to read as follows—

''(7) set forth pay-as-you-go procedures in the Senate whereby committee allocations, aggregates, and other levels can be revised for legislation if such legislation would not increase the deficit or would not increase the deficit when taken with other legislation enacted after the adoption of the resolution for the first fiscal year or the total period of fiscal years covered by the resolution;'';

(2) in paragraph 8, striking the period and inserting ''; and''; and

(3) adding the following new paragraph:

''(9) set forth direct loan obligations and primary loan commitment guarantee levels.''.

(d) VIEWS AND ESTIMATES.—The first sentence of section 301(d) of the Congressional Budget Act of 1974 is amended by inserting ''or at such time as may be requested by the Committee on the Budget,'' after ''Code,''.

(e) HEARINGS AND REPORT.—Section 301(e) of the Congressional Budget Act of 1974 is amended—

(1) by striking ''In developing'' and inserting the following:

''(1) IN GENERAL.—In developing''; and

(2) by striking the sentence beginning with ''The report accompanying '' and all that follows through the end of the subsection and inserting the following:

''(2) REQUIRED CONTENTS OF REPORT.—The report accompanying such concurrent resolution shall include—

''(A) a comparison of the appropriate levels of total new budget authority, total budget outlays, and total revenues as set forth in such concurrent resolution with those requested in the budget submitted by the President;

''(B) with respect to each major functional category, an estimate of total new budget authority and total outlays with the estimates divided between permanent authority and funds provided in appropriations Acts;

''(C) the economic assumptions which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives that the committee considered;

''(D) projections for the period of 5 fiscal years beginning with such fiscal year, of the estimated levels of total new budget authority, total outlays and total revenues and the surplus or deficit for each fiscal year;

''(E) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolutions;

''(F) the estimated levels of tax expenditures (the tax expenditures budget) by major items and functional categories for the President's budget and in the concurrent resolution; and

''(G) allocations described in section 302(a).

''(3) ADDITIONAL CONTENTS OF REPORT.—The report accompanying such concurrent resolution may include—

''(A) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

''(B) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

''(C) information, data, and comparisons on the share of total Federal budget outlays and of gross domestic product devoted to investment in the budget submitted by the President and in the concurrent resolution; and

''(D) other matters, relating to the budget and fiscal policy, the committee deems appropriate.''.

(f) SOCIAL SECURITY CORRECTIONS.—Section 301(i) of the Congressional Budget Act of 1974 is amended by—

(1) inserting ''SOCIAL SECURITY POINT OF ORDER.—'' after ''(i)''; and

(2) striking ''as reported to the Senate'' and inserting ''(or amendment, motion, or conference report on such a resolution)''.

(g) REPEAL OF BUDGET RESOLUTION PROVISION.—Section 22 of House Concurrent Resolution 218 (103d Congress) is repealed.

**SEC. 1515. AMENDMENTS TO SECTION 302.**

(a) ALLOCATIONS AND SUBALLOCATIONS.—Subsections (a) and (b) of section 302 of the Congressional Budget Act of 1974 are amended to read as follows:

''(a) COMMITTEE SPENDING ALLOCATIONS.—

''(1) HOUSE OF REPRESENTATIVES.—

''(A) ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include allocations, consistent with the resolution recommended in the conference report, of the appropriate levels (for each fiscal year covered by that resolution and a total for all such years) of—

''(i) total new budget authority;

''(ii) total entitlement authority; and

''(iii) total outlays;

among each committee of the House of Representatives that has jurisdiction over legislation providing or creating such amounts.

''(B) NO DOUBLE COUNTING.—Any item allocated to one committee of the House of Representatives may not be allocated to another such committee.

''(C) FURTHER DIVISION OF AMOUNTS.—The amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations for each fiscal year shall be further divided between discretionary and mandatory amounts or programs, as appropriate.

''(2) SENATE ALLOCATION AMONG COMMITTEES.—The joint explanatory statement accompanying a conference report on a budget resolution shall include an allocation, consistent with the resolution recommended in the conference report, of the appropriate levels of—

''(A) total new budget authority; and

''(B) total outlays;

among each committee of the Senate that has jurisdiction over legislation providing or creating such amounts.

''(3) AMOUNTS NOT ALLOCATED.—

''(A) IN THE HOUSE.—In the House of Representatives, if a committee receives no allocation of new budget authority, entitlement authority, or outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, entitlement authority, or outlays.

''(B) IN THE SENATE.—In the Senate, if a committee receives no allocation of new budget authority, outlays, or social security outlays, that committee shall be deemed to have received an allocation equal to zero for new budget authority, outlays, or social security outlays.

''(4) SCOPE OF ALLOCATIONS IN THE SENATE.—In the Senate, the allocations made pursuant to paragraph (2) shall be made for all committees for the first fiscal year covered by the resolution and for all committees other than the Committee on Appropriations for the period of fiscal years covered by such resolution.

''(b) SUBALLOCATIONS BY APPROPRIATION COMMITTEES.—As soon as practicable after a concurrent resolution on the budget is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the other House) shall suballocate each amount allocated to it for the budget year under subsection (a)(1)(A) or (a)(2) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this paragraph.''.

(b) POINT OF ORDER.—Section 302(c) of the Congressional Budget Act of 1974 is amended to read as follows:

''(c) POINT OF ORDER.—After the Committee on Appropriations has received an allocation pursuant to subsection (a) for a fiscal year, it shall not be in order in the House of

Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report providing new budget authority for that fiscal year within the jurisdiction of that committee, until such committee makes the suballocations required by subsection (b).''.

(c) ENFORCEMENT OF POINT OF ORDER.—Section 302(f)(2) of the Congressional Budget Act of 1974 is amended to read as follows:

''(2) ENFORCEMENT OF COMMITTEE ALLOCATIONS AND SUBALLOCATIONS.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, joint resolution, amendment, motion, or conference report that would cause—

''(A) in the case of any committee except the Committee on Appropriations, the appropriate allocation of new budget authority or outlays under subsection (a) to be exceeded; or

''(B) in the case of the Committee on Appropriations, the appropriate suballocation of new budget authority or outlays under subsection (b) to be exceeded.''.

(d) SEPARATE ALLOCATIONS.—Section 302(g) is amended to read as follows:

''(g) SEPARATE ALLOCATIONS.—The Committees on Appropriations and the Budget shall make separate allocations under subsections (a) and (b) consistent with the categories in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985.''

**SEC. 1516. AMENDMENTS TO SECTION 303.**

(a) IN GENERAL.—Section 303 of the Congressional Budget Act of 1974 is amended—

(1) by striking ''NEW CREDIT AUTHORITY,'' in the center heading;

(2) by striking paragraph (4) of subsection (a) and be redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively;

(3) in subsection (b)(1)(A), by inserting ''advanced, discretionary'' before ''new budget authority''; and

(4) by striking subsection (c).

(b) CONFORMING AMENDMENT.—The item relating to section 303 in the table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''new credit authority,''.

**SEC. 1517. AMENDMENT TO SECTION 305.**

Section 305(a)(1) of the Congressional Budget Act of 1974 is amended by inserting ''when the House is not in session'' after ''holidays'' each place it appears.

**SEC. 1518. AMENDMENT TO SECTION 308.**

(a) ELIMINATION OF REFERENCES TO CREDIT AUTHORITY.—Section 308 of the Congressional Budget Act of 1974 is amended—

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

''REPORTS ON SPENDING AND REVENUE LEGISLATION'';

(2) in paragraphs (1) and (2) of subsection (a), by striking ''or new credit authority,'' each place it appears and insert ''and'' before ''new spending'' each place it appears;

(3) in subsection (b)(1), by striking ''or new credit authority,'' and insert ''and'' before ''new spending''; and

(4) in subsection (c), by inserting ''and'' after the semicolon at the end of paragraph (3), strike ''; and'' at the end of paragraph (4) and insert a period; and strike paragraph (5).

(b) CONFORMING AMENDMENT.—The item relating to section 308 in the table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''or new credit authority'' and by inserting ''and'' after the first comma.

**SEC. 1519. AMENDMENTS TO SECTION 311.**

Section 311 of the Congressional Budget Act of 1974 is amended to read as follows:

''NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

''SEC. 311. (a) ENFORCEMENT OF BUDGET AGGREGATES.—

''(1) IN THE HOUSE OF REPRESENTATIVES.—Except as provided by subsection (c), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint resolution, amendment, motion, or conference report providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, if—

''(A) the enactment of such bill or resolution as reported;

''(B) the adoption and enactment of such amendment; or

''(C) the enactment of such bill or resolution in the form recommended in such conference report;

would cause the appropriate level of total new budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution except in the case that a declaration of war by the Congress is in effect.

''(2) IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that—

''(A) would cause the appropriate level of total new budget authority or total outlays set forth for the first fiscal year in such resolution to be exceeded; or

''(B) would cause revenues to be less than the appropriate level of total revenues set forth for the first fiscal year covered by such resolution or for the period including the first fiscal year plus the following 4 fiscal years in such resolution.

''(3) ENFORCEMENT OF SOCIAL SECURITY LEVELS IN THE SENATE.—After a concurrent resolution on the budget is agreed to, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause a decrease in social security surpluses or an increase in social security deficits derived from the levels of social security revenues and social security outlays set forth for the first fiscal year covered by the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such resolution.

''(b) SOCIAL SECURITY LEVELS.—

''(1) IN GENERAL.—For the purposes of subsection (a)(3), social security surpluses equal the excess of social security revenues over social security outlays in a fiscal year or years with such an excess and social security deficits equal the excess of social security outlays over social security revenues in a fiscal year or years with such an excess.

''(2) TAX TREATMENT.—For the purposes of this section, no provision of any legislation involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues or outlays unless such provision changes the income tax treatment of social security benefits.

''(c) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.—Subsection (a)(1) shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget authority or new entitlement authority effective during such fiscal year, or to any conference report on any such bill or resolution, if—

''(1) the enactment of such bill or resolution as reported;

''(2) the adoption and enactment of such amendment; or

''(3) the enactment of such bill or resolution in the form recommended in such conference report;

would not cause the appropriate allocation of new discretionary budget authority or new entitlement authority made pursuant to section 302(a) for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.''.

**SEC. 1520. AMENDMENT TO SECTION 312.**

(a) IN GENERAL.—Section 312 of the Congressional Budget Act of 1974 is amended to read as follows:

''POINTS OF ORDER

''SEC. 312. (a) DETERMINATIONS.—For purposes of this title and title IV, the levels of new budget authority, budget outlays, spending authority as described in section 401(c)(2), direct spending, new entitlement authority, and revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

''(b) DISCRETIONARY SPENDING POINT OF ORDER IN THE SENATE.—

''(1) Except as otherwise provided in this subsection, it shall not be in order in the Senate to consider any concurrent resolution on the budget (or amendment, motion, or conference report on such a resolution) that would exceed any of the discretionary spending limits in section 251(c) of the Balanced Budget and Emergency Deficit Control Act of 1985.

''(2) This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been enacted.

''(c) MAXIMUM DEFICIT AMOUNT POINT OF ORDER IN THE SENATE.—It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year under section 301, or to consider any amendment to that concurrent resolution, or to consider a conference report on that concurrent resolution—

''(1) if the level of total budget outlays for the first fiscal year that is set forth in that concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount, if any, specified in the Balanced Budget and Emergency Deficit Control Act of 1985 for such fiscal year; or

''(2) if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount, if any, specified in the Balanced Budget and Emergency Deficit Control Act of 1985 for such fiscal year.

''(d) TIMING OF POINTS OF ORDER IN THE SENATE.—A point of order under this Act may not be raised against a bill, resolution, amendment, motion, or conference report while an amendment or motion, the adoption of which would remedy the violation of this Act, is pending before the Senate.

''(e) POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES.—Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment

between the Houses, and the point of order is sustained, the effect shall be the same as if the Senate had disagreed to the amendment.

''(f) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE.—In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.''.

(b) CONFORMING AMENDMENTS.—Sections 302(g), 311(c), and 313(e) of the Congressional Budget Act of 1974 are repealed.

**SEC. 1521. ADJUSTMENTS.**

(a) IN GENERAL.—Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new sections:

''ADJUSTMENTS

''SEC. 314. (a) ADJUSTMENTS.—When—

''(1)(A) the Committee on Appropriations reports an appropriation measure for fiscal year 1998, 1999, 2000, 2001, or 2002 that specifies an amount for emergencies pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 or for continuing disability reviews pursuant to section 251(b)(2)(C) of that Act;

''(B) any other committee reports emergency legislation described in section 252(e) of that Act;

''(C) the Committee on Appropriations reports an appropriation measure for fiscal year 1998, 1999, 2000, 2001, or 2002 that includes an appropriation with respect to clause (i) or (ii), the adjustment shall be the amount of budget authority in the measure that is the dollar equivalent, in terms of Special Drawing Rights, of—

''(i) an increase in the United States quota as part of the International Monetary Fund Eleventh General Review of Quotas (United States Quota); or

''(ii) an increase in the maximum amount available to the Secretary of the Treasury pursuant to section 17 of the Bretton Woods Agreements Act, as amended from time to time (New Arrangements to Borrow); or

''(D) the Committee on Appropriations reports an appropriation measure for fiscal year 1998, 1999, or 2000 that includes an appropriation for arrearages for international organizations, international peacekeeping, and multilateral development banks during that fiscal year, and the sum of the appropriations for the period of fiscal years 1998 through 2000 does not exceed $1,884,000,000 in budget authority; or

''(2) a conference committee submits a conference report thereon;

the chairman of the Committee on the Budget of the Senate or House of Representatives (whichever is appropriate) shall make the adjustments referred to in subsection (c) to reflect the additional new budget authority for such matter provided in that measure or conference report and the additional outlays flowing from such amounts for such matter.

''(b) APPLICATION OF ADJUSTMENTS.—The adjustments and revisions to allocations, aggregates, and limits made by the Chairman of the Committee on the Budget pursuant to subsection (a) for legislation shall only apply while such legislation is under consideration shall only permanently take effect upon the enactment of that legislation.

''(c) CONTENT OF ADJUSTMENTS.—The adjustments referred to in subsection (a) shall consist of adjustments, as appropriate, to—

''(1) the discretionary spending limits as set forth in the most recently adopted concurrent resolution on the budget;

''(2) the allocations made pursuant to the most recently adopted concurrent resolution on the budget pursuant to section 302(a); and

''(3) the budgetary aggregates as set forth in the most recently adopted concurrent resolution on the budget.

''(d) REPORTING REVISED SUBALLOCATIONS.—Following the adjustments made under subsection (a), the Committees on Appropriations of the Senate and the House of Representatives shall report appropriately revised suballocations pursuant to section 302(b) to carry out this subsection.

''(e) DEFINITIONS.—As used in subsection (a)(1)(A), when referring to continuing disability reviews, the terms 'continuing disability reviews', 'additional new budget authority', and 'additional outlays' shall have the same meanings as provided in section 251(b)(2)(C)(ii) of the Balanced Budget and Emergency Deficit Control Act of 1985.''.

(b) TABLE OF CONTENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by—

(1) striking the item for section 312 and inserting the following:

''Sec. 312. Points of order.''; and

(2) adding after the item relating to section 313 the following new item:

''Sec. 314. Adjustments.''.

**SEC. 1522. AMENDMENTS TO TITLE V.**

(a) SECTION 502.—Section 502 of the Federal Credit Reform Act of 1990 is amended as follows:

(1) In the second sentence of paragraph (1), insert ''and refinancing arrangements that defer payment for more than 90 days, including the sale of a government asset on credit terms'' before the period.

(2) In paragraph (5)(A), insert ''or modification thereof'' before the first comma.

(3) In paragraph (5)(B)(iii), strike ''and other recoveries'' and insert '', other recoveries, and routine workouts of troubled loans or loans in imminent default when those workouts are to maximize repayments to the Government or to minimize claims on the Government''.

(4) In paragraph (5)(C), strike '', and'' at the end of clause (i), strike ''the'' in clause (ii) and strike the period and insert '', and'' at the end of that clause, and at the end add the following new clause:

''(iii) routine workouts of troubled loans or loans in imminent default when those workouts are to maximize the repayments to the Government or to minimize claims on the Government.''.

(5) In paragraph (5), amend subparagraph (D) to read as follows:

''(D) The cost of a modification is the difference in cost that results from the modification of a direct loan or loan guarantee (or direct loan obligation or loan guarantee commitment). This difference in cost is the difference between the currently estimated net present value of the remaining cash flows under the terms of the direct loan or loan guarantee contract assumed in the most recent President's budget submitted to Congress, and the currently estimated net present value of the remaining cash flows under the terms of the contract, as modified. Except for interest rates, the estimates shall be consistent with the economic and technical assumptions underlying the most recent President's budget submitted to Congress.''.

(6) Redesignate paragraph (9) as paragraph (10) and after paragraph (8) add the following new paragraph:

''(9) The term 'modification' means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the estimate based on the cash flows contained in the most recent President's budget submitted to Congress. This includes the sale of loan assets, with or without recourse, and the purchase of guaranteed loans. This also includes any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments) such as a change in collection procedures. The term 'modification' does not include the routine administrative work-outs of troubled loans or loans in imminent default. Work-outs are actions undertaken to maximize the repayments to the Government under existing direct loans or to minimize claims under existing loan guarantees. The expected effects of such work-outs shall be included in the original estimate of the cash flows. Insofar as the effects on cash flows are more or less than originally estimated, the differences in cash flows shall be included in a reestimate of the cost. The term 'modification' does not include changes in loan or guarantee terms resulting from the exercise by the borrower of an option included in the loan or guarantee contract. The expected effects of such changes in terms shall be included in the original estimate of the cash flow. Insofar as the effects on cash flow are more or less than originally estimated, the differences in cash flow shall be included in a reestimate of the cost; and''.

(b) SECTION 504.—Section 504 of the Federal Credit Reform Act of 1990 is amended as follows:

(1) Amend subsection (b)(1) to read as follows:

''(1) new budget authority to cover their costs is provided in advance in appropriation Acts;''.

(2) In subsection (b)(2), strike ''enacted'' and insert ''provided in an appropriation Act''.

(3) In subsection (d)(1), strike ''directly or indirectly alter the costs of outstanding direct loans and loan guarantees'' and insert ''modify outstanding direct loans (or direct loan obligations) or loan guarantees (or loan guarantee commitments)''.

(4) In subsection (e), strike ''A direct loan obligation or loan guarantee commitment'' and insert ''An outstanding direct loan (or direct loan obligation) or loan guarantee (or loan guarantee commitment)'', after ''unless'' insert ''new'', and strike ''or from other budgetary resources''.

(c) SECTION 505.—Section 505 of the Federal Credit Reform Act of 1990 is amended as follows:

(1) In subsection (c), by inserting before the period at the end of the second sentence the following: '', except that the rate of interest charged by the Secretary on lending to financing accounts (including amounts treated as lending to financing accounts by the Federal Financing Bank (hereinafter in this subsection referred to as the 'Bank') pursuant to section 406(b)) and the rate of interest paid to financing accounts on uninvested balances in financing accounts shall be the same as the rate determined pursuant to section 502(5)(E). For guaranteed loans financed by the Bank and treated as direct loans by a Federal agency pursuant to section 406(b), any fee or interest surcharge (the amount by which the interest rate charged exceeds the rate determined pursuant to section 502(5)(E)) that the Bank charges to a private borrower pursuant to section 6(c) of the Federal Financing Bank Act of 1973 shall be considered a cash flow to the Government for the purposes of determining the cost of the direct loan pursuant to section 502(5). All such amounts shall be credited to the appropriate financing account. The Bank is authorized to require reimbursement from a Federal agency to cover the administrative expenses of the Bank that are attributable to the direct loans financed for that agency. All such payments by an agency shall be considered administrative

expenses subject to section 504(g). This section shall apply to transactions related to direct loan obligations or loan guarantee commitments made on or after October 1, 1991.''.

(2) In subsection (c), by striking ''supercede'' and inserting ''supersede''.

(3) By amending subsection (d) to read as follows:

''(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.—(1) Amounts in liquidating accounts shall be available only for payments resulting from direct loan obligations or loan guarantee commitments made prior to October 1, 1991. These payments shall include—

''(A) interest payments and principal repayments to the Treasury or the Federal Financing Bank for amounts borrowed;

''(B) disbursements of loans;

''(C) default and other guarantee claim payments;

''(D) interest supplement payments;

''(E) payments for the costs of foreclosing, managing, and selling collateral that are capitalized or routinely deducted from the proceeds of sales;

''(F) payments to financing accounts when required for modifications;

''(G) administrative expenses, if—

''(i) amounts credited to the liquidating account would have been available for administrative expenses under a provision of law in effect prior to October 1, 1991; and

''(ii) no direct loan obligation or loan guarantee commitment has been made, or any modification of a direct loan or loan guarantee has been made, since September 30, 1991; and

''(H) such other payments as are necessary for the liquidation of such direct loan obligations and loan guarantee commitments.

''(2) Amounts credited to liquidating accounts in any year shall be available only for payments required in that year. Any unobligated balances in liquidating accounts at the end of a fiscal year shall be transferred to miscellaneous receipts as soon as practicable after the end of the fiscal year.

''(3) If funds in liquidating accounts are insufficient to satisfy obligations and commitments of said accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.''.

**SEC. 1523. REPEAL OF TITLE VI.**

(a) REPEALER.—Title VI of the Congressional Budget Act of 1974 is repealed.

(b) CONFORMING AMENDMENTS.—Title VI of the table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is repealed.

**SEC. 1524. AMENDMENTS TO SECTION 904.**

(a) WAIVERS.—Section 904(c) of the Congressional Budget Act of 1974 is amended to read as follows:

''(c) WAIVERS.—

''(1) Sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

''(2) Sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(I), 258B(f)(1), 258B(h)(1), 258(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.''.

(b) APPEALS.—Section 904(d) of the Congressional Budget Act of 1974 is amended to read as follows:

''(d) APPEALS.—

''(1) Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV or section 1017 shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be.

''(2) An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 310(d)(2), 313, 904(c), and 904(d) of this Act.

''(3) An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(g), 311(a), 312(b), and 312(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(I), 258B(f)(1), 258B(h)(1), 258(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.''.

(c) EXPIRATION OF SUPERMAJORITY VOTING REQUIREMENTS.—Section 904 of the Congressional Budget Act of 1974 is amended by adding at the end the following:

''(e) EXPIRATION OF CERTAIN SUPERMAJORITY VOTING REQUIREMENTS.—Subsections (c)(2) and (d)(3) shall expire on September 30, 2002.''.

**SEC. 1525. REPEAL OF SECTIONS 905 AND 906.**

(a) REPEALER.—Sections 905 and 906 of the Congressional Budget and Impoundment Control Act of 1974 are repealed.

(b) CONFORMING AMENDMENTS.—The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking the items relating to sections 905 and 906.

**SEC. 1526. AMENDMENTS TO SECTIONS 1022 AND 1024.**

(a) SECTION 1022.—Section 1022(b)(1)(F) of Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''section 601'' and inserting ''section 251(c) the Balanced Budget and Emergency Deficit Control Act of 1985''.

(b) SECTION 1024.—Section 1024(a)(1)(B) of Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''section 601(a)(2)'' and inserting ''section 251(c) the Balanced Budget and Emergency Deficit Control Act of 1985''.

**SEC. 1527. AMENDMENT TO SECTION 1026.**

Section 1026(7)(A)(iv) of the Congressional Budget and Impoundment Control Act of 1974 is amended by striking ''and'' the second place it appears and inserting ''or''.

## Subtitle B—Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985

**SEC. 1551. PURPOSE.**

This subtitle extends discretionary spending limits and pay-as-you-go requirements.

**SEC. 1552. GENERAL STATEMENT AND DEFINITIONS.**

(a) GENERAL STATEMENT.—Section 250(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking the first two sentences and inserting the following: ''This part provides for the enforcement of a balanced budget by fiscal year 2002 as called for in House Concurrent Resolution 84 (105th Congress, 1st session).''.

(b) DEFINITIONS.—Section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking paragraph (4) and inserting the following:

''(4) The term 'category' means defense, nondefense, and violent crime reduction discretionary appropriations as specified in the joint explanatory statement accompanying a conference report on the Balanced Budget Act of 1997. New accounts or activities shall be categorized only after consultation with the committees on Appropriations and the Budget of the House of Representatives and the Senate and such consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to new accounts or activities.'';

(2) by striking paragraph (6) and inserting the following:

''(6) The term 'budgetary resources' means new budget authority, unobligated balances, direct spending authority, and obligation limitations.'';

(3) in paragraph (9), by striking ''submission of the fiscal year 1992 budget that are not included with a budget submission'' and inserting ''that budget submission that are not included with that budget submission'';

(4) in paragraph (14), by inserting ''first 4'' before ''fiscal years'' and by striking ''1995'' and inserting ''2006''; and

(5) by striking paragraphs (17) and (20) and by redesignating paragraphs (18), (19), and (21) as paragraphs (17), (18), and (19), respectively.

**SEC. 1553. ENFORCING DISCRETIONARY SPENDING LIMITS.**

(a) EXTENSION THROUGH FISCAL YEAR 2002.—Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in the side heading of subsection (a), by striking ''1991–1998'' and inserting ''1997–2002'';

(2) in subsection (a)(7), by inserting ''(excluding Saturdays, Sundays, and legal holidays)'' after ''days'';

(3) in the first sentence of subsection (b)(1), by striking ''1992, 1993, 1994, 1995, 1996, 1997 or 1998'' and inserting ''1997 or any fiscal year thereafter through 2002'' and by striking ''through 1998'' and inserting ''through 2002'';

(4) in subsection (b)(1), by striking ''the following:'' and all that follows through ''in concepts and definitions'' the first place it appears and inserting ''the following: the adjustments'' and by striking subparagraphs (B) and (C);

(5) in subsection (b)(1), as amended, by striking the last sentence and inserting ''Changes in concepts and definitions may only be made after consultation with the committees on Appropriations and the Budget of the House of Representatives and the Senate and such consultation shall include written communication to such committees that affords such committees the opportunity to comment before official action is taken with respect to such changes.'';

(6) in subsection (b)(2), by striking ''1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998'' and inserting ''1997 or any fiscal year thereafter through 2002'', by striking ''through 1998'' and inserting ''through 2002'', and by striking subparagraphs (A), (B), (C), (E), and (G), and by redesignating subparagraphs (D), (F), and (H) as subparagraphs (A), (B), and (C), respectively;

(7) in subsection (b)(2)(A), as redesignated, by striking ''(i)'', by striking clause (ii), and by inserting ''fiscal'' before ''years'';

(8) in subsection (b)(2)(B), as redesignated, by striking everything after ''the adjustment in outlays'' and inserting ''for a fiscal year is the amount of the excess but not to exceed 0.5 percent of the adjusted discretionary spending limit on outlays for that fiscal year in fiscal year 1997 or any fiscal year thereafter through 2002;

(9) in subsection (b)(2)(C)(i), as redesignated—

(A) in subclause (III) by striking ''$245,000,000'' and inserting ''$290,000,000'';

(B) in subclause (IV), by striking ''$280,000,000'' and inserting ''$520,000,000'';

(C) in subclause (V), by striking ''$317,500,000'' and inserting ''$520,000,000'';

(D) in subclause (VI), by striking ''$317,500,000'' and inserting ''$520,000,000''; and

(E) in subclause (VII), by striking ''$317,000,000'' and inserting ''$520,000,000''; and

(10) by adding at the end of subsection (b)(2) the following:

''(D) ALLOWANCE FOR IMF.—If an appropriations bill or joint resolution is enacted for fiscal year 1998, 1999, 2000, 2001, or 2002 that includes an appropriation with respect to clause (i) or (ii), the adjustment shall be the amount of budget authority in the measure that is the dollar equivalent, in terms of Special Drawing Rights, of—

''(i) an increase in the United States quota as part of the International Monetary Fund Eleventh General Review of Quotas (United States Quota); or

''(ii) any increase in the maximum amount available to the Secretary of the Treasury pursuant to section 17 of the Bretton Woods Agreements Act, as amended from time to time (New Arrangements to Borrow).

''(E) ALLOWANCE FOR INTERNATIONAL ARREARAGES.—

''(i) ADJUSTMENTS.—If an appropriations bill or joint resolution is enacted for fiscal year 1998, 1999 or 2000 that includes an appropriation for arrearages for international organizations, international peacekeeping, and multilateral development banks for that fiscal year, the adjustment shall be the amount of budget authority in such measure and the outlays flowing in all fiscal years from such budget authority.

''(ii) LIMITATIONS.—The total amount of adjustments made pursuant to this subparagraph shall not exceed $1,884,000,000 in budget authority.

''(F) ALLOWANCES FOR TRANSPORTATION.—

''(i) IN GENERAL.—If during the 105th Congress, revenue increases or direct spending reductions creditable under section 252 are enacted for transportation reserve funds as provided in sections 207, 207A, 208, or 209 of House Concurrent Resolution 84 (105th Congress), OMB shall determine the amount of the budget authority adjustment for the applicable program for each fiscal year through 2002.

''(ii) ADJUSTMENTS.—If for fiscal years 1998 through 2002, discretionary appropriations are enacted for a fiscal year that designates funding for the applicable program, the adjustment is the amount of the discretionary budget authority appropriated for such program in such fiscal year and the outlays in all years flowing from such discretionary budget authority, but not to exceed the amount available for such program pursuant to this subparagraph.

''(iii) LIMITATIONS.—(I) Revenue increases and direct spending reductions credited under this subparagraph shall be so designated in statute and shall not be credited under section 252.

''(II) The amount of the budget authority adjustment determined for a fiscal year under clause (ii) shall not exceed the amount of the revenue increase or direct spending reduction credited for a fiscal year under clause (i) and shall meet the terms and conditions of sections 207, 207A, 208, or 209 of House Concurrent Resolution 84 (105th Congress), as applicable.

(b) SHIFTING OF DISCRETIONARY SPENDING LIMITS INTO GRAMM-RUDMAN.—

(1) IN GENERAL.—Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following:

''(c) DISCRETIONARY SPENDING LIMIT.—As used in this part, the term 'discretionary spending limit' means—

''(1) with respect to fiscal year 1997, for the discretionary category, the current adjusted amount of new budget authority and outlays;

''(2) with respect to fiscal year 1998—

''(A) for the defense category: $269,000,000,000 in new budget authority and $266,823,000,000 in outlays;

''(B) for the nondefense category: $252,357,000,000 in new budget authority and $282,853,000,000 in outlays; and

''(C) for the violent crime reduction category: $5,500,000,000 in new budget authority and $3,592,000,000 in outlays;

''(3) with respect to fiscal year 1999—

''(A) for the defense category: $271,500,000,000 in new budget authority and $266,518,000,000 in outlays;

''(B) for the nondefense category: $255,699,000,000 in new budget authority and $287,850,000,000 in outlays; and

''(C) for the violent crime reduction category: $5,800,000,000 in new budget authority and $4,953,000,000 in outlays;

''(4) with respect to fiscal year 2000—

''(A) for the discretionary category: $532,693,000,000 in new budget authority and $558,711,000,000 in outlays; and

''(B) for the violent crime reduction category: $4,500,000,000 in new budget authority and $5,554,000,000 in outlays;

''(5) with respect to fiscal year 2001, for the discretionary category: $542,032,000,000 in new budget authority and $564,396,000,000 in outlays; and

''(6) with respect to fiscal year 2002, for the discretionary category: $551,074,000,000 in new budget authority and $560,799,000,000 in outlays;

as adjusted in strict conformance with subsection (b).''.

(2) REPEAL OF DUPLICATIVE PROVISIONS.—Sections 201, 202, and 206 of House Concurrent Resolution 84 (105th Congress) are repealed.

**SEC. 1554. VIOLENT CRIME REDUCTION TRUST FUND.**

(a) SEQUESTRATION REGARDING VIOLENT CRIME REDUCTION TRUST FUND.—Section 251A of the Balanced Budget and Emergency Deficit Control Act of 1985 is repealed.

(b) CONFORMING AMENDMENT.—Section 310002 of Public Law 103–322 (42 U.S.C. 14212) is repealed.

**SEC. 1555. ENFORCING PAY-AS-YOU-GO.**

(a) EXTENSION.—Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking subsections (a) and (b) and inserting the following:

''(a) PURPOSE.—The purpose of this section is to assure that any legislation enacted prior to September 30, 2002, affecting direct spending or receipts that increases the deficit will trigger an offsetting sequestration.

''(b) SEQUESTRATION.—

''(1) TIMING.—For fiscal years 1998 through 2002, within 15 calendar days after Congress adjourns to end a session and on the same day as a sequestration (if any) under sections 251 and 253, there shall be a sequestration to offset the amount of any net deficit increase in the budget year caused by all direct spending and receipts legislation (after adjusting for any prior sequestration as provided by paragraph (2)) plus any net deficit increase in the prior fiscal year caused by all direct spending and receipts legislation not reflected in the final OMB sequestration report for that year.

''(2) CALCULATION OF DEFICIT INCREASE.—OMB shall calculate the amount of deficit increase, if any, in the budget year by adding—

''(A) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) applicable to the budget year, other than any amounts included in such estimates resulting from—

''(i) full funding of, and continuation of, the deposit insurance guarantee commitment in effect under current law; and

''(ii) emergency provisions as designated under subsection (e);

''(B) the estimated amount of savings in direct spending programs applicable to the budget year resulting from the prior year's sequestration under this section or section 253, if any (except for any amounts sequestered as a result of any deficit increase in the fiscal year immediately preceding the prior fiscal year), as published in OMB's final sequestration report for that prior year; and

''(C) all applicable estimates of direct spending and receipts legislation transmitted under subsection (d) for the current year that are not reflected in the final OMB sequestration report for that year, other than any amounts included in such estimates resulting from—

''(i) full funding of, and continuation of, the deposit insurance guarantee commitment in effect under current law; and

''(ii) emergency provisions as designated under subsection (e).'';

(2) by amending subsection (d) to read as follows:

''(d) ESTIMATES.—

''(1) CBO ESTIMATES.—As soon as practicable after Congress completes action on any direct spending or receipts legislation, CBO shall provide an estimate to OMB of the legislation.

''(2) OMB ESTIMATES.—Not later than 5 calendar days (excluding Saturdays, Sundays, and legal holidays) after the enactment of any direct spending or receipts legislation, OMB shall transmit a report to the House of Representatives and to the Senate containing—

''(A) the CBO estimate of that legislation;

''(B) an OMB estimate of that legislation using current economic and technical assumptions; and

''(C) an explanation of any difference between the 2 estimates.

''(3) SCOPE OF ESTIMATES.—The estimates shall be prepared in conformance with scorekeeping guidelines and shall include the amount of change in outlays or receipts, as the case may be, for the current year (if applicable), the budget year, and each outyear.

''(4) CONSULTATION.—OMB and CBO, after consultation with each other and the Committees on the Budget of the House of Representatives and the Senate, shall—

''(A) determine scorekeeping guidelines; and

''(B) in conformance with such guidelines, prepare estimates under this subsection.''; and

(3) in subsection (e), by striking '', for any fiscal year from 1991 through 1998,'' and by striking ''through 1995''.

**SEC. 1556. REPORTS AND ORDERS.**

Section 254 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking subsection (c) and redesignating subsections (d) through (k) as (c) through (j), respectively;

(2) in subsection (c)(2) (as redesignated), by striking ''1998'' and inserting ''2002'';

(3)(A) in subsection (f)(2)(A) (as redesignated), by striking ''1998'' and inserting ''2002''; and

(B) in subsection (f)(3) (as redesignated), by striking ''through 1998''; and

(4) by striking subsection (h), as redesignated, and redesignating subsection (i), as redesignated, as subsection (h).

**SEC. 1557. EXEMPT PROGRAMS AND ACTIVITIES.**

(a) VETERANS PROGRAMS.—Section 255(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) In the item relating to Veterans Insurance and Indemnity, strike ''Indemnity'' and insert ''Indemnities''.

(2) In the item relating to Veterans' Canteen Service Revolving Fund, strike ''Veterans'''.

(3) In the item relating to Benefits under chapter 21 of title 38, strike ''(36–0137–0–1–702)'' and insert ''(36–0120–0–1–701)''.

(4) In the item relating to Veterans' compensation, strike ''Veterans' compensation'' and insert ''Compensation''.

(5) In the item relating to Veterans' pensions, strike ''Veterans' pensions'' and insert ''Pensions''.

(6) After the last item, insert the following new items:

''Benefits under chapter 35 of title 38, United States Code, related to educational assistance for survivors and dependents of certain veterans with service-connected disabilities (36–0137–0–1–702);

''Assistance and services under chapter 31 of title 38, United States Code, relating to training and rehabilitation for certain veterans with service-connected disabilities (36–0137–0–1–702);

''Benefits under subchapters I, II, and III of chapter 37 of title 38, United States Code, relating to housing loans for certain veterans and for the spouses and surviving spouses of certain veterans Guaranty and Indemnity Program Account (36–1119–0–1–704);

''Loan Guaranty Program Account (36–1025–0–1–704); and

''Direct Loan Program Account (36–1024–0–1–704).''.

(b) CERTAIN PROGRAM BASES.—Section 255(f) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

''(f) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—

''(1) The President may, with respect to any military personnel account, exempt from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

''(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the date specified in section 254(d) for the budget year.''.

(c) OTHER PROGRAMS AND ACTIVITIES.—(1) Section 255(g)(1)(A) of the Balanced Budget Emergency Deficit Control Act of 1985 is amended as follows:

(A) After the first item, insert the following new item:

''Activities financed by voluntary payments to the Government for goods or services to be provided for such payments;''.

(B) Strike ''Thrift Savings Fund (26–8141–0–7–602);''.

(C) In the first item relating to the Bureau of Indian Affairs, insert ''Indian land and water claims settlements and'' after the comma.

(D) In the second item relating to the Bureau of Indian Affairs, strike ''miscellaneous'' and '', tribal trust funds'' and insert ''Miscellaneous'' before ''trust funds''.

(E) Strike ''Claims, defense (97–0102–0–1–051);''.

(F) In the item relating to Claims, judgments, and relief acts, strike ''806'' and insert ''808''.

(G) Strike ''Coinage profit fund (20–5811–0–2–803);''.

(H) Insert ''Compact of Free Association (14–0415–0–1–808);'' after the item relating to claims, judgments, and relief acts.

(I) Insert ''Conservation Reserve Program (12–2319–0–1–302);'' after the item relating to the Compensation of the President.

(J) In the item relating to the Customs Service, strike ''852'' and insert ''806''.

(K) In the item relating to the Comptroller of the Currency, insert '', Assessment funds (20–8413–0–8–373)'' before the semicolon.

(L) Strike ''Director of the Office of Thrift Supervision;''.

(M) Strike ''Eastern Indian land claims settlement fund (14–2202–0–1–806);''.

(N) After the item relating to the Exchange stabilization fund, insert the following new items:

''Farm Credit Administration, Limitation on Administrative Expenses (78–4131–0–3–351);

''Farm Credit System Financial Assistance Corporation, interest payment (20–1850–0–1–908);''.

(O) Strike ''Federal Deposit Insurance Corporation;''.

(P) In the first item relating to the Federal Deposit Insurance Corporation, insert ''(51–4064–0–3–373)'' before the semicolon.

(Q) In the second item relating to the Federal Deposit Insurance Corporation, insert ''(51–4065–0–3–373)'' before the semicolon.

(R) In the third item relating to the Federal Deposit Insurance Corporation, insert ''(51–4066–0–3–373)'' before the semicolon.

(S) In the item relating to the Federal Housing Finance Board, insert ''(95–4039–0–3–371)'' before the semicolon.

(T) In the item relating to the Federal payment to the railroad retirement account, strike ''account'' and insert ''accounts''.

(U) In the item relating to the health professions graduate student loan insurance fund, insert ''program account'' after ''fund'' and strike ''(Health Education Assistance Loan Program) (75–4305–0–3–553)'' and insert ''(75–0340–0–1–552)''.

(V) In the item relating to Higher education facilities, strike ''and insurance''.

(W) In the item relating to Internal revenue collections for Puerto Rico, strike ''852'' and insert ''806''.

(X) Amend the item relating to the Panama Canal Commission to read as follows:

''Panama Canal Commission, Panama Canal Revolving Fund (95–4061–0–3–403);''.

(Y) In the item relating to the Medical facilities guarantee and loan fund, strike ''(75–4430–0–3–551)'' and insert ''(75–9931–0–3–550)''.

(Z) In the first item relating to the National Credit Union Administration, insert ''operating fund (25–4056–0–3–373)'' before the semicolon.

(AA) In the second item relating to the National Credit Union Administration, strike ''central'' and insert ''Central'' and insert ''(25–4470–0–3–373)'' before the semicolon.

(BB) In the third item relating to the National Credit Union Administration, strike ''credit'' and insert ''Credit'' and insert ''(25–4468–0–3–373)'' before the semicolon.

(CC) After the third item relating to the National Credit Union Administration, insert the following new item:

''Office of Thrift Supervision (20–4108–0–3–373);''.

(DD) In the item relating to Payments to health care trust funds, strike ''572'' and insert ''571''.

(EE) Strike ''Compact of Free Association, economic assistance pursuant to Public Law 99–658 (14–0415–0–1–806);''.

(FF) In the item relating to Payments to social security trust funds, strike ''571'' and insert ''651''.

(GG) Strike ''Payments to state and local government fiscal assistance trust fund (20–2111–0–1–851);''.

(HH) In the item relating to Payments to the United States territories, strike ''852'' and insert ''806''.

(II) Strike ''Resolution Funding Corporation;''.

(JJ) In the item relating to the Resolution Trust Corporation, insert ''Revolving Fund (22–4055–0–3–373)'' before the semicolon.

(KK) After the item relating to the Tennessee Valley Authority funds, insert the following new items:

''Thrift Savings Fund;

''United States Enrichment Corporation (95–4054–0–3–271);

''Vaccine Injury Compensation (75–0320–0–1–551);

''Vaccine Injury Compensation Program Trust Fund (20–8175–0–7–551);''.

(2) Section 255(g)(1)(B) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(A) Strike ''The following budget'' and insert ''The following Federal retirement and disability''.

(B) In the item relating to Black lung benefits, strike ''lung benefits'' and insert ''Lung Disability Trust Fund''.

(C) In the item relating to the Court of Federal Claims Court Judges' Retirement Fund, strike ''Court of Federal''.

(D) In the item relating to Longshoremen's compensation benefits, insert ''Special workers compensation expenses,'' before ''Longshoremen's''.

(E) In the item relating to Railroad retirement tier II, insert ''Industry Pension Fund'' after ''tier II'', and strike ''retirement tier II''.

(3) Section 255(g)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(A) Strike the following items:

''Agency for International Development, Housing, and other credit guarantee programs (72–4340–0–3–151);

''Agricultural credit insurance fund (12–4140–0–1–351);''.

(B) In the item relating to Check forgery, strike ''Check'' and insert ''United States Treasury check''.

(C) Strike ''Community development grant loan guarantees (86–0162–0–1–451);''.

(D) After the item relating to the United States Treasury Check forgery insurance fund, insert the following new item:

''Credit liquidating accounts;''.

(E) Strike the following items:

''Credit union share insurance fund (25–4468–0–3–371);

''Economic development revolving fund (13–4406–0–3);

''Export-Import Bank of the United States, Limitation of program activity (83–4027–0–1–155);

''Federal deposit Insurance Corporation (51–8419–0–8–371);

''Federal Housing Administration fund (86–4070–0–3–371);

''Federal ship financing fund (69–4301–0–3–403);

''Federal ship financing fund, fishing vessels (13–4417–0–3–376);

''Government National Mortgage Association, Guarantees of mortgage-backed securities (86–4238–0–3–371);

''Health education loans (75–4307–0–3–553);

''Indian loan guarantee and insurance fund (14–4410–0–3–452);

''Railroad rehabilitation and improvement financing fund (69–4411–0–3–401);

''Rural development insurance fund (12–4155–0–3–452);

''Rural electric and telephone revolving fund (12–4230–8–3–271);

''Rural housing insurance fund (12–4141–0–3–371);

''Small Business Administration, Business loan and investment fund (73–4154–0–3–376);

''Small Business Administration, Lease guarantees revolving fund (73–4157–0–3–376);

''Small Business Administration, Pollution control equipment contract guarantee revolving fund (73–4147–0–3–376);

''Small Business Administration, Surety bond guarantees revolving fund (73–4156–0–3–376);

''Department of Veterans Affairs Loan guaranty revolving fund (36–4025–0–3–704);''.

(d) LOW-INCOME PROGRAMS.—Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) In the item relating to Aid to families with dependent children, strike ''0412'' and insert ''1501''.

(2) Amend the item relating to Child nutrition to read as follows:

''State child nutrition programs (with the exception of special milk programs) (12–3539–0–1–605);''.

(3) After the item relating to State child nutrition programs, insert the following new item:

''Commodity supplemental food program (12–3512–0–1–605);''.

(4) Amend the item relating to the Women, infants, and children program to read as follows:

''Special supplemental nutrition program for women, infants, and children (WIC) (12–3510–0–1–605).''.

(e) IDENTIFICATION OF PROGRAMS.—Section 255(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

''(i) IDENTIFICATION OF PROGRAMS.—For purposes of subsections (b), (g), and (h), each account is identified by the designated budget account identification code number set forth in the Budget of the United States Government 1998–Appendix, and an activity within an account is designated by the name of the activity and the identification code number of the account.''.

(f) OPTIONAL EXEMPTION OF MILITARY PERSONNEL.—Section 255(h) of the Balanced Budget and Emergency Deficit Control Act of 1985 is repealed.

**SEC. 1558. GENERAL AND SPECIAL SEQUESTRATION RULES.**

(a) CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The section heading of section 256 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking ''exceptions, limitations, and special rules'' and inserting ''general and special sequestration rules''.

(2) TABLE OF CONTENTS.—The item relating to section 256 in the table contents set forth in section 250(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

''Sec. 256. General and special sequestration rules.''.

(b) AUTOMATIC SPENDING INCREASES.—Section 256(a) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(c) GUARANTEED STUDENT LOAN PROGRAM.—Section 256(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

''(b) STUDENT LOANS.—For all student loans under part B or D of title IV of the Higher Education Act of 1965 made during the period when a sequestration order under section 254 is in effect, origination fees under sections 438(c)(2) and 456(c) of that Act shall be increased by a uniform percentage sufficient to produce the dollar savings in student loan programs (as a result of that sequestration order) required by section 252 or 253, as applicable.''.

(d) HEALTH CENTERS.—Section 256(e)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking the dash and all that follows thereafter and inserting ''2 percent.''.

(e) TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES.—Section 256(h)(4) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking subparagraphs (D) and (H), by redesignating subparagraphs (E), (F), (G), and (I), as subparagraphs (D), (E), (F), and (G), respectively, and by adding at the end the following new subparagraph:

''(H) Farm Credit Administration.''.

(f) COMMODITY CREDIT CORPORATION.—Section 256(j)(5) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

''(5) DAIRY PROGRAM.—Notwithstanding other provisions of this subsection, as the sole means of achieving any reduction in outlays under the milk price support program, the Secretary of Agriculture shall provide for a reduction to be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use. That price reduction (measured in cents per hundred weight of milk marketed) shall occur under section 201(d)(2)(A) of the Agricultural Act of 1949 (7 U.S.C. 1446(d)(2)(A)), shall begin on the day any sequestration order is issued under section 254, and shall not exceed the aggregate amount of the reduction in outlays under the milk price support program that otherwise would have been achieved by reducing payments for the purchase of milk or the products of milk under this subsection during the applicable fiscal year.''.

(g) EFFECTS OF SEQUESTRATION.—Section 256(k) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) in paragraph (1), strike ''other than a trust or special fund account'' and insert '', except as provided in paragraph (5)'' before the period; and

(2) strike paragraph (4), redesignate paragraphs (5) and (6) as paragraphs (4) and (5), respectively, and amend paragraph (5) (as redesignated) to read as follows:

''(5) Budgetary resources sequestered in revolving, trust, and special fund accounts, and offsetting collections sequestered in appropriation accounts shall not be available for obligation during the fiscal year in which the sequestration occurs, but shall be available in subsequent years to the extent otherwise provided in law.''.

**SEC. 1559. THE BASELINE.**

(a) IN GENERAL.—Section 257 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking subsection (b)(2)(A) and inserting the following:

''(A)(i) No program with estimated current year outlays greater than $50 million shall be assumed to expire in the budget year or the outyears except as provided in clause (ii).

''(ii) If legislation eliminates direct spending authority for a program for the budget year or any outyear and such legislation provides that the Federal Government has no legal authority or obligation to incur financial obligations for such program, clause (i) shall not apply and CBO and OMB, as appropriate, may score such legislation with the budget authority and outlay effects resulting from terminating such program as provided in such legislation and the baseline may assume the expiration of that program as provided in such legislation.'';

(2) by adding the end of subsection (b)(2) the following new subparagraph:

''(D) If any law expires before the budget year or any outyear, then any program with estimated current year outlays greater than $50 million which operates under that law shall be assumed to continue to operate under that law as in effect immediately before its expiration.'';

(3) in subsection (c)(5), in the second sentence, by striking ''national product fixed-weight price index'' and inserting ''domestic product chain-type price index''; and

(4) by striking subsection (e) and inserting the following:

''(e) ASSET SALES.—Amounts realized from the sale of an asset shall not be counted for purposes of sections 251, 252, and 253 against legislation if that sale would result in a financial cost to the Federal Government.''.

(b) BUDGETARY TREATMENT OF CERTAIN TRUST FUND OPERATIONS.—Section 710 of the Social Security Act (42 U.S.C. 911) is amended to read as follows:

''BUDGETARY TREATMENT OF TRUST FUND OPERATIONS

''SEC. 710. (a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund and the taxes imposed under sections 1401 and 3101 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

''(b) No provision of law enacted after the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act that appropriated funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit control Act of 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.''.

**SEC. 1560. TECHNICAL CORRECTION.**

Section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985, entitled ''Modification of Presidential Order'', is repealed.

**SEC. 1561. JUDICIAL REVIEW.**

Section 274 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended as follows:

(1) Strike ''252'' or ''252(b)'' each place it appears and insert ''254''.

(2) In subsection (d)(1)(A), strike ''257(l) to the extent that'' and insert ''256(a) if'', strike the parenthetical phrase, and at the end insert ''or''.

(3) In subsection (d)(1)(B), strike ''new budget'' and all that follows through ''spending authority'' and insert ''budgetary resources'' and strike ''or'' after the comma.

(4) Strike subsection (d)(1)(C).

(5) Strike subsection (f) and redesignate subsections (g) and (h) as subsections (f) and (g), respectively.

(6) In subsection (g) (as redesignated), strike ''base levels of total revenues and total budget outlays, as'' and insert ''figures'', and ''251(a)(2)(B) or (c)(2),'' and insert ''254''.

**SEC. 1562. EFFECTIVE DATE.**

(a) EXPIRATION.—Section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) by striking ''Part C of this title, section'' and inserting ''Sections 251, 252, 253, 258B, and'';

(2) by striking ''1995'' and inserting ''2002''; and

(3) by adding at the end the following new sentence: ''The remaining sections of part C of this title shall expire September 30, 2006.''.

(b) EXPIRATION.—Section 14002(c)(3) of the Omnibus Budget Reconciliation Act of 1993 is repealed.

**SEC. 1563. REDUCTION OF PREEXISTING BALANCES AND EXCLUSION OF EFFECTS OF THIS ACT FROM PAYGO SCORECARD.**

Upon the enactment of this Act, the Director of the Office of Management and Budget shall—

(1) reduce any balances of direct spending and receipts legislation for any fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 to zero; and

(2) not make any estimates of changes in direct spending outlays and receipts under subsection (d) of such section 252 for any fiscal year resulting from the enactment of this Act or any Act enacted pursuant to section 104 or 105 of House Concurrent Resolution 84 (105th Congress).

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## ABRAHAM (AND OTHERS) AMENDMENT NO. 538

(Ordered to lie on the table.)

Mr. ABRAHAM (for himself, Mr. BROWNBACK, Mr. KYL, Mr. SESSIONS, Mr. ENZI, Mr. INHOFE, and Mr. GRAMS) submitted an amendment intended to be proposed by them to the bill, S. 949, supra; as follows:

In the pending amendment, insert the following at the appropriate place:

**SEC. . ECONOMIC GROWTH PROTECTION.**

Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 902) is amended by adding at the end the following:

''(f) ECONOMIC GROWTH PROTECTION.—

''(1) ESTIMATE.—OMB shall, for any amount by which revenues for a budget year and any out-years through fiscal year 2002 exceed the revenue target absent growth, estimate the excess and include such estimate as a separate entry in the report prepared pursuant to subsection (d) at the same time as the OMB sequestration preview report is issued.

''(2) INCLUSION IN SCORECARD. OMB shall include the amount of any change in revenues determined pursuant to paragraph (1) as a deficit decrease under this part in the estimates and reports required by subsection (b) of section 254 unless such amount is offset by legislation enacted in compliance with paragraph (3).

''(3) USE OF ADJUSTMENT.—An amount not to exceed the amount of deficit decrease determined under paragraph (2) may be offset by legislation decreasing revenues.

''(4) REVENUE TARGET ABSENT GROWTH.—For purposes of this subsection, the revenue target absent growth is—

''(A) for fiscal year 1998, $1,601,800,000,000;

''(B) for fiscal year 1999, $1,664,200,000,000;

''(C) for fiscal year 2000, $1,728,100,000,000;

''(D) for fiscal year 2001, $1,805,100,000,000;

''(E) for fiscal year 2002, $1,890,400,000,000.''

**SEC. . CONGRESSIONAL PAY-AS-YOU-GO**

Legislation decreasing revenues in compliance with section 252(f)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985, as added by section , shall be considered to be in order for purposes of section 202 of House Concurrent Resolution 67 (104th Congress).

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## BIDEN (AND GRAMM) AMENDMENT NO. 539

Mr. BIDEN (for himself and Mr. GRAMM) proposed an amendment to amendment No. 537 proposed by Mr. DOMENICI to the bill, S. 949, supra; as follows:

On page 43 of the amendment, strike lines 14 through 21 and insert the following:

''(5) with respect to fiscal year 2001—

''(A) for the discretionary category: $537,677,000,000 in new budget authority and $558,460,000,000 in outlays; and

''(B) for the violent crime reduction category: $4,355,000,000 in new budget authority and $5,936,000,000 in outlays;

''(6) with respect to fiscal year 2002—

''(A) for the discretionary category: $546,619,000,000 in new budget authority and $556,314,000,000 in outlays; and

''(B) for the violent crime reduction category: $4,455,000,000 in new budget authority and $4,485,000,000 in outlays;

as adjusted in strict conformance with subsection (b).''.

(2) TRANSFERS INTO THE FUND.—On the first day of the following fiscal years, the following amounts shall be transferred from the general fund to the Violent Crime Reduction Trust Fund—

(A) for fiscal year 2001, $4,355,000,000; and

(A) for fiscal year 2002, $4,455,000,000.

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## BYRD AMENDMENT NO. 540

Mr. BYRD proposed an amendment to the bill, S. 949, supra; as follows:

At the end of the bill, add the following:

**TITLE ____—ALCOHOL ADVERTISING RESPONSIBILITY ACT**

**SEC. ___01. SHORT TITLE.**

This title may be cited as the ''Alcohol Advertising Responsibility Act''.

**SEC. ___02. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Congress finds that—

(1) alcohol is used by more Americans than any other drug;

(2) it is estimated that the costs to society from alcoholism and alcohol abuse were approximately $100,000,000,000 in 1990 alone;

(3) in 1995, the alcoholic beverage industry spent $1,040,300,000 on advertising, while the National Institute for Alcohol Abuse and Alcoholism was funded at only $181,445,000;

(4) more than 100,000 deaths each year in the United States result from alcohol-related causes;

(5) 41.3 percent of all traffic fatalities in 1995, or 17,274 deaths, were alcohol related;

(6) in addition to severe health consequences, alcohol misuse is involved in approximately 30 percent of all suicides, 50 percent of homicides, 68 percent of manslaughter cases, 52 percent of rapes and other sexual assaults, 48 percent of robberies, 62 percent of assaults, and 49 percent of all other violent crimes;

(7) approximately 30 percent of all accidental deaths are attributable to alcohol abuse;

(8) alcohol advertising may influence children's perceptions toward and inclinations to consume alcoholic beverages;

(9) 26 percent of eighth graders, 40 percent of tenth graders, and 51 percent of twelfth graders report having used alcohol in the past month; and

(10) college presidents nationwide view alcohol abuse as their paramount campus-life problem.

(b) PURPOSES.—The purposes of this title are—

(1) to repeal the existing tax subsidization for expenses incurred to promote the consumption of alcoholic beverages;

(2) to reduce the amount of alcohol advertising to which our Nation's youth are exposed; and

(3) to increase funding for those programs that educate and prevent the abuse of alcohol among our Nation's youth.

**SEC. ___03. DISALLOWANCE OF DEDUCTION FOR ADVERTISING AND PROMOTION EXPENSES RELATING TO ALCOHOLIC BEVERAGES.**

(a) IN GENERAL.—Part IX of subchapter B of chapter 1 (relating to items not deductible) is amended by adding at the end the following:

**''SEC. 280I. ADVERTISING AND PROMOTION EXPENDITURES RELATING TO ALCOHOLIC BEVERAGES.**

''(a) IN GENERAL.—No deduction otherwise allowable under this chapter shall be allowed for any amount paid or incurred to advertise or promote by any means any alcoholic beverage.

''(b) ALCOHOLIC BEVERAGE.—For purposes of this section, the term 'alcoholic beverage' means any item which is subject to tax under subpart A, C, or D of part I of subchapter A of chapter 51 (relating to taxes on distilled spirits, wines, and beer).''.

(b) CONFORMING AMENDMENT.—The table of sections for part IX of subchapter B of chapter 1 is amended by adding at the end the following:

''Sec. 280I. Advertising and promotion expenditures relating to alcoholic beverages.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31 of the year in which this Act is enacted.

**SEC. ___04. ALCOHOL ABUSE EDUCATION AND PREVENTION AMONG YOUTH.**

(a) IN GENERAL.—Subject to subsection (c), there shall be transferred, from funds in the Treasury not otherwise appropriated, to the entities described in subsection (b) amounts to the extent specified under subsection (b).

(b) EDUCATION AND PREVENTION PROGRAMS.—

(1) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—The amounts specified in this subsection shall be:

(A) IN GENERAL.—With respect to the Substance Abuse and Mental Health Services Administration, $120,000,000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to supplement substance abuse prevention activities authorized under section 501 of the Public Health Service Act (42 U.S.C. 290aa).

(B) USE OF FUNDS.—Amounts provided to the Substance Abuse and Mental Health Services Administration under subparagraph (A) shall be used directly or through grants and cooperative agreements to carry out activities to prevent the use of alcohol among youth, including the development and distribution of public service announcements.

(2) CENTERS FOR DISEASE CONTROL AND PREVENTION.—

(A) IN GENERAL.—With respect to the Centers for Disease Control and Prevention, $120,000,000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to carry out a comprehensive strategy to prevent alcohol-related disease and disability.

(B) REQUIRED USES.—In carrying out the comprehensive strategy under subparagraph (A), the Centers for Disease Control and Prevention shall—

(i) enhance and expand State-based and national surveillance activities to monitor the scope of alcohol use among the youth of the United States;

(ii) enhance comprehensive school-based health programs that focus on alcohol use prevention strategies;

(iii) develop and distribute commercial advertising to prevent alcohol abuse among youth; and

(iv) enhance and expand Fetal Alcohol Syndrome prevention activities throughout the United States.

(3) NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION.—With respect to the National

Highway Traffic Safety Administration, and in addition to any funds authorized from the Highway Trust Fund, $120,000,000 for fiscal year 1998, $180,000,000 for fiscal year 1999, $180,000,000 for fiscal year 2000, $210,000,000 for fiscal year 2001, and $210,000,000 for fiscal year 2002, to carry out programs under sections 402, 403, and 410 of title 23, United States Code, and to develop and implement a paid media campaign targeting high-risk youth populations to improve the balance of media messages related to alcohol impaired driving.

(4) INDIAN HEALTH SERVICE.—With respect to the Indian Health Service, $40,000,000 for fiscal year 1998, $60,000,000 for fiscal year 1999, $60,000,000 for fiscal year 2000, $70,000,000 for fiscal year 2001, and $70,000,000 for fiscal year 2002, to supplement the programs that such Service is authorized to carry out pursuant to titles II and III of the Public Health Service Act (42 U.S.C. 202 et seq., 241 et seq.).

(c) AUTHORITY TO TRANSFER FUNDS.—The Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate, acting through appropriations Acts, may transfer the amounts specified under subsection (b) in each fiscal year among the entities referred to in such subsection.

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## BINGAMAN AMENDMENT NO. 541

(Ordered to lie on the table.)

Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

Beginning on page 79, line 4, strike all through page 88, line 7.

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## BIDEN AMENDMENT NO. 542

(Ordered to lie on the table.)

Mr. BIDEN submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

At the appropriate place, insert the following:

**SEC. . SURVIVOR BENEFITS FOR PUBLIC SAFETY OFFICERS KILLED IN THE LINE OF DUTY.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

**"SEC. 138. SURVIVOR BENEFITS ATTRIBUTABLE TO SERVICE BY A PUBLIC SAFETY OFFICER WHO IS KILLED IN THE LINE OF DUTY.**

''(a) IN GENERAL.—Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

''(1) if such annuity is provided under a governmental plan which meets the requirements of section 401(1) to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

''(2) to the extent such annuity is attributable to such officer's service as a public safety officer.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Subsection (a) shall not apply with respect to the death of any public safety officer if—

''(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

''(B) the officer was voluntarily intoxicated (as defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) at the time of death; or

''(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death.

''(2) EXEMPTION FOR BENEFITS PAID TO CERTAIN INDIVIDUALS.—Subsection (a) shall not apply to any payment to an individual whose actions were a substantial contributing factor to the death of the officer.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date.

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## THOMAS (AND OTHERS) AMENDMENT NO. 543

(Ordered to lie on the table.)

Mr. THOMAS (for himself, Mr. ENZI, and Mr. CONRAD) submitted an amendment intended to be proposed by them to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . EXTENSION OF BINDING CONTRACT DATE FOR BIOMASS AND COAL FACILITIES.**

(a) IN GENERAL.—Subparagraph (A) of section 29(g)(1) (relating to the extension of certain facilities) is amended by striking ''July 1, 1998'' and inserting ''July 1, 1999''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

On page 400, between lines 14 and 15, insert the following:

**SEC. . DETERMINATION OF ORIGINAL ISSUE DISCOUNT WHERE POOLED DEBT OBLIGATIONS SUBJECT TO ACCELERATION.**

(a) IN GENERAL.—Subparagraph (C) of section 1272(a)(6) (relating to debt instruments to which the paragraph applies) 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 inserting after clause (i) the following:

''(iii) any pool of debt instruments the yield on which may be reduced by reason of prepayments (or to the extent provided in regulations, by reason of other events).

To the extent provided in regulations prescribed by the Secretary, in the case of a business engaged in the trade or business of selling tangible personal property at retail, clause (iii) shall not apply to debt instruments incurred in the ordinary course of such trade or business.''

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by this subsection shall apply to taxable years beginning after the date of enactment of this Act.

(2) CHANGE OF METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for its first taxable year beginning after the date of enactment of this Act—

(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 such first taxable year.

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## SPECTER AMENDMENTS NOS. 544–546

(Ordered to lie on the table)

Mr. SPECTER submitted three amendments intended to be proposed by him to the bill, S. 949, supra; as follows:

AMENDMENT NO. 544

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

**SEC. . SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate finds that—

(1) the Centers for Disease Control and Prevention has identified tobacco use as the leading preventable cause of death in the United States, causing more than 400,000 deaths each year, resulting in more than $50 billion in direct medical costs each year;

(2) funds appropriated to the National Institutes of Health comprise 30 percent of national expenditures on health research and development; and

(3) biomedical research has been shown to be effective in saving lives and reducing health care expenditures.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that if Congress considers legislation implementing the tobacco litigation settlement, such legislation should ensure that funds from the settlement are used for disease prevention research and medical treatment research for diseases linked to tobacco use.

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AMENDMENT NO. 545

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

**SEC. . SENSE OF THE SENATE.**

(a) FINDINGS.—The Senate finds that—

(1) The current Internal Revenue Code, with its myriad deductions, credits and schedules, and over 12,000 pages of rules and regulations, is long overdue for a complete overhaul;

(2) It is an unacceptable waste of our nation's precious resources when Americans spend an estimated 5.4 billion hours every year compiling information and filling out Internal Revenue Code tax forms, and in addition, spend hundreds of billions of dollars every year in tax code compliance. America's resources could be dedicated to far more productive pursuits; and

(3) The primary goals of any tax reform must be fairness, simplicity, unleashing economic growth and removing the inefficiencies of the current tax code;

(b) SENSE OF THE SENATE.—It is the sense of the Senate that Congress should proceed expeditiously to consider fundamental tax reform legislation which would replace the current tax code with a fairer, simpler, progrowth and deficit neutral tax.

On page 20, between lines 5 and 6, insert the following:

**SEC. 105. ADOPTION EXPENSES.**

(a) DISTRIBUTIONS FROM CERTAIN PLANS MAY BE USED WITHOUT PENALTY TO PAY ADOPTION EXPENSES.—

(1) IN GENERAL.—Section 72(t)(2) (relating to exceptions to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following:

''(E) DISTRIBUTIONS FROM CERTAIN PLANS FOR ADOPTION EXPENSES.—Distributions to an individual from an individual retirement plan of so much of the qualified adoption expenses (as defined in section 23(d)(1)) of the individual as does not exceed $2,000.''.

(2) CONFORMING AMENDMENT.—Section 72(t)(2)(B) is amended by striking ''or (D)'' and inserting '', (D) or (E)''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments and distributions after December 31, 1996.

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## LEVIN (AND MCCAIN) AMENDMENT NO. 547

(Ordered to lie on the table.)

Mr. LEVIN (for himself and Mr. MCCAIN) submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING TAX TREATMENT OF STOCK OPTIONS.**

(a) FINDINGS.—The Senate finds that—

(1) currently businesses can deduct the value of stock options as a business expense on their income tax returns, even though the stock options are not treated as an expense on the books of those same businesses; and

(2) stock options are the only form of compensation that is treated in this way.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.

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## MCCAIN AMENDMENT NO. 548

(Ordered to lie on the table.)

Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill, S. 949, supra; as follows:

Strike section 707 of the bill.

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## D'AMATO AMENDMENTS NO. 549–550

(Ordered to lie on the table.)

Mr. D'AMATO submitted two amendments intended to be proposed by him to the bill, S. 949, supra; as follows:

AMENDMENT NO. 549

On page 106, beginning with line 10, strike all through page 107, line 18, and insert:

''(2) ELIGIBLE GAIN.—The term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 6 months.

''(3) PURCHASE.—A taxpayer shall be treated as having purchased any property if, but for paragraph (4), the unadjusted basis of such property in the hands of the taxpayer would be its cost (within the meaning of section 1012).

''(4) BASIS ADJUSTMENTS.—If gain from any sale is not recognized by reason of subsection (a), such gain shall be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock which is purchased by the taxpayer during the 60-day period described in subsection (a).

''(c) SPECIAL RULES FOR TREATMENT OF REPLACEMENT STOCK.—

''(1) HOLDING PERIOD FOR ACCRUED GAIN.—For purposes of this chapter, gain from the disposition of any replacement qualified small business stock shall be treated as gain from the sale of exchange of qualified small business stock held more than 6 monhts to the extent that the amount of such gain does not exceed the amount of the reduction in the basis of such stock by reason of subsection (b)(4).

''(2) TACKING OF HOLDING PERIOD FOR PURPOSES OF DEFERRAL.—Solely for purposes of applying this section, if any replacement qualified small business stock is disposed of before the taxpayer has held such stock for more than 6 months, gain from such stock shall be treated eligible gain for purposes of subsection (a).

On page 400, between lines 14 and 15, insert:

**SEC. . WITHHOLDING ON GUARANTEED PAYMENTS RECEIVED BY LIMITED PARTNERS OF PROFESSIONAL SERVICE PARTNERSHIPS.**

(a) IN GENERAL.—Section 3401 (relating to withholding on wages) is amended by adding at the end the following new subsection:

''(i) SPECIAL RULE FOR GUARANTEED PAYMENTS OF CERTAIN LIMITED PARTNERS.—

''(1) IN GENERAL.—For purposes of this chapter, the term 'wages' shall include any guaranteed payments described in section 707 (a) or (c) to a limited partner of a professional service partnership for services actually rendered to or on behalf of the partnership to the extent that such payments are established to be in the nature of remuneration for such services.

''(2) PROFESSIONAL SERVICE PARTNERSHIP.—For purposes of paragraph (1), the term 'professional service partnership' means a partnership substantially all of the services of which are in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting.

''(3) TREATMENT AS EMPLOYER AND EMPLOYEE.—Solely for purposes of applying this chapter to payments described in paragraph (1)—

''(A) the professional service partnership shall be treated as an employer, and

''(B) the limited partner shall be treated as an employee.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to payments with respect to services performed after December 31, 1997.

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AMENDMENT NO. 550

On page 267, between lines 15 and 16, insert the following:

**SEC. . REMOVAL OF DOLLAR LIMITATION ON BENEFIT PAYMENTS FROM A DEFINED BENEFIT PLAN MAINTAINED FOR CERTAIN POLICE AND FIRE EMPLOYEES.**

(a) IN GENERAL.—Subparagraph (G) of section 415(b)(2) is amended by striking ''participant—'' and all that follows and inserting ''participant, subparagraphs (C) and (D) of this paragraph and subparagraph (B) of paragraph (1) shall not apply.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1996.

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## NICKLES (AND OTHERS) AMENDMENT NO. 551

Mr. NICKLES (for himself, Mr. HAGEL, Mr. CLELAND, Mr. DOMENICI, and Mr. THURMOND) proposed an amendment to the bill, S. 949, supra; as follows:

On page 212, between lines 11 and 12, insert:

**SEC. . INCREASE IN DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.**

(a) IN GENERAL.—The table contained in section 162(l)(1)(B) is amended to read as follows:

| ''For taxable years beginning in calendar year— | The applicable percentage is— |
|---|---|
| 1997 | 50 |
| 1998 | 55 |
| 1999 through 2001 | 60 |
| 2002 | 65 |
| 2003 through 2005 | 80 |
| 2006 | 90 |
| 2007 or thereafter | 100.'' |

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1996.

On page 159, line 15, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 159, line 18, strike ''42-month'' and insert ''35-month''.

On page 159, line 19, strike ''42 months'' and insert ''35 months''.

On page 160, lines 10 and 11, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 160, lines 19 and 20, strike ''December 31, 1999'' and insert ''May 31, 1999''.

On page 400, between lines 14 and 15, insert:

**SEC. ___. MODIFICATION OF RULES FOR ALLOCATING INTEREST EXPENSE TO TAX-EXEMPT INTEREST.**

(a) PRO RATA ALLOCATION RULES APPLICABLE TO CORPORATIONS.—

(1) IN GENERAL.—Paragraph (1) of section 265(b) is amended by striking ''In the case of a financial institution'' and inserting ''In the case of a corporation''.

(2) ONLY OBLIGATIONS ACQUIRED AFTER JUNE 8, 1997, TAKEN INTO ACCOUNT.—Subparagraph (A) of section 265(b)(2) is amended by striking ''August 7, 1986'' and inserting ''June 8, 1997 (August 7, 1986, in the case of a financial institution)''.

(3) SMALL ISSUER EXCEPTION NOT TO APPLY.—Subparagraph (A) of section 265(b)(3) is amended by striking ''Any qualified'' and inserting ''In the case of a financial institution, any qualified''.

(4) EXCEPTION FOR CERTAIN BONDS ACQUIRED ON SALE OF GOODS OR SERVICES.—Subparagraph (B) of section 265(b)(4) is amended by adding at the end the following new sentence: ''In the case of a taxpayer other than a financial institution, such term shall not include a nonsalable obligation acquired by such taxpayer in the ordinary course of business as payment for goods or services provided by such taxpayer to any State or local government.''

(5) LOOK-THRU RULES FOR PARTNERSHIPS.—Paragraph (6) of section 265(b) is amended by adding at the end the following new subparagraph:

''(C) LOOK-THRU RULES FOR PARTNERSHIPS.—In the case of a corporation which is a partner in a partnership, such corporation shall be treated for purposes of this subsection as holding directly its allocable share of the assets of the partnership.''

(6) APPLICATION OF PRO RATA DISALLOWANCE ON AFFILIATED GROUP BASIS.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

''(7) APPLICATION OF DISALLOWANCE ON AFFILIATED GROUP BASIS.—

''(A) IN GENERAL.—For purposes of this subsection, all members of an affiliated group filing a consolidated return under section 1501 shall be treated as 1 taxpayer.

''(B) TREATMENT OF INSURANCE COMPANIES.—This subsection shall not apply to an insurance company, and subparagraph (A) shall be applied without regard to any member of an affiliated group which is an insurance company.''

(6) DE MINIMIS EXCEPTION FOR NONFINANCIAL INSTITUTIONS.—Subsection (b) of section 265 is amended by adding at the end the following new paragraph:

''(8) DE MINIMIS EXCEPTION FOR NONFINANCIAL INSTITUTIONS.—In the case of a corporation, paragraph (1) shall not apply for any taxable year if the amount described in paragraph (2)(A) with respect to such corporation does not exceed the lesser of—

''(A) 2 percent of the amount described in paragraph (2)(B), or

''(B) $1,000,000.

The preceding sentence shall not apply to a financial institution or to a dealer in tax-exempt obligations.''

(7) CLERICAL AMENDMENT.—The subsection heading for section 265(b) is amended by striking ''FINANCIAL INSTITUTIONS'' and inserting ''CORPORATIONS''.

(b) APPLICATION OF SECTION 265(a)(2) WITH RESPECT TO CONTROLLED GROUPS.—Paragraph (2) of section 265(a) is amended after

''obligations'' by inserting ''held by the taxpayer (or any corporation which is a member of a controlled group (as defined in section 267(f)(1)) which includes the taxpayer)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

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## GRAMM (AND OTHERS) AMENDMENT NO. 552

Mr. GRAMM (for himself, Mr. COATS, Mr. NICKLES, Mr. HUTCHINSON, Mr. GRAMS, Mr. SMITH of New Hampshire, Mr. SESSIONS, Mr. ABRAHAM, and Mr. THURMOND) proposed an amendment to the bill, S. 949, supra; as follows:

At the appropriate place, insert:

**SECTION 1. CHILD TAX CREDIT FLEXIBILITY.**

On page 12, line 13, strike all through page 13, line 8, and on page 16, line 3, strike all through page 17, line 6.

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## SHELBY (AND OTHERS) AMENDMENT NO. 553

Mr. ROTH (for Mr. SHELBY, for himself, Mr. CRAIG, Mr. ABRAHAM, Mr. FAIRCLOTH, Mr. SANTORUM, Mr. COVERDELL, Mr. GRAMM, and Mr. SESSIONS) proposed an amendment to the bill, S. 949, supra; as follows:

At the end of page 11, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING REFORM OF THE INTERNAL REVENUE CODE OF 1986.**

(a) FINDINGS.—The Senate find that—

(1) the Internal Revenue Code of 1986 (''tax code'') is unnecessarily complex, having grown from 14 pages at its inception to 3,458 pages by 1995;

(2) this complexity resulted in taxpayers spending about 5,300,000,000 hours and $225,000,000,000 trying to comply with the tax code in 1996;

(3) the current congressional budgetary process is weighted too heavily toward tax increase, as evidenced by the fact that since 1954 there have been 27 major bills enacted that increased Federal income taxes and only 9 bills that decreased Federal income taxes, 3 of which were de minimis decreases;

(4) the tax burden on working families has reach an unsustainable level, as evidenced by the fact that in 1948 the average American family with children paid only 4.3 percent of its income to the Federal Government in direct taxes and today the average family pays about 25 percent;

(5) the tax code unfairly penalizes saving and investment by double taxing these activities while only taxing income used for consumption once, and as a result the United States has one of the lowest savings rates, at 4.7 percent, in the industrialized world;

(6) the tax code stifles economic growth by discouraging work and capital formation through excessively high tax rates;

(7) Congress and the President have found it necessary, on 2 separate occasions, to enact laws to protect taxpayers from the abuses of the Internal Revenue Service and a third bill has been introduced by the 105th Congress; and

(8) the complexity of the tax code has increased the number of Internal Revenue Service employees responsible for administering the tax laws to 110,000 and this costs the taxpayers $9,800,000,000 each year.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Internal Revenue Code of 1986 needs broad-based reform; and

(2) the President should submit to Congress a comprehensive proposal to reform the Internal Revenue Code of 1986.

## KERRY (AND OTHERS) AMENDMENT NO. 554

Mr. KERRY (for himself, Mr. CONRAD, and Mr. JOHNSON) proposed an amendment to the bill, S. 949, supra; as follows:

On page 13, beginning with line 9, strike all through page 17, line 12, and insert the following:

''(2) LIMITATION BASED ON ADJUSTED GROSS INCOME.—The dollar amount in subsection (a) shall be reduced (but not below zero) ratably for each $1,000 (or fraction thereof) by which the taxpayer's modified adjusted gross income exceeds $60,000 but does not exceed $75,000. For purposes of the preceding sentence, the term 'modified adjusted gross income' means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The aggregate credit allowed by subsection (a) (determined after paragraph (2)) shall not exceed the sum of—

''(A) the excess (if any) of—

''(i) the taxpayer's regular tax liability for the taxable year reduced by the credits allowable against such tax under this subpart (other than this section), over

''(ii) the taxpayer's tentative minimum tax for such taxable year (determined without regard to the alternative minimum tax foreign tax credit), plus

''(B) the excess (if any) of—

''(i) the sum of—

''(I) the taxpayer's liability for the taxable year under sections 3101 and 3201,

''(II) the amount of tax paid on behalf of such taxpayer for the taxable year under sections 3111 and 3221, plus

''(III) the taxpayer's liability for such year under sections 1401 and 3211, over

''(ii) the credit allowed for the taxable year under section 32.

''(c) QUALIFYING CHILD.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualifying child' means any individual if—

''(A) the taxpayer is allowed a deduction under section 151 with respect to such individual for the taxable year,

''(B) such individual has not attained the applicable age as of the close of the calendar year in which the taxable year of the taxpayer begins, and

''(C) such individual bears a relationship to the taxpayer described in section 32(c)(3)(B).

''(2) APPLICABLE AGE.—For purposes of paragraph (1), the applicable age is 13 in calendar year 1997, and increased by 1 year for each of the next 4 succeeding calendar years.

''(3) EXCEPTION FOR CERTAIN NONCITIZENS.—The term 'qualifying child' shall not include any individual who would not be a dependent if the first sentence of section 152(b)(3) were applied without regard to all that follows 'resident of the United States.'

(d) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

''(e) RECAPTURE OF CREDIT.—

''(1) IN GENERAL.—If—

''(A) during any taxable year any amount is withdrawn from a qualified tuition program or an education individual retirement account maintained for the benefit of a beneficiary and such amount is subject to tax under section 529(f) or 530(c)(3), and

''(B) the amount of the credit allowed under this section for the prior taxable year was contingent on a contribution being made to such a program or account for the benefit of such beneficiary,

the taxpayer's tax imposed by this chapter for the taxable year shall be increased by the lesser of the amount described in subparagraph (A) or the credit described in subparagraph (B).

''(2) NO CREDITS AGAINST TAX, ETC.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining—

''(A) the amount of any credit under this subpart or subpart B or D of this part, and

''(B) the amount of the minimum tax imposed by section 55.

''(f) OTHER DEFINITIONS.—For purposes of this section, the terms 'qualified tuition program' and 'education individual retirement account' have the meanings given such terms by section 529 and 530, respectively.

''(g) PHASEIN OF CREDIT.—In the case of taxable years beginning in 1997, subsection (a)(1) shall be applied by substituting '$250' for '$500'.''

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## JEFFORDS (AND OTHERS) AMENDMENT NO. 555

(Ordered to lie on the table.)

Mr. JEFFORDS (for himself, Mr. DODD, Mr. ROBERTS, Mr. JOHNSON, Mr. KOHL, Ms. SNOWE, and Ms. LANDRIEU) submitted an amendment intended to be proposed by them to the bill, S. 949, supra; as follows:

At the end of the bill insert the following:

**TITLE ____—INCENTIVES FOR QUALITY CHILD CARE**

**SEC. ___01. EXPANSION OF DEPENDENT CARE TAX CREDIT.**

(a) PERCENTAGE OF EMPLOYMENT-RELATED EXPENSES DETERMINED BY STATUS OF CARE GIVER.—Section 21(a)(2) (defining applicable percentage) is amended to read as follows:

''(2) APPLICABLE PERCENTAGE DEFINED.—

''(A) IN GENERAL.—For purposes of paragraph (1), the term 'applicable percentage' means—

''(i) in the case of employment-related expenses described in subsection (b)(2)(A)(ii) incurred for the care of a qualifying individual described in subsection (b)(1)(A) by an accredited child care center or a credentialed child care professional, the initial percentage reduced (but not below 12.5 percent) ratably for each $2,500 (or fraction thereof) by which the taxpayers's adjusted gross income for the taxable year exceeds $20,000, and

''(ii) in any other case, 30 percent reduced (but not below 10 percent) ratably for each $2,500 (or fraction thereof) by which the taxpayers's adjusted gross income for the taxable year exceeds $20,000 but does not exceed $70,000.

''(B) INITIAL PERCENTAGE FOR EXPENSES INCURRED FOR ACCREDITED OR CREDENTIALED PROVIDERS.—For purposes of subparagraph (A)(i), the initial percentage shall be determined in accordance with the following table:

| ''In the case of any taxable year beginning in— | The initial percentage is— |
|---|---|
| 1998 | 31.5 |
| 1999 | 33 |
| 2000 | 34.5 |
| 2001 | 36 |
| 2002 and thereafter | 37.5.'' |

(b) DEFINITIONS.—Section 21(b)(2) (relating to definitions of qualifying individual and employment-related expenses) is amended by adding at the end the following:

''(E) ACCREDITED CHILD CARE CENTER.—The term 'accredited child care center' means—

''(i) a center that is accredited, by a child care credentialing or accreditation entity recognized by a State, to provide child care to children in the State (except children who

a tribal organization elects to serve through a center described in clause (ii));

''(ii) a center that is accredited, by a child care credentialing or accreditation entity recognized by a tribal organization, to provide child care for children served by the tribal organization; or

''(iii) a center that is used as a Head Start center under the Head Start Act (42 U.S.C. 9831 et seq.) and is in compliance with any applicable performance standards established by regulation under such Act for Head Start programs.

''(F) CHILD CARE CREDENTIALING OR ACCREDITATION ENTITY.—The term 'child care credentialing or accreditation entity' means a nonprofit private organization or public agency that—

''(i) is recognized by a State agency or tribal organization; and

''(ii) accredits a center or credentials an individual to provide child care on the basis of—

''(I) an accreditation or credentialing instrument based on peer-validated research;

''(II) compliance with applicable State and local licensing requirements, or standards described in section 658E(c)(2)(E)(ii) of the Child Care and Development Block Grant Act (42 U.S.C. 9858c(c)(2)(E)(ii)), as appropriate, for the center or individual;

''(III) outside monitoring of the center or individual; and

''(IV) criteria that provide assurances of—

''(aa) compliance with age-appropriate health and safety standards at the center or by the individual;

''(bb) use of age-appropriate developmental and educational activities, as an integral part of the child care program carried out at the center or by the individual; and

''(cc) use of ongoing staff development or training activities for the staff of the center or the individual, including related skills-based testing.

''(G) CREDENTIALED CHILD CARE PROFESSIONAL.—The term 'credentialed child care professional' means—

''(i) an individual who is credentialed, by a child care credentialing or accreditation entity recognized by a State, to provide child care to children in the State (except children who a tribal organization elects to serve through an individual described in clause (i)); or

''(ii) an individual who is credentialed, by a child care credentialing or accreditation entity recognized by a tribal organization, to provide child care for children served by the tribal organization.

''(H) TRIBAL ORGANIZATION.—The term 'tribal organization' has the meaning given the term in section 658P of the Child Care and Development Block Grant Act (42 U.S.C. 9858n).''

(c) CREDIT MADE REFUNDABLE FOR LOW INCOME TAXPAYERS.—

(1) IN GENERAL.—Section 21 (relating to credit for household and dependent care services) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following:

''(f) CREDIT MADE REFUNDABLE FOR LOW INCOME TAXPAYERS.—

''(1) IN GENERAL.—For purposes of this subtitle, in the case of an applicable taxpayer individual, the credit allowable under subsection (a) for any taxable year shall be treated as a credit allowable under subpart C of this part.

''(2) APPLICABLE TAXPAYER.—For purposes of this subsection, the term 'applicable taxpayer' means a taxpayer with respect to whom the credit under section 32 is allowable for the taxable year.

''(3) COORDINATION WITH ADVANCE PAYMENTS AND MINIMUM TAX.—Rules similar to the rules of subsections (g) and (h) of section 32 shall apply with respect to the portion of any credit to which this subsection applies.''.

(2) ADVANCE PAYMENT OF CREDIT.—

(A) IN GENERAL.—Chapter 25 (relating to general provisions relating to employment taxes) is amended by inserting after section 3507 the following:

**''SEC. 3507A. ADVANCE PAYMENT OF DEPENDENT CARE CREDIT.**

''(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages with respect to whom a dependent care eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment equal to such employee's dependent care advance amount.

''(b) DEPENDENT CARE ELIGIBILITY CERTIFICATE.—For purposes of this title, a dependent care eligibility certificate is a statement furnished by an employee to the employer which—

''(1) certifies that the employee will be eligible to receive the credit provided by section 21 for the taxable year,

''(2) certifies that the employee reasonably expects to be an applicable taxpayer for the taxable year,

''(3) certifies that the employee does not have a dependent care eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer,

''(4) states whether or not the employee's spouse has a dependent care eligibility certificate in effect,

''(5) states the number of qualifying individuals in the household maintained by the employee,

''(6) states whether a qualifying individual will be cared for by an accredited child care center or a credentialed child care professional, and

''(7) estimates the amount of employment-related expenses for the calendar year.

''(c) DEPENDENT CARE ADVANCE AMOUNT.—

''(1) IN GENERAL.—For purposes of this title, the term 'dependent care advance amount' means, with respect to any payroll period, the amount determined—

''(A) on the basis of the employee's wages from the employer for such period,

''(B) on the basis of the employee's estimated employment-related expenses included in the dependent care eligibility certificate, and

''(C) in accordance with tables provided by the Secretary.

''(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(C) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables and the tables prescribed under section 3507(c).

''(d) OTHER RULES.—For purposes of this section, rules similar to the rules of subsections (d) and (e) of section 3507 shall apply.

''(e) DEFINITIONS.—For purposes of this section, terms used in this section which are defined in section 21 shall have the respective meanings given such terms by section 21.''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 25 is amended by adding after the item relating to section 3507 the following:

''Sec. 3507A. Advance payment of dependent care credit.''.

(d) EFFECTIVE DATES.—

(1) APPLICABLE PERCENTAGE.—The amendments made by subsection (a) and (b) shall apply to taxable years beginning after December 31, 1997.

(2) CREDIT MADE REFUNDABLE.—The amendments made by subsection (c) shall apply to taxable years beginning after December 31, 2001.

**SEC. ___02. EXPANSION OF DEPENDENT CARE ASSISTANCE PROGRAM.**

(a) IN GENERAL.—Section 129(a)(2)(A) (relating to limitation of exclusion) is amended to read as follows:

''(A) DOLLAR LIMITATION.—

''(i) IN GENERAL.—The amount which may be excluded under paragraph (1) for dependent care assistance with respect to dependent care services provided during a taxable year shall not exceed—

''(I) in the case of dependent care services provided by an accredited child care center or a credentialed child care professional for a qualifying individual described in section 21(b)(1)(A), an amount determined in accordance with the following table:

| ''In the case of taxable years beginning in: | For 1 qualifying individual, the amount is: | For 2 or more qualifying individuals, the amount is: |
|---|---|---|
| 1998 | $5,200 | $6,700 |
| 1999 | $5,400 | $6,900 |
| 2000 | $5,600 | $7,100 |
| 2001 | $5,800 | $7,300 |
| 2002 and thereafter | $6,000 | $7,500, |

''(II) in the case of other dependent care services for a qualifying individual described in section 21(b)(1)(A) or payments described in subsection (e)(1)(B), an amount determined in accordance with the following table:

| ''In the case of taxable years beginning in: | For 1 qualifying individual, the amount is: | For 2 or more qualifying individuals, the amount is: |
|---|---|---|
| 1998 | $4,800 | $6,300 |
| 1999 | $4,600 | $6,100 |
| 2000 | $4,400 | $5,900 |
| 2001 | $4,200 | $5,700 |
| 2002 and thereafter | $4,000 | $5,500, |

and

''(III) in the case of other dependent care services for a qualifying individual described in subparagraph (B) or (C) of section 21(b)(1), $5,000.

''(ii) AMOUNTS FOR MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—In the case of a separate return by a married individual, clause (i) shall be applied by using one-half of any amount specified in such clause.

''(iii) PROVIDERS.—For purposes of clause (i)(I), the terms 'accredited child care center' and 'credentialed child care professional' have the meaning given such terms by subparagraphs (E) and (G) of section 21(c)(2), respectively.

(b) PAYMENTS FOR STAY-AT-HOME CARE ALLOWED.—

(1) IN GENERAL.—Section 129(e)(1) (relating to definitions and special rules) is amended to read as follows:

''(1) DEPENDENT CARE ASSISTANCE.—The term 'dependent care assistance' means—

''(A) the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment), and

''(B) any payment to the employee from amounts contributed to the employee's account during the pregnancy of the employee paid within 1 year after such contribution and during the period in which—

''(i) the employee,

''(ii) the employee's spouse, or

''(iii) a parent of the employee or the employee's spouse,

stays at home to care for a qualifying individual described in section 21(b)(1)(A).''.

(2) CONFORMING AMENDMENTS.—

(A) Section 129(c) (relating to payments to related individuals) is amended by striking ''No amount'' and inserting ''Except in the case of payments described in subsection (e)(1)(B), no amount.''.

(B) Section 129(e)(9) (relating to identifying information required with respect to service provider) is amended by striking ''No amount'' and inserting ''Except in the case of payments described in paragraph (1)(B)(i), no amount.''.

(c) DEPENDENT CARE ASSISTANCE PROGRAM FOR FEDERAL EMPLOYEES.—Subpart G of part III of title 5, United States Code, is amended by inserting after chapter 87 the following:

**''CHAPTER 88—DEPENDENT CARE ASSISTANCE PROGRAM**

**''§ 8801. Definitions**

''(a) For the purpose of this chapter, 'employee' means—

''(1) an employee as defined by section 2105 of this title;

''(2) a Member of Congress as defined by section 2106 of this title;

''(3) a Congressional employee as defined by section 2107 of this title;

''(4) the President;

''(5) a justice or judge of the United States appointed to hold office during good behavior (i) who is in regular active judicial service, or (ii) who is retired from regular active service under section 371(b) or 372(a) of title 28, United States Code, or (iii) who has resigned the judicial office under section 371(a) of title 28 with the continued right during the remainder of his lifetime to receive the salary of the office at the time of his resignation;

''(6) an individual first employed by the government of the District of Columbia before October 1, 1987;

''(7) an individual employed by Gallaudet College;

''(8) an individual employed by a county committee established under section 590h(b) of title 16;

''(9) an individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838); and

''(10) an individual appointed to a position on the office staff of a former President, or a former Vice President under section 4 of the Presidential Transition Act of 1963, as amended (78 Stat. 153), who immediately before the date of such appointment was an employee as defined under any other paragraph of this subsection;

but does not include—

''(A) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

''(B) an individual who is not a citizen or national of the United States and whose permanent duty station is outside the United States, unless the individual was an employee for the purpose of this chapter on September 30, 1979, by reason of service in an Executive agency, the United States Postal Service, or the Smithsonian Institution in the area which was then known as the Canal Zone; or

''(C) an employee excluded by regulation of the Office of Personnel Management under section 8716(b) of this title.

''(b) For the purpose of this chapter, 'dependent care assistance program' has the meaning given such term by section 129(d) of the Internal Revenue Code of 1986.

**''§ 8802. Dependent care assistance program**

''The Office of Personnel Management shall establish and maintain a dependent care assistance program for the benefit of employees.''.

(d) EFFECTIVE DATE.—The amendments made by this section apply to taxable years beginning after December 31, 1997.

**SEC. ___03. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES FOR CHILD CARE ASSISTANCE.**

(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. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.**

''(a) ALLOWANCE OF CREDIT.—

''(1) IN GENERAL.—For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the applicable percentage of the qualified child care expenditures of the taxpayer for such taxable year.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage for any taxable year is equal to 50%.

''(b) DOLLAR LIMITATION.—The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED CHILD CARE EXPENDITURE.—The term 'qualified child care expenditure' means any amount paid or incurred—

''(A) to acquire, construct, rehabilitate, or expand property—

''(i) which is to be used as part of a qualified child care facility of the taxpayer,

''(ii) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

''(iii) which does not constitute part of the principal residence (within the meaning of section 1034) of the taxpayer or any employee of the taxpayer,

''(B) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training,

''(C) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer,

''(D) under a contract to provide child care resource and referral services to employees of the taxpayer, or

''(E) for the costs of seeking accreditation from a child care credentialing or accreditation entity (as defined in section 21(b)(2)(F) with respect to a qualified child care facility.

''(2) QUALIFIED CHILD CARE FACILITY.—

''(A) IN GENERAL.—The term 'qualified child care facility' means a facility—

''(i) the principal use of which is to provide child care assistance, and

''(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including, but not limited to, the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 1034) of the operator of the facility.

''(B) SPECIAL RULES WITH RESPECT TO A TAXPAYER.—A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

''(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

''(ii) the facility is not the principal trade or business of the taxpayer unless at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

''(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

''(d) RECAPTURE OF ACQUISITION AND CONSTRUCTION CREDIT.—

''(1) IN GENERAL.—If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

''(A) the applicable recapture percentage, and

''(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

''(2) APPLICABLE RECAPTURE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

| **''If the recapture event occurs in:** | **The applicable recapture percentage is:** |
|---|---|
| Years 1–3 | 100 |
| Year 4 | 85 |
| Year 5 | 70 |
| Year 6 | 55 |
| Year 7 | 40 |
| Year 8 | 25 |
| Years 9 and 10 | 10 |
| Years 11 and thereafter | 0. |

''(B) YEARS.—For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

''(3) RECAPTURE EVENT DEFINED.—For purposes of this subsection, the term 'recapture event' means—

''(A) CESSATION OF OPERATION.—The cessation of the operation of the facility as a qualified child care facility.

''(B) CHANGE IN OWNERSHIP.—

''(i) IN GENERAL.—Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

''(ii) AGREEMENT TO ASSUME RECAPTURE LIABILITY.—Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under subpart A, B, or D of this part.

''(C) NO RECAPTURE BY REASON OF CASUALTY LOSS.—The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) AGGREGATION RULES.—All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

''(2) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(3) ALLOCATION IN THE CASE OF PARTNERSHIPS.—In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

''(f) NO DOUBLE BENEFIT.—

''(1) REDUCTION IN BASIS.—For purposes of this subtitle—

''(A) IN GENERAL.—If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

''(B) CERTAIN DISPOSITIONS.—If during any taxable year there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

''(2) OTHER DEDUCTIONS AND CREDITS.—No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

''(g) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1999.''

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) is amended—

(A) by striking out ''plus'' at the end of paragraph (11),

(B) by striking out the period at the end of paragraph (12), and inserting a comma and ''plus'', and

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

''(13) the employer-provided child care credit determined under section 45D.''

(2) 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. 45D. Employer-provided child care credit.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. ___04. CHARITABLE CONTRIBUTIONS OF SCIENTIFIC EQUIPMENT TO ACCREDITED AND CREDENTIALED CHILD CARE PROVIDERS AND TO ELEMENTARY AND SECONDARY SCHOOLS.**

(a) IN GENERAL.—Subparagraph (B) of section 170(e)(4) (relating to special rule for contributions of scientific property used for research) is amended to read as follows:

''(B) QUALIFIED RESEARCH, CHILD CARE, OR EDUCATION CONTRIBUTION.—For purposes of this paragraph, the term 'qualified research, child care, or education contribution' means a charitable contribution by a corporation of tangible personal property (including computer software), but only if—

''(i) the contribution is to—

''(I) an accredited child care center (as defined in section 21(c)(2)(E)) which is an organization described in section 501(c)(3) and exempt from taxation under section 501(a),

''(II) an organization described in section 501(c)(3) and exempt from taxation under section 501(a) which is a professional or educational support entity for accredited child care centers or credentialed child care professionals (as defined in subparagraphs (E) and (G) of section 21(c)(2), respectively),

''(III) an educational organization described in subsection (b)(1)(A)(ii),

''(IV) a governmental unit described in subsection (c)(1), or

''(V) an organization described in section 41(e)(6)(B),

''(ii) the contribution is made not later than 3 years after the date the taxpayer acquired the property (or in the case of property constructed by the taxpayer, the date the construction of the property is substantially completed),

''(iii) the property is scientific equipment or apparatus substantially all of the use of which by the donee is for—

''(I) research or experimentation (within the meaning of section 174), or for research training, in the United States in physical or biological sciences, or

''(II) in the case of an organization described in subclause (I), (II), (III), or (IV) of clause (i), use within the United States for educational purposes related to the purpose or function of the organization,

''(iv) the original use of the property began with the taxpayer (or in the case of property constructed by the taxpayer, with the donee),

''(v) the property is not transferred by the donee in exchange for money, other property, or services, and

''(vi) the taxpayer receives from the donee a written statement representing that its use and disposition of the property will be in accordance with the provisions of clauses (iv) and (v).''.

(b) DONATIONS TO CHARITY FOR REFURBISHING.—Section 170(e)(4) is amended by adding at the end the following:

''(D) DONATIONS TO CHARITY FOR REFURBISHING.—For purposes of this paragraph, a charitable contribution by a corporation shall be treated as a qualified research, child care, or education contribution if—

''(i) such contribution is a contribution of property described in subparagraph (B)(iii) to an organization described in section 501(c)(3) and exempt from taxation under section 501(a),

''(ii) such organization repairs and refurbishes the property and donates the property to an organization described in subparagraph (B)(i), and

''(iii) the taxpayer receives from the organization to whom the taxpayer contributed the property a written statement representing that its use of the property (and any use by the organization to which it donates the property) meets the requirements of this paragraph.''.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (4)(A) of section 170(e) is amended by striking ''qualified research contribution'' each place it appears and inserting ''qualified research, child care, or education contribution''.

(2) The heading for section 170(e)(4) is amended by inserting '', CHILD CARE, OR EDUCATION'' after ''RESEARCH''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. ___05. 2-PERCENT FLOOR ON MISCELLANEOUS ITEMIZED DEDUCTIONS NOT APPLICABLE TO ACCREDITATION AND CREDENTIALING EXPENSES OF INDIVIDUAL CHILD CARE PROVIDERS.**

(a) IN GENERAL.—Section 67(b) (relating to miscellaneous itemized deductions) is amended by striking ''and'' at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting '', and'', and by adding at the end the following:

''(13) the deduction allowable for accreditation and credentialing expenses of child care providers.''.

(b) DEFINITION.—Section 67 (relating to 2-percent floor on miscellaneous itemized deductions) is amended by redesignating subsections (e) and (f) as subsections (f) and (g), respectively, and by inserting after subsection (d) the following:

''(e) ACCREDITATION AND CREDENTIALING EXPENSES OF CHILD CARE PROVIDERS.—For purposes of this section—

''(1) IN GENERAL.—The term 'accreditation and credentialing expenses of child care providers' means direct professional costs and educational and training expenses paid or incurred by an eligible individual in order to achieve and remain qualified for service as an employee of an accredited child care center or as a credentialed child care professional (as defined in subparagraphs (E) and (G) of section 21(c)(2), respectively).

''(2) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual 60 percent of the taxable income of whom for any taxable year is derived from service described in paragraph (1).''.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. ___06. EXPANSION OF HOME OFFICE DEDUCTION TO INCLUDE USE OF OFFICE FOR DEPENDENT CARE.**

(a) IN GENERAL.—Section 280A(c)(1) (relating to certain business use) is amended by adding at the end the following: ''A portion of a dwelling unit and the exclusive use of such portion otherwise described in this paragraph shall not fail to be so described if such portion is also used by the taxpayer during such exclusive use to care for a dependent of the taxpayer.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1997.

**SEC. ___07. EXPANSION OF COORDINATED ENFORCEMENT EFFORTS OF INTERNAL REVENUE SERVICE AND HHS OFFICE OF CHILD SUPPORT ENFORCEMENT.**

(a) STATE REPORTING OF CUSTODIAL DATA.—Section 454A(e)(4)(D) of the Social Security Act (42 U.S.C. 654(e)(4)(D)) is amended by striking ''the birth date of any child'' and inserting ''the birth date and custodial status of any child''.

(b) MATCHING PROGRAM BY IRS OF CUSTODIAL DATA AND TAX STATUS INFORMATION.—

(1) NATIONAL DIRECTORY OF NEW HIRES.—Section 453(i)(3) of the Social Security Act (42 U.S.C. 653(i)(3)) is amended by striking ''a claim with respect to employment in a tax return'' and inserting ''information which is required on a tax return''.

(2) FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.—Section 453(h) of the such Act (42 U.S.C. 653(h)) is amended by adding at the end the following:

''(3) ADMINISTRATION OF FEDERAL TAX LAWS.—The Secretary of the Treasury shall have access to the information described in paragraph (2), consisting of the names and social security numbers of the custodial parents linked with the children in the custody of such parents, for the purpose of administering those sections of the Internal Revenue Code of 1986 which grant tax benefits based on support and residence provided dependent children.''

(c) MINIMUM PAST-DUE SUPPORT THRESHOLD FOR USE OF OFFSET PROCEDURE.—

(1) PART D FAMILIES.—Section 464(b)(1) of the Social Security Act (42 U.S.C. 664(b)(1)) is amended by inserting ''(not to exceed $150)'' after ''minimum amount''.

(2) OTHER FAMILIES.—Section 464(b)(2)(A) of such Act (42 U.S.C. 664(b)(2)(A)) is amended by striking ''$500'' both places it appears and inserting ''$150''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1997.

Mr. JEFFORDS. Mr. President, tomorrow I will introduce my amendment on child care.

Today, there are more than 12 million children under the age of five—including half of all infants under one year of age—who spend at least part of their day being cared for by someone other than their parents. The past two decades have seen a dramatic rise in the number of women in the paid labor force. More than 60 percent of women with preschool aged children, are employed full- or part-time. For most of these families, child care is a requirement, not an option.

Women now constitute 46 percent of our Nation's labor force. Most women are not working just to achieve a degree of personal growth outside the home, but to meet their family's basic needs. Their employment is not a choice, but an essential part of their family's economic survival.

Similarly, child care that is affordable and convenient is necessary for most women working outside the home. Many of the traditional sources of child care are no longer available—as many of the friends, neighbors, grandparents, and other relatives who used to be available to provide child care are also working. Research has repeatedly demonstrated that for parents who must work, child care services that are dependable and of high quality make it easier to find and keep a job. Good child care helps parents reach and maintain economic self-sufficiency. There is a clear connection between child care and the production of income. Congress acknowledged this when is passed welfare reform last year.

Since 1990, the costs of child care have risen about 6 percent annually. This is almost triple the annual increase in the cost of living. At the same time, there are strong indicators that the quality of child care has significantly decreased during that same period of time. Parents are paying more but getting less.

The costs of child care are almost wholly dependent upon the geographic area, the type of child care, and the age of the child. For example, a family purchasing full-time child care services for a 4-year old in rural New York using a family child care home may pay as little as $60 a week. In contrast, a family with an infant using a child care center in New York City may pay more than $250 a week.

I think that few of us know how much child care costs. The Senate Employee's Child Care Center costs between $150 and $175 a week—$7,800 to $9,100 a year. That puts it in the high-middle range in terms of costs for the Washington, DC area. The younger the child, the higher the costs—and Senate Employee's Child Care Center does not accept children under 18 months old.

For a 3- to 4-year-old, which is the least expensive age group, the national average for center-based child care is $4,600 a year. The average cost for high quality care, such as that provided by the Senate Employee's Child Care Center, is between $8,500 and $9,100 a year.

A family normally spends about 20 percent of its income on housing and 10 percent on food. The costs of child care for a low- or middle-income family can rival the cost of housing and be double the cost of food. Even though most of us recognize the critical part that child care plays in the economic survival of families, we often fail to recognize it as a basic cost which consumes a significant portion of a family's income.

Parents can only purchase child care they can afford. While the supply of child care has increased over the past 10 years, shortages are still the norm for those in rural areas, those with school-aged children, and for lower-income families. Those who do find care that is affordable and convenient are often unsatisfied with the quality of the care their child receives. In fact, one quarter of all parents would change their child care arrangement if they could find and afford something better.

The quality of child care in America is very troubling. A recent nationwide study found that 40 percent of the child care provided to infants in child care centers was potentially injurious. Fifteen-percent of center-based child care providers for all preschoolers are so bad that a child's health and safety are threatened; 70 percent are mediocre—not hurting or helping children; and 15 percent actively promote a child's development. Center-based child care, the object of this study, is the most heavily regulated and frequently monitored type of child care. Children in less regulated settings are predicted to be far worse.

Combining the research on the quality of child care with the breakthroughs on the development of the human brain produces a very disturbing situation. Many children enter child care by 11 weeks of age, are in care for close to 30 hours a week, and often stay in some form of child care until they enter school. During that same period of life, a child's brain is undergoing a series of extraordinary changes.

In the first 3 years of life, the brain either makes the connections it needs for learning or it atrophies, making later efforts at remediation in learning, behavior, and thinking difficult, at best. The experiences and stimulation that a caretaker provide to a child are the foundations upon which all future learning is built. The brain's greatest and most critical growth spurt is between birth and 10 years of age—precisely the time when non-parental child care is most frequently utilized. A Time magazine special report on ''How a Child's Brain Develops'' (February 3, 1997) said it best, ''. . . Good, affordable day care is not a luxury or a fringe benefit for welfare mothers and working parents but essential brain food for the next generation.'' While bad child care can seriously impair a child's development, high-quality child care significantly increases the chances of good developmental outcomes for children.

Think about it. At the most important time in the development of a child's brain, 12 million children are being cared for by people who are paid less than the person who picks up your garbage each week, and are required to have less training and less skills-based testing than the person who cuts your hair. Child care providers play an important role in a child's development, for they help fine-tune the child's capacity to think and process information, social skills, emotional health, and acquisition of language.

Last year, our goal in child care was to streamline Federal assistance by creating a cohesive structure for Federal assistance and to provide sufficient Government funds to subsidize child care for welfare recipients who were transitioning into work. This year our goal must be to promote the healthy development of children in child care. I am worried that the pressure of the need to accommodate the increasing demand for child care will force many into forgoing quality just to increase the number of child care slots available.

This amendment, then, incorporates modifications to five different sections of the Tax Code. Each of the provisions has been included to solve a specific problem in an effort to improve the quality of child care. Taken as a whole, these provisions represent a comprehensive effort to increase the supply while simultaneously creating a demand for high-quality child care, and making it affordable for low- and middle-income families.

To offset the cost of these changes, my amendment reduces, but does not eliminate, the dependent care tax credit for upper-income taxpayers and the amount that an employee can place in a dependent care assistance plan used to reimburse non-accredited or non-credential child care is gradually decreased. In addition, the amendment expands the coordinated enforcement efforts of the Internal Revenue Service and the HHS Office of Child Support Enforcement, which will significantly reduce the amount of fraud related to illegal tax deduction and credit claims by non-custodial parents.

The first provision in the amendment makes several changes in the Child and Dependent Care Tax Credit [CDCTC]. This tax credit is the largest tax-based subsidy for child care. My amendment raises the income level for the receipt of the highest percentage of employment-related child care costs from $10,000 to $20,000. The percentage is decreased at a rate of 1 percent for each additional $2,500 in adjusted gross income and sets a minimum percentage of 10 percent for incomes of $70,000 and above.

This change represents a more equitable distribution of limited resources

based on the percentage of income a family must use to meet child care expenses. For families qualifying for the EITC, my amendment makes the child care tax credit refundable, on a quarterly basis. This will enable many low-income working families to move from part-time to full-time employment, by easing the burden of child care costs and having the money available at regular intervals throughout the year.

Finally, the amendment establishes, over a 5-year period, different rates for the tax credit, dependent on whether the child care is provided in an accredited child care facility or by a credentialed professional. This will reward parents who choose high-quality child care and help defray the additional costs of that care.

I am sensitive to the concerns of colleagues who object to reducing the child care tax credit. But before you judge this reduction too harshly, let's put it into perspective. The tax credit remains at or above the current rate of 20 percent for parents with adjusted gross incomes of $45,000 or less, regardless of the type of child care. The median income of families with children nationally is $37,000. While there are wide differences in between States, there are only four States where the median exceeds $45,000 AGI triggering a reduction in the current rate of 20 percent. Most States are significantly below this trigger.

At the end of the 5-year phase in period, the tax credit remains at or above the current 20 percent rate for families with an AGI of $55,000. No States have median incomes of families with children which exceed the $55,000 AGI level for high quality child care which triggers a reduction below current child care tax rate. Families with incomes at or above $70,000 will still receive a tax credit of 10 percent, increased to 12.5 percent if high quality care is used.

In terms of money, a 1 percent decrease in the child care tax credit equals $24 when care for one child is claimed, and $48 for two or more children. Families making $70,000 or more are the hardest hit by my amendment. Yet their maximum financial cost is $240 a year for one child, or $480 a year for two or more children—about half of one percent of their adjusted gross income.

The second area of changes occurs in the Dependent Care Assistance Plan [DCAP]. The amendment increases the amount that an employee can contribute to a DCAP account, if the funds are used to pay for the care of two or more eligible persons. In addition, the amount of DCAP contributions is increased for high-quality care and decreased for care that is provided by an unaccredited child care facility or a person who has not received a professional credential. These differential rates are phased in over a 5-year period in order for child care providers to achieve accreditation or become credentialed in child care.

Current law prohibits DCAP from being used to pay relatives for care. While I support needed controls on the use of DCAP accounts in most cases, my amendment would make a very limited exception to this prohibition. DCAP payments could be made to pay a parent or grandparent to care for a newborn child. The DCAP account could be joined at anytime during a pregnancy. The funds would be available for up to 12 months from the date of deposit into the employee's DCAP account—because babies have a timetable all their own when it comes time to be born.

The last change my amendment makes in DCAP is through the addition of a requirement that Federal employees have the opportunity to contribute to Dependent Care Assistance Plans. Private employees, as well as many State and local governments, have had DCAP available for their employees since 1981. Consistent with the intent of the Congressional Accountability Act, I want to make this child care subsidy available to Federal workers, including legislative branch employees.

Child care is a growing concern to businesses big and small. Employers are coming to the realization that affordable, convenient high-quality child care is a critical element in hiring and retaining skilled employees. Many companies, such as Johnson & Johnson, IBM, and others have been very innovative in providing child care assistance for their employees. Small businesses in particular are finding it difficult to meet the child care needs of their employees, but recognize the importance of that help.

I am defering to my colleague from Wisconsin, Senator KOHL, who has an excellent amendment providing a tax credit to businesses who provide child care services and support for their employees. My amendment included a similar provision, but because Senator KOHL has been working on this aspect of child care for so long, I dropped my provision and urge my colleagues to vote for his amendment as well as this one.

Current law prohibits businesses from receiving a charitable deduction for donations made to public entities, such as schools and child care services. My amendment will extend eligibility for a business charitable deduction to the donation of educational equipment and supplies donated to public schools, public child care providers and public child care support entities, such as resource and referral services. If child care is to improve and meet the developmental needs of our Nation's children, every available resource must be made available. Computers which are discarded because they are too slow or have insufficient hard drive capacity, can be the first step into the computer-age for a small child or the link to professional training for a child care provider.

A critical part of improving the quality of child care is professional development for child care providers. Since the 1970's there has been a decline in child care teacher salaries. In 1990, teachers in child care centers earned an average of $11,500 a year. Assistant teachers, the largest growing segment of child care professionals, were paid 10 to 20 percent less than child care teachers. The 1990 annual income of regulated family child care providers was $10,944 which translates to about $4 an hour. Nonregulated family child care, generally comprised of providers taking care of a smaller number of children, earned an average of $4,275 a year—substantially less than minimum wage. With these wages, it is easy to understand why more child care providers do not participate in professional training or attend college classes to improve their skills. The costs of applying for and receiving certification as a qualified child care professional are minimal, but understandably out of reach for many child care providers.

My amendment will exempt expenses directly related to child care accreditation or becoming credentialed from the 2 percent floor that is applied to miscellaneous itemized deductions. This will at least permit child care providers to receive a full deduction for the expenses associated with improving the child care services which they provide. This incentive for professional growth and the development of new skills is a small but critical part of my overall effort to support high-quality child care.

The last provision in my amendment creates a very limited exception to the executive use rule governing the tax deduction for home office expenses. The amendment will permit the mixed use of home office space for business and personal purposes to allow a person to care for his or her child. In some ways, the need for this exception comes down to fundamental fairness. How many school days, snow days and other times do children accompany their parents into work? I can always tell when the schools are unexpectedly closed, by the increased number of little people I see in Senate offices and eateries. I have been in Senate offices and other workplaces when a crib or playpen is clearly in evidence. Yet, none of us question whether our offices are exclusively for business use. One of the big incentives for telecommuting and home-based business is to allow parents to have more time with their families, yet existing law would keep a new mother from legitimately claiming a home office deduction if she has her child read a book or play in a corner of the room where she is working.

The need for high-quality child care is compelling. Having affordable, convenient child care is tied directly to a family's ability to produce income. Good child care can be an effective way to support the healthy development of children, particularly in the acquisition of social and language skills. For the millions of children who spend much of their pre-school lives being cared for by someone other than their parents, child care provides the foundation upon which all future education

will be built—and determines to a large extent whether that foundation will be strong or weak.

As we all know, quality child care costs money. It costs money to parents who bear the biggest burden for the cost of child care. It costs businesses both through the direct assistance that they provide to employees to help with the costs of child care, and through their ability to hire and retain a skilled work force. It costs Government through existing tax provisions, direct spending, and discretionary spending targeted at child care. But the costs of not making this investment are even higher. Those costs can be measured in the cost of remedial education, the increase of an unskilled labor force, the increase in prison populations, and most importantly, the blunted potential of millions of children.

I urge my colleagues to support my amendment to the budget reconciliation act.

Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

AN AMENDMENT TO BE PROPOSED BY SENATOR JEFFORDS ON THE BUDGET RECONCILIATION ACT OF 1997 TO IMPROVE THE QUALITY OF CHILD CARE

Changes to the Tax Code to encourage improvements in child care services and options for meeting employment-related child care needs—multiple provisions.

Proposed Amendment: To amend the Internal Revenue Code to encourage the demand for and supply of high quality child care by:

(1) Making the following changes in the Dependent Care Tax Credit—

(a) Increasing the percentage of child care expenses to 30 percent for families with incomes at or below $20,000 AGI; decreased at the rate of 1 percent for every $2,500 AGI over $20,000 to a minimum of 10 percent for AGI over $70,000

(b) Phasing in a differential percentage (over 5 years) if the child care is provided in an accredited center or by a credentialed professional; At the end of the phase in period, there is a 25 percent differential in the percentage of the tax credit between high-quality child care and other child care

(c) Making the Dependent Care Tax Credit refundable beginning in 2002, for taxpayers eligible for the EITC, including the differential percentage (see b above) for high quality child care.

(2) Making the following changes in the Dependent Care Assistance Program—

(a) The amount of money that can be placed in a Dependent Care Assistance Program by an employee is increased for accredited or credentialed child care, increased if there is more than one qualified dependent, and decreased if child care is provided in non-accredited child care or with a non-credentialed child care professional—phased in over 5 years

(b) An exception in the calendar year spending requirement and prohibition against its use to pay relatives for providing care is made to make it possible for a parent or grandparent to provide care for a newborn child

(c) Federal employees are provided the opportunity of enrolling in a dependent care assistance plan

(3) Extending the eligibility for businesses to take a qualified charitable deduction for the donation of educational equipment and material to public schools and accredited or credentialed non-profit child care providers and child care support entities.

(4) Exempting the expenses related to achieving and maintaining child care accreditation and credentialing from the 2 percent floor applicable to miscellaneous itemized deductions.

(5) Excepting the mixed use of home office space for business and personal purposes to allow for the care of a dependent from the exclusive use rule governing home office deductions.

Reasons for Change: The increase in the number or employed women with young children, combined with recent reforms in the welfare system, has placed tremendous pressures on states and communities to dramatically expand the amount of available child care. Studies on the relationship between quality child care and job retention, employment absenteeism, and job acquisition clearly identifies that the quality and safety of child care is as important as the existence of child care services. In addition, the recent research on the development of the human brain underscores how child care affects the development of the tomorrow's workers and citizens. The Committee for Economic Development recently issued a report which identified changes in federal tax policies, training of child care workers, incentives for certification, educational resources, and increased business involvement as critical to efforts to improve the quality of child care. The tax code changes included in this amendment address each of these issues.

Summary of each provision:

I. CHANGES TO THE DEPENDENT CARE TAX CREDIT

A. Percent of the current $2,400 work related child care expenses ($4,800 for 2 or more dependents):

Initial percentage reduced by 1 percent for each $2,500 by which the taxpayer's AGI exceeds $20,000 but does not exceed $70,000—rate does not reduce below 12.5 percent for accredited/credentialed child care, 10 percent for non-accredited/non-credentialed child care.

A 25 percent rate differential for accredited or credentialed child care (as defined in the bill) is phased in over 5 years.

For child care provided in non-accredited facilities or by non-credentialed providers, the initial percentage is 30 percent and the phase out percentage is 10 percent, regardless of the year.

Initial and phase out percentage for accredited/credentialied child care:

| Taxable year beginning in— | Initial percent | Phaseout percent |
|---|---|---|
| 1998 | 31.5 | 12.5 |
| 1999 | 33.0 | 12.5 |
| 2000 | 34.5 | 12.5 |
| 2001 | 36.0 | 12.5 |
| 2002 | 37.5 | 12.5 |

B: Credit made refundable for Low Income Tax Payers:

Applicable taxpayers are those for whom credit under section 32 of the tax code (EITC) is allowable for the taxable year.

Coordinated with advance payments and minimum tax rules, including eligibility certification and advance payment table.

Applies to taxable years beginning December 31, 2001.

II. EXPANSION OF DEPENDENT CARE ASSISTANCE PROGRAM

A. Change in Dollar Limitation:

Applies to child care only—not elder or other dependent care.

Change in rates for child in accredited/credentialed child care:

| Taxable years beginning in: | For 1 qualifying child | 2 or more qualifying child |
|---|---|---|
| 1998 | $5,200 | $6,700 |
| 1999 | 5,400 | 6,900 |
| 2000 | 5,600 | 7,100 |
| 2001 | 5,800 | 7,300 |
| 2002 and thereafter | 6,000 | 7,500 |

Change in rates for child NOT in accredited/credentialed child care:

| Taxable years beginning in— | For 1 qualifying child | 2 or more qualifying child |
|---|---|---|
| 1998 | $4,800 | $6,300 |
| 1999 | 4,600 | 6,100 |
| 2000 | 4,400 | 5,900 |
| 2001 | 4,200 | 5,700 |
| 2002 and thereafter | 4,000 | 5,500 |

B. Changes in eligibility for Dependent Care Assistance Program:

Exception in calendar year spending requirement and prohibition against using Dependent Care Assistance Program to pay relative providing care.

During pregnancy, parent may elect to join the employer's Dependent Care Assistance Program at any time during pregnancy.

If parent signs up during a pregnancy, each deposit into the individual's Dependent Care Assistance Account may be available for use for a 12 month period.

If parent signs up during a pregnancy, the funds may be used to reimburse a parent or spouse to remain at home with the newborn child as an alternative to placing the child in child care in order to return to work.

Federal employees must be provided with the opportunity to enroll in a Dependent Care Assistance Program.

III. CHARITABLE DEDUCTION FOR DONATING EDUCATIONAL EQUIPMENT & MATERIALS

Extending eligibility for qualified charitable deduction for business donation of educational equipment and materials to public schools, accredited or credentialed non-profit child care providers, and public or non-profit child care support entities.

IV. TAX DEDUCTION FOR SPECIFIC EDUCATIONAL EXPENSES FOR INDIVIDUAL CHILD CARE PROVIDERS

Exemption from the 2% floor on applicable to miscellaneous itemized deductions is provided for educational expenses directly related to achieving or maintaining child care accreditation or professional child care credentials for individuals deriving at least 60% of their taxable income through the provision of child care services.

V. CHANGE IN HOME OFFICE DEDUCTION

Limited exception to the exclusive use rule permitting mixed use of space for business and personal purposes in the case of taxpayers who conduct home-based business while caring for dependents.

Revenue Estimate: 4.11 Billion over 10 years.

Revenue Offset: To offset these increases, the dependent care tax credit is reduced (not eliminated) for upper-income taxpayers and the amount that an employee can place in a dependent care assistance plan used to reimburse non-accredited or non-credential child care is decreased. In addition, the amendment expands the coordinated enforcement efforts of the Internal Revenue Service and the HHS Office of Child Support Enforcement, which will significantly reduce the amount of fraud related to illegal tax deduction and credit claims by non-custodial parents.

For the Purpose of this Amendment:

The terms credential and accreditation are used to refer to formal credentialing and accreditation processes by a private non-profit or public entity that is state recognized

(minimum requirements: age-appropriate health and safety standards, age-appropriate developmental and educational activities as an integral part of the program, outside monitoring of the program/individual, accreditation/credentialing instruments based on peer-validated research, programs/facilities meet any applicable state and local licensing requirements, and on-going staff development-training which includes related skills testing). There are several organizations and a few states that currently provide accreditation and/or credentialing for early childhood development programs, child care and child care providers.

## LEVIN (AND McCAIN) AMENDMENT NO. 556

Mr. ROTH (for Mr. LEVIN for himself and Mr. MCCAIN) proposed an amendment to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . SENSE OF THE SENATE REGARDING TAX TREATMENT OF STOCK OPTIONS.**

(a) FINDINGS.—The Senate finds that—

(1) currently businesses can deduct the value of stock options as business expense on their income tax returns, even though the stock options are not treated as an expense on the books of these same businesses; and

(2) stock options are the only form of compensation that is treated in this way.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance of the Senate should hold hearings on the tax treatment of stock options.

## ENZI (AND OTHERS) AMENDMENT NO. 557

Mr. ROTH (for Mr. ENZI for himself, Mr. HAGEL, Mr. HUTCHINSON, Mr. GRAMS, Mr. ROBERTS, Mr. INHOFE, Mr. THOMAS, Mr. ALLARD, Mr. LUGAR, Mr. SANTORUM, Mr. FRIST, Mr. BURNS, and Mr. SESSIONS) proposed an amendment to the bill, S. 949, supra; as follows:

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

**SEC. . SENSE OF THE SENATE ON ESTATE TAXES.**

(a) The Senate finds that whereas—

(1) The Federal estate tax punishes hard working small business owners and discourages savings and growth; and

(2) The Federal estate tax imposes an unfair economic burden on small businesses and reduces their ability to survive and compete with large corporations; and

(3) A reduction in Federal estate taxes for family-owned farms and enterprises will help to prevent the liquidation of small businesses that strengthen American communities by providing jobs and security;

(b) It is the Sense of the Senate that—

(1) The estate tax relief provided in this bill is an important step that will enable more family-owned farms and small businesses to survive and continue to provide economic security and job creation in American communities; and

(2) Congress should eliminate the Federal estate tax liability for family-owned businesses by the end of 2002 on a deficit-neutral basis.

## DODD AMENDMENT NO. 558

Mr. ROTH (for Mr. DODD) proposed an amendment to the bill, S. 949, supra; as follows:

On page 77, between lines 11 and 12, insert the following:

**SEC. . TREATMENT OF CANCELLATION OF CERTAIN STUDENT LOANS.**

(a) CERTAIN LOANS BY EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Paragraph (2) of section 108(f) (defining student loan) is amended by striking ''or'' at the end of subparagraph (B) and by striking subparagraph (D) and inserting the following:

''(D) any educational organization described in section 170(b)(1)(A)(ii) 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 which is designed to encourage its students to serve in occupations with unmet needs or in areas with unmet needs and under which the services provided by the students (or former students) are for or under the direction of a governmental unit or an organization described in section 501(c)(3) and exempt from tax under section 501(a).

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) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Subsection (f) of section 108 is amended by adding at the end the following new paragraph:

''(3) EXCEPTION FOR DISCHARGES ON ACCOUNT OF SERVICES PERFORMED FOR CERTAIN LENDERS.—Paragraph (1) shall not apply to the discharge of a loan made by an organization described in paragraph (2)(D) (or by an organization described in paragraph (2)(E) from funds provided by an organization described in paragraph (2)(D)) if the discharge is on account of services performed for either such organization.''

(b) CERTAIN STUDENT LOANS THE REPAYMENT OF WHICH IS INCOME CONTINGENT.—Paragraph (1) of section 108(f) is amended by striking ''any student loan if'' and all that follows and inserting ''any student loan if—

''(A) such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers, or

''(B) in the case of a loan made under part D of title IV of the Higher Education Act of 1965 which has a repayment schedule established under section 455(e)(4) of such Act (relating to income contingent repayments), such discharge is after the maximum repayment period under such loan (as prescribed under such part).''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

## GRAMS AMENDMENT NO. 559

Mr. ROTH (for Mr. GRAMS) proposed an amendment to the bill, S. 949, supra; as follows:

''(j) QUALIFIED GAMES OF CHANCE.—

(1) IN GENERAL.—The term 'unrelated trade or business' does not include the activity of qualified games of chance.

(2) QUALIFIED GAMES OF CHANCE.—For purposes of this subsection, the term 'qualified games of chance means any game of chance, other than provided in subsection (f), conducted by an organization if—

''(A) such organization is licensed pursuant to State law to conduct such game,

''(B) only organizations which are organized as nonprofit corporations or are exempt from tax under section 501(a) may be so licensed to conduct such game within the State, and

''(C) the conduct of such game does not violate State or local law.''

## DORGAN AMENDMENTS NOS. 560–561

Mr. ROTH (for Mr. DORGAN) proposed two amendments to the bill, S. 949, supra; as follows:

AMENDMENT NO. 560

On page 211, between lines 5 and 6, insert the following:

**SEC. 724. DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS MAY BE USED WITHOUT PENALTY TO REPLACE OR REPAIR PROPERTY DAMAGED IN PRESIDENTIALLY DECLARED DISASTER AREAS.**

(a) IN GENERAL.—Section 72(t)(2) (relating to exceptions to 10-percent additional tax on early distributions), as amended by sections 203 and 303, is amended by adding at the end the following new subparagraph:

''(G) DISTRIBUTIONS FOR DISASTER-RELATED EXPENSES.—Distributions from an individual retirement plan which are qualified disaster-related distributions.''

(b) QUALIFIED DISASTER-RELATED DISTRIBUTIONS.—Section 72(t), as amended by sections 203 and 303, is amended by adding at the end the following new paragraph:

''(9) QUALIFIED DISASTER-RELATED DISTRIBUTIONS.—For purposes of paragraph (2)(E)—

''(A) IN GENERAL.—The term 'qualified disaster-related distribution' means any payment or distribution received by an individual to the extent that the payment or distribution is used by such individual within 60 days of the payment or distribution to pay for the repair or replacement of tangible property which is disaster-damaged property.

''(B) LIMITATIONS.—

''(i) ONLY DISTRIBUTIONS WITHIN 2 YEARS.—The term 'qualified disaster-related distribution' shall only include any payment or distribution which is made during the 2-year period beginning on the date of the determination referred to in subparagraph (D).

''(ii) DOLLAR LIMITATION.—Such term shall not include distributions to the extent the amount of such distributions exceeds $10,000 during the 2-year period described in clause (i).

''(C) DISASTER-DAMAGED PROPERTY.—The term 'disaster-damaged property' means property—

''(i) which was located in a disaster area on the date of the determination referred to in subparagraph (C), and

''(ii) which was destroyed or substantially damaged as a result of the disaster occurring in such area.

''(D) DISASTER AREA.—The term 'disaster area' means an area determined by the President during 1997 to warrant assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.''

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments and distributions after December 31, 1996, with respect to disasters occurring after such date.

**SEC. 725. ELIMINATION OF 10 PERCENT FLOOR FOR DISASTER LOSSES.**

(a) GENERAL RULE.—Section 165(h)(2)(A) (relating to net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income) is amended by striking clauses (i) and (ii) and inserting the following new clauses:

''(i) the amount of the personal casualty gains for the taxable year,

''(ii) the amount of the federally declared disaster losses for the taxable year (or, if lesser, the net casualty loss), plus

''(iii) the portion of the net casualty loss which is not deductible under clause (ii) but only to the extent such portion exceeds 10 percent of the adjusted gross income of the individual.

For purposes of the preceding sentence, the term 'net casualty loss' means the excess of personal casualty losses for the taxable year over personal casualty gains.''

(b) FEDERALLY DECLARED DISASTER LOSS DEFINED.—Section 165(h)(3) (relating to treatment of casualty gains and losses) is amended by adding at the end the following new subparagraph:

''(C) FEDERALLY DECLARED DISASTER LOSS.—

''(i) IN GENERAL.—The term 'federally declared disaster loss' means any personal casualty loss attributable to a disaster occurring during 1997 in an area subsequently determined 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.

''(ii) DOLLAR LIMITATION.—Such term shall not include personal casualty losses to the extent such losses exceed $10,000 for the taxable year.''

(c) CONFORMING AMENDMENT.—The heading for section 165(h)(2) is amended by striking ''NET CASUALTY LOSS'' and inserting ''NET NONDISASTER CASUALTY LOSS''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to losses attributable to disasters occurring after December 31, 1996, including for purposes of determining the portion of such losses allowable in taxable years ending before such date pursuant to an election under section 165(i) of the Internal Revenue Code of 1986.

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On page 211, between lines 5 and 6, insert the following:

**SECTION 724. ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.**

(a) IN GENERAL.—Section 6404 (relating to abatements) is amended by adding at the end the following:

''(h) ABATEMENT OF INTEREST ON UNDERPAYMENTS BY TAXPAYERS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—

''(1) IN GENERAL.—If the Secretary extends for any period the time for filing income tax returns under section 6081 and the time for paying income tax with respect to such returns under section 6161 (and waives any penalties relating to the failure to so file or so pay) for any individual located in a Presidentially declared disaster area, the Secretary shall abate for such period the assessment of any interest prescribed under section 6601 on such income tax.

''(2) PRESIDENTIALLY DECLARED DISASTER AREA.—For purposes of paragraph (1), the term 'Presidentially declared disaster area' means, with respect to any individual, any area which the President has determined during 1997 warrants assistance for the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance.

''(3) INDIVIDUAL.—For purposes of this subsection, the term 'individual' shall not include any estate or trust.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to disasters declared after December 31, 1996.

## BIDEN AMENDMENT NO. 562

Mr. ROTH (for Mr. BIDEN) proposed an amendment to the bill, S. 949, supra; as follows:

At the appropriate place, insert the following:

**SEC. . SURVIVOR BENEFITS FOR PUBLIC SAFETY OFFICERS KILLED IN THE LINE OF DUTY.**

IN GENERAL.—Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

**''SEC. 138. SURVIVOR BENEFITS ATTRIBUTABLE TO SERVICE BY A PUBLIC SAFETY OFFICER WHO IS KILLED IN THE LINE OF DUTY.**

''(a) IN GENERAL.—Gross income shall not include any amount paid as a survivor annuity on account of the death of a public safety officer (as such term is defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) killed in the line of duty—

''(1) if such annuity is provided under a governmental plan which meets the requirements of section 401(1) to the spouse (or a former spouse) of the public safety officer or to a child of such officer; and

''(2) to the extent such annuity is attributable to such officer's service as a public safety officer.

''(b) EXCEPTIONS.—

''(1) IN GENERAL.—Subsection (a) shall not apply with respect to the death of any public safety officer if—

''(A) the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about such officer's death;

''(B) the officer was voluntarily intoxicated (as defined in section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968) at the time of death; or

''(C) the officer was performing such officer's duties in a grossly negligent manner at the time of death.

''(2) EXCEPTION FOR BENEFITS PAID TO CERTAIN INDIVIDUALS.—Subsection (a) shall not apply to any payment to an individual whose actions were a substantial contributing factor at the death of the officer.

(b) EFFECTIVE DATE.—The amendments made by this subsection shall apply to amounts received in taxable years beginning after December 31, 1996, with respect to individuals dying after such date.

## DODD (AND D'AMATO) AMENDMENT NO. 563

Mr. ROTH (for Mr. DODD for himself and Mr. D'AMATO) proposed an amendment to the bill, S. 949, supra; as follows:

On page 267, between lines 15 and 16, insert the following:

**SEC. . 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.—his section shall apply to any amount—

(1) which is payable—

(A) 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

(B) under a State law (as in existence on July 1, 1992) which irrebuttably presumed that heart disease and hypertension are work-related illnesses but only for employees separating from service before such date; 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.

(c) WAIVER OF STATUTE OF LIMITATIONS.—If, on the date of the enactment of this Act (or at any time within the 1-year period beginning on such date of enactment) credit or refund of any overpayment of tax resulting from the provisions of this section is barred by any law or rule of law, credit or refund of such overpayment shall, nevertheless, be allowed or made if claim therefore is filed before the date 1 year after such date of enactment.

**SECTION . REMOVAL OF DOLLAR LIMITATION ON BENEFIT PAYMENTS FROM A DEFINED BENEFIT PLAN MAINTAINED FOR CERTAIN POLICE AND FIRE EMPLOYEES.**

(a) IN GENERAL.—Subparagraph (G) of section 415(b)(2) of the Internal Revenue Code of 1986 is amended by striking ''participant—'' and all that follows and inserting ''participant, subparagraphs (C) and (D) of this paragraph and subparagraph (B) of paragraph (1) shall not apply.''

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1996.

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## BOXER AMENDMENT NO. 564

Mr. ROTH (for Mrs. BOXER) proposed an amendment to the bill, S. 949, supra; as follows:

On page 208, between lines 16 and 17, insert the following:

**SEC. . DIVERSIFICATION IN SECTION 401(k) PLAN INVESTMENTS.**

(a) LIMITATIONS ON INVESTMENT IN EMPLOYER SECURITIES AND EMPLOYER REAL PROPERTY BY CASH OR DEFERRED ARRANGEMENTS.—Section 407(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107(d)(3)) is amended by adding at the end the following:

''(D)(i) The term 'eligible individual account plan' does not include that portion of an individual account plan that consists of elective deferrals (as defined in section 402(g)(3) of the Internal Revenue Code of 1986) pursuant to a qualified cash or deferred arrangement as defined in section 401(k) of the Internal Revenue Code of 1986 (and earnings allocable thereto) are required to be invested in qualifying employer securities or qualifying employer real property or both pursuant to the documents and instruments governing the plan or at the direction of a person other than the participant on whose behalf such elective deferrals are made to the plan (or the participant's beneficiary).

''(ii) For purposes of subsection (a), such portion shall be treated as a separate plan.

''(iii) This subparagraph shall not apply to an individual account plan if the fair market value of the assets of all individual account plans maintained by the employer equals not more than 10 percent of the fair market value of the assets of all pension plans maintained by the employer.

''(iv) This subparagraph shall not apply to an individual account plan that is an employee stock ownership plan as defined in

section 409(a) or 4975(e)(7) of the Internal Revenue Code.''.

(v) This subparagraph shall not apply to an individual account plan if not more than 1 percent of an employees eligible compensation deposited to the plan as an elective deferral (as so defined) is required to be invested in the qualifying employer securities.

(b) EFFECTIVE DATE.—(1) IN GENERAL.—The amendments made by this section shall apply to employer securities and employer real property acquired after the beginning of the first plan year beginning after the 90th day after the date of enactment of this Act.

(2) SPECIAL RULE FOR CERTAIN ACQUISITIONS.—Employer securities and employer real property acquired pursuant to a binding written contract to acquire such securities and real property in effect on the date of enactment of this Act and at all times thereafter, shall be treated as acquired immediately before such date.

## DASCHLE AMENDMENT NO. 565

Mr. ROTH (for Mr. DASCHLE) proposed an amendment to the bill, S. 949, supra; as follows:

Beginning on page 189, line 24, strike ''and'' and all that follows through page 190, line 1, and insert the following:

''(III) capital expenditures related to rail operations for Class II or Class III rail carriers in the State,

''(IV) any project that is eligible to receive funding under section 5309, 5310, or 5311 of title 49, United States Code,

''(V) any project that is eligible to receive funding under section 130 of title 23, United States Code, and

''(VI) the payment of interest.

Mr. DASCHLE. Mr. President, I ask unanimous consent that additional material be printed in the RECORD.

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

DASCHLE AMENDMENT TO S. 949 TO EXPAND USES OF INTERCITY PASSENGER RAIL FUND FOR NON-AMTRAK STATES

LIMITATIONS PROPOSED BY S. 949

The Finance Committee bill creates an Intercity Passenger Rail Fund financed by 0.5 cent per gallon of the federal fuel excise taxes primarily to finance Amtrak. The bill also sets aside 1% of annual program funds per year for each state with no Amtrak service. The six states currently lacking Amtrak service are South Dakota, Wyoming, Oklahoma, Maine, Alaska and Hawaii. However, the bill *limits* the use of those funds by non-Amtrak States to: (1) intercity passenger rail or bus service capital improvements and maintenance, or (2) The purchase of intercity passenger rail services from the National Railroad Passenger Corporation.

PROBLEMS POSED TO NON-AMTRAK STATES

South Dakota and some of the other non-Amtrak states have no passenger rail service and only limited intercity bus service. This type of funding would not significantly benefit these states, nor could they wisely invest funds in such service.

AMENDMENT ALLOWS NON-AMTRAK STATES TO USE FUNDS PRODUCTIVELY

The amendment would expand the use of funding provided to non-Amtrak states under this provision to include the expenditure of such funds for:

1. Rural and public transportation projects that are eligible for funding under Sections 5309 (discretionary transit-urban areas), 5310 (transit capital for the elderly and handicapped), and 5311 (rural transit capital and operations) of Title 49 USC. Rural public transportation (a portion of which is intercity in nature in transporting elderly and disabled from small towns to larger cities for medical care, shopping and other purposes, as well as providing local nutritional needs and mobility) is extremely important and needed in South Dakota in order to deal with the vast aging population in a sparsely populated area. During FY 1996 in the State, rural public transportation operators provided 1,114,672 rides and traveled 2,102,414 miles transporting the elderly and disabled of which over 50% of the rides were for medical, employment and nutritional needs. However, only about two-thirds of the State currently has access to limited Public Transportation, and over half of the existing transit vehicles in the providers' fleets are older than 7 years or have over 1000,000 miles. Therefore this funding would address significant public transit needs.

2. Rail/highway crossing safety projects that are eligible for funding under Section 130 of Title 23, USC. Only 219 out of 2025 of South Dakota's rail/highway crossings are signalized, and there is a tremendous unmet need to improve the safety of rail/highway crossings in the state.

3. Capital expenditures related to rail operations for Class II and Class III railroads within the state. Only railroads that are primarily regional carriers-not large railroads would be eligible for assistance. This is extremely important for states like South Dakota which depends on regional carriers and has made a major investment on its own and currently owns approximately 50% of the rail lines operating in the state in order to provide a core rail transportation system to benefit the state's agricultural economy.

## NOTICE OF HEARING

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that two joint oversight hearings have been scheduled before the Committee on Energy and Natural Resources and the House Resources Committee.

The hearings will take place Wednesday, July 9, 1997 at 11 a.m. and Thursday, July 10, 1997 at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building in Washington, D.C.

The purpose of the hearings is to receive testimony on the Final Draft of the Tongass Land Management Plan as the first step in the congressional review process provided by the 1996 amendments to the Regulatory Flexibility Act.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, D.C. 20510. For further information, please call Judy Brown or Mark Rey at (202) 224–6170.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Commerce, Science and Transportation be authorize to meet on Thursday, June 26, 1997, at 2 p.m. on pending committee business.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 26 for purposes of conducting a Subcommittee on Forests and Public Land Management hearing which is scheduled to begin at 9:30 a.m.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be granted permission to meet during the session of the Senate on Thursday, June 26 for purposes of conducting a Subcommittee on National Parks, Historic Preservation, and Recreation hearing which is scheduled to begin at 2 p.m.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. ROTH. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee to meet on Thursday, June 26, at 4 p.m. for a business meeting on issues relating to the matter of issuing subpoenas for the special investigation hearings.

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

COMMITTEE ON SMALL BUSINESS

Mr. ROTH. Mr. President, I ask unanimous consent that the Committee on Small Business be authorized to meet during the session of the Senate on Thursday, June 26, 1997, to markup legislation pending in the Committee. The markup will begin at 9:30 a.m. in room 428A of the Russell Senate Office Building.

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

SUBCOMMITTEE ON CLEAN AIR, WETLANDS, PRIVATE PROPERTY, AND NUCLEAR SAFETY

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety be granted permission to conduct an oversight hearing Thursday, June 26, 1997, 9:30 a.m., Hearing Room (SD–406), on recent administrative changes and judicial decisions relating to Section 404 of the Federal Water Pollution Control Act.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT AND TRADE PROMOTION

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Export and Trade Promotion of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, June 26, 1997, at 9:30 a.m. to hold a hearing.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROTH. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, be authorized to meet during the session of the Senate on Thursday, June 26, 1997, to hold a hearing on the prevalence of waste fraud and abuse in the health care industry, with particular focus on Medicare.

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

SUBCOMMITTEE ON SECURITIES

Mr. ROTH. Mr. President, I ask unanimous consent that the Subcommittee on Securities of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, June 26, 1997, to conduct an oversight hearing on Social Security investments in the securities markets.

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

## ADDITIONAL STATEMENTS

### DAVID G. UNGER, ASSOCIATE CHIEF OF THE USDA FOREST SERVICE

• Ms. SNOWE. Mr. President, I would like to take a few minutes to recognize a distinguished civil servant and new resident of the State of Maine.

My colleagues know the value of having experienced, wise, and seasoned legislators in our midst to work through many of the difficult and complex issues we face on a daily basis. We can all appreciate the tremendous loss, therefore, at the Department of Agriculture when Associate Chief Dave Unger retires from his post at the Forest Service at the end of this month.

Mr. Unger has 40 years of experience working with natural resource issues in the public arena. Most recently he has been second in command at the Forest Service, engaged in the management of the National Forest System, the Forest Service research priorities, State and private forestry programs, international forestry issues, and administrative responsibilities. As one of the most heavily forested States in the country, Maine has benefitted from his leadership through technical assistance to landowners, advanced wood products manufacturing technology from the research program, and recreational opportunities in our own corner of the White Mountain National Forest.

In addition to serving as Associate Chief for the Forest Service, Mr. Unger was Deputy Assistant Secretary for Natural Resources and Environment, Associate Chief for the Soil Conservation Service, executive vice president of the National Association of Conservation Districts, Director of the Pennsylvania State Soil and Water Commission, among other leadership posts in the natural resources and conservation arena.

Recently, Mr. Unger was honored by the President of the United States with a Distinguished Executive Rank Award. In 1991, President Bush awarded him the Presidential Meritorious Executive Rank Award. He is a fellow of the Soil and Water Conservation Society and has been recognized by many other organizations for his contributions over a long and productive career helping farmers, conserving forests and protecting wildlife.

I am also pleased to say that Mr. Unger has chosen one of the most beautiful places in the world to retire with his wife, Carolyn. He will become a permanent resident of Maine where I am sure our communities, farmers, foresters, and others will continue to reap the benefits of his illustrious career. I want to welcome the Ungers Downeast, congratulate Mr. Unger on a full and productive career, and wish them both the best in their retirement in Maine.•

### TRIBUTE TO MRS. MERRILL CATT AND THE RICE PADDY KIDS

• Mr. BUMPERS. Mr. President, I rise today to pay tribute to Mrs. Merrill Catt, a speech therapist in the Weiner, AR, public school system and eight of her students who participated in a year-long project entitled ''The Rice Paddy Kids''. This project was designed to teach economics and provide hands-on learning experience to the students who ranged from third to eighth grade and were receiving speech/language therapy and resource services.

Because the students live in the heart of the rice-producing region of Arkansas, which is the leading rice-producing State in the United States, the project focused on the production and marketing of rice. In the initial phase of the project the students gathered information and knowledge about rice and its economic impact locally and nationally. The second phase of the project consisted of hands-on learning opportunities as the students planned, advertised, and produced products containing rice and marketed their products to the student body and the community. In addition to the applications of economic concepts and basic skills contained in each phase, curriculum activities were incorporated to improve the students' individual language deficiencies. The students concluded the project by planning and implementing a rice banquet for their parents, business supporters, teachers, school administration and community members.

What I've just summarized in several paragraphs takes many long hours of hard work and dedication to plan, organize, and implement. This is the second economic project Mrs. Catt has successfully undertaken to expand the knowledge and capabilities of her speech and language students, and I commend her for her initiative and willingness to go the extra mile for the benefit of her students and school. In addition to teaching these students about rice, she has shown them what can be accomplished when the important principles of responsibility, cooperation, perseverance, and innovation are utilized. I also congratulate the eight ''Rice Paddy Kids'' for a job well done. Not only are these students the benefactors of the project but they are an integral part of its success. While educating and helping themselves, they also educated and benefited their school and community.

There are many school systems in Arkansas that are larger in terms of student population and funding than the Weiner school system. However, the accomplishments of Mrs. Catt and ''The Rice Paddy Kids'' are a perfect example of how bigger is not always better. They have demonstrated a principle in which I firmly believe: being from a small town is no excuse not to think big and achieve great things.•

### TRIBUTE TO FLIP KLEFFNER

• Mr. CRAIG. Mr. President, today I would like to take a few moments to pay tribute to Flip Kleffner who, after a long and distinguished career as University of Idaho alumni director, will be retiring June 30.

I take a personal interest in his retirement because, as a fellow University of Idaho graduate, I've been the beneficiary of all his work.

Flip has served as alumni director for the past 15 years and has been involved with the University of Idaho most of his life. He is a former student body president and was a standout athlete who excelled at basketball, baseball, and football. In fact, he still holds the school record for the longest punt at 82 yards.

Flip has always made everything he does a very personal effort. In that regard, he's a tremendous example of how one person really can make a difference. He has quietly given countless hours of volunteer service to his community—in everything from youth sports to education—without expecting anything in return.

In addition, his efforts to continually improve the quality of education in Idaho have helped the State keep its best and brightest at home.

Flip has a wonderful sense of humor and is one of the most personable, pleasant people I have ever had the privilege of knowing. He will be greatly missed at the university, but I'm confident he'll remain an active force for good on campus—even in retirement.

He has had a remarkable career and I wish him all the best now as he enters this new chapter in his life.•

### TRIBUTE TO DR. DAN DOYLE

• Mr. ROCKEFELLER. Mr. President, improvements in health care provide America with a sense of security. Knowing there are advancements in the medical field every day gives people hope that someday we will find cures for cancer, AIDS, leukemia, and other serious diseases. Although these advancements are notable, we cannot

forget the small town doctors who are doing their part to help our fellow citizens stay healthy and fight medical problems.

That is why I take this opportunity to express admiration and appreciation for an outstanding West Virginia physician. Dr. Daniel B. Doyle has recently received the 1997 National Rural Health Association's Practitioner of the Year Award.

For 20 years, Dr. Doyle has served the health care needs of southern, rural West Virginia. Since 1977, he has directed the New River Family Health Center in Scarbro, WV. As its director, Dr. Doyle developed all the clinical systems, recruited staff, and helped guide the center's institutional policy, budget, and strategic planning. As a result of his tremendous efforts, the center now serves a county of over 50,000 people.

Today Dr. Doyle is a full-time family physician for the New River Family Health Center. Along with serving as the Director of Medical Education for the New River Health Association, he is also the director of the Fayette, Raleigh, and Nicholas rural health initiative consortium. As a small part of his endeavors with the New River Health Association, Dr. Doyle also works with the Hidden Valley Health Care Center, a 60-bed nursing home.

One of Dr. Doyle's colleagues, Jacquelynn A. Copenhaver, coordinator of the Rivers and Bridges Rural Health Education Partnerships Consortium, said, ''Doyle is involved in his community through his willingness to serve his patients whenever the need arises. He does not hesitate to make home visits, and by making those home visits, he meets the needs of the families of his patients as well as the needs of the patients themselves.''

I am extremely proud that one of this country's finest doctors is dedicated to serving the people of West Virginia. Knowing that the health of West Virginians is in such capable hands, I have added confidence that the future health of our State and Nation will get better and better.●

## COMMENCEMENT ADDRESS OF PATRICIA FERRONE

● Mr. KERRY. Mr. President, I was given the opportunity recently to read a speech prepared by my Executive Assistant, Patricia Ferrone, on the occasion of her graduation from the University of Maryland University College. I think this speech embodies many of the ideals we often talk about here on the floor of the United States Senate, and I commend all of our colleagues to take a moment and read her very thoughtful and insightful perspectives on education today. I ask it be printed in the RECORD.

The speech follows:

COMMENCEMENT ADDRESS, UNIVERSITY OF MARYLAND CLASS OF 1997

My name is Patricia Ferrone, and two years ago I enrolled in the Open Learning program at the University of Maryland University College. Today, I am thrilled to be a member of the University of Maryland's class of 1997.

Twenty years ago, I adhered to a strict interpretation of Mark Twain's adage that you should never let schooling interfere with your education. After all, how in the world was I to get on with my life if all I did was go to school? How could I find a good job, make a living, and gain experience if all I did was sit in a classroom?

What I didn't realize then was that education is not designed to limit our experience, but to broaden our perspective. I didn't realize that education is a rite of passage from darkness to light, from ignorance to analysis, from having a narrow vision to acquiring a sweeping view of the immense, rich, and colorful world around us, and from living in one moment in space and time to understanding ourselves and our place in history and in the universe.

Twenty years ago, I didn't realize that education is much more than day to day experiences in a limited world. But today, I know that education is the difference between being and becoming; it is discovering that the world I live in is not the only world that exists. Today I know that education is timeless, and I've learned that education is a rite of passage to a true understanding of society, the world, and ultimately of ourselves.

The education we've been lucky enough to receive here at the University of Maryland, has not been about sitting in a classroom and learning to parrot mathematical functions or names and dates, or other people's ideas. It is more fundamental. Here, we have been taught how to think for ourselves and how to look into ourselves and our history and learn the reference points of civilization so that we fully comprehend and appreciate the times in which we live.

Therefore, it is important for all of us to understand that the education we have acquired here is not some kind of job training program. Because if we think it is, if we treat it like it is, then we will have failed, for we will have trapped ourselves in our time, never understanding that civilization is a continuing journey, and that there is a precedence for our failures and our success, and we must learn what they are.

Our society and our personal lives will always contain areas of uncertainty and confusion; we will always be confronted by more questions than answers. Education alone will never be a panacea for curing society's ills or for defeating our own personal challenges. But I am convinced that obtaining an education is a moral imperative for improving the quality of our own individual lives and, ultimately, improving the quality of life around us. Today I am certain that education is the key to the treasures of the universe, and it is also the key that unlocks the riches that lie inside each of us.

Over the past several years, we have all worked hard to earn our degrees. During the process, we were confronted by the anxieties of new possibilities, but our commitment to our goal inspired us to meet the challenge. We all refused to believe that we had limitations. So our graduation today is a personal rite of passage that we should all be proud of and should celebrate. But, my hope for all of us is that the passion that drove our commitment does not end here.

I can stand before you now and say with certainty that Mark Twain and I were wrong. It is through schooling that we learn the broader view of where we have been, and therefore understand where we are, so that we can logically think about where we want to go. I know the education I have received here has been my compass. It has set me on course and given me direction.

I am eternally grateful to all my instructors and to the University of Maryland University College for making this experience one of the richest and most profound learning experiences of my life. Now I understand that education is the catalyst that turns knowledge and experience into wisdom—and gaining wisdom is more than a rite of passage, it is a lifetime process.●

## COMMENTS BY SENATOR SNOWE AT WOMEN'S SUFFRAGE STATUE REDEDICATION

● Ms. SNOWE. Mr. President, I would like to share with my colleagues a speech I gave today at the rededication ceremony for the Suffrage Statue. I ask that my speech be printed in the RECORD.

The speech follows:

Thank you, Lynn, for that kind introduction. It is a pleasure and honor to be here on a day that recognizes the importance of the role of women in our nation. Speaker Gingrich, you honor us with your presence and the women of America appreciate your efforts and support in returning this statue to its rightful place. And I would also like to commend Karen Staser and Joan Meecham, co-chairs of the Women's Suffrage Statute Campaign—what a wonderful day this must be to see your hard work come to fruition in such a splendid fashion.

And make no mistake: this effort has meant a great deal of hard work, and the colleagues I join today deserve special recognition for their tireless crusade to ensure that this statue is part of these hallowed halls. The outstanding attendance at this ceremony here in the Rotunda speaks to the symbolic importance of this re-dedication.

As you know, for years this statue was relegated to the crypt beneath our feet. In fact, a fitting title for the story of the women's suffrage statue could be ''Tales from the Crypt''. While Lady Liberty has stood proudly atop the dome of the United States Capitol, the ladies who fought to make that liberty real for women have languished in its basement.

In 1995 when a number of us sought the relocation of the statue to its originally intended spot—the Rotunda—we thought that it was a little thing to ask. We never could have imagined that this request, which on its merits seemed so straightforward, would become so problematic. The bottom line is, the debate should not have been about the weight of the statue, but the weight of an argument . . . and the worth of a just cause. When Susan B. Anthony said, ''What is this little thing we are asking for? It seems so little, yet it is everything'' she was talking about a woman's right to vote—but she could have been speaking about the moving of her own statue.

The difficult and circuitous journey these ladies have had from Crypt to Rotunda is in many ways emblematic of women's struggles for justice and equality throughout our history. For too long, women in this country had to endure the myth of what—or where—a ''woman's place'' should be. According to the out-of-date stereotype, a woman's place used to be only in the parlor, the kitchen, and, I suppose, the crypt. Since then, a lot has changed. Today, a woman's place is in the House, the Senate, and yes, in the Rotunda.

But it was not always this way. It took 73 long years beginning at the Seneca Falls Convention in 1848—spanning two centuries, eighteen Presidencies, and three wars—for women to get the right to vote. That's what it took before women won the right to shape

their destinies through full participation in this republic.

Well, it's hard to believe that it has taken them 76 more years—and fourteen more Presidencies—to earn a place of dignity for these three women who fought valiantly for that right . . . three women who changed America—Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott.

But the day has finally arrived and I am extremely pleased to help celebrate their long-overdue ''change of address'', one that is fitting for the accomplishments they bestowed on a grateful nation. There is no question about the symbolic importance of their new home. The Rotunda is the epicenter, if you will, of our American democracy. The Rotunda is ''the symbolic and physical heart of the United States Capitol'', according to the Architect of the Capitol.

What that means is simply this: what adorns the Rotunda matters. And having this statue here will matter to the throngs of Americans who come to Washington to be inspired by its symbolism. It will matter to the young girls who tours The Capitol and ask of the significance of these heroines. And it matters that visitors from the furthest flung reaches of the globe leave with no doubt about the importance we place on the participation of women in the greatest democracy that this world has ever seen.

The Rotunda's gilded halls will now not only reverberate with the images of our forefathers, but with our foremothers as well. Granted, the statues and monuments that have inhabited the Rotunda are of great men whose words and actions bequeathed a nation and people who today stand alone at the summit of civilization.

But we also know that women have played their roles in reaching the summit, as did these three women—Susan B. Anthony, Lucretia Mott, and Elizabeth Cady Stanton—in dedicating their lives to getting women into voting booths and out of the shadows of civic life. How could we do no less than to fight to bring their memory out of the shadows of the Crypt? After all, if we are to celebrate all that women have accomplished in America, we must celebrate those who gave life to our dreams. If we are to appreciate all that we have, we must appreciate those who fought for our opportunity to have it. And if we are to exercise our rights with strength and wisdom, we must understand that they came to us not by entitlement but by struggle.

As we bring the likenesses of these women into the light of day, so too do we take a step toward bringing history into the light of truth. Because for too long, women were the forgotten lines in the narrative of humankind. As these great ladies finally receive the recognition they have earned, let their spirit inspire us to honor and study other heroic women in history who also deserve recognition—like Sojourner Truth, who spoke so eloquently for African-American women. Indeed, it is my sincere hope that Sojourner Truth will soon join these ladies in the Rotunda where a woman of her courage and stature belongs.

Truth and her remarkable story also highlights the importance of the effort that has begun to create a National Women's History Museum. When you consider that we have memorialized Archie Bunker's chair and Norm's bar stool in a museum in the Nation's Capital—and I think that's fine—it's not unreasonable to think that there should be a place in Washington to memorialize all that women have contributed to America.

That's why I spearheaded a letter last month to President Clinton, signed by 20 of my Senate colleagues, urging him to establish a Task Force responsible for developing such a museum. This museum will ensure that women's accomplishments are never again relegated to the cellar of the annals of history.

So let us celebrate today and honor these three great American women. They had courage. They had tenacity. They had strength. And they've certainly had patience.

It's been 76 years since our country began to fulfill Susan B. Anthony's vision of ''Men, their rights and nothing more; women, their rights and nothing less''. It was the first dramatic step toward the realization that a country founded on the vestment of power in the people would not survive if over half those people were silenced. Let the story these women have to tell be silenced no longer. Let everyone who passes through this grandest of buildings forever hear their voices, and be inspired by lives led in pursuit of justice.

## MEMORIAL TO KRISTY DANIELLE VAUGHN

• Mr. ALLARD. Mr President, Kristy Danielle Vaughn, daughter of Gary and Kelli Vaughn, of Joes, Co, was a promising young student about to report for duty this month at the United States Military Academy at West Point. She had been nominated for an appointment there by former U.S. Senator Hank Brown and myself when I served in the U.S. House of Representatives.

She was a leader in her high school government, 4–H Club, sports, and school organizations, and received numerous awards in all areas. With all these responsibilities, she also gave much of her time to the duties of her family's farm. This bright young woman was suddenly killed in an auto accident recently as she was on her way to the All State Basketball finals in Greeley, CO.

Kristy very actively contributed her time and talents to her school and her community. She will be greatly missed in Joes, and her opportunities and contributions at West Point will never be realized. •

## TRIBUTE TO THE COMMUNITY OF MATTAWA, WA

• Mr. GORTON. Mr. President, last weekend, I had the opportunity to spend time along the banks of the Columbia River in the town of Mattawa, WA. I held a field hearing there to explore various proposals to preserve a stretch of the Columbia River's pristine beauty, and to ensure that one of our State's great natural assets remains protected.

The community of Mattawa opened its doors to me, to my staff, and to all of those who testified at and attended the public hearing, which attracted nearly 1,000 people. I want to thank the people of the community who so generously welcomed us, and worked so diligently to ensure that our hearing was a success. Without their attention to detail and enthusiasm, such civil discourse in so comfortable a setting would not have been possible. We could not have asked for finer hosts.

Our public hearing was held at the Saddle Mountain Intermediate School, in Mattawa. I would especially like to thank Dr. Bill Miller, superintendent of the Wahluke School District for all of his efforts on our behalf. Also, I would like to thank all of those in law enforcement, the school staff, and the volunteers who made our hearing such a success:

Mattawa Mayor Judy Essor; Ms. Luz Juarez-Stump, Saddle Mountain Intermediate School principal; Ms. Karen Hilliker, Saddle Mountain Intermediate School secretary; Mr. Mike Holland, Middle School principal; Mary Jane Holland, Wahluke School District staff; Mr. Steven Buckingham, teacher and advisor for the class of 1998; Ms. Lark Moore, Ms. Polly Weeks and Ms. Marlene Bird, staff for the Wahluke School District; Students from the Wahluke High School class of 1998, who provided us with wonderful refreshments; Andrea Eckenbuerg, chairwoman of the parent volunteers; Mr. Scott Egan, technical director for the school; Mr. Tim Schrag, maintenance supervisor; Chief of Policy Randy Blackburn and Chief Criminal Deputy Bryan Pratt who coordinated security for us.

These individuals made our visit comfortable and enjoyable, and I hope some day soon to be able to return to this beautiful, friendly part of our State.

Thank you all.•

## TRIBUTE TO DR. JOHN MATHER

• Mr. SARBANES. Mr. President, it gives me great pleasure to rise today to recognize Dr. John Mather, a senior astrophysicist from Hyattsville, MD, who works at the nearby Goddard Space Flight Center [GSFC] in Greenbelt, MD. Dr. Mather has risen to the top of his field and was recently elected to the National Academy of Sciences for his distinguished and continued groundbreaking achievements in the area of original research.

As a senior Astrophysicist at Goddard, Dr. Mather serves as a Study Scientist for the Next Generation Space Telescope, which will be a successor to the Hubbel Space Telescope. He also serves as chair of the Anomaly Review Board for the HST NICMOS Instrumental as PI for the ARCADE/DIMES mission studies, as PI for a Long Term Astrophysics grant for the study of the anisotropy of the cosmic IR background, as well as other projects that will advance science well into the next century.

Since joining NASA in 1974, Dr. Mather has received a number of commendations and awards for his cutting edge work in the demanding field of astrophysics. Among his accomplishments are the Group Achievement

Award from GSFC, the Exception Achievement Award, the John C. Lindsay Memorial Award, the Group Achievement Award, the Rotary National Space Achievement Award, the National Air and Space Museum Trophy, the American Institute of Aeronautics and Astronautics Space Science Award, an Honorary Doctor of Science Degree from Swarthmore College, and the Rumford Prize from the American Academy of Arts and Sciences.

In recent years, Dr. Mather has continued to publish on the topic of the COBE FIRAS Spectrum, the Far Infrared Absolute Spectrophotometer on the Cosmic Background Explorer and other topics, always maintaining his grasp of current scientific discoveries.

A native of New Jersey, Dr. Mather grew up on the Rutgers University Dairy Research Station where his father worked as a geneticist. He went on to graduate from Swarthmore College with highest honors in Physics. He received his doctorate in Physics in 1974 from the University of California at Berkeley. We in Maryland are certainly delighted that he has since decided to become a member of the Hyattsville community and a prominent member of the NASA presence in the state.

Mr. President, Dr. Mather's election to the National Academy of Sciences is a tremendous milestone in this public servant's already magnificent career. As Dr. Mather continues to be a rising star in the astrophysics community it is truly an honor to recognize this fine Marylander for his accomplishments and I wish him continued success in future endeavors.●

## BALANCED BUDGET RECONCILIATION ACT OF 1997

● Mr. SPECTER. Mr. President, I wish to explain my vote against waiving the Budget Act on the point of order raised by Senator ROCKEFELLER yesterday concerning the provisions in S. 947 on balance billing in the Medicare Program.

The Balanced Budget Act of 1997 includes a new Medicare Choice Program, allowing Medicare beneficiaries for the first time to choose from a wide range of options for receiving their Medicare coverage, including traditional fee-for-service plans, private fee-for-service plans, provider sponsored organizations, medical savings accounts, health maintenance organizations, and preferred provider organizations.

Within the context of Medicare Choice, there is an issue as to whether current law Medicare balance billing requirements should apply across the board. Under the Medicare Program, balance billing refers to the arrangement in which the Federal Government pays doctors at a given rate for treating a patient and doctors can charge up to a specific percentage above that amount.

This legislation exempts from balance billing requirements the new private fee-for-service plans and medical savings accounts. If the Rockefeller point of order were sustained and the exemptions eliminated, doctors would be less likely to participate in the Medicare Choice Program's fee-for-service or medical savings account options because balance billing would cap their charges. As a result, seniors would have fewer options for medical care under this new program. I would note that under this legislation, no senior citizen would be required to choose any specific option, and each person can analyze all of the options to determine which best suits his or her individual health care needs. Further, balance billing will still remain in effect for the other options under Medicare Choice. Accordingly, in order to maximize choices for Medicare beneficiaries, I supported the motion to waive the Budget Act to overcome the Rockefeller point of order.●

## SUPREME COURT STRIKES DOWN THE COMMUNICATION DECENCY ACT

● Mr. FEINGOLD. Mr. President, I rise to applaud today's U.S. Supreme Court decision striking down the Communications Decency Act as an unconstitutional restriction of free speech on the Internet, affirming the 1996 lower court decision.

In striking down the provisions of the CDA, which effectively censors the speech of adults on the Internet, the Court stated ''We agree with the District Court's conclusion that the CDA places an unacceptably heavy burden on protected speech.'' The Court concluded that the CDA ''threatens to torch a large segment of the Internet community.''

Mr. President, this decision is a victory not only for Internet users, it is a victory for all Americans who hold the first amendment right to free speech among their most cherished rights.

The Senator from Vermont [Senator LEAHY] and I spoke in opposition to the CDA when it was first brought to the Senate floor in 1995 during consideration of the Telecommunications Act. The high court decision pointed out the many flaws of the CDA that the Senator from Vermont and I raised before the legislation was approved. Among other concerns, we pointed out that indecency restrictions which have been upheld when applied to other media, were unconstitutional when applied to the Internet due to its unique nature. We urged our colleagues to study the problem and the potential solutions more carefully before they rushed headlong to pass what we knew to be unconstitutional legislation. Ultimately, the CDA passed the Senate in June 1995 with only 2 hours of debate and no Congressional hearings. The lack of congressional consideration of the CDA's problems was among the reasons cited by the Court in its finding that the act violated the first amendment. In failing to carefully examine the problem, the Congress merely tied the CDA up in Court for over a year while getting no closer to its goal of protecting children on the Internet.

Both the Supreme Court, and the lower court before it, conducted an exhaustive review of the nature of the Internet and of the technologies that exist to protect children and concluded that the CDA was an unconstitutional restriction on the free speech of adults that was not narrowly tailored to the goal of protecting kids on the Net.

Specifically, Mr. President, the Supreme Court found that:

Other laws restricting speech that have been upheld by the Supreme Court are substantially different from the CDA. Fundamentally, the Court determined that unlike other media that have been subject to some speech restrictions, the Internet receives full first amendment protection. Additionally, the Court pointed out that restrictions previously upheld by the High Court have been time, place and manner restrictions, rather than ''content-based blanket restriction on speech.'' Those differences bring into question the constitutionality of the CDA rather than confirming it.

The characteristics of other media that have some speech restrictions, such as the scarcity of broadcast spectrum and the invasive nature of broadcast media, do not apply to the Internet.

The combination of criminal penalties for violations and the vague nature of the ''indecency'' prohibition will chill speech on the Internet because speakers will not know which speech is prohibited and which is acceptable.

The breadth of the indecency standard in the CDA is unprecedented.

The CDA attempts to protect children by suppressing constitutionally protected speech of adults. This burden of speech is constitutionally unacceptable because less restrictive means of achieving the Government's goal are available.

Mr. President, the Supreme Court correctly struck down the Communications Decency Act. While this decision precludes enforcement of the act, Congress should act quickly to repeal the CDA. It is time to conduct a thorough and thoughtful review of constitutional methods to protect children on the Internet from those who would seek to harm them.

Mr. President, I urge my colleagues to read today's Supreme Court decision striking down the Communications Decency Act and work toward more effective solutions to protect our kids.●

## THE BALANCED BUDGET ACT OF 1997

The text of H.R. 2015, as amended by S. 947, is as follows:

*Resolved,* That the bill from the House of Representatives (H.R. 2015) entitled ''An Act to provide for reconciliation pursuant to section 104(a) of the concurrent resolution on

the budget for fiscal year 1998.'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the ''Balanced Budget Act of 1997''.*

***SEC. 2. TABLE OF TITLES.***

*The table of titles for this Act is as follows:*



## *TITLE I—COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY*

***SEC. 1001. HARDSHIP EXEMPTION.***

*Section 6(o) of the Food Stamp Act of 1977 (7 U.S.C. 2015(o)) is amended—*

*(1) in paragraph (2)(D), by striking ''or (5)'' and inserting ''(5), or (6)'';*

*(2) by redesignating paragraph (6) as paragraph (7); and*

*(3) by inserting after paragraph (5) the following:*

*''(6) 15-PERCENT HARDSHIP EXEMPTION.—*

*''(A) DEFINITIONS.—In this paragraph:*

*''(i) CASELOAD.—The term 'caseload' means the average monthly number of individuals receiving food stamps during the 12-month period ending the preceding June 30.*

*''(ii) COVERED INDIVIDUAL.—The term 'covered individual' means a food stamp recipient, or an individual denied eligibility for food stamp benefits solely due to paragraph (2), who—*

*''(I) is not eligible for an exception under paragraph (3);*

*''(II) does not reside in an area covered by a waiver granted under paragraph (4);*

*''(III) is not complying with subparagraph (A), (B), or (C) of paragraph (2);*

*''(IV) is not receiving food stamp benefits during the 3 months of eligibility provided under paragraph (2); and*

*''(V) is not receiving food stamp benefits under paragraph (5).*

*''(B) GENERAL RULE.—Subject to subparagraphs (C) through (F), a State agency may provide a hardship exemption from the requirements of paragraph (2) for covered individuals.*

*''(C) FISCAL YEAR 1998.—Subject to subparagraph (E), for fiscal year 1998, a State agency may provide a number of hardship exemptions such that the average monthly number of the exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State in fiscal year 1998, as estimated by the Secretary, based on the survey conducted to carry out section 16(c) for fiscal year 1996 and such other factors as the Secretary considers appropriate due to the timing and limitations of the survey.*

*''(D) SUBSEQUENT FISCAL YEARS.—Subject to subparagraphs (E) and (F), for fiscal year 1999 and each subsequent fiscal year, a State agency may provide a number of hardship exemptions such that the average monthly number of the exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State, as estimated by the Secretary under subparagraph (C), adjusted by the Secretary to reflect changes in the State's caseload and the Secretary's estimate of changes in the proportion of food stamp recipients covered by waivers granted under paragraph (4).*

*''(E) CASELOAD ADJUSTMENTS.—The Secretary shall adjust the number of individuals estimated for a State under subparagraph (C) or (D) during a fiscal year if the number of food stamp recipients in the State varies from the caseload by more than 10 percent, as determined by the Secretary.*

*''(F) EXEMPTION ADJUSTMENTS.—For fiscal year 1999 and each subsequent fiscal year, the Secretary shall increase or decrease the number of individuals who may be granted a hardship exemption by a State agency to the extent that the average monthly number of hardship exemptions in effect in the State for the preceding fiscal year is greater or less than the average monthly number of hardship exemptions estimated for the State agency for such preceding fiscal year.*

*''(G) REPORTING REQUIREMENT.—A State agency shall submit such reports to the Secretary as the Secretary determines are necessary to ensure compliance with this paragraph.''.*

***SEC. 1002. ADDITIONAL FUNDING FOR EMPLOYMENT AND TRAINING.***

*Section 16(h) of the Food Stamp Act of 1977 (7 U.S.C. 2025(h)) is amended by striking paragraphs (1) and (2) and inserting the following:*

*''(1) IN GENERAL.—*

*''(A) AMOUNTS.—To carry out employment and training programs, the Secretary shall reserve for allocation to State agencies, to remain available until expended, from funds made available for each fiscal year under section 18(a)(1) the amount of—*

*''(i) for fiscal year 1996, $75,000,000;*

*''(ii) for fiscal year 1997, $79,000,000;*

*''(iii) for fiscal year 1998, $221,000,000;*

*''(iv) for fiscal year 1999, $224,000,000;*

*''(v) for fiscal year 2000, $226,000,000;*

*''(vi) for fiscal year 2001, $228,000,000; and*

*''(vii) for fiscal year 2002, $170,000,000.*

*''(B) ALLOCATION.—The Secretary shall allocate the amounts reserved under subparagraph (A) among the State agencies using a reasonable formula (as determined by the Secretary) that reflects the proportion of food stamp recipients who are not eligible for an exception under section 6(o)(3) that reside in each State, as estimated by the Secretary based on the survey conducted to carry out subsection (c) for fiscal year 1996 and such other factors as the Secretary considers appropriate due to the timing and limitations of the survey (as adjusted by the Secretary each fiscal year to reflect changes in each State's caseload (as defined in section 6(o)(5)(A))).*

*''(C) REALLOCATION.—If a State agency will not expend all of the funds allocated to the State agency for a fiscal year under subparagraph (B), the Secretary shall reallocate the unexpended funds to other States (during the fiscal year or the subsequent fiscal year) as the Secretary considers appropriate and equitable.*

*''(D) MINIMUM ALLOCATION.—Notwithstanding subparagraph (B), the Secretary shall ensure that each State agency operating an employment and training program shall receive not less than $50,000 for each fiscal year.*

*''(E) PLACEMENTS.—Of the amount of funds reserved for a State agency for a fiscal year under subparagraphs (A) through (D), the State agency shall be eligible to receive for the fiscal year not more than an amount equal to the sum of—*

*''(i) the product obtained by multiplying—*

*''(I) the average monthly number of food stamp recipients who during the fiscal year—*

*''(aa) are not eligible for an exception under section 6(o)(3); and*

*''(bb) are placed in and comply with a program described in subparagraph (B) or (C) of section 6(o)(2), other than a program described in subparagraph (A) or (B) of section 6(o)(1); by*

*''(II) an amount determined by the Secretary to reflect the reasonable cost of efficiently and economically providing services that meet the requirements of subparagraph (B) or (C) of section 6(o)(2) to food stamp recipients described in subclause (I) for the fiscal year, as periodically adjusted by the Secretary; and*

*''(ii) the product obtained by multiplying—*

*''(I) the average monthly number of food stamp recipients in activities not described in clause (i)(I)(bb) who during the fiscal year are placed in and comply with an employment and training program; by*

*''(II) an amount determined by the Secretary to reflect the reasonable cost of efficiently and economically providing employment and training services to food stamp recipients described in subclause (I) for the fiscal year that is less than the amount determined under clause (i)(II), as periodically adjusted by the Secretary.*

*''(F) USE OF FUNDS.—Of the amount of funds a State agency receives under subparagraphs (A) through (E) for a fiscal year, not less than 75 percent shall be used by the State agency in the fiscal year to serve food stamp recipients described in subparagraph (E)(i)(I)(aa) who are placed in and comply with a program described in subparagraph (E)(i)(I)(bb).*

*''(G) MAINTENANCE OF EFFORT.—To receive an amount reserved under subparagraph (A), a State agency shall maintain the expenditures of the State agency for employment and training programs and workfare programs for any fiscal year under paragraph (2), and administrative expenses under section 20(g)(1), at a level that is not less than 75 percent of the level of the expenditures by the State agency to carry out the programs for fiscal year 1996.*

*''(2) ADDITIONAL PAYMENTS TO STATES.—If a State agency—*

*''(A) incurs costs to place individuals in employment and training programs, including the costs for case management and casework to facilitate the transition from economic dependency to self-sufficiency through work; and*

*''(B) does not use the funds provided under paragraph (1)(A) to defray the costs incurred;*

*the Secretary shall pay the State agency an amount equal to 50 percent of the costs incurred, subject to paragraph (3).''.*

***SEC. 1003. DENIAL OF FOOD STAMPS FOR PRISONERS.***

*(a) STATE PLANS.—*

*(1) IN GENERAL.—Section 11(e) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)) is amended by striking paragraph (20) and inserting the following:*

*''(20) that the State agency shall establish a system and take action on a periodic basis—*

*''(A) to verify and otherwise ensure that an individual does not receive coupons in more than 1 jurisdiction within the State; and*

*''(B) to verify and otherwise ensure that an individual who is placed under detention in a Federal, State, or local penal, correctional, or other detention facility for more than 30 days shall not be eligible to participate in the food stamp program as a member of any household, except that—*

*''(i) the Secretary may determine that extraordinary circumstances make it impracticable for the State agency to obtain information necessary to discontinue inclusion of the individual; and*

*''(ii) a State agency that obtains information collected under section 1611(e)(1)(I)(i)(I) of the Social Security Act (42 U.S.C. 1382(e)(1)(I)(i)(I)) through an agreement under section 1611(e)(1)(I)(ii)(II) of that Act (42 U.S.C. 1382(e)(1)(I)(ii)(II)), or under another program determined by the Secretary to be comparable to the program carried out under that section, shall be considered in compliance with this subparagraph.''.*

*(2) LIMITS ON DISCLOSURE AND USE OF INFORMATION.—Section 11(e)(8)(E) of the Food Stamp Act of 1977 (7 U.S.C. 2020(e)(8)(E)) is amended by striking ''paragraph (16)'' and inserting ''paragraph (16) or (20)(B)''.*

*(3) EFFECTIVE DATE.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall take effect on the date that is 1 year after the date of enactment of this Act.*

*(B) EXTENSION.—The Secretary of Agriculture may grant a State an extension of time to comply with the amendments made by this subsection, not to exceed beyond the date that is 2 years after the date of enactment of this Act, if the chief executive officer of the State submits a request for the extension to the Secretary—*

*(i) stating the reasons why the State is not able to comply with the amendments made by this subsection by the date that is 1 year after the date of enactment of this Act;*

*(ii) providing evidence that the State is making a good faith effort to comply with the amendments made by this subsection as soon as practicable; and*

*(iii) detailing a plan to bring the State into compliance with the amendments made by this subsection as soon as practicable and not later than the date of the requested extension.*

*(b) INFORMATION SHARING.—Section 11 of the Food Stamp Act of 1977 (7 U.S.C. 2020) is amended by adding at the end the following:*

*''(q) DENIAL OF FOOD STAMPS FOR PRISONERS.—The Secretary shall assist States, to the maximum extent practicable, in implementing a system to conduct computer matches or other systems to prevent prisoners described in section 11(e)(20)(B) from receiving food stamp benefits.''.*

***SEC. 1004. NUTRITION EDUCATION.***

*Section 11(f) of the Food Stamp Act of 1977 (7 U.S.C. 2020(f)) is amended—*

*(1) by striking ''(f) To encourage'' and inserting the following:*

*''(f) NUTRITION EDUCATION.—*

*''(1) IN GENERAL.—To encourage''; and*

*(2) by adding at the end the following:*

*''(2) GRANTS.—*

*''(A) IN GENERAL.—The Secretary shall make available not more than $600,000 for each of fiscal years 1998 through 2001 to pay the Federal share of grants made to eligible private nonprofit organizations and State agencies to carry out subparagraph (B).*

*''(B) ELIGIBILITY.—A private nonprofit organization or State agency shall be eligible to receive a grant under subparagraph (A) if the organization or agency agrees—*

*''(i) to use the funds to direct a collaborative effort to coordinate and integrate nutrition education into health, nutrition, social service, and food distribution programs for food stamp participants and other low-income households; and*

*''(ii) to design the collaborative effort to reach large numbers of food stamp participants and other low-income households through a network of organizations, including schools, child care centers, farmers' markets, health clinics, and outpatient education services.*

*''(C) PREFERENCE.—In deciding between 2 or more private nonprofit organizations or State agencies that are eligible to receive a grant under subparagraph (B), the Secretary shall give a preference to an organization or agency that conducted a collaborative effort described in subparagraph (B) and received funding for the collaborative effort from the Secretary before the date of enactment of this paragraph.*

*''(D) FEDERAL SHARE.—*

*''(i) IN GENERAL.—Subject to subparagraph (E), the Federal share of a grant under this paragraph shall be 50 percent.*

*''(ii) NO IN-KIND CONTRIBUTIONS.—The non-Federal share of a grant under this paragraph shall be in cash.*

*''(iii) PRIVATE FUNDS.—The non-Federal share of a grant under this paragraph may include amounts from private nongovernmental sources.*

*''(E) LIMIT ON INDIVIDUAL GRANT.—A grant under subparagraph (A) may not exceed $200,000 for a fiscal year.''.*

## *TITLE II—COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS*

### *Subtitle A—Mortgage Assignment and Annual Adjustment Factors*

***SEC. 2001. TABLE OF CONTENTS.***

*The table of contents for this title is as follows:*



***SEC. 2002. EXTENSION OF FORECLOSURE AVOIDANCE AND BORROWER ASSISTANCE PROVISIONS FOR FHA SINGLE FAMILY HOUSING MORTGAGE INSURANCE PROGRAM.***

*Section 407 of The Balanced Budget Downpayment Act, I (12 U.S.C. 1710 note) is amended—*

*(1) in subsection (c)—*

*(A) by striking ''only''; and*

*(B) by inserting '', on, or after'' after ''before''; and*

*(2) by striking subsection (e).*

***SEC. 2003. ADJUSTMENT OF MAXIMUM MONTHLY RENTS FOR CERTAIN DWELLING UNITS IN NEW CONSTRUCTION AND SUBSTANTIAL OR MODERATE REHABILITATION PROJECTS ASSISTED UNDER SECTION 8 RENTAL ASSISTANCE PROGRAM.***

*The third sentence of section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is amended by inserting before the period at the end the following: '', and during fiscal year 1999 and thereafter''.*

***SEC. 2004. ADJUSTMENT OF MAXIMUM MONTHLY RENTS FOR NONTURNOVER DWELLING UNITS ASSISTED UNDER SECTION 8 RENTAL ASSISTANCE PROGRAM.***

*The last sentence of section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)) is amended by inserting before the period at the end the following: '', and during fiscal year 1999 and thereafter''.*

### *Subtitle B—Multifamily Housing Reform*

***SEC. 2100. SHORT TITLE.***

*This subtitle may be cited as the ''Multifamily Assisted Housing Reform and Affordability Act of 1997''.*

### *Part 1—FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring*

***SEC. 2101. FINDINGS AND PURPOSES.***

*(a) FINDINGS.—Congress finds that—*

*(1) there exists throughout the Nation a need for decent, safe, and affordable housing;*

*(2) as of the date of enactment of this Act, it is estimated that—*

*(A) the insured multifamily housing portfolio of the Federal Housing Administration consists of 14,000 rental properties, with an aggregate unpaid principal mortgage balance of $38,000,000,000; and*

*(B) approximately 10,000 of these properties contain housing units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;*

*(3) FHA-insured multifamily rental properties are a major Federal investment, providing affordable rental housing to an estimated 2,000,000 low- and very low-income families;*

*(4) approximately 1,600,000 of these families live in dwelling units that are assisted with project-based rental assistance under section 8 of the United States Housing Act of 1937;*

*(5) a substantial number of housing units receiving project-based assistance have rents that are higher than the rents of comparable, unassisted rental units in the same housing rental market;*

*(6) many of the contracts for project-based assistance will expire during the several years following the date of enactment of this Act;*

*(7) it is estimated that—*

*(A) if no changes in the terms and conditions of the contracts for project-based assistance are made before fiscal year 2000, the cost of renewing all expiring rental assistance contracts under section 8 of the United States Housing Act of 1937 for both project-based and tenant-based rental assistance will increase from approximately $3,600,000,000 in fiscal year 1997 to over $14,300,000,000 by fiscal year 2000 and some $22,400,000,000 in fiscal year 2006;*

*(B) of those renewal amounts, the cost of renewing project-based assistance will increase from $1,200,000,000 in fiscal year 1997 to almost $7,400,000,000 by fiscal year 2006; and*

*(C) without changes in the manner in which project-based rental assistance is provided, renewals of expiring contracts for project-based rental assistance will require an increasingly larger portion of the discretionary budget authority of the Department of Housing and Urban Development in each subsequent fiscal year for the foreseeable future;*

*(8) absent new budget authority for the renewal of expiring rental contracts for project-based assistance, many of the FHA-insured multifamily housing projects that are assisted with*

*project-based assistance will likely default on their FHA-insured mortgage payments, resulting in substantial claims to the FHA General Insurance Fund and Special Risk Insurance Funds;*

*(9) more than 15 percent of federally assisted multifamily housing projects are physically or financially distressed, including a number which suffer from mismanagement;*

*(10) due to Federal budget constraints, the downsizing of the Department of Housing and Urban Development, and diminished administrative capacity, the Department lacks the ability to ensure the continued economic and physical well-being of the stock of federally insured and assisted multifamily housing projects; and*

*(11) the economic, physical, and management problems facing the stock of federally insured and assisted multifamily housing projects will be best served by reforms that—*

*(A) reduce the cost of Federal rental assistance, including project-based assistance, to these projects by reducing the debt service and operating costs of these projects while retaining the low-income affordability and availability of this housing;*

*(B) address physical and economic distress of this housing and the failure of some project managers and owners of projects to comply with management and ownership rules and requirements; and*

*(C) transfer and share many of the loan and contract administration functions and responsibilities of the Secretary with capable State, local, and other entities.*

*(b) PURPOSES.—The purposes of this part are—*

*(1) to preserve low-income rental housing affordability and availability while reducing the long-term costs of project-based assistance;*

*(2) to reform the design and operation of Federal rental housing assistance programs, administered by the Secretary, to promote greater multifamily housing project operating and cost efficiencies;*

*(3) to encourage owners of eligible multifamily housing projects to restructure their FHA-insured mortgages and project-based assistance contracts in a manner that is consistent with this part before the year in which the contract expires;*

*(4) to streamline and improve federally insured and assisted multifamily housing project oversight and administration;*

*(5) to resolve the problems affecting financially and physically troubled federally insured and assisted multifamily housing projects through cooperation with residents, owners, State and local governments, and other interested entities and individuals; and*

*(6) to grant additional enforcement tools to use against those who violate agreements and program requirements, in order to ensure that the public interest is safeguarded and that Federal multifamily housing programs serve their intended purposes.*

***SEC. 2102. DEFINITIONS.***

*In this part:*

*(1) COMPARABLE PROPERTIES.—The term ''comparable properties'' means properties that are—*

*(A) similar to the eligible multifamily housing project in neighborhood (including risk of crime), location, access, street appeal, age, property size, apartment mix, physical configuration, property and unit amenities, and utilities;*

*(B) unregulated by contractual encumbrances or local rent-control laws; and*

*(C) occupied predominantly by renters who receive no rent supplements or rental assistance.*

*(2) ELIGIBLE MULTIFAMILY HOUSING PROJECT.—The term ''eligible multifamily housing project'' means a property consisting of more than 4 dwelling units—*

*(A) with rents which, on an average per unit or per room basis, exceed the fair market rent or the rent of comparable properties in the same market area, as determined by the Secretary;*

*(B) that is covered in whole or in part by a contract for project-based assistance under—*

*(i) the new construction and substantial rehabilitation program under section 8(b)(2) of the United States Housing Act of 1937 (as in effect before October 1, 1983);*

*(ii) the property disposition program under section 8(b) of the United States Housing Act of 1937;*

*(iii) the moderate rehabilitation program under section 8(e)(2) of the United States Housing Act of 1937;*

*(iv) the loan management assistance program under section 8 of the United States Housing Act of 1937;*

*(v) section 23 of the United States Housing Act of 1937 (as in effect before January 1, 1975);*

*(vi) the rent supplement program under section 101 of the Housing and Urban Development Act of 1965; or*

*(vii) section 8 of the United States Housing Act of 1937, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; and*

*(C) financed by a mortgage insured or held by the Secretary under the National Housing Act.*

*(3) EXPIRING CONTRACT.—The term ''expiring contract'' means a project-based assistance contract attached to an eligible multifamily housing project which, under the terms of the contract, will expire.*

*(4) EXPIRATION DATE.—The term ''expiration date'' means the date on which an expiring contract expires.*

*(5) FAIR MARKET RENT.—The term ''fair market rent'' means the fair market rental established under section 8(c) of the United States Housing Act of 1937.*

*(6) LOW-INCOME FAMILIES.—The term ''low-income families'' has the same meaning as provided under section 3(b)(2) of the United States Housing Act of 1937.*

*(7) PORTFOLIO RESTRUCTURING AGREEMENT.—The term ''Portfolio restructuring agreement'' means the agreement entered into between the Secretary and a participating administrative entity, as provided under section 2103.*

*(8) PARTICIPATING ADMINISTRATIVE ENTITY.—The term ''participating administrative entity'' means a public agency, including a State housing finance agency or local housing agency, which meets the requirements under section 2103(b).*

*(9) PROJECT-BASED ASSISTANCE.—The term ''project-based assistance'' means rental assistance under section 8 of the United States Housing Act of 1937 that is attached to a multifamily housing project.*

*(10) RENEWAL.—The term ''renewal'' means the replacement of an expiring Federal rental contract with a new contract under section 8 of the United States Housing Act of 1937, consistent with the requirements of this part.*

*(11) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.*

*(12) STATE.—The term ''State'' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.*

*(13) TENANT-BASED ASSISTANCE.—The term ''tenant-based assistance'' has the same meaning as in section 8(f) of the United States Housing Act of 1937.*

*(14) UNIT OF GENERAL LOCAL GOVERNMENT.—The term ''unit of general local government'' has the same meaning as in section 104 of the Cranston-Gonzalez National Affordable Housing Act.*

*(15) VERY LOW-INCOME FAMILY.—The term ''very low-income family'' has the same meaning as in section 3(b) of the United States Housing Act of 1937.*

*(16) QUALIFIED MORTGAGEE.—The term ''qualified mortgagee'' means an entity approved by the Secretary that is capable of servicing, as well as originating, FHA-insured mortgages, and that—*

*(A) is not suspended or debarred by the Secretary;*

*(B) is not suspended or on probation imposed by the Mortgagee Review Board;*

*(C) is not in default under any Government National Mortgage Association obligation; and*

*(D) meets previous participation requirements.*

***SEC. 2103. AUTHORITY OF PARTICIPATING ADMINISTRATIVE ENTITIES.***

*(a) PARTICIPATING ADMINISTRATIVE ENTITIES.—*

*(1) IN GENERAL.—The Secretary shall enter into portfolio restructuring agreements with participating administrative entities for the implementation of mortgage restructuring and rental assistance sufficiency plans to restructure FHA-insured multifamily housing mortgages, in order to—*

*(A) reduce the costs of current and expiring contracts for assistance under section 8 of the United States Housing Act of 1937;*

*(B) address financially and physically troubled projects; and*

*(C) correct management and ownership deficiencies.*

*(2) PORTFOLIO RESTRUCTURING AGREEMENTS.—Each portfolio restructuring agreement entered into under this subsection shall—*

*(A) be a cooperative agreement to establish the obligations and requirements between the Secretary and the participating administrative entity;*

*(B) identify the eligible multifamily housing projects or groups of projects for which the participating administrative entity is responsible for assisting in developing and implementing approved mortgage restructuring and rental assistance sufficiency plans under section 2104;*

*(C) require the participating administrative entity to review and certify to the accuracy and completeness of a comprehensive needs assessment submitted by the owner of an eligible multifamily housing project, in accordance with the information and data requirements of section 403 of the Housing and Community Development Act of 1992, including such other data, information, and requirements as the Secretary may require to be included as part of the comprehensive needs assessment;*

*(D) identify the responsibilities of both the participating administrative entity and the Secretary in implementing a mortgage restructuring and rental assistance sufficiency plan, including any actions proposed to be taken under section 2106 or 2107;*

*(E) require each mortgage restructuring and rental assistance sufficiency plan to be prepared in accordance with the requirements of section 2104 for each eligible multifamily housing project;*

*(F) indemnify the participating administrative entity against lawsuits and penalties for actions taken pursuant to the agreement, excluding actions involving gross negligence or willful misconduct; and*

*(G) include compensation for all reasonable expenses incurred by the participating administrative entity necessary to perform its duties under this part, including such incentives as may be authorized under section 2108.*

*(b) SELECTION OF PARTICIPATING ADMINISTRATIVE ENTITY.—*

*(1) SELECTION CRITERIA.—The Secretary shall select a participating administrative entity based on the following criteria—*

*(A) is located in the State or local jurisdiction in which the eligible multifamily housing project or projects are located;*

*(B) has demonstrated expertise in the development or management of low-income affordable rental housing;*

*(C) has a history of stable, financially sound, and responsible administrative performance;*

*(D) has demonstrated financial strength in terms of asset quality, capital adequacy, and liquidity; and*

*(E) is otherwise qualified, as determined by the Secretary, to carry out the requirements of this part.*

*(2) SELECTION OF MORTGAGE RISK-SHARING ENTITIES AND FISCAL YEAR 1997 MULTIFAMILY DEMONSTRATION AUTHORITY.—Any State housing finance agency or local housing agency that is designated as a qualified participating entity under section 542 of the Housing and Community Development Act of 1992 or under section 212 of Public Law 104–204, shall automatically qualify as a participating administrative entity under this section.*

*(3) ALTERNATIVE ADMINISTRATORS.—With respect to any eligible multifamily housing project that is located in a State or local jurisdiction in which the Secretary determines that a participating administrative entity is not located, is unavailable, or does not qualify, the Secretary shall either—*

*(A) carry out the requirements of this part with respect to that eligible multifamily housing project; or*

*(B) contract with other qualified entities that meet the requirements of subsection (b), with the exception of subsection (b)(1)(A), the authority to carry out all or a portion of the requirements of this part with respect to that eligible multifamily housing project.*

*(4) PREFERENCE FOR PUBLIC HOUSING FINANCE AGENCIES AS PARTICIPATING ADMINISTRATIVE ENTITIES.—In selecting participating administrative entities under this subsection, the Secretary shall give preference to State housing finance agencies and local housing agencies.*

*(5) STATE AND LOCAL PORTFOLIO REQUIREMENTS.—*

*(A) IN GENERAL.—If the housing finance agency of a State is selected as the participating administrative entity, that agency shall be responsible for all eligible multifamily housing projects in that State, except that a local housing agency selected as a participating administrative entity shall be responsible for all eligible multifamily housing projects in the jurisdiction of the agency.*

*(B) RIGHT OF FIRST REFUSAL.—A participating State housing finance agency or local housing agency shall have the right of first refusal to assume responsibility for any properties it has financed.*

*(C) DELEGATION.—A participating administrative entity may delegate or transfer responsibilities and functions under this part to one or more interested and qualified public entities.*

*(D) WAIVER.—A State housing finance agency or local housing agency may request a waiver from the Secretary from the requirements of subparagraph (A) for good cause.*

***SEC. 2104. MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.***

*(a) IN GENERAL.—*

*(1) DEVELOPMENT OF PROCEDURES AND REQUIREMENTS.—The Secretary shall develop procedures and requirements for the submission of a mortgage restructuring and rental assistance sufficiency plan for each eligible multifamily housing project with an expiring contract.*

*(2) TERMS AND CONDITIONS.—Each mortgage restructuring and rental assistance sufficiency plan submitted under this subsection shall be developed at the initiative of an owner of an eligible multifamily housing project, in cooperation with the qualified mortgagee servicing the loan, with a participating administrative entity, under such terms and conditions as the Secretary shall require.*

*(3) CONSOLIDATION.—Mortgage restructuring and rental assistance sufficiency plans submitted under this subsection may be consolidated as part of an overall strategy for more than one property.*

*(b) NOTICE REQUIREMENTS.—The Secretary shall establish notice procedures and hearing requirements for tenants and owners concerning the dates for the expiration of project-based assistance contracts for any eligible multifamily housing project.*

*(c) EXTENSION OF CONTRACT TERM.—Subject to agreement by a project owner, the Secretary may extend the term of any expiring contract or provide a section 8 contract with rent levels set in accordance with subsection (g) for a period sufficient to facilitate the implementation of a mortgage restructuring and rental assistance sufficiency plan, as determined by the Secretary.*

*(d) TENANT RENT PROTECTION.—If the owner of a project with an expiring Federal rental assistance contract does not agree to extend the contract, not less than 12 months prior to terminating the contract, the project owner shall provide written notice to the Secretary and the tenants and the Secretary shall make tenant-based assistance available to tenants residing in units assisted under the expiring contract at the time of expiration.*

*(e) MORTGAGE RESTRUCTURING AND RENTAL ASSISTANCE SUFFICIENCY PLAN.—Each mortgage restructuring and rental assistance sufficiency plan shall—*

*(1) except as otherwise provided, restructure the project-based assistance rents for the eligible multifamily housing project in a manner consistent with subsection (g);*

*(2) allow for rent adjustments by applying an operating cost adjustment factor established under guidelines established by the Secretary;*

*(3) require the owner or purchaser of an eligible multifamily housing project with an expiring contract to submit to the participating administrative entity a comprehensive needs assessment, in accordance with the information and data requirements of section 403 of the Housing and Community Development Act of 1992, including such other data, information, and requirements as the Secretary may require to be included as part of the comprehensive needs assessment;*

*(4) require the owner or purchaser of the project to provide or contract for competent management of the project;*

*(5) require the owner or purchaser of the project to take such actions as may be necessary to rehabilitate, maintain adequate reserves, and to maintain the project in decent and safe condition, based on housing quality standards established by—*

*(A) the Secretary; or*

*(B) local housing codes or codes adopted by public housing agencies that—*

*(i) meet or exceed housing quality standards established by the Secretary; and*

*(ii) do not severely restrict housing choice;*

*(6) require the owner or purchaser of the project to maintain affordability and use restrictions for the remaining term of the existing mortgage and, if applicable, the remaining term of the second mortgage, as the participating administrative entity determines to be appropriate and consistent with the rent levels established under subsection (g), which restrictions shall be consistent with the long-term physical and financial viability character of the project as affordable housing;*

*(7) meet subsidy layering requirements under guidelines established by the Secretary;*

*(8) require the owner or purchaser of the project to meet such other requirements as the Secretary determines to be appropriate; and*

*(9) prohibit the owner from refusing to lease any available dwelling unit to a recipient of tenant-based assistance under section 8 of the United States Housing Act of 1937.*

*(f) TENANT AND COMMUNITY PARTICIPATION AND CAPACITY BUILDING.—*

*(1) PROCEDURES.—*

*(A) IN GENERAL.—The Secretary shall establish procedures to provide an opportunity for tenants of the project and other affected parties, including local government and the community in which the project is located, to participate effectively in the restructuring process established by this part.*

*(B) CRITERIA.—These procedures shall include—*

*(i) the rights to timely and adequate written notice of the proposed decisions of the owner or the Secretary or participating administrative entity;*

*(ii) timely access to all relevant information (except for information determined to be proprietary under standards established by the Secretary);*

*(iii) an adequate period to analyze this information and provide comments to the Secretary or participating administrative entity (which comments shall be taken into consideration by the participating administrative entity); and*

*(iv) if requested, a meeting with a representative of the participating administrative entity and other affected parties.*

*(2) PROCEDURES REQUIRED.—The procedures established under paragraph (1) shall permit tenant, local government, and community participation in at least the following decisions or plans specified in this part:*

*(A) The Portfolio Restructuring Agreement.*

*(B) Any proposed expiration of the section 8 contract.*

*(C) The project's eligibility for restructuring pursuant to section 2106 and the mortgage restructuring and rental assistance sufficiency plan pursuant to section 2104.*

*(D) Physical inspections.*

*(E) Capital needs and management assessments, whether before or after restructuring.*

*(F) Any proposed transfer of the project.*

*(3) FUNDING.—*

*(A) IN GENERAL.—The Secretary may provide not more than $10,000,000 annually in funding to tenant groups, nonprofit organizations, and public entities for building the capacity of tenant organizations, for technical assistance in furthering any of the purposes of this part (including transfer of developments to new owners) and for tenant services, from those amounts made available under appropriations Acts for implementing this part.*

*(B) ALLOCATION.—The Secretary may allocate any funds made available under subparagraph (A) through existing technical assistance programs pursuant to any other Federal law, including the Low-Income Housing Preservation and Resident Homeownership Act of 1990 and the Multifamily Property Disposition Reform Act of 1994.*

*(C) PROHIBITION.—None of the funds made available under subparagraph (A) may be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation.*

*(g) RENT LEVELS.—*

*(1) IN GENERAL.—Except as provided in paragraph (2), each mortgage restructuring and rental assistance sufficiency plan pursuant to the terms, conditions, and requirements of this part shall establish for units assisted with project-based assistance in eligible multifamily housing projects adjusted rent levels that—*

*(A) are equivalent to rents derived from comparable properties, if—*

*(i) the participating administrative entity makes the rent determination not later than 120 days after the owner submits a mortgage restructuring and rental assistance sufficiency plan; and*

*(ii) the market rent determination is based on not less than 2 comparable properties; or*

*(B) if those rents cannot be determined, are equal to 90 percent of the fair market rents for the relevant market area.*

*(2) EXCEPTIONS.—*

*(A) IN GENERAL.—A contract under this section may include rent levels that exceed the rent level described in paragraph (1) at rent levels that do not exceed 120 percent of the local fair market rent if the participating administrative entity—*

*(i) determines, that the housing needs of the tenants and the community cannot be adequately addressed through implementation of*

*the rent limitation required to be established through a mortgage restructuring and rental assistance sufficiency plan under paragraph (1); and*

*(ii) follows the procedures under paragraph (3).*

*(B) EXCEPTION RENTS.—In any fiscal year, a participating administrative entity may approve exception rents on not more than 20 percent of all units in the geographic jurisdiction of the entity with expiring contracts in that fiscal year, except that the Secretary may waive this ceiling upon a finding of special need in the geographic area served by the participating administrative entity.*

*(3) RENT LEVELS FOR EXCEPTION PROJECTS.—For purposes of this section, a project eligible for an exception rent shall receive a rent calculation on the actual and projected costs of operating the project, at a level that provides income sufficient to support a budget-based rent that consists of—*

*(A) the debt service of the project;*

*(B) the operating expenses of the project, as determined by the participating administrative entity, including—*

*(i) contributions to adequate reserves;*

*(ii) the costs of maintenance and necessary rehabilitation; and*

*(iii) other eligible costs permitted under section 8 of the United States Housing Act of 1937;*

*(C) an adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the participating administrative entity;*

*(D) an allowance for a reasonable rate of return to the owner or purchaser of the project, as determined by the participating administrative entity, which may be established to provide incentives for owners or purchasers to meet benchmarks of quality for management and housing quality; and*

*(E) other expenses determined by the participating administrative entity to be necessary for the operation of the project.*

*(h) EXEMPTIONS FROM RESTRUCTURING.—Subject to section 2106, the Secretary shall renew project-based assistance contracts at existing rents, or at a level that provides income sufficient to support a budget-based rent (including a budget-based rent adjustment if justified by reasonable and expected operating expenses), if—*

*(1) the project was financed through obligations such that the implementation of a mortgage restructuring and rental assistance sufficiency plan under this section is inconsistent with applicable law or agreements governing such financing;*

*(2) in the determination of the Secretary or the participating administrative entity, the restructuring would not result in significant section 8 savings to the Secretary; or*

*(3) the project has an expiring contract under section 8 of the United States Housing Act of 1937 but does not qualify as an eligible multifamily housing project pursuant to section 2102(2) of this part.*

***SEC. 2105. SECTION 8 RENEWALS AND LONG-TERM AFFORDABILITY COMMITMENT BY OWNER OF PROJECT.***

*(a) SECTION 8 RENEWALS OF RESTRUCTURED PROJECTS.—Subject to the availability of amounts provided in advance in appropriations Acts, the Secretary shall enter into contracts with participating administrative entities pursuant to which the participating administrative entity shall offer to renew or extend an expiring section 8 contract on an eligible multifamily housing project, and the owner of the project shall accept the offer, provided the initial renewal is in accordance with the terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan.*

*(b) REQUIRED COMMITMENT.—After the initial renewal of a section 8 contract pursuant to this section, the owner shall accept each offer made pursuant to subsection (a) to renew the contract, for the remaining term of the existing mortgage and, if applicable, the remaining term of an existing second mortgage, if the offer to renew is on terms and conditions specified in the mortgage restructuring and rental assistance sufficiency plan.*

***SEC. 2106. PROHIBITION ON RESTRUCTURING.***

*(a) PROHIBITION ON RESTRUCTURING.—The Secretary shall not consider any mortgage restructuring and rental assistance sufficiency plan or request for contract renewal if the participating administrative entity determines that—*

*(1) the owner or purchaser of the project has engaged in material adverse financial or managerial actions or omissions with regard to this project (or with regard to other similar projects if the Secretary determines that those actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by the Secretary), including—*

*(A) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;*

*(B) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937, after receipt of notice and an opportunity to cure;*

*(C) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;*

*(D) repeatedly and materially violating any Federal, State, or local law or regulation with regard to the project or any other federally assisted project;*

*(E) repeatedly and materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937;*

*(F) repeatedly and materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity;*

*(G) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;*

*(H) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or*

*(I) committing any actions or omissions that would warrant suspension or debarment by the Secretary;*

*(2) the owner or purchaser of the property materially failed to follow the procedures and requirements of this part, after receipt of notice and an opportunity to cure; or*

*(3) the poor condition of the project cannot be remedied in a cost effective manner, as determined by the participating administrative entity.*

*(b) OPPORTUNITY TO DISPUTE FINDINGS.—*

*(1) IN GENERAL.—During the 30-day period beginning on the date on which the owner or purchaser of an eligible multifamily housing project receives notice of a rejection under subsection (a) or of a mortgage restructuring and rental assistance sufficiency plan under section 2104, the Secretary or participating administrative entity shall provide that owner or purchaser with an opportunity to dispute the basis for the rejection and an opportunity to cure.*

*(2) AFFIRMATION, MODIFICATION, OR REVERSAL.—*

*(A) IN GENERAL.—After providing an opportunity to dispute under paragraph (1), the Secretary or the participating administrative entity may affirm, modify, or reverse any rejection under subsection (a) or rejection of a mortgage restructuring and rental assistance sufficiency plan under section 2104.*

*(B) REASONS FOR DECISION.—The Secretary or the participating administrative entity, as applicable, shall identify the reasons for any final decision under this paragraph.*

*(C) REVIEW PROCESS.—The Secretary shall establish an administrative review process to appeal any final decision under this paragraph.*

*(c) FINAL DETERMINATION.—Any final determination under this section shall not be subject to judicial review.*

*(d) DISPLACED TENANTS.—Subject to the availability of amounts provided in advance in appropriations Acts, for any low-income tenant that is residing in a project or receiving assistance under section 8 of the United States Housing Act of 1937 at the time of rejection under this section, that tenant shall be provided with tenant-based assistance and reasonable moving expenses, as determined by the Secretary.*

*(e) TRANSFER OF PROPERTY.—For properties disqualified from the consideration of a mortgage restructuring and rental assistance sufficiency plan under this section because of actions by an owner or purchaser in accordance with paragraph (1) or (2) of subsection (a), the Secretary shall establish procedures to facilitate the voluntary sale or transfer of a property as part of a mortgage restructuring and rental assistance sufficiency plan, with a preference for tenant organizations and tenant-endorsed community-based nonprofit and public agency purchasers meeting such reasonable qualifications as may be established by the Secretary, which purchasers shall be eligible to receive project-based assistance under section 8 of the United States Housing Act of 1937.*

***SEC. 2107. RESTRUCTURING TOOLS.***

*(a) RESTRUCTURING TOOLS.—In this part, and to the extent these actions are consistent with this section, an approved mortgage restructuring and rental assistance sufficiency plan may include one or more of the following:*

*(1) FULL OR PARTIAL PAYMENT OF CLAIM.—Making a full payment of claim or partial payment of claim under section 541(b) of the National Housing Act. Any payment under this paragraph shall not require the approval of a mortgagee.*

*(2) REFINANCING OF DEBT.—Refinancing of all or part of the debt on a project, if the refinancing would result in significant subsidy savings under section 8 of the United States Housing Act of 1937.*

*(3) MORTGAGE INSURANCE.—Providing FHA multifamily mortgage insurance, reinsurance or other credit enhancement alternatives, including multifamily risk-sharing mortgage programs, as provided under section 542 of the Housing and Community Development Act of 1992. Any limitations on the number of units available for mortgage insurance under section 542 shall not apply to eligible multifamily housing projects. Any credit subsidy costs of providing mortgage insurance shall be paid from the General Insurance Fund and the Special Risk Insurance Fund.*

*(4) CREDIT ENHANCEMENT.—Any additional State or local mortgage credit enhancements and risk-sharing arrangements may be established with State or local housing finance agencies, the Federal Housing Finance Board, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, to a modified first mortgage.*

*(5) COMPENSATION OF THIRD PARTIES.—Entering into agreements, incurring costs, or making payments, as may be reasonably necessary, to compensate the participation of participating administrative entities and other parties in undertaking actions authorized by this part. Upon request, participating administrative entities shall be considered to be contract administrators under section 8 of the United States Housing Act of 1937 for purposes of any contracts entered into as part of an approved mortgage restructuring and rental assistance sufficiency plan. Subject to the availability of amounts provided in advance in appropriations Acts for administrative fees under section 8 of the United States Housing Act of 1937, such fees shall be used to compensate participating administrative entities*

*for compliance monitoring costs incurred under section 2110.*

*(6) RESIDUAL RECEIPTS.—Applying any acquired residual receipts to maintain the long-term affordability and physical condition of the property or of other eligible multifamily housing projects. The participating administrative entity may expedite the acquisition of residual receipts by entering into agreements with owners of housing covered by an expiring contract to provide an owner with a share of the receipts, not to exceed 10 percent.*

*(7) REHABILITATION NEEDS.—Assisting in addressing the necessary rehabilitation needs of the project, except that assistance under this paragraph shall not exceed the equivalent of $5,000 per unit for those units covered with project-based assistance. Rehabilitation may be paid from the provision of grants from residual receipts or, as provided in appropriations Acts, from budget authority provided for increases in the budget authority for assistance contracts under section 8 of the United States Housing Act of 1937, the rehabilitation grant program established under section 2201 of this subtitle, or through the debt restructuring transaction. Each owner that receives rehabilitation assistance shall contribute not less than 25 percent of the amount of rehabilitation assistance received.*

*(8) MORTGAGE RESTRUCTURING.—Restructuring mortgages to provide a structured first mortgage to cover rents at levels that are established in section 2104(g) and a second mortgage equal to the difference between the restructured first mortgage and the mortgage balance of the eligible multifamily housing project at the time of restructuring. The second mortgage shall bear interest at a rate not to exceed the applicable Federal rate for a term not to exceed 50 years. If the first mortgage remains outstanding, payments of interest and principal on the second mortgage shall be made from a portion of the excess project income only after the payment of all reasonable and necessary operating expenses (including deposits in a reserve for replacement), debt service on the first mortgage, and such other expenditures as may be approved by the Secretary. Such portion shall be equal to not less than 75 percent of excess project income. The participating administrative entity may provide up to 25 percent of the excess project income to the project owner if the participating administrative entity determines that the project owner meets benchmarks of quality for management and housing quality. During the period in which the first mortgage remains outstanding, no payments of interest or principal shall be required on the second mortgage. The second mortgage shall be assumable by any subsequent purchaser of any multifamily housing project, pursuant to guidelines established by the Secretary. The participating administrative entity may be authorized to modify the terms or forgive all or part of the second mortgage upon acquisition by a tenant organization or tenant-endorsed community-based nonprofit or public agency, pursuant to guidelines established by the Secretary. The principal and accrued interest due under the second mortgage shall be fully payable upon disposition of the property, unless the mortgage is assumed under the preceding sentence. The owner shall begin repayment of the second mortgage upon full payment of the first mortgage in equal monthly installments in an amount equal to the monthly principal and interest payments formerly paid under the first mortgage. The principal and interest of a second mortgage shall be immediately due and payable upon a finding by the Secretary that an owner has failed to materially comply with this part or any requirements of the United States Housing Act of 1937 as those requirements apply to the applicable project, after receipt of notice of such failure and a reasonable opportunity to cure such failure. The second mortgage may be a direct obligation of the Secretary or a loan financed through a lender, other than the Secretary. If the second mortgage is a direct obligation of the Secretary, the participating administrative entity shall be authorized in the portfolio restructuring agreement to act as the agent of the Secretary in servicing such mortgage and enforcing the rights of the Secretary thereunder. Any credit subsidy costs of providing a second mortgage shall be paid from the General Insurance Fund and the Special Risk Insurance Fund.*

*(b) ROLE OF FNMA AND FHLMC.—Section 1335 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4565) is amended—*

*(1) in paragraph (3), by striking ''and'' at the end;*

*(2) paragraph (4), by striking the period at the end and inserting ''; and'';*

*(3) by striking ''To meet'' and inserting the following:*

*''(a) IN GENERAL.—To meet''; and*

*(4) by adding at the end the following:*

*''(5) assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.*

*''(b) AFFORDABLE HOUSING GOALS.—Actions taken under subsection (a)(5) shall constitute part of the contribution of each entity in meeting their affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.''.*

*(c) PROHIBITION ON EQUITY SHARING BY THE SECRETARY.—The Secretary is prohibited from participating in any equity agreement or profit-sharing agreement in conjunction with any eligible multifamily housing project.*

***SEC. 2108. SHARED SAVINGS INCENTIVE.***

*(a) IN GENERAL.—At the time a participating administrative entity is designated, the Secretary shall negotiate an incentive agreement with the participating administrative entity, which agreement shall provide such entity with a share of any principal and interest payments on the second mortgage. The Secretary shall negotiate with participating administrative entities a savings incentive formula that provides for periodic payments over a period of not less than 5 years, which is allocated as incentives to participating administrative entities.*

*(b) USE OF SAVINGS.—Notwithstanding any other provision of law, the incentive agreement under subsection (a) shall require any savings provided to a participating administrative entity under that agreement to be used only for providing decent, safe, and affordable housing for very low-income families and persons with a priority for eligible multifamily housing projects.*

***SEC. 2109. MANAGEMENT STANDARDS.***

*Each participating administrative entity shall establish and implement management standards, including requirements governing conflicts of interest between owners, managers, contractors with an identity of interest, pursuant to guidelines established by the Secretary and consistent with industry standards.*

***SEC. 2110. MONITORING OF COMPLIANCE.***

*(a) COMPLIANCE AGREEMENTS.—Pursuant to regulations issued by the Secretary after public notice and comment, each participating administrative entity, through binding contractual agreements with owners and otherwise, shall ensure long-term compliance with the provisions of this part. Each agreement shall, at a minimum, provide for—*

*(1) enforcement of the provisions of this part; and*

*(2) remedies for the breach of those provisions.*

*(b) PERIODIC MONITORING.—*

*(1) IN GENERAL.—Not less than annually, each participating administrative entity shall review the status of all multifamily housing projects for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.*

*(2) INSPECTIONS.—Each review under this subsection shall include onsite inspection to determine compliance with housing codes and other requirements as provided in this part and the portfolio restructuring agreements.*

*(c) AUDIT BY THE SECRETARY.—The Comptroller General of the United States, the Secretary, and the Inspector General of the Department of Housing and Urban Development may conduct an audit at any time of any multifamily housing project for which a mortgage restructuring and rental assistance sufficiency plan has been implemented.*

***SEC. 2111. REVIEW.***

*(a) ANNUAL REVIEW.—In order to ensure compliance with this part, the Secretary shall conduct an annual review and report to Congress on actions taken under this part and the status of eligible multifamily housing projects.*

*(b) SUBSIDY LAYERING REVIEW.—The participating administrative entity shall certify, pursuant to guidelines issued by the Secretary, that the requirements of section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 are satisfied so that the combination of assistance provided in connection with a property for which a mortgage is to be restructured shall not be any greater than is necessary to provide affordable housing.*

***SEC. 2112. GAO AUDIT AND REVIEW.***

*(a) INITIAL AUDIT.—Not later than 18 months after the effective date of interim or final regulations promulgated under this part, the Comptroller General of the United States shall conduct an audit to evaluate a representative sample of all eligible multifamily housing projects and the implementation of all mortgage restructuring and rental assistance sufficiency plans.*

*(b) REPORT.—*

*(1) IN GENERAL.—Not later than 18 months after the audit conducted under subsection (a), the Comptroller General of the United States shall submit to Congress a report on the status of all eligible multifamily housing projects and the implementation of all mortgage restructuring and rental assistance sufficiency plans.*

*(2) CONTENTS.—The report submitted under paragraph (1) shall include—*

*(A) a description of the initial audit conducted under subsection (a); and*

*(B) recommendations for any legislative action to increase the financial savings to the Federal Government of the restructuring of eligible multifamily housing projects balanced with the continued availability of the maximum number of affordable low-income housing units.*

***SEC. 2113. REGULATIONS.***

*(a) RULEMAKING AND IMPLEMENTATION.—The Secretary shall issue interim regulations necessary to implement this part not later than the expiration of the 6-month period beginning on the date of enactment of this Act. Not later than 1 year after the date of enactment of this subtitle, in accordance with the negotiated rulemaking procedures set forth in subchapter III of chapter 5 of title 5, United States Code, the Secretary shall implement final regulations implementing this part.*

*(b) REPEAL OF FHA MULTIFAMILY HOUSING DEMONSTRATION AUTHORITY.—*

*(1) IN GENERAL.—Beginning upon the expiration of the 6-month period beginning on the date of enactment of this Act, the Secretary may not exercise any authority or take any action under section 210 of the Balanced Budget Down Payment Act, II.*

*(2) UNUSED BUDGET AUTHORITY.—Any unused budget authority under section 210(f) of the Balanced Budget Down Payment Act, II, shall be available for taking actions under the requirements established through regulations issued under subsection (a).*

***SEC. 2114. TECHNICAL AND CONFORMING AMENDMENTS.***

*(a) CALCULATION OF LIMIT ON PROJECT-BASED ASSISTANCE.—Section 8(d) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)) is amended by adding at the end the following:*

*''(5) CALCULATION OF LIMIT.—Any contract entered into under section 2104 of the Multifamily Assisted Housing Reform and Affordability*

*Act of 1997 shall be excluded in computing the limit on project-based assistance under this subsection.''.*

*(b) PARTIAL PAYMENT OF CLAIMS ON MULTIFAMILY HOUSING PROJECTS.—Section 541 of the National Housing Act (12 U.S.C. 1735f–19) is amended—*

*(1) in subsection (a), in the subsection heading, by striking ''AUTHORITY'' and inserting ''DEFAULTED MORTGAGES'';*

*(2) by redesignating subsection (b) as subsection (c); and*

*(3) by inserting after subsection (a) the following:*

*''(b) EXISTING MORTGAGES.—Notwithstanding any other provision of law, the Secretary, in connection with a mortgage restructuring under section 2104 of the Multifamily Assisted Housing Reform and Affordability Act of 1997, may make a one time, nondefault partial payment of the claim under the mortgage insurance contract, which shall include a determination by the Secretary or the participating administrative entity, in accordance with the Multifamily Assisted Housing Reform and Affordability Act of 1997, of the market value of the project and a restructuring of the mortgage, under such terms and conditions as the Secretary may establish.''.*

*(c) REUSE AND RESCISSION OF CERTAIN RECAPTURED BUDGET AUTHORITY.—Section 8(bb) of the United States Housing Act of 1937 (42 U.S.C. 1437f(b)(b)) is amended to read as follows:*

*''(bb) REUSE AND RESCISSION OF CERTAIN RECAPTURED BUDGET AUTHORITY.—If a project-based assistance contract for an eligible multifamily housing project subject to actions authorized under title I is terminated or amended as part of restructuring under section 107, the Secretary shall recapture the budget authority not required for the terminated or amended contract and, without regard to section 218 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997, use such amounts as are necessary to provide housing assistance for the same number of families covered by such contract for the remaining term of such contract, under a contract providing for project-based or tenant-based assistance. The amount of budget authority saved as a result of the shift to project-based or tenant-based assistance shall be rescinded.''.*

***SEC. 2115. TERMINATION OF AUTHORITY.***

*(a) IN GENERAL.—Except as provided in subsection (b), this part is repealed effective October 1, 2001.*

*(b) EXCEPTION.—The repeal under this section does not apply with respect to projects and programs for which binding commitments have been entered into before October 1, 2001.*

***Part 2—Miscellaneous Provisions***

***SEC. 2201. REHABILITATION GRANTS FOR CERTAIN INSURED PROJECTS.***

*Section 236 of the National Housing Act (12 U.S.C. 1715z–1) is amended by adding at the end the following:*

*''(s) GRANT AUTHORITY.—*

*''(1) IN GENERAL.—The Secretary may make grants for the capital costs of rehabilitation to owners of projects that meet the eligibility and other criteria set forth in, and in accordance with, this subsection.*

*''(2) PROJECT ELIGIBILITY.—A project may be eligible for capital grant assistance under this subsection—*

*''(A) if—*

*''(i) the project was insured under section 236 or section 221(d)(3) of the National Housing Act; and*

*''(ii) the project was assisted by the loan management assistance program under section 8 of the United States Housing Act of 1937 on the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997;*

*''(B) if the project owner agrees to maintain the housing quality standards that were in effect immediately prior to the extinguishment of the mortgage insurance;*

*''(C) if the Secretary determines that the owner or purchaser of the project has not engaged in material adverse financial or managerial actions or omissions with regard to this project (or with regard to other similar projects if the Secretary determines that those actions or omissions constitute a pattern of mismanagement that would warrant suspension or debarment by the Secretary), including—*

*''(i) materially violating any Federal, State, or local law or regulation with regard to this project or any other federally assisted project, after receipt of notice and an opportunity to cure;*

*''(ii) materially breaching a contract for assistance under section 8 of the United States Housing Act of 1937, after receipt of notice and an opportunity to cure;*

*''(iii) materially violating any applicable regulatory or other agreement with the Secretary or a participating administrative entity, after receipt of notice and an opportunity to cure;*

*''(iv) repeatedly failing to make mortgage payments at times when project income was sufficient to maintain and operate the property;*

*''(v) materially failing to maintain the property according to housing quality standards after receipt of notice and a reasonable opportunity to cure; or*

*''(vi) committing any act or omission that would warrant suspension or debarment by the Secretary; and*

*''(D) if the project owner demonstrates to the satisfaction of the Secretary—*

*''(i) using information in a comprehensive needs assessment, that capital grant assistance is needed for rehabilitation of the project; and*

*''(ii) that project income is not sufficient to support such rehabilitation.*

*''(3) ELIGIBLE PURPOSES.—The Secretary may make grants to the owners of eligible projects for the purposes of—*

*''(A) payment into project replacement reserves;*

*''(B) providing a fair return on equity investment;*

*''(C) debt service payments on non-Federal rehabilitation loans; and*

*''(D) payment of nonrecurring maintenance and capital improvements, under such terms and conditions as are determined by the Secretary.*

*''(4) GRANT AGREEMENT.—*

*''(A) IN GENERAL.—The Secretary shall provide in any grant agreement under this subsection that the grant shall be terminated if the project fails to meet housing quality standards, as applicable on the date of enactment of the Multifamily Housing Reform and Affordability Act of 1997, or any successor standards for the physical conditions of projects, as are determined by the Secretary.*

*''(B) AFFORDABILITY AND USE CLAUSES.—The Secretary shall include in a grant agreement under this subsection a requirement for the project owners to maintain such affordability and use restrictions as the Secretary determines to be appropriate.*

*''(C) OTHER TERMS.—The Secretary may include in a grant agreement under this subsection such other terms and conditions as the Secretary determines to be necessary.*

*''(5) DELEGATION.—*

*''(A) IN GENERAL.—In addition to the authorities set forth in subsection (p), the Secretary may delegate to State and local governments the responsibility for the administration of grants under this subsection. Any such government may carry out such delegated responsibilities directly or under contracts.*

*''(B) ADMINISTRATION COSTS.—In addition to other eligible purposes, amounts of grants under this subsection may be made available for costs of administration under subparagraph (A).*

*''(6) FUNDING.—*

*''(A) IN GENERAL.—For purposes of carrying out this subsection, the Secretary may make available amounts that are unobligated amounts for contracts for interest reduction payments—*

*''(i) that were previously obligated for contracts for interest reduction payments under this section until insurance under this section was extinguished;*

*''(ii) that become available as a result of the outstanding principal balance of a mortgage having been written down;*

*''(iii) that are uncommitted balances within the limitation on maximum payments that may have been, before the date of enactment of the Multifamily Assisted Housing Reform and Affordability Act of 1997, permitted in any fiscal year; or*

*''(iv) that become available from any other source.*

*''(B) LIQUIDATION AUTHORITY.—The Secretary may liquidate obligations entered into under this subsection under section 1305(10) of title 31, United States Code.*

*''(C) CAPITAL GRANTS.—In making capital grants under the terms of this subsection, using the amounts that the Secretary has recaptured from contracts for interest reduction payments, the Secretary shall ensure that the rates and amounts of outlays do not at any one time exceed the rates and amounts of outlays that would have been experienced if the insurance had not been extinguished or the principal amount had not been written down, and the interest reduction payments that the Secretary has recaptured had continued in accordance with the terms in effect immediately prior to such extinguishment or write-down.''.*

***SEC. 2202. MINIMUM RENT.***

*Notwithstanding section 3(a) of the United States Housing Act of 1937, the Secretary of Housing and Urban Development may provide that each family receiving project-based assistance under section 8 shall pay a minimum monthly rent in an amount not to exceed $25 per month.*

***SEC. 2203. REPEAL OF FEDERAL PREFERENCES.***

*(a) SECTION 8 EXISTING AND MODERATE REHABILITATION.—Section 8(d)(1)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(A)) is amended to read as follows:*

*''(A) the selection of tenants shall be the function of the owner, subject to the annual contributions contract between the Secretary and the agency, except that with respect to the certificate and moderate rehabilitation programs only, for the purpose of selecting families to be assisted, the public housing agency may establish, after public notice and an opportunity for public comment, a written system of preferences for selection that are not inconsistent with the comprehensive housing affordability strategy for the jurisdiction in which the project is located, in accordance with title I of the Cranston-Gonzalez National Affordable Housing Act;''.*

*(b) SECTION 8 NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION.—*

*(1) REPEAL.—Section 545(c) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 1437f note) is amended to read as follows:*

*''(c) [Reserved.]''.*

*(2) PROHIBITION.—The provisions of section 8(e)(2) of the United States Housing Act of 1937, as in existence on the day before October 1, 1983, that require tenant selection preferences shall not apply with respect to—*

*(A) housing constructed or substantially rehabilitated pursuant to assistance provided under section 8(b)(2) of the United States Housing Act of 1937, as in existence on the day before October 1, 1983; or*

*(B) projects financed under section 202 of the Housing Act of 1959, as in existence on the day before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act.*

*(c) RENT SUPPLEMENTS.—Section 101(k) of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s(k)) is amended to read as follows:*

*''(k) [Reserved.]''.*

*(d) CONFORMING AMENDMENTS.—*

*(1) UNITED STATES HOUSING ACT OF 1937.—The United States Housing Act of 1937 (42 U.S.C. 1437 et seq.) is amended—*

*(A) in section 6(o), by striking ''preference rules specified in'' and inserting ''written selection criteria established pursuant to'';*

*(B) in section 8(d)(2)(A), by striking the last sentence; and*

*(C) in section 8(d)(2)(H), by striking ''Notwithstanding subsection (d)(1)(A)(i), an'' and inserting ''An''.*

*(2) CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT.—The Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704 et seq.) is amended—*

*(A) in section 455(a)(2)(D)(iii), by striking ''would qualify for a preference under'' and inserting ''meet the written selection criteria established pursuant to''; and*

*(B) in section 522(f)(6)(B), by striking ''any preferences for such assistance under section 8(d)(1)(A)(i)'' and inserting ''the written selection criteria established pursuant to section 8(d)(1)(A)''.*

*(3) LOW-INCOME HOUSING PRESERVATION AND RESIDENT HOMEOWNERSHIP ACT OF 1990.—The second sentence of section 226(b)(6)(B) of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4116(b)(6)(B)) is amended by striking ''requirement for giving preferences to certain categories of eligible families under'' and inserting ''written selection criteria established pursuant to''.*

*(4) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section 655 of the Housing and Community Development Act of 1992 (42 U.S.C. 13615) is amended by striking ''preferences for occupancy'' and all that follows before the period at the end and inserting ''selection criteria established by the owner to elderly families according to such written selection criteria, and to near-elderly families according to such written selection criteria, respectively''.*

*(5) REFERENCES IN OTHER LAW.—Any reference in any Federal law other than any provision of any law amended by paragraphs (1) through (5) of this subsection or to the preferences for assistance under section 8(d)(1)(A)(i) of the United States Housing Act of 1937, as that section existed on the day before the effective date of this part, shall be considered to refer to the written selection criteria established pursuant to section 8(d)(1)(A) of the United States Housing Act of 1937, as amended by this subsection.*

### *Part 3—Enforcement Provisions*

***SEC. 2301. IMPLEMENTATION.***

*(a) ISSUANCE OF NECESSARY REGULATIONS.—Notwithstanding section 7(o) of the Department of Housing and Urban Development Act or part 10 of title 24, Code of Federal Regulations (as in existence on the date of enactment of this Act), the Secretary shall issue such regulations as the Secretary determines to be necessary to implement this subtitle and the amendments made by this subtitle in accordance with section 552 or 553 of title 5, United States Code, as determined by the Secretary.*

*(b) USE OF EXISTING REGULATIONS.—In implementing any provision of this subtitle, the Secretary may, in the discretion of the Secretary, provide for the use of existing regulations to the extent appropriate, without rulemaking.*

### *Subpart A—FHA Single Family and Multifamily Housing*

***SEC. 2311. AUTHORIZATION TO IMMEDIATELY SUSPEND MORTGAGEES.***

*Section 202(c)(3)(C) of the National Housing Act (12 U.S.C. 1708(c)(3)(C)) is amended by inserting after the first sentence the following: ''Notwithstanding paragraph (4)(A), a suspension shall be effective upon issuance by the Board if the Board determines that there exists adequate evidence that immediate action is required to protect the financial interests of the Department or the public.''.*

***SEC. 2312. EXTENSION OF EQUITY SKIMMING TO OTHER SINGLE FAMILY AND MULTIFAMILY HOUSING PROGRAMS.***

*Section 254 of the National Housing Act (12 U.S.C. 1715z–19) is amended to read as follows:*

***''SEC. 254. EQUITY SKIMMING PENALTY.***

*''(a) IN GENERAL.—Whoever, as an owner, agent, or manager, or who is otherwise in custody, control, or possession of a multifamily project or a 1- to 4-family residence that is security for a mortgage note that is described in subsection (b), willfully uses or authorizes the use of any part of the rents, assets, proceeds, income, or other funds derived from property covered by that mortgage note for any purpose other than to meet reasonable and necessary expenses that include expenses approved by the Secretary if such approval is required, in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement covering the property, or the mortgagor has failed to comply with the provisions of such other form of regulatory control imposed by the Secretary, shall be fined not more than $500,000, imprisoned not more than 5 years, or both.*

*''(b) MORTGAGE NOTES DESCRIBED.—For purposes of subsection (a), a mortgage note is described in this subsection if it—*

*''(1) is insured, acquired, or held by the Secretary pursuant to this Act;*

*''(2) is made pursuant to section 202 of the Housing Act of 1959 (including property still subject to section 202 program requirements that existed before the date of enactment of the Cranston-Gonzalez National Affordable Housing Act); or*

*''(3) is insured or held pursuant to section 542 of the Housing and Community Development Act of 1992, but is not reinsured under section 542 of the Housing and Community Development Act of 1992.''.*

***SEC. 2313. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.***

*(a) CHANGE TO SECTION TITLE.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended by striking the section heading and the section designation and inserting the following:*

***''SEC. 536. CIVIL MONEY PENALTIES AGAINST MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.''.***

*(b) EXPANSION OF PERSONS ELIGIBLE FOR PENALTY.—Section 536(a) of the National Housing Act (12 U.S.C. 1735f–14(a)) is amended—*

*(1) in paragraph (1), by striking the first sentence and inserting the following: ''If a mortgagee approved under the Act, a lender holding a contract of insurance under title I, or a principal, officer, or employee of such mortgagee or lender, or other person or entity participating in either an insured mortgage or title I loan transaction under this Act or providing assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents and dealers, knowingly and materially violates any applicable provision of subsection (b), the Secretary may impose a civil money penalty on the mortgagee or lender, or such other person or entity, in accordance with this section. The penalty under this paragraph shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed whether or not the Secretary imposes other administrative sanctions.''; and*

*(2) in paragraph (2)—*

*(A) in the first sentence, by inserting ''or such other person or entity'' after ''lender''; and*

*(B) in the second sentence, by striking ''provision'' and inserting ''the provisions''.*

*(c) ADDITIONAL VIOLATIONS FOR MORTGAGEES, LENDERS, AND OTHER PARTICIPANTS IN FHA PROGRAMS.—Section 536(b) of the National Housing Act (12 U.S.C. 1735f–14(b)) is amended—*

*(1) by redesignating paragraph (2) as paragraph (3);*

*(2) by inserting after paragraph (1) the following:*

*''(2) The Secretary may impose a civil money penalty under subsection (a) for any knowing and material violation by a principal, officer, or employee of a mortgagee or lender, or other participants in either an insured mortgage or title I loan transaction under this Act or provision of assistance to the borrower in connection with any such loan, including sellers of the real estate involved, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, and dealers for—*

*''(A) submission to the Secretary of information that was false, in connection with any mortgage insured under this Act, or any loan that is covered by a contract of insurance under title I of this Act;*

*''(B) falsely certifying to the Secretary or submitting to the Secretary a false certification by another person or entity; or*

*''(C) failure by a loan correspondent or dealer to submit to the Secretary information which is required by regulations or directives in connection with any loan that is covered by a contract of insurance under title I.''; and*

*(3) in paragraph (3), as redesignated, by striking ''or paragraph (1)(F)'' and inserting ''or (F), or paragraph (2) (A), (B), or (C)''.*

*(d) CONFORMING AND TECHNICAL AMENDMENTS.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended—*

*(1) in subsection (c)(1)(B), by inserting after ''lender'' the following: ''or such other person or entity'';*

*(2) in subsection (d)(1)—*

*(A) by inserting ''or such other person or entity'' after ''lender''; and*

*(B) by striking ''part 25'' and inserting ''parts 24 and 25''; and*

*(3) in subsection (e), by inserting ''or such other person or entity'' after ''lender'' each place that term appears.*

### *Subpart B—FHA Multifamily Provisions*

***SEC. 2320. CIVIL MONEY PENALTIES AGAINST GENERAL PARTNERS, OFFICERS, DIRECTORS, AND CERTAIN MANAGING AGENTS OF MULTIFAMILY PROJECTS.***

*(a) CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS.—Section 537 of the National Housing Act (12 U.S.C. 1735f–15) is amended—*

*(1) in subsection (b)(1), by striking ''on that mortgagor'' and inserting the following: ''on that mortgagor, on a general partner of a partnership mortgagor, or on any officer or director of a corporate mortgagor'';*

*(2) in subsection (c)—*

*(A) by striking the subsection heading and inserting the following:*

*''(c) OTHER VIOLATIONS.—''; and*

*(B) in paragraph (1)—*

*(i) by striking ''VIOLATIONS.—The Secretary may'' and all that follows through the colon and inserting the following:*

*''(A) LIABLE PARTIES.—The Secretary may also impose a civil money penalty under this section on—*

*''(i) any mortgagor of a property that includes five or more living units and that has a mortgage insured, coinsured, or held pursuant to this Act;*

*''(ii) any general partner of a partnership mortgagor of such property;*

*''(iii) any officer or director of a corporate mortgagor;*

*''(iv) any agent employed to manage the property that has an identity of interest with the mortgagor, with the general partner of a partnership mortgagor, or with any officer or director of a corporate mortgagor of such property; or*

*''(v) any member of a limited liability company that is the mortgagor of such property or is the general partner of a limited partnership mortgagor or is a partner of a general partnership mortgagor.*

*''(B) VIOLATIONS.—A penalty may be imposed under this section upon any liable party under*

*subparagraph (A) that knowingly and materially takes any of the following actions:'';*

*(ii) in subparagraph (B), as designated by clause (i), by redesignating the subparagraph designations (A) through (L) as clauses (i) through (xii), respectively;*

*(iii) by adding after clause (xii), as redesignated by clause (ii), the following:*

*''(xiii) Failure to maintain the premises, accommodations, any living unit in the project, and the grounds and equipment appurtenant thereto in good repair and condition in accordance with regulations and requirements of the Secretary, except that nothing in this clause shall have the effect of altering the provisions of an existing regulatory agreement or federally insured mortgage on the property.*

*''(xiv) Failure, by a mortgagor, a general partner of a partnership mortgagor, or an officer or director of a corporate mortgagor, to provide management for the project that is acceptable to the Secretary pursuant to regulations and requirements of the Secretary.''; and*

*(iv) in the last sentence, by deleting ''of such agreement'' and inserting ''of this subsection'';*

*(3) in subsection (d)—*

*(A) in paragraph (1)(B), by inserting after ''mortgagor'' the following: '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property''; and*

*(B) by adding at the end the following:*

*''(5) PAYMENT OF PENALTY.—No payment of a civil money penalty levied under this section shall be payable out of project income.'';*

*(4) in subsection (e)(1), by deleting ''a mortgagor'' and inserting ''an entity or person'';*

*(5) in subsection (f), by inserting after ''mortgagor'' each place such term appears the following: '', general partner of a partnership mortgagor, officer or director of a corporate mortgagor, or identity of interest agent employed to manage the property'';*

*(6) by striking the heading of subsection (f) and inserting the following: ''CIVIL MONEY PENALTIES AGAINST MULTIFAMILY MORTGAGORS, GENERAL PARTNERS OF PARTNERSHIP MORTGAGORS, OFFICERS AND DIRECTORS OF CORPORATE MORTGAGORS, AND CERTAIN MANAGING AGENTS''; and*

*(7) by adding at the end the following:*

*''(k) IDENTITY OF INTEREST MANAGING AGENT.—In this section, the terms 'agent employed to manage the property that has an identity of interest' and 'identity of interest agent' mean an entity—*

*''(1) that has management responsibility for a project;*

*''(2) in which the ownership entity, including its general partner or partners (if applicable) and its officers or directors (if applicable), has an ownership interest; and*

*''(3) over which the ownership entity exerts effective control.''.*

*(b) IMPLEMENTATION.—*

*(1) PUBLIC COMMENT.—The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment. The notice shall seek comments primarily as to the definitions of the terms ''ownership interest in'' and ''effective control'', as those terms are used in the definition of the terms ''agent employed to manage the property that has an identity of interest'' and ''identity of interest agent''.*

*(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act.*

*(c) APPLICABILITY OF AMENDMENTS.—The amendments made by subsection (a) shall apply only with respect to—*

*(1) violations that occur on or after the effective date of the final regulations implementing the amendments made by this section; and*

*(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after that date.*

***SEC. 2321. CIVIL MONEY PENALTIES FOR NONCOMPLIANCE WITH SECTION 8 HAP CONTRACTS.***

*(a) BASIC AUTHORITY.—Title I of the United States Housing Act of 1937 is amended—*

*(1) by designating the second section designated as section 27 (as added by section 903(b) of Public Law 104–193 (110 Stat. 2348)) as section 28; and*

*(2) by adding at the end the following:*

***''SEC. 29. CIVIL MONEY PENALTIES AGAINST SECTION 8 OWNERS.***

*''(a) IN GENERAL.—*

*''(1) EFFECT ON OTHER REMEDIES.—The penalties set forth in this section shall be in addition to any other available civil remedy or any available criminal penalty, and may be imposed regardless of whether the Secretary imposes other administrative sanctions.*

*''(2) FAILURE OF SECRETARY.—The Secretary may not impose penalties under this section for a violation, if a material cause of the violation is the failure of the Secretary, an agent of the Secretary, or a public housing agency to comply with an existing agreement.*

*''(b) VIOLATIONS OF HOUSING ASSISTANCE PAYMENT CONTRACTS FOR WHICH PENALTY MAY BE IMPOSED.—*

*''(1) LIABLE PARTIES.—The Secretary may impose a civil money penalty under this section on—*

*''(A) any owner of a property receiving project-based assistance under section 8;*

*''(B) any general partner of a partnership owner of that property; and*

*''(C) any agent employed to manage the property that has an identity of interest with the owner or the general partner of a partnership owner of the property.*

*''(2) VIOLATIONS.—A penalty may be imposed under this section for a knowing and material breach of a housing assistance payments contract, including the following—*

*''(A) failure to provide decent, safe, and sanitary housing pursuant to section 8; or*

*''(B) knowing or willful submission of false, fictitious, or fraudulent statements or requests for housing assistance payments to the Secretary or to any department or agency of the United States.*

*''(3) AMOUNT OF PENALTY.—The amount of a penalty imposed for a violation under this subsection, as determined by the Secretary, may not exceed $25,000 per violation.*

*''(c) AGENCY PROCEDURES.—*

*''(1) ESTABLISHMENT.—The Secretary shall issue regulations establishing standards and procedures governing the imposition of civil money penalties under subsection (b). These standards and procedures—*

*''(A) shall provide for the Secretary or other department official to make the determination to impose the penalty;*

*''(B) shall provide for the imposition of a penalty only after the liable party has received notice and the opportunity for a hearing on the record; and*

*''(C) may provide for review by the Secretary of any determination or order, or interlocutory ruling, arising from a hearing and judicial review, as provided under subsection (d).*

*''(2) FINAL ORDERS.—*

*''(A) IN GENERAL.—If a hearing is not requested before the expiration of the 15-day period beginning on the date on which the notice of opportunity for hearing is received, the imposition of a penalty under subsection (b) shall constitute a final and unappealable determination.*

*''(B) EFFECT OF REVIEW.—If the Secretary reviews the determination or order, the Secretary may affirm, modify, or reverse that determination or order.*

*''(C) FAILURE TO REVIEW.—If the Secretary does not review that determination or order before the expiration of the 90-day period beginning on the date on which the determination or order is issued, the determination or order shall be final.*

*''(3) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under subsection (b), the Secretary shall take into consideration—*

*''(A) the gravity of the offense;*

*''(B) any history of prior offenses by the violator (including offenses occurring before the enactment of this section);*

*''(C) the ability of the violator to pay the penalty;*

*''(D) any injury to tenants;*

*''(E) any injury to the public;*

*''(F) any benefits received by the violator as a result of the violation;*

*''(G) deterrence of future violations; and*

*''(H) such other factors as the Secretary may establish by regulation.*

*''(4) PAYMENT OF PENALTY.—No payment of a civil money penalty levied under this section shall be payable out of project income.*

*''(d) JUDICIAL REVIEW OF AGENCY DETERMINATION.—Judicial review of determinations made under this section shall be carried out in accordance with section 537(e) of the National Housing Act.*

*''(e) REMEDIES FOR NONCOMPLIANCE.—*

*''(1) JUDICIAL INTERVENTION.—*

*''(A) IN GENERAL.—If a person or entity fails to comply with the determination or order of the Secretary imposing a civil money penalty under subsection (b), after the determination or order is no longer subject to review as provided by subsections (c) and (d), the Secretary may request the Attorney General of the United States to bring an action in an appropriate United States district court to obtain a monetary judgment against that person or entity and such other relief as may be available.*

*''(B) FEES AND EXPENSES.—Any monetary judgment awarded in an action brought under this paragraph may, in the discretion of the court, include the attorney's fees and other expenses incurred by the United States in connection with the action.*

*''(2) NONREVIEWABILITY OF DETERMINATION OR ORDER.—In an action under this subsection, the validity and appropriateness of the determination or order of the Secretary imposing the penalty shall not be subject to review.*

*''(f) SETTLEMENT BY SECRETARY.—The Secretary may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.*

*''(g) DEPOSIT OF PENALTIES.—*

*''(1) IN GENERAL.—Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is insured or formerly insured by the Secretary, the Secretary shall apply all civil money penalties collected under this section to the appropriate insurance fund or funds established under this Act, as determined by the Secretary.*

*''(2) EXCEPTION.—Notwithstanding any other provision of law, if the mortgage covering the property receiving assistance under section 8 is neither insured nor formerly insured by the Secretary, the Secretary shall make all civil money penalties collected under this section available for use by the appropriate office within the Department for administrative costs related to enforcement of the requirements of the various programs administered by the Secretary.*

*''(h) DEFINITIONS.—In this section—*

*''(1) the term 'agent employed to manage the property that has an identity of interest' means an entity—*

*''(A) that has management responsibility for a project;*

*''(B) in which the ownership entity, including its general partner or partners (if applicable), has an ownership interest; and*

*''(C) over which such ownership entity exerts effective control; and*

*''(2) the term 'knowing' means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the prohibitions under this section.''.*

*(b) APPLICABILITY.—The amendments made by subsection (a) shall apply only with respect to—*

(1) violations that occur on or after the effective date of final regulations implementing the amendments made by this section; and

(2) in the case of a continuing violation (as determined by the Secretary of Housing and Urban Development), any portion of a violation that occurs on or after such date.

(c) IMPLEMENTATION.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Secretary shall implement the amendments made by this section by regulation issued after notice and opportunity for public comment.

(B) COMMENTS SOUGHT.—The notice under subparagraph (A) shall seek comments as to the definitions of the terms ''ownership interest in'' and ''effective control'', as such terms are used in the definition of the term ''agent employed to manage such property that has an identity of interest''.

(2) TIMING.—A proposed rule implementing the amendments made by this section shall be published not later than 1 year after the date of enactment of this Act.

**SEC. 2322. EXTENSION OF DOUBLE DAMAGES REMEDY.**

Section 421 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715z–4a) is amended—

(1) in subsection (a)(1)—

(A) in the first sentence, by striking ''Act; or (B)'' and inserting the following: ''Act; (B) a regulatory agreement that applies to a multifamily project whose mortgage is insured or held by the Secretary under section 202 of the Housing Act of 1959 (including property subject to section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990); (C) a regulatory agreement or such other form of regulatory control as may be imposed by the Secretary that applies to mortgages insured or held by the Secretary under section 542 of the Housing and Community Development Act of 1992, but not reinsured under section 542 of the Housing and Community Development Act of 1992; or (D)''; and

(B) in the second sentence, by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,'';

(2) in subsection (a)(2), by inserting after ''Act,'' the following: ''under section 202 of the Housing Act of 1959 (including section 202 of such Act as it existed before enactment of the Cranston-Gonzalez National Affordable Housing Act of 1990) and under section 542 of the Housing and Community Development Act of 1992,'';

(3) in subsection (b), by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,'';

(4) in subsection (c)—

(A) in the first sentence, by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,''; and

(B) in the second sentence, by inserting before the period the following: ''or under the Housing Act of 1959, as appropriate''; and

(5) in subsection (d), by inserting after ''agreement'' the following: '', or such other form of regulatory control as may be imposed by the Secretary,''.

**SEC. 2323. OBSTRUCTION OF FEDERAL AUDITS.**

Section 1516(a) of title 18, United States Code, is amended by inserting after ''under a contract or subcontract,'' the following: ''or relating to any property that is security for a mortgage note that is insured, guaranteed, acquired, or held by the Secretary of Housing and Urban Development pursuant to any Act administered by the Secretary,''.

## TITLE III—COMMITTEE ON COMMERCE SCIENCE AND TRANSPORTATION

### Subtitle A—Spectrum Auctions and License Fees

**SEC. 3001. SPECTRUM AUCTIONS.**

(a) EXTENSION AND EXPANSION OF AUCTION AUTHORITY.—

(1) IN GENERAL.—Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended—

(A) by striking paragraphs (1) and (2) and inserting in lieu thereof the following:

''(1) GENERAL AUTHORITY.—If mutually exclusive applications are accepted for any initial license or construction permit that will involve an exclusive use of the electromagnetic spectrum, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection. The Commission, subject to paragraphs (2) and (7) of this subsection, also may use auctions as a means to assign spectrum when it determines that such an auction is consistent with the public interest, convenience, and necessity, and the purposes of this Act.

''(2) EXCEPTIONS.—The competitive bidding authority granted by this subsection shall not apply to a license or construction permit the Commission issues—

''(A) for public safety services, including private internal radio services used by State and local governments and non-government entities, including emergency auto service by nonprofit organizations, that—

''(i) are used to protect the safety of life, health, or property; and

''(ii) are not made commercially available to the public;

''(B) for public telecommunications services, as defined in section 397(14) of this Act, when the license application is for channels reserved for noncommercial use;

''(C) for spectrum and associated orbits used in the provision of any communications within a global satellite system;

''(D) for initial licenses or construction permits for new digital television service given to existing terrestrial broadcast licensees to replace their current television licenses;

''(E) for terrestrial radio and television broadcasting when the Commission determines that an alternative method of resolving mutually exclusive applications serves the public interest substantially better than competitive bidding; or

''(F) for spectrum allocated for unlicensed use pursuant to part 15 of the Commission's regulations (47 C.F.R. part 15), if the competitive bidding for licenses would interfere with operation of end-user products permitted under such regulations.'';

(B) by striking ''1998'' in paragraph (11) and inserting ''2007''; and

(C) by inserting after paragraph (13) the following:

''(14) OUT-OF-BAND EFFECTS.—The Commission and the National Telecommunications and Information Administration shall seek to create incentives to minimize the effects of out-of-band emissions to promote more efficient use of the electromagnetic spectrum. The Commission and the National Telecommunications and Information Administration also shall encourage licensees to minimize the effects of interference.''.

(2) CONFORMING AMENDMENT.—Subsection (i) of section 309 of the Communications Act of 1934 is repealed.

(b) AUCTION OF 45 MEGAHERTZ LOCATED AT 1,710–1,755 MEGAHERTZ.—

(1) IN GENERAL.—The Commission shall assign by competitive bidding 45 megahertz located at 1,710–1,755 megahertz no later than December 31, 2001, for commercial use.

(2) FEDERAL GOVERNMENT USERS.—Any Federal Government station that, on the date of enactment of this Act, is assigned to use electromagnetic spectrum located in the 1,710–1,755 megahertz band shall retain that use until December 31, 2003, unless exempted from relocation.

(c) COMMISSION TO MAKE ADDITIONAL SPECTRUM AVAILABLE BY AUCTION.—

(1) IN GENERAL.—The Federal Communications Commission shall complete all actions necessary to permit the assignment, by September 30, 2002, by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)), of licenses for the use of bands of frequencies currently allocated by the Commission that—

(A) in the aggregate span not less than 55 megahertz;

(B) are located below 3 gigahertz; and

(C) as of the date of enactment of this Act, have not been—

(i) designated by Commission regulation for assignment pursuant to section 309(j);

(ii) identified by the Secretary of Commerce pursuant to section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923); or

(iii) allocated for Federal Government use pursuant to section 305 of the Communications Act of 1934 (47 U.S.C. 305).

(2) CRITERIA FOR REASSIGNMENT.—In making available bands of frequencies for competitive bidding pursuant to paragraph (1), the Commission shall—

(A) seek to promote the most efficient use of the electromagnetic spectrum;

(B) consider the cost to incumbent licensees of relocating existing uses to other bands of frequencies or other means of communication;

(C) consider the needs of public safety radio services;

(D) comply with the requirements of international agreements concerning spectrum allocations; and

(E) coordinate with the Secretary of Commerce when there is any impact on Federal Government spectrum use.

(3) NOTIFICATION TO THE SECRETARY OF COMMERCE.—The Commission shall attempt to accommodate incumbent licensees displaced under this section by relocating them to other frequencies available to the Commission. The Commission shall notify the Secretary of Commerce whenever the Commission is not able to provide for the effective relocation of an incumbent licensee to a band of frequencies available to the Commission for assignment. The notification shall include—

(A) specific information on the incumbent licensee;

(B) the bands the Commission considered for relocation of the licensee; and

(C) the reasons the incumbent cannot be accommodated in these bands.

(4) REPORT TO THE SECRETARY OF COMMERCE.—

(A) TECHNICAL REPORT.—The Commission, in consultation with the National Telecommunications and Information Administration, shall submit a detailed technical report to the Secretary of Commerce setting forth—

(i) the reasons the incumbent licensees described in paragraph (3) could not be accommodated in existing non-government spectrum; and

(ii) the Commission's recommendations for relocating those incumbents.

(B) NTIA USE OF REPORT.—The National Telecommunications and Information Administration shall review this report when assessing whether a commercial licensee can be accommodated by being reassigned to a frequency allocated for Government use.

(d) IDENTIFICATION AND REALLOCATION OF FREQUENCIES.—

(1) IN GENERAL.—Section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended by adding at the end thereof the following:

''(f) ADDITIONAL REALLOCATION REPORT.—If the Secretary receives a report from the Commission pursuant to section 3001(c)(6) of the Balanced Budget Act of 1997, the Secretary shall

*submit to the President, the Congress, and the Commission a report with the Secretary's recommendations.*

*''(g) REIMBURSEMENT OF FEDERAL SPECTRUM USERS FOR RELOCATION COSTS.—*

*''(1) IN GENERAL.—*

*''(A) ACCEPTANCE OF COMPENSATION AUTHORIZED.—In order to expedite the efficient use of the electromagnetic spectrum, and notwithstanding section 3302(b) of title 31, United States Code, any Federal entity that operates a Federal Government station that has been identified by NTIA for relocation may accept payment, including in-kind compensation and shall be reimbursed if required to relocate by the service applicant, provider, licensee, or representative entering the band as a result of a license assignment by the Commission or otherwise authorized by Commission rules.*

*''(B) DUTY TO COMPENSATE OUSTED FEDERAL ENTITY.—Any such service applicant, provider, licensee, or representative shall compensate the Federal entity in advance for relocating through monetary or in-kind payment for the cost of relocating the Federal entity's operations from one or more electromagnetic spectrum frequencies to any other frequency or frequencies, or to any other telecommunications transmission media.*

*''(C) COMPENSABLE COSTS.—Compensation shall include, but not be limited to, the costs of any modification, replacement, or reissuance of equipment, facilities, operating manuals, regulations, or other relocation expenses incurred by that entity.*

*''(D) DISPOSITION OF PAYMENTS.—Payments, other than in-kind compensation, pursuant to this section shall be deposited by electronic funds transfer in a separate agency account or accounts which shall be used to pay directly the costs of relocation, to repay or make advances to appropriations or funds which do or will initially bear all or part of such costs, or to refund excess sums when necessary, and shall remain available until expended.*

*''(E) APPLICATION TO CERTAIN OTHER RELOCATIONS.—The provisions of this paragraph also apply to any Federal entity that operates a Federal Government station assigned to use electromagnetic spectrum identified for reallocation under subsection (a), if before the date of enactment of the Balanced Budget Act of 1997 the Commission has not identified that spectrum for service or assigned licenses or otherwise authorized service for that spectrum.*

*''(2) PETITIONS FOR RELOCATION.—Any person seeking to relocate a Federal Government station that has been assigned a frequency within a band allocated for mixed Federal and non-Federal use under this Act shall submit a petition for relocation to NTIA. The NTIA shall limit or terminate the Federal Government station's operating license within 6 months after receiving the petition if the following requirements are met:*

*''(A) The proposed relocation is consistent with obligations undertaken by the United States in international agreements and with United States national security and public safety interests.*

*''(B) The person seeking relocation of the Federal Government station has guaranteed to defray entirely, through payment in advance, advance in-kind payment of costs, or a combination of payment in advance and advance in-kind payment, all relocation costs incurred by the Federal entity, including, but not limited to, all engineering, equipment, site acquisition and construction, and regulatory fee costs.*

*''(C) The person seeking relocation completes all activities necessary for implementing the relocation, including construction of replacement facilities (if necessary and appropriate) and identifying and obtaining on the Federal entity's behalf new frequencies for use by the relocated Federal Government station (if the station is not relocating to spectrum reserved exclusively for Federal use).*

*''(D) Any necessary replacement facilities, equipment modifications, or other changes have been implemented and tested by the Federal entity to ensure that the Federal Government station is able to accomplish successfully its purposes including maintaining communication system performance.*

*''(E) The Secretary has determined that the proposed use of any spectrum frequency band to which a Federal entity relocates its operations is suitable for the technical characteristics of the band and consistent with other uses of the band. In exercising authority under this subparagraph, the Secretary shall consult with the Secretary of Defense, the Secretary of State, and other appropriate Federal officials.*

*''(3) RIGHT TO RECLAIM.—If within one year after the relocation of a Federal Government station, the Federal entity affected demonstrates to the Secretary and the Commission that the new facilities or spectrum are not comparable to the facilities or spectrum from which the Federal Government station was relocated, the person who sought the relocation shall take reasonable steps to remedy any defects or pay the Federal entity for the costs of returning the Federal Government station to the electromagnetic spectrum from which the station was relocated.*

*''(h) FEDERAL ACTION TO EXPEDITE SPECTRUM TRANSFER.—Any Federal Government station which operates on electromagnetic spectrum that has been identified for reallocation under this Act for mixed Federal and non-Federal use in any reallocation report under subsection (a), to the maximum extent practicable through the use of subsection (g) and any other applicable law, shall take prompt action to make electromagnetic spectrum available for use in a manner that maximizes efficient use of the electromagnetic spectrum.*

*''(i) FEDERAL SPECTRUM ASSIGNMENT RESPONSIBILITY.—This section does not modify NTIA's authority under section 103(b)(2)(A) of this Act.*

*''(j) DEFINITIONS.—As used in this section—*

*''(1) the term 'Federal entity' means any department, agency, or instrumentality of the Federal Government that utilizes a Government station license obtained under section 305 of the 1934 Act (47 U.S.C. 305);*

*''(2) the term 'digital television services' means television services provided using digital technology to enhance audio quality and video resolution, as further defined in the Memorandum Opinion, Report, and Order of the Commission entitled 'Advanced Television Systems and Their Impact Upon the Existing Television Service', MM Docket No. 87–268 and any subsequent FCC proceedings dealing with digital television; and*

*''(3) the term 'analog television licenses' means licenses issued pursuant to 47 CFR 73.682 et seq.''.*

*(2) Section 114(a) of that Act (47 U.S.C. 924(a)) is amended by striking ''(a) or (d)(1)'' and inserting ''(a), (d)(1), or (f)''.*

*(e) IDENTIFICATION AND REALLOCATION OF AUCTIONABLE FREQUENCIES.—*

*(1) SECOND REPORT REQUIRED.—Section 113(a) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(a)) is amended by inserting ''and within 6 months after the date of enactment of the Balanced Budget Act of 1997'' after ''Act of 1993''.*

*(2) IN GENERAL.—Section 113(b) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 923(b)) is amended—*

*(A) by striking the caption of paragraph (1) and inserting ''INITIAL REALLOCATION REPORT.—'';*

*(B) by inserting ''in the initial report required by subsection (a)'' after ''recommend for reallocation'' in paragraph (1);*

*(C) by inserting ''or (3)'' after ''paragraph (1)'' each place it appears in paragraph (2); and*

*(D) by adding at the end thereof the following:*

*''(3) SECOND REALLOCATION REPORT.—The Secretary shall make available for reallocation a total of 20 megahertz in the second report required by subsection (a), for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), that is located below 3 gigahertz and that meets the criteria specified in paragraphs (1) through (5) of subsection (a).''.*

*(3) ALLOCATION AND ASSIGNMENT.—Section 115 of that Act (47 U.S.C. 925) is amended—*

*(A) by striking ''the report required by section 113(a)'' in subsection (b) and inserting ''the initial reallocation report required by section 113(a)''; and*

*(B) by adding at the end thereof the following:*

*''(c) ALLOCATION AND ASSIGNMENT OF FREQUENCIES IDENTIFIED IN THE SECOND ALLOCATION REPORT.—*

*''(1) PLAN.—Within 12 months after it receives a report from the Secretary under section 113(f) of this Act, the Commission shall—*

*''(A) submit a plan, prepared in coordination with the Secretary of Commerce, to the President and to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Commerce, for the allocation and assignment under the 1934 Act of frequencies identified in the report; and*

*''(B) implement the plan.*

*''(2) CONTENTS.—The plan prepared by the Commission under paragraph (1) shall consist of a schedule of reallocation and assignment of those frequencies in accordance with section 309(j) of the 1934 Act in time for the assignment of those licenses or permits by September 30, 2002.''.*

***SEC. 3002. DIGITAL TELEVISION SERVICES.***

*Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) is amended by adding at the end thereof the following:*

*''(15) AUCTION OF RECAPTURED BROADCAST TELEVISION SPECTRUM AND POTENTIAL DIGITAL TELEVISION LICENSE FEES.—*

*''(A) LIMITATIONS ON TERMS OF TERRESTRIAL TELEVISION BROADCAST LICENSES.—*

*''(i) A television license that authorizes analog television services may not be renewed to authorize such services for a period that extends beyond December 31, 2006. The Commission shall extend or waive this date for any station in any television market unless 95 percent of the television households have access to digital local television signals, either by direct off-air reception or by other means.*

*''(ii) A commercial digital television license that is issued shall expire on September 30, 2003. A commercial digital television license shall be re-issued only subject to fulfillment of the licensee's obligations under subparagraph (C).*

*''(iii) No later than December 31, 2001, and every 2 years thereafter, the Commission shall report to Congress on the status of digital television conversion in each television market. In preparing this report, the Commission shall consult with other departments and agencies of the Federal Government. The report shall contain the following information:*

*''(I) Actual consumer purchases of analog and digital television receivers, including the price, availability, and use of conversion equipment to allow analog sets to receive a digital signal.*

*''(II) The percentage of television households in each market that has access to digital local television signals as defined in paragraph (a)(1), whether such access is attained by direct off-air reception or by some other means.*

*''(III) The cost to consumers of purchasing digital television receivers (or conversion equipment to prevent obsolescence of existing analog equipment) and other related changes in the marketplace, such as increases in the cost of cable converter boxes.*

*''(B) SPECTRUM REVERSION AND RESALE.—*

*''(i) The Commission shall—*

*''(I) ensure that, as analog television licenses expire pursuant to subparagraph (A)(i), each broadcaster shall return electromagnetic spectrum according to the Commission's direction; and*

''(II) reclaim and organize the electromagnetic spectrum in a manner to maximize the deployment of new and existing services.

''(ii) Licensees for new services occupying electromagnetic spectrum previously used for the broadcast of analog television shall be selected by competitive bidding. The Commission shall start the competitive bidding process by July 1, 2001, with payment pursuant to the competitive bidding rules established by the Commission. The Commission shall report the total revenues from the competitive bidding by January 1, 2002.

''(C) DEFINITIONS.—As used in this paragraph—

''(i) the term 'digital television services' means television services provided using digital technology to enhance audio quality and video resolution, as further defined in the Memorandum Opinion, Report, and Order of the Commission entitled 'Advanced Television Systems and Their Impact Upon the Existing Television Service', MM Docket No. 87–268 and any subsequent Commission proceedings dealing with digital television; and

''(ii) the term 'analog television licenses' means licenses issued pursuant to 47 CFR 73.682 et seq.''.

**SEC. 3003. ALLOCATION AND ASSIGNMENT OF NEW PUBLIC SAFETY AND COMMERCIAL LICENSES.**

(a) IN GENERAL.—The Federal Communications Commission, not later than January 1, 1998, shall allocate from electromagnetic spectrum between 746 megahertz and 806 megahertz—

(1) 24 megahertz of that spectrum for public safety services according to terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General; and

(2) 36 megahertz of that spectrum for commercial purposes to be assigned by competitive bidding.

(b) ASSIGNMENT.—The Commission shall—

(1) commence assignment of the licenses for public safety created pursuant to subsection (a) no later than September 30, 1998; and

(2) commence competitive bidding for the commercial licenses created pursuant to subsection (a) no later than March 31, 1998.

(c) LICENSING OF UNUSED FREQUENCIES FOR PUBLIC SAFETY RADIO SERVICES.—

(1) USE OF UNUSED CHANNELS FOR PUBLIC SAFETY.—It shall be the policy of the Federal Communications Commission, notwithstanding any other provision of this Act or any other law, to waive whatever licensee eligibility and other requirements (including bidding requirements) are applicable in order to permit the use of unassigned frequencies for public safety purposes by a State or local government agency upon a showing that—

(A) no other existing satisfactory public safety channel is immediately available to satisfy the requested use;

(B) the proposed use is technically feasible without causing harmful interference to existing stations in the frequency band entitled to protection from such interference under the rules of the Commission; and

(C) use of the channel for public safety purposes is consistent with other existing public safety channel allocations in the geographic area of proposed use.

(2) APPLICABILITY.—Paragraph (1) shall apply to any application—

(A) is pending before the Commission on the date of enactment of this Act;

(B) was not finally determined under section 402 or 405 of the Communications Act of 1934 (47 U.S.C. 402 or 405) on May 15, 1997; or

(C) is filed after May 15, 1997.

(d) PROTECTION OF BROADCAST TV LICENSEES DURING DIGITAL TRANSITION.—Public safety and commercial licenses granted pursuant to this subsection—

(1) shall enjoy flexibility in use, subject to—

(A) interference limits set by the Commission at the boundaries of the electromagnetic spectrum block and service area; and

(B) any additional technical restrictions imposed by the Commission to protect full-service analog and digital television licenses during a transition to digital television;

(2) may aggregate multiple licenses to create larger spectrum blocks and service areas;

(3) may disaggregate or partition licenses to create smaller spectrum blocks or service areas; and

(4) may transfer a license to any other person qualified to be a licensee.

(e) PROTECTION OF PUBLIC SAFETY LICENSEES DURING DIGITAL TRANSITION.—The Commission shall establish rules insuring that public safety licensees using spectrum reallocated pursuant to subsection (a)(1) shall not be subject to harmful interference from television broadcast licensees.

(f) DIGITAL TELEVISION ALLOTMENT.—In assigning temporary transitional digital licenses, the Commission shall—

(1) minimize the number of allotments between 746 and 806 megahertz and maximize the amount of spectrum available for public safety and new services;

(2) minimize the number of allotments between 698 and 746 megahertz in order to facilitate the recovery of spectrum at the end of the transition;

(3) consider minimizing the number of allotments between 54 and 72 megahertz to facilitate the recovery of spectrum at the end of the transition; and

(4) develop an allotment plan designed to recover 78 megahertz of spectrum to be assigned by competitive bidding, in addition to the 60 megahertz identified in paragraph (a) of this subsection.

(g) INCUMBENT BROADCAST LICENSEES.—Any person who holds an analog television license or a digital television license between 746 and 806 megahertz—

(1) may not operate at that frequency after the date on which the digital television services transition period terminates, as determined by the Commission; and

(2) shall surrender immediately the license or permit to construct pursuant to Commission rules.

(h) DEFINITIONS.—For purposes of this section:

(1) COMMISSION.—The term ''Commission'' means the Federal Communications Commission.

(2) DIGITAL TELEVISION (DTV) SERVICE.—The term ''digital television (DTV) service'' means terrestrial broadcast services provided using digital technology to enhance audio quality and video resolution, as further defined in the Memorandum Opinion, Report, and Order of the Commission entitled ''Advanced Television Systems and Their Impact Upon the Existing Television Service'', MM Docket No. 87–268, or subsequent findings of the Commission.

(3) DIGITAL TELEVISION LICENSE.—The term ''digital television license'' means a full-service license issued pursuant to rules adopted for digital television service.

(4) ANALOG TELEVISION LICENSE.—The term ''analog television license'' means a full-service license issued pursuant to 47 CFR 73.682 et seq.

(5) PUBLIC SAFETY SERVICES.—The term ''public safety services'' means services whose sole or principal purpose is to protect the safety of life, health, or property.

(6) SERVICE AREA.—The term ''service area'' means the geographic area over which a licensee may provide service and is protected from interference.

(7) SPECTRUM BLOCK.—The term ''spectrum block'' means the range of frequencies over which the apparatus licensed by the Commission is authorized to transmit signals.

**SEC. 3004. FLEXIBLE USE OF ELECTROMAGNETIC SPECTRUM.**

Section 303 of the Communications Act of 1934 (47 U.S.C. 303) is amended by adding at the end thereof the following:

''(y) Shall allocate electromagnetic spectrum so as to provide flexibility of use, except—

''(1) as required by international agreements relating to global satellite systems or other telecommunication services to which the United States is a party;

''(2) as required by public safety allocations;

''(3) to the extent that the Commission finds, after notice and an opportunity for public comment, that such an allocation would not be in the public interest;

''(4) to the extent that flexible use would retard investment in communications services and systems, or technology development thereby lessening the value of the electromagnetic spectrum; or

''(5) to the extent that flexible use would result in harmful interference among users.''.

**SEC. 3005. RESERVE PRICE.**

In any auction conducted or supervised by the Federal Communications Commission (hereinafter the Commission) for any license, permit or right which has value, a reasonable reserve price shall be set by the Commission for each unit in the auction unless the Commission determines it not to be in the public interest. The reserve price shall establish a minimum bid for the unit to be auctioned. If no bid is received above the reserve price for a unit, the unit shall be retained. The Commission shall re-assess the reserve price for that unit and place the unit in the next scheduled or next appropriate auction.

## SUBTITLE B—MERCHANT MARINE PROVISIONS

**SEC. 3501. EXTENSION OF VESSEL TONNAGE DUTIES.**

(a) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended by inserting ''1999, 2000, 2001, and 2002,'' after ''1998,'' each place it appears.

(b) CONFORMING AMENDMENT.—The Act of March 8, 1910 (36 Stat. 234; 46 U.S.C. 132), is amended by striking ''and 1998,'' and inserting ''1998, 1999, 2000, 2001, and 2002,''.

## TITLE IV—COMMITTEE ON ENERGY AND NATURAL RESOURCES

**SEC. 4001. LEASE OF EXCESS STRATEGIC PETROLEUM RESERVE CAPACITY.**

Part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231 et seq.) is amended by adding at the end the following new section:

''USE OF UNDERUTILIZED FACILITIES

''SEC. 168. Notwithstanding section 649(b) of the Department of Energy Organization Act (42 U.S.C. 7259(b)), the Secretary is authorized to store in underutilized Strategic Petroleum Reserve facilities, by lease or otherwise, petroleum product owned by a foreign government or its representative: Provided, That funds resulting from the leasing or other use of a Reserve facility on or after October 1, 2007, shall be available to the Secretary, without further appropriation, for the purchase of petroleum products for the Reserve: Provided further, That petroleum product stored under this section is not part of the Strategic Petroleum Reserve, is not subject to part C of this title, and notwithstanding any provision of this Act, may be exported from the United States.''.

## TITLE V—COMMITTEE ON FINANCE

**SEC. 5000. AMENDMENTS TO SOCIAL SECURITY ACT AND REFERENCES TO OBRA; TABLE OF CONTENTS OF 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'', ''OBRA–1990'', and ''OBRA–1993'' 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), the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66), respectively.

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

***SEC. 5000A. EXTENSION OF MORATORIUM.***

*Section 6408(a)(3) of the Omnibus Budget Reconciliation Act of 1989, as amended by section 13642 of the Omnibus Budget Reconciliation Act of 1993 is amended by striking ''December 31, 1995'' and inserting ''December 31, 2002''.*

## *DIVISION 1—MEDICARE*

### *Subtitle A—Medicare Choice Program*

### *CHAPTER 1—MEDICARE CHOICE PROGRAM*

#### *Subchapter A—Medicare Choice Program*

***SEC. 5001. ESTABLISHMENT OF MEDICARE CHOICE PROGRAM.***

*Title XVIII is amended by redesignating part C as part D and by inserting after part B the following new part:*

*''PART C—MEDICARE CHOICE PROGRAM*

*''ELIGIBILITY, ELECTION, AND ENROLLMENT*

*''SEC. 1851. (a) CHOICE OF MEDICARE BENEFITS THROUGH MEDICARE CHOICE PLANS.—*

*''(1) IN GENERAL.—Subject to the provisions of this section, each Medicare Choice eligible individual (as defined in paragraph (3)) is entitled to elect to receive benefits under this title—*

*''(A) through the traditional medicare fee-for-service program under parts A and B, or*

*''(B) through enrollment in a Medicare Choice plan under this part.*

*''(2) TYPES OF MEDICARE CHOICE PLANS THAT MAY BE AVAILABLE.—A Medicare Choice plan may be any of the following types of plans of health insurance:*

*''(A) FEE-FOR-SERVICE PLANS.—A plan that reimburses hospitals, physicians, and other providers on the basis of a privately determined fee schedule or other basis.*

*''(B) PLANS OFFERED BY PREFERRED PROVIDER ORGANIZATIONS.—A Medicare Choice plan offered by a preferred provider organization.*

*''(C) POINT OF SERVICE PLANS.—A point of service plan.*

*''(D) PLANS OFFERED BY PROVIDER-SPONSORED ORGANIZATION.—A Medicare Choice plan offered by a provider-sponsored organization, as defined in section 1855(e).*

''(E) PLANS OFFERED BY HEALTH MAINTENANCE ORGANIZATIONS.—A Medicare Choice plan offered by a health maintenance organization.

''(F) COMBINATION OF MSA PLAN AND CONTRIBUTIONS TO MEDICARE CHOICE MSA.—An MSA plan, as defined in section 1859(b)(3), and a contribution into a Medicare Choice medical savings account (MSA).

''(G) OTHER HEALTH CARE PLANS.—Any other private plan for the delivery of health care items and services that is not described in a preceding subparagraph.

''(3) MEDICARE CHOICE ELIGIBLE INDIVIDUAL.—

''(A) IN GENERAL.—In this title, subject to subparagraph (B), the term 'Medicare Choice eligible individual' means an individual who is entitled to benefits under part A and enrolled under part B.

''(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—Such term shall not include an individual medically determined to have end-stage renal disease, except that an individual who develops end-stage renal disease while enrolled in a Medicare Choice plan may continue to be enrolled in that plan.

''(b) SPECIAL RULES.—

''(1) RESIDENCE REQUIREMENT.—

''(A) IN GENERAL.—Except as the Secretary may otherwise provide, an individual is eligible to elect a Medicare Choice plan offered by a Medicare Choice organization only if the plan serves the geographic area in which the individual resides.

''(B) CONTINUATION OF ENROLLMENT PERMITTED.—Pursuant to rules specified by the Secretary, the Secretary shall provide that an individual may continue enrollment in a plan, notwithstanding that the individual no longer resides in the service area of the plan, so long as the plan provides benefits for enrollees located in the area in which the individual resides.

''(2) SPECIAL RULE FOR CERTAIN INDIVIDUALS COVERED UNDER FEHBP OR ELIGIBLE FOR VETERANS OR MILITARY HEALTH BENEFITS, VETERANS.—

''(A) FEHBP.—An individual who is enrolled in a health benefit plan under chapter 89 of title 5, United States Code, is not eligible to enroll in an MSA plan until such time as the Director of the Office of Management and Budget certifies to the Secretary that the Office of Personnel Management has adopted policies which will ensure that the enrollment of such individuals in such plans will not result in increased expenditures for the Federal Government for health benefit plans under such chapter.

''(B) VA AND DOD.—The Secretary may apply rules similar to the rules described in subparagraph (A) in the case of individuals who are eligible for health care benefits under chapter 55 of title 10, United States Code, or under chapter 17 of title 38 of such Code.

''(3) LIMITATION ON ELIGIBILITY OF QUALIFIED MEDICARE BENEFICIARIES AND OTHER MEDICAID BENEFICIARIES TO ENROLL IN AN MSA PLAN.—An individual who is a qualified medicare beneficiary (as defined in section 1905(p)(1)), a qualified disabled and working individual (described in section 1905(s)), an individual described in section 1902(a)(10)(E)(iii), or otherwise entitled to medicare cost-sharing under a State plan under title XIX is not eligible to enroll in an MSA plan.

''(4) COVERAGE UNDER MSA PLANS ON A DEMONSTRATION BASIS.—

''(A) IN GENERAL.—An individual is not eligible to enroll in an MSA plan under this part—

''(i) on or after January 1, 2003, unless the enrollment is the continuation of such an enrollment in effect as of such date; or

''(ii) as of any date if the number of such individuals so enrolled as of such date has reached 100,000.

Under rules established by the Secretary, an individual is not eligible to enroll (or continue enrollment) in an MSA plan for a year unless the individual provides assurances satisfactory to the Secretary that the individual will reside in the United States for at least 183 days during the year.

''(B) EVALUATION.—The Secretary shall regularly evaluate the impact of permitting enrollment in MSA plans under this part on selection (including adverse selection), use of preventive care, access to care, and the financial status of the Trust Funds under this title.

''(C) REPORTS.—The Secretary shall submit to Congress periodic reports on the numbers of individuals enrolled in such plans and on the evaluation being conducted under subparagraph (B). The Secretary shall submit such a report, by not later than March 1, 2002, on whether the time limitation under subparagraph (A)(i) should be extended or removed and whether to change the numerical limitation under subparagraph (A)(ii).

''(c) PROCESS FOR EXERCISING CHOICE.—

''(1) IN GENERAL.—The Secretary shall establish a process through which elections described in subsection (a) are made and changed, including the form and manner in which such elections are made and changed. Such elections shall be made or changed as provided in subsection (e) and shall become effective as provided in subsection (f).

''(2) COORDINATION THROUGH MEDICARE CHOICE ORGANIZATIONS.—

''(A) ENROLLMENT.—Such process shall permit an individual who wishes to elect a Medicare Choice plan offered by a Medicare Choice organization to make such election through the filing of an appropriate election form with the organization.

''(B) DISENROLLMENT.—Such process shall permit an individual, who has elected a Medicare Choice plan offered by a Medicare Choice organization and who wishes to terminate such election, to terminate such election through the filing of an appropriate election form with the organization.

''(3) DEFAULT.—

''(A) INITIAL ELECTION.—

''(i) IN GENERAL.—Subject to clause (ii), an individual who fails to make an election during an initial election period under subsection (e)(1) is deemed to have chosen the traditional medicare fee-for-service program option.

''(ii) SEAMLESS CONTINUATION OF COVERAGE.—The Secretary may establish procedures under which an individual who is enrolled in a health plan (other than Medicare Choice plan) offered by a Medicare Choice organization at the time of the initial election period and who fails to elect to receive coverage other than through the organization is deemed to have elected the Medicare Choice plan offered by the organization (or, if the organization offers more than one such plan, such plan or plans as the Secretary identifies under such procedures).

''(B) CONTINUING PERIODS.—An individual who has made (or is deemed to have made) an election under this section is considered to have continued to make such election until such time as—

''(i) the individual changes the election under this section, or

''(ii) the Medicare Choice plan with respect to which such election is in effect is discontinued.

''(d) PROVIDING INFORMATION TO PROMOTE INFORMED CHOICE.—

''(1) IN GENERAL.—The Secretary shall provide for activities under this subsection to broadly disseminate information to medicare beneficiaries (and prospective medicare beneficiaries) on the coverage options provided under this section in order to promote an active, informed selection among such options.

''(2) PROVISION OF NOTICE.—

''(A) OPEN SEASON NOTIFICATION.—At least 15 days before the beginning of each annual, coordinated election period (as defined in subsection (e)(3)(B)), the Secretary shall mail to each Medicare Choice eligible individual residing in an area the following:

''(i) GENERAL INFORMATION.—The general information described in paragraph (3).

''(ii) LIST OF PLANS AND COMPARISON OF PLAN OPTIONS.—A list identifying the Medicare Choice plans that are (or will be) available to residents of the area and information described in paragraph (4) concerning such plans. Such information shall be presented in a comparative, chart-like form.

''(iii) ADDITIONAL INFORMATION.—Any other information that the Secretary determines will assist the individual in making the election under this section.

The mailing of such information shall be coordinated with the mailing of any annual notice under section 1804.

''(B) NOTIFICATION TO NEWLY MEDICARE CHOICE ELIGIBLE INDIVIDUALS.—To the extent practicable, the Secretary shall, not later than 30 days before the beginning of the initial Medicare Choice enrollment period for an individual described in subsection (e)(1)(A), mail to the individual the information described in subparagraph (A).

''(C) FORM.—The information disseminated under this paragraph shall be written and formatted using language that is easily understandable by medicare beneficiaries.

''(D) PERIODIC UPDATING.—The information described in subparagraph (A) shall be updated on at least an annual basis to reflect changes in the availability of Medicare Choice plans and the benefits and net monthly premiums for such plans.

''(3) GENERAL INFORMATION.—General information under this paragraph, with respect to coverage under this part during a year, shall include the following:

''(A) BENEFITS UNDER TRADITIONAL MEDICARE FEE-FOR-SERVICE PROGRAM OPTION.—A general description of the benefits covered under the traditional medicare fee-for-service program under parts A and B, including—

''(i) covered items and services,

''(ii) beneficiary cost sharing, such as deductibles, coinsurance, and copayment amounts, and

''(iii) any beneficiary liability for balance billing.

''(B) PART B PREMIUM.—The part B premium rates that will be charged for part B coverage.

''(C) ELECTION PROCEDURES.—Information and instructions on how to exercise election options under this section.

''(D) RIGHTS.—A general description of procedural rights (including grievance and appeals procedures) of beneficiaries under the traditional medicare fee-for-service program and the Medicare Choice program and the right to be protected against discrimination based on health status-related factors under section 1852(b).

''(E) INFORMATION ON MEDIGAP AND MEDICARE SELECT.—A general description of the benefits, enrollment rights, and other requirements applicable to medicare supplemental policies under section 1882 and provisions relating to medicare select policies described in section 1882(t).

''(F) POTENTIAL FOR CONTRACT TERMINATION.—The fact that a Medicare Choice organization may terminate or refuse to renew its contract under this part and the effect the termination or nonrenewal of its contract may have on individuals enrolled with the Medicare Choice plan under this part.

''(4) INFORMATION COMPARING PLAN OPTIONS.—Information under this paragraph, with respect to a Medicare Choice plan for a year, shall include the following:

''(A) BENEFITS.—The benefits covered under the plan, including—

''(i) covered items and services beyond those provided under the traditional medicare fee-for-service program,

''(ii) any beneficiary cost sharing,

''(iii) any maximum limitations on out-of-pocket expenses, and

''(iv) in the case of an MSA plan, differences in cost sharing and balance billing under such a plan compared to under other Medicare Choice plans.

''(B) PREMIUMS.—The net monthly premium, if any, for the plan.

''(C) SERVICE AREA.—The service area of the plan.

''(D) QUALITY AND PERFORMANCE.—To the extent available, plan quality and performance indicators for the benefits under the plan (and how they compare to such indicators under the traditional medicare fee-for-service program under parts A and B in the area involved), including—

''(i) disenrollment rates for medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan's service area),

''(ii) information on medicare enrollee satisfaction,

''(iii) information on health outcomes,

''(iv) the extent to which a medicare enrollee may select the health care provider of their choice, including health care providers within the plan's network and out-of-network health care providers (if the plan covers out-of-network items and services), and

''(v) an indication of medicare enrollee exposure to balance billing and the restrictions on coverage of items and services provided to such enrollee by an out-of-network health care provider.

''(E) SUPPLEMENTAL BENEFITS OPTIONS.—Whether the organization offering the plan offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.

''(F) PHYSICIAN COMPENSATION.—An overall summary description as to the method of compensation of participating physicians.

''(5) MAINTAINING A TOLL-FREE NUMBER AND INTERNET SITE.—The Secretary shall maintain a toll-free number for inquiries regarding Medicare Choice options and the operation of this part in all areas in which Medicare Choice plans are offered and an Internet site through which individuals may electronically obtain information on such options and Medicare Choice plans.

''(6) USE OF NON-FEDERAL ENTITIES.—The Secretary may enter into contracts with non-Federal entities to carry out activities under this subsection.

''(7) PROVISION OF INFORMATION.—A Medicare Choice organization shall provide the Secretary with such information on the organization and each Medicare Choice plan it offers as may be required for the preparation of the information referred to in paragraph (2)(A).

''(8) COORDINATION WITH STATES.—The Secretary shall coordinate with States to the maximum extent feasible in developing and distributing information provided to beneficiaries.

''(e) COVERAGE ELECTION PERIODS.—

''(1) INITIAL CHOICE UPON ELIGIBILITY TO MAKE ELECTION IF MEDICARE CHOICE PLANS AVAILABLE TO INDIVIDUAL.—If, at the time an individual first becomes entitled to benefits under part A and enrolled under part B, there is one or more Medicare Choice plans offered in the area in which the individual resides, the individual shall make the election under this section during a period specified by the Secretary such that if the individual elects a Medicare Choice plan during the period, coverage under the plan becomes effective as of the first date on which the individual may receive such coverage.

''(2) OPEN ENROLLMENT AND DISENROLLMENT OPPORTUNITIES.—Subject to paragraph (5), a Medicare Choice eligible individual may change the election under subsection (a)(1) at any time, except that such individual may only enroll in a Medicare Choice plan which has an open enrollment period in effect at that time.

''(3) ANNUAL, COORDINATED ELECTION PERIOD.—

''(A) IN GENERAL.—Subject to paragraph (5), a Medicare Choice eligible individual may change an election under subsection (a)(1) during an annual, coordinated election period.

''(B) ANNUAL, COORDINATED ELECTION PERIOD.—For purposes of this section, the term 'annual, coordinated election period' means, with respect to a calendar year (beginning with 1998), the month of November before such year.

''(C) MEDICARE CHOICE HEALTH INFORMATION FAIRS.—In the month of November of each year (beginning with 1997), the Secretary shall provide for a nationally coordinated educational and publicity campaign to inform Medicare Choice eligible individuals about Medicare Choice plans and the election process provided under this section.

''(4) SPECIAL ELECTION PERIODS.—A Medicare Choice individual may make a new election under this section if—

''(A) the organization's or plan's certification under this part has been terminated or the organization has terminated or otherwise discontinued providing the plan;

''(B) the individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances (specified by the Secretary, but not including termination of the individual's enrollment on the basis described in clause (i) or (ii) subsection (g)(3)(B));

''(C) the individual demonstrates (in accordance with guidelines established by the Secretary) that—

''(i) the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual (including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards); or

''(ii) the organization (or an agent or other entity acting on the organization's behalf) materially misrepresented the plan's provisions in marketing the plan to the individual; or

''(D) the individual meets such other exceptional conditions as the Secretary may provide.

''(5) SPECIAL RULES FOR MSA PLANS.—Notwithstanding the preceding provisions of this subsection, an individual—

''(A) may elect an MSA plan only during—

''(i) an initial open enrollment period described in paragraph (1), or

''(ii) an annual, coordinated election period described in paragraph (3)(B), and

''(B) may not discontinue an election of an MSA plan except during the periods described in subparagraph (A) and under paragraph (4).

''(6) OPEN ENROLLMENT PERIODS.—A Medicare Choice organization—

''(A) shall accept elections or changes to elections described in paragraphs (1), (3), and (4) during the periods prescribed in such paragraphs, and

''(B) may accept other changes to elections at such other times as the organization provides.

''(f) EFFECTIVENESS OF ELECTIONS AND CHANGES OF ELECTIONS.—

''(1) DURING INITIAL COVERAGE ELECTION PERIOD.—An election of coverage made during the initial coverage election period under subsection (e)(1)(A) shall take effect upon the date the individual becomes entitled to benefits under part A and enrolled under part B, except as the Secretary may provide (consistent with section 1838) in order to prevent retroactive coverage.

''(2) DURING CONTINUOUS OPEN ENROLLMENT PERIODS.—An election or change of coverage made under subsection (e)(2) shall take effect with the first day of the first calendar month following the date on which the election is made.

''(3) ANNUAL, COORDINATED ELECTION PERIOD.—An election or change of coverage made during an annual, coordinated election period (as defined in subsection (e)(3)(B)) in a year shall take effect as of the first day of the following year unless the individual elects to have it take effect on December 1 of the election year.

''(4) OTHER PERIODS.—An election or change of coverage made during any other period under subsection (e)(4) shall take effect in such manner as the Secretary provides in a manner consistent (to the extent practicable) with protecting continuity of health benefit coverage.

''(g) GUARANTEED ISSUE AND RENEWAL.—

''(1) IN GENERAL.—Except as provided in this subsection, a Medicare Choice organization shall provide that at any time during which elections are accepted under this section with respect to a Medicare Choice plan offered by the organization, the organization will accept without restrictions individuals who are eligible to make such election.

''(2) PRIORITY.—If the Secretary determines that a Medicare Choice organization, in relation to a Medicare Choice plan it offers, has a capacity limit and the number of Medicare Choice eligible individuals who elect the plan under this section exceeds the capacity limit, the organization may limit the election of individuals of the plan under this section but only if priority in election is provided—

''(A) first to such individuals as have elected the plan at the time of the determination, and

''(B) then to other such individuals in such a manner that does not discriminate, on a basis described in section 1852(b), among the individuals (who seek to elect the plan).

The preceding sentence shall not apply if it would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the medicare population in the service area of the plan.

''(3) LIMITATION ON TERMINATION OF ELECTION.—

''(A) IN GENERAL.—Subject to subparagraph (B), a Medicare Choice organization may not for any reason terminate the election of any individual under this section for a Medicare Choice plan it offers.

''(B) BASIS FOR TERMINATION OF ELECTION.—A Medicare Choice organization may terminate an individual's election under this section with respect to a Medicare Choice plan it offers if—

''(i) any net monthly premiums required with respect to such plan are not paid on a timely basis (consistent with standards under section 1856 that provide for a grace period for late payment of net monthly premiums),

''(ii) the individual has engaged in disruptive behavior (as specified in such standards), or

''(iii) the plan is terminated with respect to all individuals under this part in the area in which the individual resides.

''(C) CONSEQUENCE OF TERMINATION.—

''(i) TERMINATIONS FOR CAUSE.—Any individual whose election is terminated under clause (i) or (ii) of subparagraph (B) is deemed to have elected the traditional medicare fee-for-service program option described in subsection (a)(1)(A).

''(ii) TERMINATION BASED ON PLAN TERMINATION OR SERVICE AREA REDUCTION.—Any individual whose election is terminated under subparagraph (B)(iii) shall have a special election period under subsection (e)(4)(A) in which to change coverage to coverage under another Medicare Choice plan. Such an individual who fails to make an election during such period is deemed to have chosen to change coverage to the traditional medicare fee-for-service program option described in subsection (a)(1)(A).

''(D) ORGANIZATION OBLIGATION WITH RESPECT TO ELECTION FORMS.—Pursuant to a contract under section 1857, each Medicare Choice organization receiving an election form under subsection (c)(3) shall transmit to the Secretary (at such time and in such manner as the Secretary may specify) a copy of such form or such other information respecting the election as the Secretary may specify.

''(h) APPROVAL OF MARKETING MATERIAL AND APPLICATION FORMS.—

''(1) SUBMISSION.—No marketing material or application form may be distributed by a Medicare Choice organization to (or for the use of) Medicare Choice eligible individuals unless—

''(A) at least 45 days before the date of distribution the organization has submitted the material or form to the Secretary for review, and

''(B) the Secretary has not disapproved the distribution of such material or form.

''(2) REVIEW.—The standards established under section 1856 shall include guidelines for the review of any material or form submitted and under such guidelines the Secretary shall disapprove (or later require the correction of) such material or form if the material or form is materially inaccurate or misleading or otherwise makes a material misrepresentation.

''(3) DEEMED APPROVAL (1-STOP SHOPPING).—In the case of material or form that is submitted under paragraph (1)(A) to the Secretary or a regional office of the Department of Health and Human Services and the Secretary or the office has not disapproved the distribution of marketing material or form under paragraph (1)(B) with respect to a Medicare Choice plan in an area, the Secretary is deemed not to have disapproved such distribution in all other areas covered by the plan and organization except to the extent that such material or form is specific only to an area involved.

''(4) PROHIBITION OF CERTAIN MARKETING PRACTICES.—Each Medicare Choice organization shall conform to fair marketing standards, in relation to Medicare Choice plans offered under this part, included in the standards established under section 1856.

''(i) EFFECT OF ELECTION OF MEDICARE CHOICE PLAN OPTION.—Subject to sections 1852(a)(5) and 1857(f)(2)—

''(1) payments under a contract with a Medicare Choice organization under section 1853(a) with respect to an individual electing a Medicare Choice plan offered by the organization shall be instead of the amounts which (in the absence of the contract) would otherwise be payable under parts A and B for items and services furnished to the individual, and

''(2) subject to subsections (e) and (g) of section 1853, only the Medicare Choice organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

''BENEFITS AND BENEFICIARY PROTECTIONS

''SEC. 1852. (a) BASIC BENEFITS.—

''(1) IN GENERAL.—Except as provided in section 1859(b)(3) for MSA plans, each Medicare Choice plan shall provide to members enrolled under this part, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

''(A) those items and services for which benefits are available under parts A and B to individuals residing in the area served by the plan, and

''(B) additional benefits required under section 1854(f)(1)(A).

''(2) SUPPLEMENTAL BENEFITS.—

''(A) BENEFITS INCLUDED SUBJECT TO SECRETARY'S APPROVAL.—Each Medicare Choice organization may provide to individuals enrolled under this part (without affording those individuals an option to decline the coverage) supplemental health care benefits that the Secretary may approve. The Secretary shall approve any such supplemental benefits unless the Secretary determines that including such supplemental benefits would substantially discourage enrollment by Medicare Choice eligible individuals with the organization.

''(B) AT ENROLLEES' OPTION.—A Medicare Choice organization may provide to individuals enrolled under this part (other than under an MSA plan) supplemental health care benefits that the individuals may elect, at their option, to have covered.

''(3) ORGANIZATION AS SECONDARY PAYER.—Notwithstanding any other provision of law, a Medicare Choice organization may (in the case of the provision of items and services to an individual under a Medicare Choice plan under circumstances in which payment under this title is made secondary pursuant to section 1862(b)(2)) charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—

''(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

''(B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

''(4) NATIONAL COVERAGE DETERMINATIONS.—If there is a national coverage determination made in the period beginning on the date of an announcement under section 1853(b) and ending on the date of the next announcement under such section and the Secretary projects that the determination will result in a significant change in the costs to a Medicare Choice organization of providing the benefits that are the subject of such national coverage determination and that such change in costs was not incorporated in the determination of the annual Medicare Choice capitation rate under section 1853 included in the announcement made at the beginning of such period, then, unless otherwise required by law—

''(A) such determination shall not apply to contracts under this part until the first contract year that begins after the end of such period, and

''(B) if such coverage determination provides for coverage of additional benefits or coverage under additional circumstances, section 1851(i) shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period.

''(5) SATISFACTION OF REQUIREMENT.—

''(A) IN GENERAL.—A MedicarePlus plan offered by a MedicarePlus organization satisfies paragraph (1)(A), with respect to benefits for items and services furnished other than through a provider that has a contract with the organization offering the plan, if the plan provides (in addition to any cost sharing provided for under the plan) for at least the total dollar amount of payment for such items and services as would otherwise be authorized under parts A and B (including any balance billing permitted under such parts).

''(B) EXCEPTION FOR MSA PLANS AND UNRESTRICTED FEE-FOR-SERVICE PLANS.—Subparagraph (A) shall not apply to an MSA plan or an unrestricted fee-for-service plan.

''(b) ANTIDISCRIMINATION.—

''(1) BENEFICIARIES.—

''(A) IN GENERAL.—A Medicare Choice organization may not deny, limit, or condition the coverage or provision of benefits under this part, for individuals permitted to be enrolled with the organization under this part, based on any health status-related factor described in section 2702(a)(1) of the Public Health Service Act.

''(B) CONSTRUCTION.—Subparagraph (A) shall not be construed as requiring a Medicare Choice organization to enroll individuals who are determined to have end-stage renal disease, except as provided under section 1851(a)(3)(B).

''(2) PROVIDERS.—A Medicare Choice organization shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This paragraph shall not be construed to prohibit a plan from including providers only to the extent necessary to meet the needs of the plan's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the plan.

''(c) DISCLOSURE REQUIREMENTS.—

''(1) DETAILED DESCRIPTION OF PLAN PROVISIONS.—A Medicare Choice organization shall disclose, in clear, accurate, and standardized form to each enrollee with a Medicare Choice plan offered by the organization under this part at the time of enrollment and at least annually thereafter, the following information regarding such plan:

''(A) SERVICE AREA.—The plan's service area.

''(B) BENEFITS.—Benefits offered under the plan, including information described in section 1851(d)(3)(A) and exclusions from coverage and, if it is an MSA plan, a comparison of benefits under such a plan with benefits under other Medicare Choice plans.

''(C) ACCESS.—The number, mix, and distribution of plan providers.

''(D) OUT-OF-AREA COVERAGE.—Out-of-area coverage provided by the plan.

''(E) EMERGENCY COVERAGE.—Coverage of emergency services and urgently needed care, including—

''(i) the appropriate use of emergency services, including use of the 911 telephone system or its local equivalent in emergency situations and an explanation of what constitutes an emergency situation;

''(ii) the process and procedures of the plan for obtaining emergency services; and

''(iii) the locations of (I) emergency departments, and (II) other settings, in which plan physicians and hospitals provide emergency services and post-stabilization care.

''(F) SUPPLEMENTAL BENEFITS.—Supplemental benefits available from the organization offering the plan, including—

''(i) whether the supplemental benefits are optional,

''(ii) the supplemental benefits covered, and

''(iii) the premium price for the supplemental benefits.

''(G) PRIOR AUTHORIZATION RULES.—Rules regarding prior authorization or other review requirements that could result in nonpayment.

''(H) PLAN GRIEVANCE AND APPEALS PROCEDURES.—All plan appeal or grievance rights and procedures.

''(I) QUALITY ASSURANCE PROGRAM.—A description of the organization's quality assurance program under subsection (e).

''(J) OUT-OF-NETWORK COVERAGE.—The out-of-network coverage (if any) provided by the plan.

''(2) DISCLOSURE UPON REQUEST.—Upon request of a Medicare Choice eligible individual, a Medicare Choice organization must provide the following information to such individual:

''(A) The information described in paragraphs (3) and (4) of section 1851(d).

''(B) Information on utilization review procedures.

''(d) ACCESS TO SERVICES.—

''(1) IN GENERAL.—A Medicare Choice organization offering a Medicare Choice plan, other than an unrestricted fee-for-service plan, may select the providers from whom the benefits under the plan are provided so long as—

''(A) the organization makes such benefits available and accessible to each individual electing the plan within the plan service area with reasonable promptness and in a manner which assures continuity in the provision of benefits;

''(B) when medically necessary the organization makes such benefits available and accessible 24 hours a day and 7 days a week;

''(C) the plan provides for reimbursement with respect to services which are covered under subparagraphs (A) and (B) and which are provided to such an individual other than through the organization, if—

''(i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition, and it was not reasonable given the circumstances to obtain the services through the organization, or

''(ii) the services were renal dialysis services and were provided other than through the organization because the individual was temporarily out of the plan's service area;

''(D) the organization provides access to appropriate providers, including credentialed specialists, for medically necessary treatment and services;

''(E) coverage is provided for emergency services (as defined in paragraph (3)) without regard to prior authorization or the emergency

*care provider's contractual relationship with the organization; and*

*''(F) except as provided by the Secretary on a case-by-case basis, the organization provides primary care services within 30 minutes or 30 miles from an enrollee's place of residence if the enrollee resides in a rural area.*

*''(2) GUIDELINES RESPECTING COORDINATION OF POST-STABILIZATION CARE.—*

*''(A) IN GENERAL.—A Medicare Choice plan shall comply with such guidelines as the Secretary shall prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable under section 1867.*

*''(B) CONTENT OF GUIDELINES.—The guidelines prescribed under subparagraph (A) shall provide that—*

*''(i) a provider of emergency services shall make a documented good faith effort to contact the plan in a timely fashion from the point at which the individual is stabilized to request approval for medically necessary post-stabilization care,*

*''(ii) the plan shall respond in a timely fashion to the initial contact with the plan with a decision as to whether the services for which approval is requested will be authorized, and*

*''(iii) if a denial of a request is communicated, the plan shall, upon request from the treating physician, arrange for a physician who is authorized by the plan to review the denial to communicate directly with the treating physician in a timely fashion.*

*''(3) DEFINITION OF EMERGENCY SERVICES.—In this subsection—*

*''(A) IN GENERAL.—The term 'emergency services' means, with respect to an individual enrolled with an organization, covered inpatient and outpatient services that—*

*''(i) are furnished by a provider that is qualified to furnish such services under this title, and*

*''(ii) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).*

*''(B) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—*

*''(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,*

*''(ii) serious impairment to bodily functions, or*

*''(iii) serious dysfunction of any bodily organ or part.*

*''(e) QUALITY ASSURANCE PROGRAM.—*

*''(1) IN GENERAL.—Each Medicare Choice organization must have arrangements, consistent with any regulation, for an ongoing quality assurance program for health care services it provides to individuals enrolled with Medicare Choice plans of the organization.*

*''(2) ELEMENTS OF PROGRAM.—The quality assurance program shall—*

*''(A) stress health outcomes and provide for the collection, analysis, and reporting of data (in accordance with a quality measurement system that the Secretary recognizes) that will permit measurement of outcomes and other indices of the quality of Medicare Choice plans and organizations;*

*''(B) provide for the establishment of written protocols for utilization review, based on current standards of medical practice;*

*''(C) provide review by physicians and other health care professionals of the process followed in the provision of such health care services;*

*''(D) monitor and evaluate high volume and high risk services and the care of acute and chronic conditions;*

*''(E) evaluate the continuity and coordination of care that enrollees receive;*

*''(F) have mechanisms to detect both underutilization and overutilization of services;*

*''(G) after identifying areas for improvement, establish or alter practice parameters;*

*''(H) take action to improve quality and assesses the effectiveness of such action through systematic followup;*

*''(I) make available information on quality and outcomes measures to facilitate beneficiary comparison and choice of health coverage options (in such form and on such quality and outcomes measures as the Secretary determines to be appropriate);*

*''(J) be evaluated on an ongoing basis as to its effectiveness;*

*''(K) include measures of consumer satisfaction; and*

*''(L) provide the Secretary with such access to information collected as may be appropriate to monitor and ensure the quality of care provided under this part.*

*''(3) EXTERNAL REVIEW.—Each Medicare Choice organization shall, for each Medicare Choice plan it operates, have an agreement with an independent quality review and improvement organization approved by the Secretary to perform functions of the type described in sections 1154(a)(4)(B) and 1154(a)(14) with respect to services furnished by Medicare Choice plans for which payment is made under this title.*

*''(4) EXCEPTION FOR MEDICARE CHOICE UNRESTRICTED FEE-FOR-SERVICE PLANS.—Paragraphs (1) through (3) of this subsection and subsection (h)(2) (relating to maintaining medical records) shall not apply in the case of a Medicare Choice organization in relation to a Medicare Choice unrestricted fee-for-service plan.*

*''(5) TREATMENT OF ACCREDITATION.—The Secretary shall provide that a Medicare Choice organization is deemed to meet requirements of paragraphs (1) and (2) of this subsection and subsection (h) (relating to confidentiality and accuracy of enrollee records) if the organization is accredited (and periodically reaccredited) by a private organization under a process that the Secretary has determined assures that the organization, as a condition of accreditation, applies and enforces standards with respect to the requirements involved that are no less stringent than the standards established under section 1856 to carry out the respective requirements.*

*''(6) ANNUAL REPORT ON NON-HEALTH EXPENDITURES.—Each Medicare Choice organization shall, at the request of the enrollee, annually provide to enrollees a statement disclosing the proportion of the premiums and other revenues received by the organization that are expended for non-health care items and services.*

*''(f) COVERAGE DETERMINATIONS.—*

*''(1) DECISIONS ON NONEMERGENCY CARE.—A Medicare Choice organization shall make determinations regarding authorization requests for nonemergency care on a timely basis, depending on the urgency of the situation.*

*''(2) RECONSIDERATIONS.—*

*''(A) IN GENERAL.—Subject to subsection (g)(4), a reconsideration of a determination of an organization denying coverage shall be made within 30 days of the date of receipt of medical information, but not later than 60 days after the date of the determination.*

*''(B) PHYSICIAN DECISION ON CERTAIN RECONSIDERATIONS.—A reconsideration relating to a determination to deny coverage based on a lack of medical necessity shall be made only by a physician other than a physician involved in the initial determination.*

*''(g) GRIEVANCES AND APPEALS.—*

*''(1) GRIEVANCE MECHANISM.—Each Medicare Choice organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and enrollees with Medicare Choice plans of the organization under this part.*

*''(2) APPEALS.—An enrollee with a Medicare Choice plan of a Medicare Choice organization under this part who is dissatisfied by reason of the enrollee's failure to receive any health service to which the enrollee believes the enrollee is entitled and at no greater charge than the enrollee believes the enrollee is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the organization a party. If the amount in controversy is $1,000 or more, the individual or organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the organization shall be entitled to be parties to that judicial review. In applying subsections (b) and (g) of section 205 as provided in this paragraph, and in applying section 205(l) thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.*

*''(3) INDEPENDENT REVIEW OF CERTAIN COVERAGE DENIALS.—The Secretary shall contract with an independent, outside entity to review and resolve reconsiderations that affirm denial of coverage.*

*''(4) EXPEDITED DETERMINATIONS AND RECONSIDERATIONS.—*

*''(A) RECEIPT OF REQUESTS.—An enrollee in a Medicare Choice plan may request, either in writing or orally, an expedited determination or reconsideration by the Medicare Choice organization regarding a matter described in paragraph (2). The organization shall also permit the acceptance of such requests by physicians.*

*''(B) ORGANIZATION PROCEDURES.—*

*''(i) IN GENERAL.—The Medicare Choice organization shall maintain procedures for expediting organization determinations and reconsiderations when, upon request of an enrollee, the organization determines that the application of normal time frames for making a determination (or a reconsideration involving a determination) could seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.*

*''(ii) TIMELY RESPONSE.—In an urgent case described in clause (i), the organization shall notify the enrollee (and the physician involved, as appropriate) of the determination (or determination on the reconsideration) as expeditiously as the enrollee's health condition requires, but not later than 72 hours (or 24 hours in the case of a reconsideration) of the time of receipt of the request for the determination or reconsideration (or receipt of the information necessary to make the determination or reconsideration), or such longer period as the Secretary may permit in specified cases.*

*''(h) CONFIDENTIALITY AND ACCURACY OF ENROLLEE RECORDS.—Each Medicare Choice organization shall establish procedures—*

*''(1) to safeguard the privacy of individually identifiable enrollee information,*

*''(2) to maintain accurate and timely medical records and other health information for enrollees, and*

*''(3) to assure timely access of enrollees to their medical information.*

*''(i) INFORMATION ON ADVANCE DIRECTIVES.—Each Medicare Choice organization shall meet the requirement of section 1866(f) (relating to maintaining written policies and procedures respecting advance directives).*

*''(j) RULES REGARDING PHYSICIAN PARTICIPATION.—*

*''(1) PROCEDURES.—Each Medicare Choice organization shall establish reasonable procedures relating to the participation (under an agreement between a physician and the organization) of physicians under Medicare Choice plans offered by the organization under this part. Such procedures shall include—*

''(A) providing notice of the rules regarding participation,

''(B) providing written notice of participation decisions that are adverse to physicians, and

''(C) providing a process within the organization for appealing such adverse decisions, including the presentation of information and views of the physician regarding such decision.

''(2) CONSULTATION IN MEDICAL POLICIES.—A Medicare Choice organization shall consult with physicians who have entered into participation agreements with the organization regarding the organization's medical policy, quality, and medical management procedures.

''(3) LIMITATIONS ON PHYSICIAN INCENTIVE PLANS.—

''(A) IN GENERAL.—No Medicare Choice organization may operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

''(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

''(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

''(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or group, and

''(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

''(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

''(B) PHYSICIAN INCENTIVE PLAN DEFINED.—In this paragraph, the term 'physician incentive plan' means any compensation arrangement between a Medicare Choice organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization under this part.

''(4) LIMITATION ON PROVIDER INDEMNIFICATION.—A Medicare Choice organization may not provide (directly or indirectly) for a provider (or group of providers) to indemnify the organization against any liability resulting from a civil action brought for any damage caused to an enrollee with a Medicare Choice plan of the organization under this part by the organization's denial of medically necessary care.

''(k) TREATMENT OF SERVICES FURNISHED BY CERTAIN PROVIDERS.—

''(1) IN GENERAL.—A physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this part with a MedicarePlus organization shall accept as payment in full for covered services under this title that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to such a payment with respect to an individual entitled to benefits under this title (but not enrolled with a MedicarePlus organization under this part) also applies with respect to an individual so enrolled.

''(2) EXCEPTION FOR MSA PLANS AND UNRESTRICTED FEE-FOR-SERVICE PLANS.—Paragraph (1) shall not apply to an MSA plan or an unrestricted fee-for-service plan.

''PAYMENTS TO MEDICARE CHOICE ORGANIZATIONS

''SEC. 1853. (a) PAYMENTS TO ORGANIZATIONS.—

''(1) MONTHLY PAYMENTS.—

''(A) IN GENERAL.—Under a contract under section 1857 and subject to subsections (e) and (f), the Secretary shall make monthly payments under this section in advance to each Medicare Choice organization, with respect to coverage of an individual under this part in a Medicare Choice payment area for a month, in an amount equal to 1/12 of the annual Medicare Choice capitation rate (as calculated under subsection (c)) with respect to that individual for that area, adjusted for such risk factors as age, disability status, gender, institutional status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such factors, if such changes will improve the determination of actuarial equivalence.

''(B) SPECIAL RULE FOR END-STAGE RENAL DISEASE.—The Secretary shall establish separate rates of payment to a Medicare Choice organization with respect to classes of individuals determined to have end-stage renal disease and enrolled in a Medicare Choice plan of the organization. Such rates of payment shall be actuarially equivalent to rates paid to other enrollees in the Medicare Choice payment area (or such other area as specified by the Secretary). In accordance with regulations, the Secretary shall provide for the application of the seventh sentence of section 1881(b)(7) to payments under this section covering the provision of renal dialysis treatment in the same manner as such sentence applies to composite rate payments described in such sentence.

''(2) ADJUSTMENT TO REFLECT NUMBER OF ENROLLEES.—

''(A) IN GENERAL.—The amount of payment under this subsection may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled with an organization under this part and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(B) SPECIAL RULE FOR CERTAIN ENROLLEES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary may make retroactive adjustments under subparagraph (A) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with a Medicare Choice organization under a plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the organization under this part, except that for purposes of making such retroactive adjustments under this subparagraph, such period may not exceed 90 days.

''(ii) EXCEPTION.—No adjustment may be made under clause (i) with respect to any individual who does not certify that the organization provided the individual with the disclosure statement described in section 1852(c) at the time the individual enrolled with the organization.

''(3) ESTABLISHMENT OF RISK ADJUSTMENT FACTORS.—

''(A) IN GENERAL.—The Secretary shall develop and implement a method of risk adjustment of payment rates under this section that accounts for variations in per capita costs based on health status. Such method shall not be implemented before the Secretary receives an evaluation by an outside, independent actuary of the actuarial soundness of such method.

''(B) DATA COLLECTION.—In order to carry out this paragraph, the Secretary shall require Medicare Choice organizations (and eligible organizations with risk-sharing contracts under section 1876) to submit, for periods beginning on or after January 1, 1998, data regarding inpatient hospital services and other services and other information the Secretary deems necessary.

''(4) INTERIM RISK ADJUSTMENT.—

''(A) IN GENERAL.—In the case of an applicable enrollee in a Medicare Choice plan, the payment to the Medicare Choice organization under this section shall be reduced by an amount equal to the applicable percentage of the amount of such payment (determined without regard to this paragraph).

''(B) APPLICABLE ENROLLEE.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable enrollee' means, with respect to any month, a medicare eligible individual who—

''(I) is enrolled in a Medicare Choice plan, and

''(II) has not been enrolled in Medicare Choice plans and plans operated by eligible organizations with risk-sharing contracts under section 1876 for an aggregate number of months greater than 60 (including the month for which the determination is being made).

''(ii) EXCEPTION FOR BENEFICIARIES MAINTAINING ENROLLMENT IN CERTAIN PLANS.—The term 'applicable enrollee' shall not include any individual enrolled in a Medicare Choice plan offered by a Medicare Choice organization if such individual was enrolled in a health plan (other than a Medicare Choice plan) offered by such organization at the time of the individual's initial election period under section 1851(e)(1) and has been continuously enrolled in such Medicare Choice plan (or another Medicare Choice plan offered by such organization) since such election period.

''(C) APPLICABLE PERCENTAGE.—For purposes of this paragraph, the applicable percentage shall be determined in accordance with the following table:

| ''Months enrolled in HMOs: | Applicable percentage: |
|---|---|
| 1–12 | 5 |
| 13–24 | 4 |
| 25–36 | 3 |
| 37–48 | 2 |
| 49–60 | 1. |

''(D) EXCEPTION FOR NEW PLANS.—This paragraph shall not apply to applicable enrollees in a Medicare Choice plan for any month if—

''(i) such month occurs during the first 12 months during which the plan enrolls Medicare Choice eligible individuals in the Medicare Choice payment area, and

''(ii) the annual Medicare Choice capitation rate for such area for the calendar year preceding the calendar year in which such 12-month period begins is less than the annual national Medicare Choice capitation rate (as determined under subsection (c)(4)) for such preceding calendar year.

In the case of 1998, clause (ii) shall be applied by using the adjusted average per capita cost under section 1876 for 1997 rather than such capitation rate.

''(E) TERMINATION.—This paragraph shall not apply to any month beginning on or after the first day of the first month to which the method for risk adjustment described in paragraph (3) applies.

''(b) ANNUAL ANNOUNCEMENT OF PAYMENT RATES.—

''(1) ANNUAL ANNOUNCEMENT.—The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than August 1 before the calendar year concerned—

''(A) the annual Medicare Choice capitation rate for each Medicare Choice payment area for the year, and

''(B) the risk and other factors to be used in adjusting such rates under subsection (a)(1)(A) for payments for months in that year.

''(2) ADVANCE NOTICE OF METHODOLOGICAL CHANGES.—At least 45 days before making the announcement under paragraph (1) for a year, the Secretary shall provide for notice to Medicare Choice organizations of proposed changes

*to be made in the methodology from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.*

*''(3) EXPLANATION OF ASSUMPTIONS.—In each announcement made under paragraph (1), the Secretary shall include an explanation of the assumptions and changes in methodology used in the announcement in sufficient detail so that Medicare Choice organizations can compute monthly adjusted Medicare Choice capitation rates for individuals in each Medicare Choice payment area which is in whole or in part within the service area of such an organization.*

*''(c) CALCULATION OF ANNUAL MEDICARE CHOICE CAPITATION RATES.—*

*''(1) IN GENERAL.—For purposes of this part, each annual Medicare Choice capitation rate, for a Medicare Choice payment area for a contract year consisting of a calendar year, is equal to the largest of the amounts specified in the following subparagraph (A), (B), or (C):*

*''(A) BLENDED CAPITATION RATE.—The sum of—*

*''(i) the area-specific percentage for the year (as specified under paragraph (2) for the year) of the annual area-specific Medicare Choice capitation rate for the year for the Medicare Choice payment area, as determined under paragraph (3), and*

*''(ii) the national percentage (as specified under paragraph (2) for the year) of the annual national Medicare Choice capitation rate for the year, as determined under paragraph (4),*

*multiplied by the payment adjustment factors described in subparagraphs (A) and (B) of paragraph (5).*

*''(B) MINIMUM AMOUNT.—Subject to paragraph (8)—*

*''(i) For 1998, $4,200 (but not to exceed, in the case of an area outside the 50 States and the District of Columbia, 150 percent of the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the area).*

*''(ii) For each subsequent year, 101 percent of the amount in effect under this subparagraph for the previous year.*

*''(C) MINIMUM PERCENTAGE INCREASE.—Subject to paragraph (8)—*

*''(i) For 1998, 101 percent of the annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the Medicare Choice payment area.*

*''(ii) For each subsequent year, 101 percent of the annual Medicare Choice capitation rate under this paragraph for the area for the previous year.*

*''(2) AREA-SPECIFIC AND NATIONAL PERCENTAGES.—For purposes of paragraph (1)(A)—*

*''(A) for 1998, the 'area-specific percentage' is 90 percent and the 'national percentage' is 10 percent,*

*''(B) for 1999, the 'area-specific percentage' is 80 percent and the 'national percentage' is 20 percent,*

*''(C) for 2000, the 'area-specific percentage' is 70 percent and the 'national percentage' is 30 percent,*

*''(D) for 2001, the 'area-specific percentage' is 60 percent and the 'national percentage' is 40 percent, and*

*''(E) for a year after 2001, the 'area-specific percentage' is 50 percent and the 'national percentage' is 50 percent.*

*''(3) ANNUAL AREA-SPECIFIC MEDICARE CHOICE CAPITATION RATE.—*

*''(A) IN GENERAL.—For purposes of paragraph (1)(A), the annual area-specific Medicare Choice capitation rate for a Medicare Choice payment area—*

*''(i) for 1998 is the modified annual per capita rate of payment for 1997 determined under section 1876(a)(1)(C) for the area, increased by the national average per capita growth percentage for 1998 (as defined in paragraph (6)); or*

*''(ii) for a subsequent year is the annual area-specific Medicare Choice capitation rate for the previous year determined under this paragraph for the area, increased by the national average per capita growth percentage for such subsequent year.*

*''(B) MODIFIED ANNUAL PER CAPITA RATE OF PAYMENT.—For purposes of subparagraph (A), the modified annual per capita rate of payment for a Medicare Choice payment area for 1997 shall be equal to the annual per capita rate of payment for such area for such year which would have been determined under section 1876(a)(1)(C) if 25 percent of any payments attributable to sections 1886(d)(5)(B), 1886(h), and 1886(d)(5)(F) (relating to IME, GME, and DSH payments) were not taken into account.*

*''(C) SPECIAL RULES FOR 1999, 2000, AND 2001.—In applying subparagraph (A)(ii) for 1999, 2000, and 2001, the annual area-specific Medicare Choice capitation rate for the preceding calendar year shall be the amount which would have been determined if subparagraph (B) had been applied by substituting the following percentages for '25 percent':*

*''(i) In 1999, 50 percent.*

*''(ii) In 2000, 75 percent.*

*''(iii) In 2001, 100 percent.*

*''(4) ANNUAL NATIONAL MEDICARE CHOICE CAPITATION RATE.—For purposes of paragraph (1)(A), the annual national Medicare Choice capitation rate for a Medicare Choice payment area for a year is equal to—*

*''(A) the sum (for all Medicare Choice payment areas) of the product of—*

*''(i) the annual area-specific Medicare Choice capitation rate for that year for the area under paragraph (3), and*

*''(ii) the average number of medicare beneficiaries residing in that area in the year; divided by*

*''(B) the sum of the amounts described in subparagraph (A)(ii) for all Medicare Choice payment areas for that year.*

*''(5) PAYMENT ADJUSTMENT BUDGET NEUTRALITY FACTORS.—For purposes of paragraph (1)(A)—*

*''(A) BLENDED RATE PAYMENT ADJUSTMENT FACTOR.—For each year, the Secretary shall compute a blended rate payment adjustment factor such that, not taking into account subparagraphs (B) and (C) of paragraph (1) and the application of the payment adjustment factor described in subparagraph (B) but taking into account paragraph (7), the aggregate of the payments that would be made under this part is equal to the aggregate payments that would have been made under this part (not taking into account such subparagraphs and such other adjustment factor) if the area-specific percentage under paragraph (1) for the year had been 100 percent and the national percentage had been 0 percent.*

*''(B) FLOOR-AND-MINIMUM-UPDATE PAYMENT ADJUSTMENT FACTOR.—For each year, the Secretary shall compute a floor-and-minimum-update payment adjustment factor so that, taking into account the application of the blended rate payment adjustment factor under subparagraph (A) and subparagraphs (B) and (C) of paragraph (1) and the application of the adjustment factor under this subparagraph, the aggregate of the payments under this part shall not exceed the aggregate payments that would have been made under this part if subparagraphs (B) and (C) of paragraph (1) did not apply and if the floor-and-minimum-update payment adjustment factor under this subparagraph was 1.*

*''(6) NATIONAL AVERAGE PER CAPITA GROWTH PERCENTAGE DEFINED.—In this part, the 'national average per capita growth percentage' for any year (beginning with 1998) is equal to the sum of—*

*''(A) the percentage increase in the gross domestic product per capita for the 12-month period ending on June 30 of the preceding year, plus*

*''(B) 0.5 percentage points.*

*''(7) TREATMENT OF AREAS WITH HIGHLY VARIABLE PAYMENT RATES.—In the case of a Medicare Choice payment area for which the annual per capita rate of payment determined under section 1876(a)(1)(C) for 1997 varies by more than 20 percent from such rate for 1996, for purposes of this subsection the Secretary may substitute for such rate for 1997 a rate that is more representative of the costs of the enrollees in the area.*

*''(8) ADJUSTMENTS TO MINIMUM AMOUNTS AND MINIMUM PERCENTAGE INCREASES.—After computing all amounts under this subsection (without regard to this paragraph) for any year, the Secretary shall—*

*''(A) redetermine the amount under paragraph (1)(C) for such year by substituting '100 percent' for '101 percent' each place it appears, and*

*''(B) increase the minimum amount under paragraph (1)(B) to an amount equal to the lesser of—*

*''(i) the amount the Secretary estimates will result in increased payments under such paragraph equal to the decrease in payments by reason of the redetermination under subparagraph (A), or*

*''(ii) an amount equal to 85 percent of the annual national Medicare Choice capitation rate determined under paragraph (4).*

*''(9) STUDY OF LOCAL PRICE INDICATORS.—The Secretary and the Medicare Payment Advisory Commission shall each conduct a study with respect to appropriate measures for adjusting the annual Medicare Choice capitation rates determined under this section to reflect local price indicators, including the medicare hospital wage index and the case-mix of a geographic region. The Secretary and the Advisory Commission shall report the results of such study to the appropriate committees of Congress, including recommendations (if any) for legislation.*

*''(d) MEDICARE CHOICE PAYMENT AREA DEFINED.—*

*''(1) IN GENERAL.—In this part, except as provided in paragraph (3), the term 'Medicare Choice payment area' means a county, or equivalent area specified by the Secretary.*

*''(2) RULE FOR ESRD BENEFICIARIES.—In the case of individuals who are determined to have end stage renal disease, the Medicare Choice payment area shall be a State or such other payment area as the Secretary specifies.*

*''(3) GEOGRAPHIC ADJUSTMENT.—*

*''(A) IN GENERAL.—Upon written request of the chief executive officer of a State for a contract year (beginning after 1998) made at least 7 months before the beginning of the year, the Secretary shall make a geographic adjustment to a Medicare Choice payment area in the State otherwise determined under paragraph (1)—*

*''(i) to a single statewide Medicare Choice payment area,*

*''(ii) to the metropolitan based system described in subparagraph (C), or*

*''(iii) to consolidating into a single Medicare Choice payment area noncontiguous counties (or equivalent areas described in paragraph (1)) within a State.*

*Such adjustment shall be effective for payments for months beginning with January of the year following the year in which the request is received.*

*''(B) BUDGET NEUTRALITY ADJUSTMENT.—In the case of a State requesting an adjustment under this paragraph, the Secretary shall adjust the payment rates otherwise established under this section for Medicare Choice payment areas in the State in a manner so that the aggregate of the payments under this section in the State shall not exceed the aggregate payments that would have been made under this section for Medicare Choice payment areas in the State in the absence of the adjustment under this paragraph.*

*''(C) METROPOLITAN BASED SYSTEM.—The metropolitan based system described in this subparagraph is one in which—*

*''(i) all the portions of each metropolitan statistical area in the State or in the case of a consolidated metropolitan statistical area, all of the*

*portions of each primary metropolitan statistical area within the consolidated area within the State, are treated as a single Medicare Choice payment area, and*

*''(ii) all areas in the State that do not fall within a metropolitan statistical area are treated as a single Medicare Choice payment area.*

*''(D) AREAS.—In subparagraph (C), the terms 'metropolitan statistical area', 'consolidated metropolitan statistical area', and 'primary metropolitan statistical area' mean any area designated as such by the Secretary of Commerce.*

*''(e) SPECIAL RULES FOR INDIVIDUALS ELECTING MSA PLANS.—*

*''(1) IN GENERAL.—If the amount of the monthly premium for an MSA plan for a Medicare Choice payment area for a year is less than 1/12 of the annual Medicare Choice capitation rate applied under this section for the area and year involved, the Secretary shall deposit an amount equal to 100 percent of such difference in a Medicare Choice MSA established (and, if applicable, designated) by the individual under paragraph (2).*

*''(2) ESTABLISHMENT AND DESIGNATION OF MEDICARE CHOICE MEDICAL SAVINGS ACCOUNT AS REQUIREMENT FOR PAYMENT OF CONTRIBUTION.—In the case of an individual who has elected coverage under an MSA plan, no payment shall be made under paragraph (1) on behalf of an individual for a month unless the individual—*

*''(A) has established before the beginning of the month (or by such other deadline as the Secretary may specify) a Medicare Choice MSA (as defined in section 138(b)(2) of the Internal Revenue Code of 1986), and*

*''(B) if the individual has established more than one such Medicare Choice MSA, has designated one of such accounts as the individual's Medicare Choice MSA for purposes of this part. Under rules under this section, such an individual may change the designation of such account under subparagraph (B) for purposes of this part.*

*''(3) LUMP-SUM DEPOSIT OF MEDICAL SAVINGS ACCOUNT CONTRIBUTION.—In the case of an individual electing an MSA plan effective beginning with a month in a year, the amount of the contribution to the Medicare Choice MSA on behalf of the individual for that month and all successive months in the year shall be deposited during that first month. In the case of a termination of such an election as of a month before the end of a year, the Secretary shall provide for a procedure for the recovery of deposits attributable to the remaining months in the year.*

*''(4) SPECIAL RULE FOR APPLICABLE ENROLLEE.—In the case of an enrollee in a MSA plan for any month who is an applicable enrollee for such month under section 1853(a)(4)(B), the amount of the deposit under paragraph (1) for such month shall be reduced by the applicable percentage (as defined in section 1853(a)(4)(C)) of the amount of such deposit (determined without regard to this paragraph).*

*''(f) PAYMENTS FROM TRUST FUND.—The payment to a Medicare Choice organization under this section for individuals enrolled under this part with the organization and payments to a Medicare Choice MSA under subsection (e)(1)(B) shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under part A and under part B represents of the actuarial value of the total benefits under this title. Monthly payments otherwise payable under this section for October 2001 shall be paid on the last business day of September 2001. Monthly payments otherwise payable under this section for October 2006 shall be paid on the first business day of October 2006.*

*''(g) SPECIAL RULE FOR CERTAIN INPATIENT HOSPITAL STAYS.—In the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1886(d)(1)(B)) as of the effective date of the individual's—*

*''(1) election under this part of a Medicare Choice plan offered by a Medicare Choice organization—*

*''(A) payment for such services until the date of the individual's discharge shall be made under this title through the Medicare Choice plan or the traditional medicare fee-for-service program option described in section 1851(a)(1)(A) (as the case may be) elected before the election with such organization,*

*''(B) the elected organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and*

*''(C) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this part; or*

*''(2) termination of election with respect to a Medicare Choice organization under this part—*

*''(A) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,*

*''(B) payment for such services during the stay shall not be made under section 1886(d) or by any succeeding Medicare Choice organization, and*

*''(C) the terminated organization shall not receive any payment with respect to the individual under this part during the period the individual is not enrolled.*

*''PREMIUMS*

*''SEC. 1854. (a) SUBMISSION AND CHARGING OF PREMIUMS.—*

*''(1) IN GENERAL.—Subject to paragraph (3), each Medicare Choice organization shall file with the Secretary each year, in a form and manner and at a time specified by the Secretary—*

*''(A) the amount of the monthly premium for coverage for services under section 1852(a) under each Medicare Choice plan it offers under this part in each Medicare Choice payment area (as defined in section 1853(d)) in which the plan is being offered; and*

*''(B) the enrollment capacity in relation to the plan in each such area.*

*''(2) TERMINOLOGY.—In this part—*

*''(A) the term 'monthly premium' means, with respect to a Medicare Choice plan offered by a Medicare Choice organization, the monthly premium filed under paragraph (1), not taking into account the amount of any payment made toward the premium under section 1853; and*

*''(B) the term 'net monthly premium' means, with respect to such a plan and an individual enrolled with the plan, the premium (as defined in subparagraph (A)) for the plan reduced by the amount of payment made toward such premium under section 1853.*

*''(b) MONTHLY PREMIUM CHARGED.—The monthly amount of the premium charged by a Medicare Choice organization for a Medicare Choice plan offered in a Medicare Choice payment area to an individual under this part shall be equal to the net monthly premium plus any monthly premium charged in accordance with subsection (e)(2) for supplemental benefits.*

*''(c) UNIFORM PREMIUM.—The monthly premium and monthly amount charged under subsection (b) of a Medicare Choice organization under this part may not vary among individuals who reside in the same Medicare Choice payment area.*

*''(d) TERMS AND CONDITIONS OF IMPOSING PREMIUMS.—Each Medicare Choice organization shall permit the payment of net monthly premiums on a monthly basis and may terminate election of individuals for a Medicare Choice plan for failure to make premium payments only in accordance with section 1851(g)(3)(B)(i). A Medicare Choice organization is not authorized to provide for cash or other monetary rebates as an inducement for enrollment or otherwise.*

*''(e) LIMITATION ON ENROLLEE COST-SHARING.—*

*''(1) FOR BASIC AND ADDITIONAL BENEFITS.—Except as provided in paragraph (2), in no event may—*

*''(A) the net monthly premium (multiplied by 12) and the actuarial value of the deductibles, coinsurance, and copayments applicable on average to individuals enrolled under this part with a Medicare Choice plan of an organization with respect to required benefits described in section 1852(a)(1) and additional benefits (if any) required under subsection (f)(1) for a year, exceed*

*''(B) the actuarial value of the deductibles, coinsurance, and copayments that would be applicable on average to individuals entitled to benefits under part A and enrolled under part B if they were not members of a Medicare Choice organization for the year.*

*''(2) FOR SUPPLEMENTAL BENEFITS.—If the Medicare Choice organization provides to its members enrolled under this part supplemental benefits described in section 1852(a)(3), the sum of the monthly premium rate (multiplied by 12) charged for such supplemental benefits and the actuarial value of its deductibles, coinsurance, and copayments charged with respect to such benefits may not exceed the adjusted community rate for such benefits (as defined in subsection (f)(4)).*

*''(3) EXCEPTION FOR MSA PLANS AND UNRESTRICTED FEE-FOR-SERVICE PLANS.—Paragraphs (1) and (2) do not apply to an MSA plan or an unrestricted fee-for-service plan.*

*''(4) DETERMINATION ON OTHER BASIS.—If the Secretary determines that adequate data are not available to determine the actuarial value under paragraph (1)(A) or (2), the Secretary may determine such amount with respect to all individuals in the Medicare Choice payment area, the State, or in the United States, eligible to enroll in the Medicare Choice plan involved under this part or on the basis of other appropriate data.*

*''(f) REQUIREMENT FOR ADDITIONAL BENEFITS.—*

*''(1) REQUIREMENT.—*

*''(A) IN GENERAL.—Each Medicare Choice organization (in relation to a Medicare Choice plan it offers) shall provide that if there is an excess amount (as defined in subparagraph (B)) for the plan for a contract year, subject to the succeeding provisions of this subsection, the organization shall provide to individuals such additional benefits (as the organization may specify) in a value which is at least equal to the adjusted excess amount (as defined in subparagraph (C)).*

*''(B) EXCESS AMOUNT.—For purposes of this paragraph, the 'excess amount', for an organization for a plan, is the amount (if any) by which—*

*''(i) the average of the capitation payments made to the organization under section 1853 for the plan at the beginning of contract year, exceeds*

*''(ii) the actuarial value of the required benefits described in section 1852(a)(1) under the plan for individuals under this part, as determined based upon an adjusted community rate described in paragraph (4) (as reduced for the actuarial value of the coinsurance and deductibles under parts A and B).*

*''(C) ADJUSTED EXCESS AMOUNT.—For purposes of this paragraph, the 'adjusted excess amount', for an organization for a plan, is the excess amount reduced to reflect any amount withheld and reserved for the organization for the year under paragraph (3).*

*''(D) NO APPLICATION TO MSA PLANS.—Subparagraph (A) shall not apply to an MSA plan.*

*''(E) UNIFORM APPLICATION.—This paragraph shall be applied uniformly for all enrollees for a plan in a Medicare Choice payment area.*

*''(F) CONSTRUCTION.—Nothing in this subsection shall be construed as preventing a Medicare Choice organization from providing health care benefits that are in addition to the benefits otherwise required to be provided under this paragraph and from imposing a premium for such additional benefits.*

*''(2) STABILIZATION FUND.—A Medicare Choice organization may provide that a part of the*

*value of an excess amount described in paragraph (1) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with such paragraph. Any of such value of the amount reserved which is not provided as additional benefits described in paragraph (1)(A) to individuals electing the Medicare Choice plan of the organization in accordance with such paragraph prior to the end of such periods, shall revert for the use of such trust funds.*

*''(3) DETERMINATION BASED ON INSUFFICIENT DATA.—For purposes of this subsection, if the Secretary finds that there is insufficient enrollment experience to determine an average of the capitation payments to be made under this part at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this part.*

*''(4) ADJUSTED COMMUNITY RATE.—*

*''(A) IN GENERAL.—For purposes of this subsection, subject to subparagraph (B), the term 'adjusted community rate' for a service or services means, at the election of a Medicare Choice organization, either—*

*''(i) the rate of payment for that service or services which the Secretary annually determines would apply to an individual electing a Medicare Choice plan under this part if the rate of payment were determined under a 'community rating system' (as defined in section 1302(8) of the Public Health Service Act, other than subparagraph (C)), or*

*''(ii) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to such an individual, as the Secretary annually estimates is attributable to that service or services,*

*but adjusted for differences between the utilization characteristics of the individuals electing coverage under this part and the utilization characteristics of the other enrollees with the plan (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of individuals selecting other Medicare Choice coverage, or Medicare Choice eligible individuals in the area, in the State, or in the United States, eligible to elect Medicare Choice coverage under this part and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).*

*''(B) SPECIAL RULE FOR PROVIDER-SPONSORED ORGANIZATIONS.—In the case of a Medicare Choice organization that is a provider-sponsored organization, the adjusted community rate under subparagraph (A) for a Medicare Choice plan of the organization may be computed (in a manner specified by the Secretary) using data in the general commercial marketplace or (during a transition period) based on the costs incurred by the organization in providing such a plan.*

*''(g) PERIODIC AUDITING.—The Secretary shall provide for the annual auditing of the financial records (including data relating to medicare utilization, costs, and computation of the adjusted community rate) of at least one-third of the Medicare Choice organizations offering Medicare Choice plans under this part. The Comptroller General shall monitor auditing activities conducted under this subsection.*

*''(h) PROHIBITION OF STATE IMPOSITION OF PREMIUM TAXES.—No State may impose a premium tax or similar tax with respect to payments on Medicare Choice plans or the offering of such plans.*

*''ORGANIZATIONAL AND FINANCIAL REQUIREMENTS FOR MEDICARE CHOICE ORGANIZATIONS; PROVIDER-SPONSORED ORGANIZATIONS*

*''SEC. 1855. (a) ORGANIZED AND LICENSED UNDER STATE LAW.—*

*''(1) IN GENERAL.—Subject to paragraphs (2) and (3), a Medicare Choice organization shall be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage in each State in which it offers a Medicare Choice plan.*

*''(2) SPECIAL EXCEPTION BEFORE 2001 FOR PROVIDER-SPONSORED ORGANIZATIONS.—*

*''(A) IN GENERAL.—In the case of a provider-sponsored organization that seeks to offer a Medicare Choice plan in a State, the Secretary shall waive the requirement of paragraph (1) that the organization be licensed in that State for any year before 2001 if—*

*''(i) the organization files an application for such waiver with the Secretary, and*

*''(ii) the contract with the organization under section 1857 requires the organization to meet all requirements of State law which relate to the licensing of the organization (other than solvency requirements or a prohibition on licensure for such organization).*

*''(B) TREATMENT OF WAIVER.—*

*''(i) IN GENERAL.—In the case of a waiver granted under this paragraph for a provider-sponsored organization—*

*''(I) the waiver shall be effective for the years specified in the waiver, except it may be renewed based on a subsequent application, and*

*''(II) subject to subparagraph (A)(ii), any provisions of State law which would otherwise prohibit the organization from providing coverage pursuant to a contract under this part shall be superseded.*

*''(ii) TERMINATION.—A waiver granted under this paragraph shall in no event extend beyond the earlier of—*

*''(I) December 31, 2000; or*

*''(II) the date on which the Secretary determines that the State has in effect solvency standards identical to the standards established under section 1856(a).*

*''(C) PROMPT ACTION ON APPLICATION.—The Secretary shall grant or deny such a waiver application within 60 days after the date the Secretary determines that a substantially complete application has been filed.*

*''(D) ENFORCEMENT OF STATE STANDARDS.—*

*''(i) IN GENERAL.—The Secretary shall enter into agreements with States subject to a waiver under this paragraph to ensure the adequate enforcement of standards incorporated into the contract under subparagraph (A)(ii). Such agreements shall provide methods by which States may notify the Secretary of any failure by an organization to comply with such standards.*

*''(ii) ENFORCEMENT.—If the Secretary determines that an organization is not in compliance with the standards described in clause (i), the Secretary shall take appropriate actions under subsections (g) and (h) with respect to civil penalties and termination of the contract. The Secretary shall allow an organization 60 days to comply with the standards after notification of failure.*

*''(E) REPORT.—The Secretary shall, not later than December 31, 1998, report to Congress on the waiver procedure in effect under this paragraph. Such report shall include an analysis of State efforts to adopt regulatory standards that take into account health plan sponsors that provide services directly to enrollees through affiliated providers.*

*''(3) EXCEPTION IF REQUIRED TO OFFER MORE THAN MEDICARE CHOICE PLANS.—Paragraph (1) shall not apply to a Medicare Choice organization in a State if the State requires the organization, as a condition of licensure, to offer any product or plan other than a Medicare Choice plan.*

*''(4) LICENSURE DOES NOT SUBSTITUTE FOR OR CONSTITUTE CERTIFICATION.—The fact that an organization is licensed in accordance with paragraph (1) does not deem the organization to meet other requirements imposed under this part.*

*''(b) PREPAID PAYMENT.—A Medicare Choice organization shall be compensated (except for premiums, deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members under the contract under this part by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.*

*''(c) ASSUMPTION OF FULL FINANCIAL RISK.—The Medicare Choice organization shall assume full financial risk on a prospective basis for the provision of the health care services (except, at the election of the organization, hospice care) for which benefits are required to be provided under section 1852(a)(1), except that the organization—*

*''(1) may obtain insurance or make other arrangements for the cost of providing to any enrolled member such services the aggregate value of which for any year exceeds the applicable amount determined under the last sentence of this subsection for the year,*

*''(2) may obtain insurance or make other arrangements for the cost of such services provided to its enrolled members other than through the organization because medical necessity required their provision before they could be secured through the organization,*

*''(3) may obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and*

*''(4) may make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.*

*For purposes of paragraph (1), the applicable amount for 1998 is the amount established by the Secretary, and for 1999 and any succeeding year is the amount in effect for the previous year increased by the percentage change 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.*

*''(d) CERTIFICATION OF PROVISION AGAINST RISK OF INSOLVENCY FOR PSOS.—*

*''(1) IN GENERAL.—Each Medicare Choice organization that is a provider-sponsored organization with a waiver in effect under subsection (a)(2) shall meet the standards established under section 1856(a) with respect to the financial solvency and capital adequacy of the organization.*

*''(2) CERTIFICATION PROCESS FOR SOLVENCY STANDARDS FOR PSOS.—The Secretary shall establish a process for the receipt and approval of applications of a provider-sponsored organization for certification (and periodic recertification) of the organization as meeting such solvency standards. Under such process, the Secretary shall act upon such an application not later than 60 days after the date the application has been received.*

*''(e) PROVIDER-SPONSORED ORGANIZATION DEFINED.—*

*''(1) IN GENERAL.—In this part, the term 'provider-sponsored organization' means a public or private entity—*

*''(A) that is established or organized and operated by a local health care provider, or local group of affiliated health care providers,*

*''(B) that provides a substantial proportion (as defined by the Secretary in accordance with paragraph (2)) of the health care items and services under the contract under this part directly through the provider or affiliated group of providers, and*

''(C) with respect to which those affiliated providers that share, directly or indirectly, substantial financial risk with respect to the provision of such items and services have at least a majority financial interest in the entity.

''(2) SUBSTANTIAL PROPORTION.—In defining what is a 'substantial proportion' for purposes of paragraph (1)(B), the Secretary—

''(A) shall take into account the need for such an organization to assume responsibility for providing—

''(i) significantly more than the majority of the items and services under the contract under this section through its own affiliated providers; and

''(ii) most of the remainder of the items and services under the contract through providers with which the organization has an agreement to provide such items and services,

in order to assure financial stability and to address the practical considerations involved in integrating the delivery of a wide range of service providers;

''(B) shall take into account the need for such an organization to provide a limited proportion of the items and services under the contract through providers that are neither affiliated with nor have an agreement with the organization; and

''(C) may allow for variation in the definition of substantial proportion among such organizations based on relevant differences among the organizations, such as their location in an urban or rural area.

''(3) AFFILIATION.—For purposes of this subsection, a provider is 'affiliated' with another provider if, through contract, ownership, or otherwise—

''(A) one provider, directly or indirectly, controls, is controlled by, or is under common control with the other,

''(B) both providers are part of a controlled group of corporations under section 1563 of the Internal Revenue Code of 1986,

''(C) each provider is a participant in a lawful combination under which each provider shares substantial financial risk in connection with the organization's operations, or

''(D) both providers are part of an affiliated service group under section 414 of such Code.

''(4) CONTROL.—For purposes of paragraph (3), control is presumed to exist if one party, directly or indirectly, owns, controls, or holds the power to vote, or proxies for, not less than 51 percent of the voting rights or governance rights of another.

''(5) HEALTH CARE PROVIDER DEFINED.—In this subsection, the term 'health care provider' means—

''(A) any individual who is engaged in the delivery of health care services in a State and who is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, and

''(B) any entity that is engaged in the delivery of health care services in a State and that, if it is required by State law or regulation to be licensed or certified by the State to engage in the delivery of such services in the State, is so licensed.

''(6) REGULATIONS.—The Secretary shall issue regulations to carry out this subsection.

''ESTABLISHMENT OF STANDARDS

''SEC. 1856. (a) ESTABLISHMENT OF SOLVENCY STANDARDS FOR PROVIDER-SPONSORED ORGANIZATIONS.—

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The Secretary shall establish, on an expedited basis and using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code, standards described in section 1855(d)(1) (relating to the financial solvency and capital adequacy of the organization) that entities must meet to qualify as provider-sponsored organizations under this part.

''(B) FACTORS TO CONSIDER FOR SOLVENCY STANDARDS.—In establishing solvency standards under subparagraph (A) for provider-sponsored organizations, the Secretary shall consult with interested parties and shall take into account—

''(i) the delivery system assets of such an organization and ability of such an organization to provide services directly to enrollees through affiliated providers,

''(ii) alternative means of protecting against insolvency, including reinsurance, unrestricted surplus, letters of credit, guarantees, organizational insurance coverage, partnerships with other licensed entities, and valuation attributable to the ability of such an organization to meet its service obligations through direct delivery of care, and

''(iii) any standards developed by the National Association of Insurance Commissioners specifically for risk-based health care delivery organizations.

''(C) ENROLLEE PROTECTION AGAINST INSOLVENCY.—Such standards shall include provisions to prevent enrollees from being held liable to any person or entity for the Medicare Choice organization's debts in the event of the organization's insolvency.

''(2) PUBLICATION OF NOTICE.—In carrying out the rulemaking process under this subsection, the Secretary, after consultation with the National Association of Insurance Commissioners, the American Academy of Actuaries, organizations representative of medicare beneficiaries, and other interested parties, shall publish the notice provided for under section 564(a) of title 5, United States Code, by not later than 45 days after the date of the enactment of this section.

''(3) TARGET DATE FOR PUBLICATION OF RULE.—As part of the notice under paragraph (2), and for purposes of this subsection, the 'target date for publication' (referred to in section 564(a)(5) of such title) shall be April 1, 1998.

''(4) ABBREVIATED PERIOD FOR SUBMISSION OF COMMENTS.—In applying section 564(c) of such title under this subsection, '15 days' shall be substituted for '30 days'.

''(5) APPOINTMENT OF NEGOTIATED RULEMAKING COMMITTEE AND FACILITATOR.—The Secretary shall provide for—

''(A) the appointment of a negotiated rulemaking committee under section 565(a) of such title by not later than 30 days after the end of the comment period provided for under section 564(c) of such title (as shortened under paragraph (4)), and

''(B) the nomination of a facilitator under section 566(c) of such title by not later than 10 days after the date of appointment of the committee.

''(6) PRELIMINARY COMMITTEE REPORT.—The negotiated rulemaking committee appointed under paragraph (5) shall report to the Secretary, by not later than January 1, 1998, regarding the committee's progress on achieving a consensus with regard to the rulemaking proceeding and whether such consensus is likely to occur before 1 month before the target date for publication of the rule. If the committee reports that the committee has failed to make significant progress towards such consensus or is unlikely to reach such consensus by the target date, the Secretary may terminate such process and provide for the publication of a rule under this subsection through such other methods as the Secretary may provide.

''(7) FINAL COMMITTEE REPORT.—If the committee is not terminated under paragraph (6), the rulemaking committee shall submit a report containing a proposed rule by not later than 1 month before the target date of publication.

''(8) INTERIM, FINAL EFFECT.—The Secretary shall publish a rule under this subsection in the Federal Register by not later than the target date of publication. Such rule shall be effective and final immediately on an interim basis, but is subject to change and revision after public notice and opportunity for a period (of not less than 60 days) for public comment. In connection with such rule, the Secretary shall specify the process for the timely review and approval of applications of entities to be certified as provider-sponsored organizations pursuant to such rules and consistent with this subsection.

''(9) PUBLICATION OF RULE AFTER PUBLIC COMMENT.—The Secretary shall provide for consideration of such comments and republication of such rule by not later than 1 year after the target date of publication.

''(b) ESTABLISHMENT OF OTHER STANDARDS.—

''(1) IN GENERAL.—The Secretary shall establish by regulation other standards (not described in subsection (a)) for Medicare Choice organizations and plans consistent with, and to carry out, this part.

''(2) USE OF CURRENT STANDARDS.—Consistent with the requirements of this part, standards established under this subsection shall be based on standards established under section 1876 to carry out analogous provisions of such section.

''(3) USE OF INTERIM STANDARDS.—For the period in which this part is in effect and standards are being developed and established under the preceding provisions of this subsection, the Secretary shall provide by not later than June 1, 1998, for the application of such interim standards (without regard to any requirements for notice and public comment) as may be appropriate to provide for the expedited implementation of this part. Such interim standards shall not apply after the date standards are established under the preceding provisions of this subsection.

''(4) APPLICATION OF NEW STANDARDS TO ENTITIES WITH A CONTRACT.—In the case of a Medicare Choice organization with a contract in effect under this part at the time standards applicable to the organization under this section are changed, the organization may elect not to have such changes apply to the organization until the end of the current contract year (or, if there is less than 6 months remaining in the contract year, until 1 year after the end of the current contract year).

''(5) RELATION TO STATE LAWS.—The standards established under this subsection shall supersede any State law or regulation with respect to Medicare Choice plans which are offered by Medicare Choice organizations under this part to the extent such law or regulation is inconsistent with such standards.

''CONTRACTS WITH MEDICARE CHOICE ORGANIZATIONS

''SEC. 1857. (a) IN GENERAL.—The Secretary shall not permit the election under section 1851 of a Medicare Choice plan offered by a Medicare Choice organization under this part, and no payment shall be made under section 1853 to an organization, unless the Secretary has entered into a contract under this section with the organization with respect to the offering of such plan. Such a contract with an organization may cover more than 1 Medicare Choice plan. Such contract shall provide that the organization agrees to comply with the applicable requirements and standards of this part and the terms and conditions of payment as provided for in this part.

''(b) MINIMUM ENROLLMENT REQUIREMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary may not enter into a contract under this section with a Medicare Choice organization unless the organization has at least 1,500 individuals who are receiving health benefits through the organization (500 such individuals if the organization primarily serves individuals residing outside of urbanized areas).

''(2) ALLOWING TRANSITION.—The Secretary may waive the requirement of paragraph (1) during the first 2 contract years with respect to an organization.

''(3) SPECIAL RULE FOR PSO.—In the case of a Medicare Choice organization which is a provider-sponsored organization, paragraph (1) shall be applied by taking into account individuals for whom the organization has assumed substantial financial risk.

''(c) CONTRACT PERIOD AND EFFECTIVENESS.—

''(1) PERIOD.—Each contract under this section shall be for a term of at least 1 year, as determined by the Secretary, and may be made

*automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term.*

*''(2) TERMINATION AUTHORITY.—In accordance with procedures established under subsection (h), the Secretary may at any time terminate any such contract, or may impose the intermediate sanctions described in an applicable paragraph of subsection (g)(3) on the Medicare Choice organization, if the Secretary determines that the organization—*

*''(A) has failed substantially to carry out the contract;*

*''(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part; or*

*''(C) no longer substantially meets the applicable conditions of this part.*

*''(3) EFFECTIVE DATE OF CONTRACTS.—The effective date of any contract executed pursuant to this section shall be specified in the contract, except that in no case shall a contract under this section which provides for coverage under an MSA plan be effective before January 1999 with respect to such coverage.*

*''(4) PREVIOUS TERMINATIONS.—The Secretary may not enter into a contract with a Medicare Choice organization if a previous contract with that organization under this section was terminated at the request of the organization within the preceding 5-year period, except in circumstances which warrant special consideration, as determined by the Secretary.*

*''(5) NO CONTRACTING AUTHORITY.—The authority vested in the Secretary by this part may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this title.*

*''(d) PROTECTIONS AGAINST FRAUD AND BENEFICIARY PROTECTIONS.—*

*''(1) INSPECTION AND AUDIT.—Each contract under this section shall provide that the Secretary, or any person or organization designated by the Secretary—*

*''(A) shall have the right to inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract and (ii) the facilities of the organization when there is reasonable evidence of some need for such inspection, and*

*''(B) shall have the right to audit and inspect any books and records of the Medicare Choice organization that pertain (i) to the ability of the organization to bear the risk of potential financial losses, or (ii) to services performed or determinations of amounts payable under the contract.*

*''(2) ENROLLEE NOTICE AT TIME OF TERMINATION.—Each contract under this section shall require the organization to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this title, to each individual enrolled with the organization under this part.*

*''(3) DISCLOSURE.—*

*''(A) IN GENERAL.—Each Medicare Choice organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:*

*''(i) Such information as the Secretary may require demonstrating that the organization has a fiscally sound operation.*

*''(ii) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1124 by disclosing entities.*

*''(iii) A description of transactions, as specified by the Secretary, between the organization and a party in interest. Such transactions shall include—*

*''(I) any sale or exchange, or leasing of any property between the organization and a party in interest;*

*''(II) any furnishing for consideration of goods, services (including management services), or facilities between the organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and*

*''(III) any lending of money or other extension of credit between an organization and a party in interest.*

*The Secretary may require that information reported respecting an organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.*

*''(B) PARTY IN INTEREST DEFINED.—For the purposes of this paragraph, the term 'party in interest' means—*

*''(i) any director, officer, partner, or employee responsible for management or administration of a Medicare Choice organization, any person who is directly or indirectly the beneficial owner of more than 5 percent of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 percent of the organization, and, in the case of a Medicare Choice organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;*

*''(ii) any entity in which a person described in clause (i)—*

*''(I) is an officer or director;*

*''(II) is a partner (if such entity is organized as a partnership);*

*''(III) has directly or indirectly a beneficial interest of more than 5 percent of the equity; or*

*''(IV) has a mortgage, deed of trust, note, or other interest valuing more than 5 percent of the assets of such entity;*

*''(iii) any person directly or indirectly controlling, controlled by, or under common control with an organization; and*

*''(iv) any spouse, child, or parent of an individual described in clause (i).*

*''(C) ACCESS TO INFORMATION.—Each Medicare Choice organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.*

*''(4) LOAN INFORMATION.—The contract shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.*

*''(e) ADDITIONAL CONTRACT TERMS.—*

*''(1) IN GENERAL.—The contract shall contain such other terms and conditions not inconsistent with this part (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.*

*''(2) COST-SHARING IN ENROLLMENT-RELATED COSTS.—The contract with a Medicare Choice organization shall require the payment to the Secretary for the organization's pro rata share (as determined by the Secretary) of the estimated costs to be incurred by the Secretary in carrying out section 1851 (relating to enrollment and dissemination of information). Such payments are appropriated to defray the costs described in the preceding sentence, to remain available until expended.*

*''(3) NOTICE TO ENROLLEES IN CASE OF DECERTIFICATION.—If a contract with a Medicare Choice organization is terminated under this section, the organization shall notify each enrollee with the organization under this part of such termination.*

*''(f) PROMPT PAYMENT BY MEDICARE CHOICE ORGANIZATION.—*

*''(1) REQUIREMENT.—A contract under this part shall require a Medicare Choice organization to provide prompt payment (consistent with the provisions of sections 1816(c)(2) and 1842(c)(2)) of claims submitted for services and supplies furnished to individuals pursuant to the contract, if the services or supplies are not furnished under a contract between the organization and the provider or supplier.*

*''(2) SECRETARY'S OPTION TO BYPASS NONCOMPLYING ORGANIZATION.—In the case of a Medicare Choice eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with paragraph (1), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for covered services and supplies furnished to individuals enrolled under this part under the contract. If the Secretary provides for the direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this part to reflect the amount of the Secretary's payments (and the Secretary's costs in making the payments).*

*''(g) INTERMEDIATE SANCTIONS.—*

*''(1) IN GENERAL.—If the Secretary determines that a Medicare Choice organization with a contract under this section—*

*''(A) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;*

*''(B) imposes net monthly premiums on individuals enrolled under this part in excess of the net monthly premiums permitted;*

*''(C) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this part;*

*''(D) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this part) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;*

*''(E) misrepresents or falsifies information that is furnished—*

*''(i) to the Secretary under this part, or*

*''(ii) to an individual or to any other entity under this part;*

*''(F) fails to comply with the requirements of section 1852(j)(3); or*

*''(G) employs or contracts with any individual or entity that is excluded from participation under this title under section 1128 or 1128A for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;*

*the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in paragraph (2).*

*''(2) REMEDIES.—The remedies described in this paragraph are—*

*''(A) civil money penalties of not more than $25,000 for each determination under paragraph (1) or, with respect to a determination under subparagraph (D) or (E)(i) of such paragraph, of not more than $100,000 for each such determination, plus, with respect to a determination under paragraph (1)(B), double the excess amount charged in violation of such paragraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under paragraph (1)(D), $15,000 for each individual not enrolled as a result of the practice involved,*

*''(B) suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or*

''(C) suspension of payment to the organization under this part for individuals enrolled after the date the Secretary notifies the organization of a determination under paragraph (1) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

''(3) OTHER INTERMEDIATE SANCTIONS.—In the case of a Medicare Choice organization for which the Secretary makes a determination under subsection (c)(2) the basis of which is not described in paragraph (1), the Secretary may apply the following intermediate sanctions:

''(A) Civil money penalties of not more than $25,000 for each determination under subsection (c)(2) if the deficiency that is the basis of the determination has directly adversely affected (or has the substantial likelihood of adversely affecting) an individual covered under the organization's contract.

''(B) Civil money penalties of not more than $10,000 for each week beginning after the initiation of procedures by the Secretary under subsection (g) during which the deficiency that is the basis of a determination under subsection (c)(2) exists.

''(C) Suspension of enrollment of individuals under this part after the date the Secretary notifies the organization of a determination under subsection (c)(2) and until the Secretary is satisfied that the deficiency that is the basis for the determination has been corrected and is not likely to recur.

''(4) CIVIL MONEY PENALTIES.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply to a civil money penalty under subsection (f) or under paragraph (2) or (3) of this subsection in the same manner as they apply to a civil money penalty or proceeding under section 1128A(a).

''(h) PROCEDURES FOR TERMINATION.—

''(1) IN GENERAL.—The Secretary may terminate a contract with a Medicare Choice organization under this section in accordance with formal investigation and compliance procedures established by the Secretary under which—

''(A) the Secretary provides the organization with the reasonable opportunity to develop and implement a corrective action plan to correct the deficiencies that were the basis of the Secretary's determination under subsection (c)(2);

''(B) the Secretary shall impose more severe sanctions on an organization that has a history of deficiencies or that has not taken steps to correct deficiencies the Secretary has brought to the organization's attention;

''(C) there are no unreasonable or unnecessary delays between the finding of a deficiency and the imposition of sanctions; and

''(D) the Secretary provides the organization with reasonable notice and opportunity for hearing (including the right to appeal an initial decision) before terminating the contract.

''(2) EXCEPTION FOR IMMINENT AND SERIOUS RISK TO HEALTH.—Paragraph (1) shall not apply if the Secretary determines that a delay in termination, resulting from compliance with the procedures specified in such paragraph prior to termination, would pose an imminent and serious risk to the health of individuals enrolled under this part with the organization.

''DEFINITIONS; MISCELLANEOUS PROVISIONS

''SEC. 1859. (a) DEFINITIONS RELATING TO MEDICARE CHOICE ORGANIZATIONS.—In this part—

''(1) MEDICARE CHOICE ORGANIZATION.—The term 'Medicare Choice organization' means a public or private entity that is certified under section 1856 as meeting the requirements and standards of this part for such an organization.

''(2) PROVIDER-SPONSORED ORGANIZATION.—The term 'provider-sponsored organization' is defined in section 1855(e)(1).

''(b) DEFINITIONS RELATING TO MEDICARE CHOICE PLANS.—

''(1) MEDICARE CHOICE PLAN.—The term 'Medicare Choice plan' means health benefits coverage offered under a policy, contract, or plan by a Medicare Choice organization pursuant to and in accordance with a contract under section 1857.

''(2) MEDICARE CHOICE UNRESTRICTED FEE-FOR-SERVICE PLAN.—The term 'Medicare Choice unrestricted fee-for-service plan' means a Medicare Choice plan that provides for coverage of benefits without restrictions relating to utilization and without regard to whether the provider has a contract or other arrangement with the organization offering the plan for the provision of such benefits.

''(3) MSA PLAN.—

''(A) IN GENERAL.—The term 'MSA plan' means a Medicare Choice plan that—

''(i) provides reimbursement for at least the items and services described in section 1852(a)(1) in a year but only after the enrollee incurs countable expenses (as specified under the plan) equal to the amount of an annual deductible (described in subparagraph (B));

''(ii) counts as such expenses (for purposes of such deductible) at least all amounts that would have been payable under parts A and B, and that would have been payable by the enrollee as deductibles, coinsurance, or copayments, if the enrollee had elected to receive benefits through the provisions of such parts;

''(iii) subject to clause (iv), provides, after such deductible is met for a year and for all subsequent expenses for items and services referred to in clause (i) in the year, for a level of reimbursement that is not less than—

''(I) 100 percent of such expenses, or

''(II) 100 percent of the amounts that would have been paid (without regard to any deductibles or coinsurance) under parts A and B with respect to such expenses,

whichever is less; and

''(iv) provides that the annual out-of-pocket expenses required to be paid under the plan (other than for premiums) for covered benefits does not exceed the amount in effect under section 220(c)(2)(A)(iii)(I) of the Internal Revenue Code of 1986 for the year.

''(B) DEDUCTIBLE.—The amount of annual deductible under an MSA plan shall not be less than or more than the amounts in excess under section 220(c)(2)(A)(i) of the Internal Revenue Code of 1986 for the year.

''(c) OTHER REFERENCES TO OTHER TERMS.—

''(1) MEDICARE CHOICE ELIGIBLE INDIVIDUAL.—The term 'Medicare Choice eligible individual' is defined in section 1851(a)(3).

''(2) MEDICARE CHOICE PAYMENT AREA.—The term 'Medicare Choice payment area' is defined in section 1853(d).

''(3) NATIONAL AVERAGE PER CAPITA GROWTH PERCENTAGE.—The 'national average per capita growth percentage' is defined in section 1853(c)(6).

''(4) MONTHLY PREMIUM; NET MONTHLY PREMIUM.—The terms 'monthly premium' and 'net monthly premium' are defined in section 1854(a)(2).

''(d) COORDINATED ACUTE AND LONG-TERM CARE BENEFITS UNDER A MEDICARE CHOICE PLAN.—Nothing in this part shall be construed as preventing a State from coordinating benefits under a medicaid plan under title XIX with those provided under a Medicare Choice plan in a manner that assures continuity of a full-range of acute care and long-term care services to poor elderly or disabled individuals eligible for benefits under this title and under such plan.

''(e) RESTRICTION ON ENROLLMENT FOR CERTAIN MEDICARE CHOICE PLANS.—

''(1) IN GENERAL.—In the case of a Medicare Choice religious fraternal benefit society plan described in paragraph (2), notwithstanding any other provision of this part to the contrary and in accordance with regulations of the Secretary, the society offering the plan may restrict the enrollment of individuals under this part to individuals who are members of the church, convention, or group described in paragraph (3)(B) with which the society is affiliated.

''(2) MEDICARE CHOICE RELIGIOUS FRATERNAL BENEFIT SOCIETY PLAN DESCRIBED.—For purposes of this subsection, a Medicare Choice religious fraternal benefit society plan described in this paragraph is a Medicare Choice plan described in section 1851(a)(2)(A) that—

''(A) is offered by a religious fraternal benefit society described in paragraph (3) only to members of the church, convention, or group described in paragraph (3)(B); and

''(B) permits all such members to enroll under the plan without regard to health status-related factors.

Nothing in this subsection shall be construed as waiving any plan requirements relating to financial solvency. In developing solvency standards under section 1856, the Secretary shall take into account open contract and assessment features characteristic of fraternal insurance certificates.

''(3) RELIGIOUS FRATERNAL BENEFIT SOCIETY DEFINED.—For purposes of paragraph (2)(A), a 'religious fraternal benefit society' described in this section is an organization that—

''(A) is exempt from Federal income taxation under section 501(c)(8) of the Internal Revenue Code of 1986;

''(B) is affiliated with, carries out the tenets of, and shares a religious bond with, a church or convention or association of churches or an affiliated group of churches;

''(C) offers, in addition to a Medicare Choice religious fraternal benefit society plan, at least the same level of health coverage to individuals not entitled to benefits under this title who are members of such church, convention, or group; and

''(D) does not impose any limitation on membership in the society based on any health status-related factor.

''(4) PAYMENT ADJUSTMENT.—Under regulations of the Secretary, in the case of individuals enrolled under this part under a Medicare Choice religious fraternal benefit society plan described in paragraph (2), the Secretary shall provide for such adjustment to the payment amounts otherwise established under section 1854 as may be appropriate to assure an appropriate payment level, taking into account the actuarial characteristics and experience of such individuals.''.

***SEC. 5002. TRANSITIONAL RULES FOR CURRENT MEDICARE HMO PROGRAM.***

(a) AUTHORIZING TRANSITIONAL WAIVER OF 50:50 RULE.—Section 1876(f) (42 U.S.C. 1395mm(f)) is amended—

(1) in paragraph (1)—

(A) by striking ''Each'' and inserting ''For contract periods beginning before January 1, 1999, each''; and

(B) by striking ''or under a State plan approved under title XIX'';

(2) in paragraph (2), by striking ''The Secretary'' and inserting ''Subject to paragraph (4), the Secretary'', and

(3) by adding at the end the following:

''(4) The Secretary may waive the requirement imposed by paragraph (1) if the Secretary determines that the plan meets all other beneficiary protections and quality standards under this section.''.

(b) TRANSITION.—Section 1876 (42 U.S.C. 1395mm) is amended by adding at the end the following new subsection:

''(k)(1) Except as provided in paragraph (2) or (3), the Secretary shall not enter into, renew, or continue any risk-sharing contract under this section with an eligible organization for any contract year beginning on or after—

''(A) the date standards for Medicare Choice organizations and plans are first established under section 1856 with respect to Medicare Choice organizations that are insurers or health maintenance organizations, or

''(B) in the case of such an organization with such a contract in effect as of the date such standards were first established, 1 year after such date.

''(2) The Secretary shall not enter into, renew, or continue any risk-sharing contract under this section with an eligible organization for any contract year beginning on or after January 1, 2000.

''(3) An individual who is enrolled in part B only and is enrolled in an eligible organization with a risk-sharing contract under this section on December 31, 1998, may continue enrollment in such organization in accordance with regulations issued by not later than July 1, 1998.

''(4) Notwithstanding subsection (a), the Secretary shall provide that payment amounts under risk-sharing contracts under this section for months in a year (beginning with January 1998) shall be computed—

''(A) with respect to individuals entitled to benefits under both parts A and B, by substituting payment rates under section 1853(a) for the payment rates otherwise established under section 1876(a), and

''(B) with respect to individuals only entitled to benefits under part B, by substituting an appropriate proportion of such rates (reflecting the relative proportion of payments under this title attributable to such part) for the payment rates otherwise established under subsection (a).

For purposes of carrying out this paragraph for payments for months in 1998, the Secretary shall compute, announce, and apply the payment rates under section 1853(a) (notwithstanding any deadlines specified in such section) in as timely a manner as possible and may (to the extent necessary) provide for retroactive adjustment in payments made under this section not in accordance with such rates.''.

(c) ENROLLMENT TRANSITION RULE.—An individual who is enrolled on December 31, 1998, with an eligible organization under section 1876 of the Social Security Act (42 U.S.C. 1395mm) shall be considered to be enrolled with that organization on January 1, 1999, under part C of title XVIII of such Act if that organization has a contract under that part for providing services on January 1, 1999 (unless the individual has disenrolled effective on that date).

(d) ADVANCE DIRECTIVES.—Section 1866(f) (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) by inserting ''1855(i),'' after ''1833(s),'', and

(B) by inserting '', Medicare Choice organization,'' after ''provider of services''; and

(2) in paragraph (2)(E), by inserting ''or a Medicare Choice organization'' after ''section 1833(a)(1)(A)''.

(e) EXTENSION OF PROVIDER REQUIREMENT.—Section 1866(a)(1)(O) (42 U.S.C. 1395cc(a)(1)(O)) is amended—

(1) by striking ''in the case of hospitals and skilled nursing facilities,'';

(2) by striking ''inpatient hospital and extended care'';

(3) by inserting ''with a Medicare Choice organization under part C or'' after ''any individual enrolled''; and

(4) by striking ''(in the case of hospitals) or limits (in the case of skilled nursing facilities)''.

(f) ADDITIONAL CONFORMING CHANGES.—

(1) CONFORMING REFERENCES TO PREVIOUS PART C.—Any reference in law (in effect before the date of the enactment of this Act) to part C of title XVIII of the Social Security Act is deemed a reference to part D of such title (as in effect after such date).

(2) SECRETARIAL SUBMISSION OF LEGISLATIVE PROPOSAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit to the appropriate committees of Congress a legislative proposal providing for such technical and conforming amendments in the law as are required by the provisions of this chapter.

(g) IMMEDIATE EFFECTIVE DATE FOR CERTAIN REQUIREMENTS FOR DEMONSTRATIONS.—Section 1857(e)(2) of the Social Security Act (requiring contribution to certain costs related to the enrollment process comparative materials) applies to demonstrations with respect to which enrollment is effected or coordinated under section 1851 of such Act.

(h) USE OF INTERIM, FINAL REGULATIONS.—In order to carry out the amendments made by this chapter in a timely manner, the Secretary of Health and Human Services may promulgate regulations that take effect on an interim basis, after notice and pending opportunity for public comment.

(i) TRANSITION RULE FOR PSO ENROLLMENT.—In applying subsection (g)(1) of section 1876 of the Social Security Act (42 U.S.C. 1395mm) to a risk-sharing contract entered into with an eligible organization that is a provider-sponsored organization (as defined in section 1855(e)(1) of such Act, as inserted by section 5001) for a contract year beginning on or after January 1, 1998, there shall be substituted for the minimum number of enrollees provided under such section the minimum number of enrollees permitted under section 1857(b)(1) of such Act (as so inserted).

**SEC. 5003. CONFORMING CHANGES IN MEDIGAP PROGRAM.**

(a) CONFORMING AMENDMENTS TO MEDICARE CHOICE CHANGES.—

(1) IN GENERAL.—Section 1882(d)(3)(A)(i) (42 U.S.C. 1395ss(d)(3)(A)(i)) is amended—

(A) in the matter before subclause (I), by inserting ''(including an individual electing a Medicare Choice plan under section 1851)'' after ''of this title''; and

(B) in subclause (II)—

(i) by inserting ''in the case of an individual not electing a Medicare Choice plan'' after ''(II)'', and

(ii) by inserting before the comma at the end the following: ''or in the case of an individual electing a Medicare Choice plan, a medicare supplemental policy with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled under the Medicare Choice plan or under another medicare supplemental policy''.

(2) CONFORMING AMENDMENTS.—Section 1882(d)(3)(B)(i)(I) (42 U.S.C. 1395ss(d)(3)(B)(i)(I)) is amended by inserting ''(including any Medicare Choice plan)'' after ''health insurance policies''.

(3) MEDICARE CHOICE PLANS NOT TREATED AS MEDICARE SUPPLEMENTARY POLICIES.—Section 1882(g)(1) (42 U.S.C. 1395ss(g)(1)) is amended by inserting ''or a Medicare Choice plan or'' after ''does not include''.

(b) ADDITIONAL RULES RELATING TO INDIVIDUALS ENROLLED IN MSA PLANS.—Section 1882 (42 U.S.C. 1395ss) is further amended by adding at the end the following new subsection:

''(u)(1) It is unlawful for a person to sell or issue a policy described in paragraph (2) to an individual with knowledge that the individual has in effect under section 1851 an election of an MSA plan.

''(2) A policy described in this subparagraph is a health insurance policy that provides for coverage of expenses that are otherwise required to be counted toward meeting the annual deductible amount provided under the MSA plan.''.

***Subchapter B—Special Rules for Medicare Choice Medical Savings Accounts***

**SEC. 5006. MEDICARE CHOICE MSA.**

(a) IN GENERAL.—Part III of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to amounts specifically excluded from gross income) is amended by redesignating section 138 as section 139 and by inserting after section 137 the following new section:

**''SEC. 138. MEDICARE CHOICE MSA.**

''(a) EXCLUSION.—Gross income shall not include any payment to the Medicare Choice MSA of an individual by the Secretary of Health and Human Services under part C of title XVIII of the Social Security Act.

''(b) MEDICARE CHOICE MSA.—For purposes of this section, the term 'Medicare Choice MSA' means a medical savings account (as defined in section 220(d))—

''(1) which is designated as a Medicare Choice MSA,

''(2) with respect to which no contribution may be made other than—

''(A) a contribution made by the Secretary of Health and Human Services pursuant to part C of title XVIII of the Social Security Act, or

''(B) a trustee-to-trustee transfer described in subsection (c)(4),

''(3) the governing instrument of which provides that trustee-to-trustee transfers described in subsection (c)(4) may be made to and from such account, and

''(4) which is established in connection with an MSA plan described in section 1859(b)(3) of the Social Security Act.

''(c) SPECIAL RULES FOR DISTRIBUTIONS.—

''(1) DISTRIBUTIONS FOR QUALIFIED MEDICAL EXPENSES.—In applying section 220 to a Medicare Choice MSA—

''(A) qualified medical expenses shall not include amounts paid for medical care for any individual other than the account holder, and

''(B) section 220(d)(2)(C) shall not apply.

''(2) PENALTY FOR DISTRIBUTIONS FROM MEDICARE CHOICE MSA NOT USED FOR QUALIFIED MEDICAL EXPENSES IF MINIMUM BALANCE NOT MAINTAINED.—

''(A) IN GENERAL.—The tax imposed by this chapter for any taxable year in which there is a payment or distribution from a Medicare Choice MSA which is not used exclusively to pay the qualified medical expenses of the account holder shall be increased by 50 percent of the excess (if any) of—

''(i) the amount of such payment or distribution, over

''(ii) the excess (if any) of—

''(I) the fair market value of the assets in such MSA as of the close of the calendar year preceding the calendar year in which the taxable year begins, over

''(II) an amount equal to 60 percent of the deductible under the Medicare Choice MSA plan covering the account holder as of January 1 of the calendar year in which the taxable year begins.

Section 220(f)(2) shall not apply to any payment or distribution from a Medicare Choice MSA.

''(B) EXCEPTIONS.—Subparagraph (A) shall not apply if the payment or distribution is made on or after the date the account holder—

''(i) becomes disabled within the meaning of section 72(m)(7), or

''(ii) dies.

''(C) SPECIAL RULES.—For purposes of subparagraph (A)—

''(i) all Medicare Choice MSAs of the account holder shall be treated as 1 account,

''(ii) all payments and distributions not used exclusively to pay the qualified medical expenses of the account holder during any taxable year shall be treated as 1 distribution, and

''(iii) any distribution of property shall be taken into account at its fair market value on the date of the distribution.

''(3) WITHDRAWAL OF ERRONEOUS CONTRIBUTIONS.—Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any payment or distribution from a Medicare Choice MSA to the Secretary of Health and Human Services of an erroneous contribution to such MSA and of the net income attributable to such contribution.

''(4) TRUSTEE-TO-TRUSTEE TRANSFERS.—Section 220(f)(2) and paragraph (2) of this subsection shall not apply to any trustee-to-trustee transfer from a Medicare Choice MSA of an account holder to another Medicare Choice MSA of such account holder.

''(d) SPECIAL RULES FOR TREATMENT OF ACCOUNT AFTER DEATH OF ACCOUNT HOLDER.—In applying section 220(f)(8)(A) to an account which was a Medicare Choice MSA of a decedent, the rules of section 220(f) shall apply in lieu of the rules of subsection (c) of this section with respect to the spouse as the account holder of such Medicare Choice MSA.

''(e) REPORTS.—In the case of a Medicare Choice MSA, the report under section 220(h)—

''(1) shall include the fair market value of the assets in such Medicare Choice MSA as of the close of each calendar year, and

''(2) shall be furnished to the account holder—

''(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

''(B) in such manner as the Secretary prescribes in such regulations.

''(f) COORDINATION WITH LIMITATION ON NUMBER OF TAXPAYERS HAVING MEDICAL SAVINGS ACCOUNTS.—Subsection (i) of section 220 shall not apply to an individual with respect to a Medicare Choice MSA, and Medicare Choice MSA's shall not be taken into account in determining whether the numerical limitations under section 220(j) are exceeded.''.

(b) TECHNICAL AMENDMENTS.—

(1) The last sentence of section 4973(d) of such Code is amended by inserting ''or section 138(c)(3)'' after ''section 220(f)(3)''.

(2) Subsection (b) of section 220 of such Code is amended by adding at the end the following new paragraph:

''(7) MEDICARE ELIGIBLE INDIVIDUALS.—The limitation under this subsection for any month with respect to an individual shall be zero for the first month such individual is entitled to benefits under title XVIII of the Social Security Act and for each month thereafter.''.

(3) The table of sections for part III of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

''Sec. 138. Medicare Choice MSA.

''Sec. 139. Cross references to other Acts.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1998.

## CHAPTER 2—INTEGRATED LONG-TERM CARE PROGRAMS

### Subchapter A—Programs of All-Inclusive Care for the Elderly (PACE)

#### SEC. 5011. COVERAGE OF PACE UNDER THE MEDICARE PROGRAM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''PAYMENTS TO, AND COVERAGE OF BENEFITS UNDER, PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

''SEC. 1894. (a) RECEIPT OF BENEFITS THROUGH ENROLLMENT IN PACE PROGRAM; DEFINITIONS FOR PACE PROGRAM RELATED TERMS.—

''(1) BENEFITS THROUGH ENROLLMENT IN A PACE PROGRAM.—In accordance with this section, in the case of an individual who is entitled to benefits under part A or enrolled under part B and who is a PACE program eligible individual (as defined in paragraph (5)) with respect to a PACE program offered by a PACE provider under a PACE program agreement—

''(A) the individual may enroll in the program under this section; and

''(B) so long as the individual is so enrolled and in accordance with regulations—

''(i) the individual shall receive benefits under this title solely through such program; and

''(ii) the PACE provider is entitled to payment under and in accordance with this section and such agreement for provision of such benefits.

''(2) PACE PROGRAM DEFINED.—For purposes of this section and section 1932, the term 'PACE program' means a program of all-inclusive care for the elderly that meets the following requirements:

''(A) OPERATION.—The entity operating the program is a PACE provider (as defined in paragraph (3)).

''(B) COMPREHENSIVE BENEFITS.—The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

''(C) TRANSITION.—In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

''(3) PACE PROVIDER DEFINED.—

''(A) IN GENERAL.—For purposes of this section, the term 'PACE provider' means an entity that—

''(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986; and

''(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

''(B) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—Clause (i) of subparagraph (A) shall not apply—

''(i) to entities subject to a demonstration project waiver under subsection (h); and

''(ii) after the date the report under section 5013(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

''(4) PACE PROGRAM AGREEMENT DEFINED.—For purposes of this section, the term 'PACE program agreement' means, with respect to a PACE provider, an agreement, consistent with this section, section 1932 (if applicable), and regulations promulgated to carry out such sections, between the PACE provider and the Secretary, or an agreement between the PACE provider and a State administering agency for the operation of a PACE program by the provider under such sections.

''(5) PACE PROGRAM ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term 'PACE program eligible individual' means, with respect to a PACE program, an individual who—

''(A) is 55 years of age or older;

''(B) subject to subsection (c)(4), is determined under subsection (c) to require the level of care required under the State medicaid plan for coverage of nursing facility services;

''(C) resides in the service area of the PACE program; and

''(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii).

''(6) PACE PROTOCOL.—For purposes of this section, the term 'PACE protocol' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

''(7) PACE DEMONSTRATION WAIVER PROGRAM DEFINED.—For purposes of this section, the term 'PACE demonstration waiver program' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

''(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

''(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

''(8) STATE ADMINISTERING AGENCY DEFINED.—For purposes of this section, the term 'State administering agency' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under title XIX in the State) responsible for administering PACE program agreements under this section and section 1932 in the State.

''(9) TRIAL PERIOD DEFINED.—

''(A) IN GENERAL.—For purposes of this section, the term 'trial period' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

''(B) TREATMENT OF ENTITIES PREVIOUSLY OPERATING PACE DEMONSTRATION WAIVER PROGRAMS.—Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

''(10) REGULATIONS.—For purposes of this section, the term 'regulations' refers to interim final or final regulations promulgated under subsection (f) to carry out this section and section 1932.

''(b) SCOPE OF BENEFITS; BENEFICIARY SAFEGUARDS.—

''(1) IN GENERAL.—Under a PACE program agreement, a PACE provider shall—

''(A) provide to PACE program eligible individuals, regardless of source of payment and directly or under contracts with other entities, at a minimum—

''(i) all items and services covered under this title (for individuals enrolled under this section) and all items and services covered under title XIX, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under this title or such title, respectively; and

''(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

''(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

''(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

''(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

''(2) QUALITY ASSURANCE; PATIENT SAFEGUARDS.—The PACE program agreement shall require the PACE provider to have in effect at a minimum—

''(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations; and

''(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this title and Federal and State law that are designed for the protection of patients.

''(c) ELIGIBILITY DETERMINATIONS.—

''(1) IN GENERAL.—The determination of whether an individual is a PACE program eligible individual—

''(A) shall be made under and in accordance with the PACE program agreement; and

''(B) who is entitled to medical assistance under title XIX, shall be made (or who is not so entitled, may be made) by the State administering agency.

''(2) CONDITION.—An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who

*have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential eligible individuals.*

*''(3) ANNUAL ELIGIBILITY RECERTIFICATIONS.—*

*''(A) IN GENERAL.—Subject to subparagraph (B), the determination described in subsection (a)(5)(B) for an individual shall be reevaluated at least annually.*

*''(B) EXCEPTION.—The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases where the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the advanced age, severity of the advanced age, severity of chronic condition, or degree of impairment of functional capacity of the individual involved.*

*''(4) CONTINUATION OF ELIGIBILITY.—An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.*

*''(5) ENROLLMENT; DISENROLLMENT.—The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time. Such regulations and agreement shall provide that the PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term 'noncompliant behavior' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.*

*''(d) PAYMENTS TO PACE PROVIDERS ON A CAPITATED BASIS.—*

*''(1) IN GENERAL.—In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the Secretary shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section in the same manner and from the same sources as payments are made to an eligible organization under a risk-sharing contract under section 1876. Such payments shall be subject to adjustment in the manner described in section 1876(a)(1)(E).*

*''(2) CAPITATION AMOUNT.—The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be based upon payment rates established under section 1876 for risk-sharing contracts and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. Such amount under such an agreement shall be computed in a manner so that the total payment level for all PACE program eligible individuals enrolled under a program is less than the projected payment under this title for a comparable population not enrolled under a PACE program.*

*''(e) PACE PROGRAM AGREEMENT.—*

*''(1) REQUIREMENT.—*

*''(A) IN GENERAL.—The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1932, and regulations.*

*''(B) NUMERICAL LIMITATION.—*

*''(i) IN GENERAL.—The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—*

*''(I) 40 as of the date of the enactment of this section; or*

*''(II) as of each succeeding anniversary of such date, the numerical limitation under this subparagraph for the preceding year plus 20.*

*Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.*

*''(ii) TREATMENT OF CERTAIN PRIVATE, FOR-PROFIT PROVIDERS.—The numerical limitation in clause (i) shall not apply to a PACE provider that—*

*''(I) is operating under a demonstration project waiver under subsection (h); or*

*''(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii).*

*''(2) SERVICE AREA AND ELIGIBILITY.—*

*''(A) IN GENERAL.—A PACE program agreement for a PACE program—*

*''(i) shall designate the service area of the program;*

*''(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;*

*''(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);*

*''(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and*

*''(v) shall have such additional terms and conditions as the parties may agree to, provided that such terms and conditions are consistent with this section and regulations.*

*''(B) SERVICE AREA OVERLAP.—In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.*

*''(3) DATA COLLECTION; DEVELOPMENT OF OUTCOME MEASURES.—*

*''(A) DATA COLLECTION.—*

*''(i) IN GENERAL.—Under a PACE program agreement, the PACE provider shall—*

*''(I) collect data;*

*''(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and*

*''(III) make to the Secretary and the State administering agency reports that the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program under this Act.*

*''(ii) REQUIREMENTS DURING TRIAL PERIOD.—During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).*

*''(B) DEVELOPMENT OF OUTCOME MEASURES.—Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.*

*''(4) OVERSIGHT.—*

*''(A) ANNUAL, CLOSE OVERSIGHT DURING TRIAL PERIOD.—During the trial period (as defined in subsection (a)(9)) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—*

*''(i) an on-site visit to the program site;*

*''(ii) comprehensive assessment of a provider's fiscal soundness;*

*''(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;*

*''(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and*

*''(v) any other elements the Secretary or State agency considers necessary or appropriate.*

*''(B) CONTINUING OVERSIGHT.—After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.*

*''(C) DISCLOSURE.—The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.*

*''(5) TERMINATION OF PACE PROVIDER AGREEMENTS.—*

*''(A) IN GENERAL.—Under regulations—*

*''(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause; and*

*''(ii) a PACE provider may terminate an agreement after appropriate notice to the Secretary, the State agency, and enrollees.*

*''(B) CAUSES FOR TERMINATION.—In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—*

*''(i) the Secretary or State administering agency determines that—*

*''(I) there are significant deficiencies in the quality of care provided to enrolled participants; or*

*''(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1932; and*

*''(ii) the entity has failed to develop and successfully initiate, within 30 days of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.*

*''(C) TERMINATION AND TRANSITION PROCEDURES.—An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C).*

*''(6) SECRETARY'S OVERSIGHT; ENFORCEMENT AUTHORITY.—*

*''(A) IN GENERAL.—Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:*

*''(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.*

*''(ii) Withhold some or all further payments under the PACE program agreement under this*

section or section 1932 with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

''(iii) Terminate such agreement.

''(B) APPLICATION OF INTERMEDIATE SANCTIONS.—Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1876(i)(6)(B) or 1903(m)(5)(B) in the case of violations by the provider of the type described in section 1876(i)(6)(A) or 1903(m)(5)(A), respectively (in relation to agreements, enrollees, and requirements under this section or section 1932, respectively).

''(7) PROCEDURES FOR TERMINATION OR IMPOSITION OF SANCTIONS.—Under regulations, the provisions of section 1876(i)(9) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and an eligible organization under section 1876.

''(8) TIMELY CONSIDERATION OF APPLICATIONS FOR PACE PROGRAM PROVIDER STATUS.—In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

''(f) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall issue interim final or final regulations to carry out this section and section 1932.

''(2) USE OF PACE PROTOCOL.—

''(A) IN GENERAL.—In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

''(B) FLEXIBILITY.—In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1932, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

''(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

''(ii) The delivery of comprehensive, integrated acute and long-term care services.

''(iii) The interdisciplinary team approach to care management and service delivery.

''(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

''(v) The assumption by the provider of full financial risk.

''(3) APPLICATION OF CERTAIN ADDITIONAL BENEFICIARY AND PROGRAM PROTECTIONS.—

''(A) IN GENERAL.—In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of sections 1876 and 1903(m) relating to protection of beneficiaries and program integrity as would apply to eligible organizations under risk-sharing contracts under section 1876 and to health maintenance organizations under prepaid capitation agreements under section 1903(m).

''(B) CONSIDERATIONS.—In issuing such regulations, the Secretary shall—

''(i) take into account the differences between populations served and benefits provided under this section and under sections 1876 and 1903(m);

''(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

''(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this title or title XIX.

''(g) WAIVERS OF REQUIREMENTS.—With respect to carrying out a PACE program under this section, the following requirements of this title (and regulations relating to such requirements) are waived and shall not apply:

''(1) Section 1812, insofar as it limits coverage of institutional services.

''(2) Sections 1813, 1814, 1833, and 1886, insofar as such sections relate to rules for payment for benefits.

''(3) Sections 1814(a)(2)(B), 1814(a)(2)(C), and 1835(a)(2)(A), insofar as they limit coverage of extended care services or home health services.

''(4) Section 1861(i), insofar as it imposes a 3-day prior hospitalization requirement for coverage of extended care services.

''(5) Paragraphs (1) and (9) of section 1862(a), insofar as they may prevent payment for PACE program services to individuals enrolled under PACE programs.

''(h) DEMONSTRATION PROJECT FOR FOR-PROFIT ENTITIES.—

''(1) IN GENERAL.—In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) that a PACE provider may not be a for-profit, private entity.

''(2) SIMILAR TERMS AND CONDITIONS.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

''(B) NUMERICAL LIMITATION.—The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B).

''(i) MISCELLANEOUS PROVISIONS.—Nothing in this section or section 1932 shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A, or enrolled under part B, or eligible for medical assistance under title XIX.''.

***SEC. 5012. EFFECTIVE DATE; TRANSITION.***

(a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE DATE.—The Secretary of Health and Human Services shall promulgate regulations to carry out this subtitle in a timely manner. Such regulations shall be designed so that entities may establish and operate PACE programs under sections 1894 and 1932 of the Social Security Act (as added by sections 5011 and 5751 of this Act) for periods beginning not later than 1 year after the date of the enactment of this Act.

(b) EXPANSION AND TRANSITION FOR PACE DEMONSTRATION PROJECT WAIVERS.—

(1) EXPANSION IN CURRENT NUMBER OF DEMONSTRATION PROJECTS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, is amended—

(A) in paragraph (1), by inserting before the period at the end the following: '', except that the Secretary shall grant waivers of such requirements up to the applicable numerical limitation specified in section 1894(e)(1)(B) of the Social Security Act''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking '', including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk''; and

(ii) in subparagraph (C), by adding at the end the following: ''In granting further extensions, an organization shall not be required to provide for reporting of information which is only required because of the demonstration nature of the project.''.

(2) ELIMINATION OF REPLICATION REQUIREMENT.—Subparagraph (B) of paragraph (2) of such section shall not apply to waivers granted under such section after the date of the enactment of this Act.

(3) TIMELY CONSIDERATION OF APPLICATIONS.—In considering an application for waivers under such section before the effective date of repeals made under subsection (d), subject to the numerical limitation under the amendment made by paragraph (1), the application shall be deemed approved unless the Secretary of Health and Human Services, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information which is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(c) PRIORITY AND SPECIAL CONSIDERATION IN APPLICATION.—During the 3-year period beginning on the date of enactment of this Act:

(1) PROVIDER STATUS.—The Secretary of Health and Human Services shall give priority, in processing applications of entities to qualify as PACE programs under section 1894 or 1932 of the Social Security Act—

(A) first, to entities that are operating a PACE demonstration waiver program (as defined in section 1894(a)(7) of such Act); and

(B) then entities that have applied to operate such a program as of May 1, 1997.

(2) NEW WAIVERS.—The Secretary shall give priority, in the awarding of additional waivers under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986—

(A) to any entities that have applied for such waivers under such section as of May 1, 1997; and

(B) to any entity that, as of May 1, 1997, has formally contracted with a State to provide services for which payment is made on a capitated basis with an understanding that the entity was seeking to become a PACE provider.

(3) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications described in paragraph (1) and the awarding of waivers described in paragraph (2), to an entity which as of May 1, 1997 through formal activities (such as entering into contracts for feasibility studies) has indicated a specific intent to become a PACE provider.

(d) REPEAL OF CURRENT PACE DEMONSTRATION PROJECT WAIVER AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the following provisions of law are repealed:

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21).

(B) Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(C) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(2) DELAY IN APPLICATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the repeals made by paragraph (1) shall not apply to waivers granted before the initial effective date of regulations described in subsection (a).

(B) APPLICATION TO APPROVED WAIVERS.—Such repeals shall apply to waivers granted before such date only after allowing such organizations a transition period (of up to 24 months) in order to permit sufficient time for an orderly

*transition from demonstration project authority to general authority provided under the amendments made by this subtitle.*

***SEC. 5013. STUDY AND REPORTS.***

*(a) STUDY.—*

*(1) IN GENERAL.—The Secretary of Health and Human Services (in close consultation with State administering agencies, as defined in section 1894(a)(8) of the Social Security Act) shall conduct a study of the quality and cost of providing PACE program services under the medicare and medicaid programs under the amendments made by this subtitle.*

*(2) STUDY OF PRIVATE, FOR-PROFIT PROVIDERS.—Such study shall specifically compare the costs, quality, and access to services by entities that are private, for-profit entities operating under demonstration projects waivers granted under section 1894(h) of the Social Security Act with the costs, quality, and access to services of other PACE providers.*

*(b) REPORT.—*

*(1) IN GENERAL.—Not later than 4 years after the date of enactment of this Act, the Secretary shall provide for a report to Congress on the impact of such amendments on quality and cost of services. The Secretary shall include in such report such recommendations for changes in the operation of such amendments as the Secretary deems appropriate.*

*(2) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—The report shall include specific findings on whether any of the following findings is true:*

*(A) The number of covered lives enrolled with entities operating under demonstration project waivers under section 1894(h) of the Social Security Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).*

*(B) The population enrolled with such entities is less frail than the population enrolled with other PACE providers.*

*(C) Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other PACE providers.*

*(D) The application of such section has resulted in an increase in expenditures under the medicare or medicaid programs above the expenditures that would have been made if such section did not apply.*

*(c) INFORMATION INCLUDED IN ANNUAL RECOMMENDATIONS.—The Physician Payment Review Commission shall include in its annual recommendations under section 1845(b) of the Social Security Act (42 U.S.C. 1395w–1), and the Prospective Payment Review Commission shall include in its annual recommendations reported under section 1886(e)(3)(A) of such Act (42 U.S.C. 1395ww(e)(3)(A)), recommendations on the methodology and level of payments made to PACE providers under section 1894(d) of such Act and on the treatment of private, for-profit entities as PACE providers. References in the preceding sentence to the Physician Payment Review Commission and the Prospective Payment Review Commission shall be deemed to be references to the Medicare Payment Advisory Commission (MedPAC) established under section 5022(a) after the termination of the Physician Payment Review Commission and the Prospective Payment Review Commission provided for in section 5022(c)(2).*

***Subchapter B—Social Health Maintenance Organizations***

***SEC. 5015. SOCIAL HEALTH MAINTENANCE ORGANIZATIONS (SHMOS).***

*(a) EXTENSION OF DEMONSTRATION PROJECT AUTHORITIES.—Section 4018(b) of the Omnibus Budget Reconciliation Act of 1987 is amended—*

*(1) in paragraph (1), by striking ''1997'' and inserting ''2000'', and*

*(2) in paragraph (4), by striking ''1998'' and inserting ''2001''.*

*(b) EXPANSION OF CAP.—Section 13567(c) of the Omnibus Budget Reconciliation Act of 1993 is amended by striking ''12,000'' and inserting ''36,000''.*

*(c) REPORT ON INTEGRATION AND TRANSITION.—*

*(1) IN GENERAL.—The Secretary of Health and Human Services shall submit to Congress, by not later than January 1, 1999, a plan for the integration of health plans offered by social health maintenance organizations (including SHMO I and SHMO II sites developed under section 2355 of the Deficit Reduction Act of 1984 and under the amendment made by section 4207(b)(3)(B)(i) of OBRA–1990, respectively) and similar plans as an option under the Medicare Choice program under part C of title XVIII of the Social Security Act.*

*(2) PROVISION FOR TRANSITION.—Such plan shall include a transition for social health maintenance organizations operating under demonstration project authority under such section.*

*(3) PAYMENT POLICY.—The report shall also include recommendations on appropriate payment levels for plans offered by such organizations, including an analysis of the application of risk adjustment factors appropriate to the population served by such organizations.*

***Subchapter C—Other Programs***

***SEC. 5018. EXTENSION OF CERTAIN MEDICARE COMMUNITY NURSING ORGANIZATION DEMONSTRATION PROJECTS.***

*Notwithstanding any other provision of law, demonstration projects conducted under section 4079 of the Omnibus Budget Reconciliation Act of 1987 may be conducted for an additional period of 2 years, and the deadline for any report required relating to the results of such projects shall be not later than 6 months before the end of such additional period.*

***CHAPTER 3—COMMISSIONS***

***SEC. 5021. NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE.***

*(a) ESTABLISHMENT.—There is established a commission to be known as the National Bipartisan Commission on the Future of Medicare (in this section referred to as the ''Commission'').*

*(b) FINDINGS.—Congress finds that—*

*(1) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) provides essential health care coverage to this Nation's senior citizens and to individuals with disabilities;*

*(2) the Federal Hospital Insurance Trust Fund established under that Act has been spending more than it receives since 1995, and will be bankrupt in the year 2001;*

*(3) the Federal Hospital Insurance Trust Fund faces even greater solvency problems in the long run with the aging of the baby boom generation and the continuing decline in the number of workers paying into the medicare program for each medicare beneficiary;*

*(4) the trustees of the trust funds of the medicare program have reported that growth in spending within the Federal Supplementary Medical Insurance Trust Fund established under that Act is unsustainable; and*

*(5) expeditious action is needed in order to restore the financial integrity of the medicare program and to maintain this Nation's commitment to senior citizens and to individuals with disabilities.*

*(c) DUTIES OF THE COMMISSION.—The Commission shall—*

*(1) review and analyze the long-term financial condition of the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);*

*(2) identify problems that threaten the financial integrity of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under that title (42 U.S.C. 1395i, 1395t), including the extent to which current medicare update indexes do not accurately reflect inflation;*

*(3) analyze potential solutions to the problems identified under paragraph (2) that will ensure both the financial integrity of the medicare program and the provision of appropriate benefits under such program;*

*(4) make recommendations to restore the solvency of the Federal Hospital Insurance Trust Fund and the financial integrity of the Federal Supplementary Medical Insurance Trust Fund through the year 2030, when the last of the baby boomers reaches age 65;*

*(5) make recommendations for establishing the appropriate financial structure of the medicare program as a whole;*

*(6) make recommendations for establishing the appropriate balance of benefits covered and beneficiary contributions to the medicare program;*

*(7) make recommendations for the time periods during which the recommendations described in paragraphs (4), (5), and (6) should be implemented;*

*(8) make recommendations regarding the financing of graduate medical education (GME), including consideration of alternative broad-based sources of funding for such education and funding for institutions not currently eligible for such GME support under the medicare program that conduct approved graduate medical residency programs, such as children's hospitals;*

*(9) make recommendations on the feasibility of allowing individuals between the age of 62 and the medicare eligibility age to buy into the medicare program;*

*(10) make recommendations on the impact of chronic disease and disability trends on future costs and quality of services under the current benefit, financing, and delivery system structure of the medicare program; and*

*(11) review and analyze such other matters as the Commission deems appropriate.*

*(d) MEMBERSHIP.—*

*(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members, of whom—*

*(A) three shall be appointed by the President;*

*(B) six shall be appointed by the Majority Leader of the Senate, in consultation with the Minority Leader of the Senate, of whom not more than 4 shall be of the same political party; and*

*(C) six shall be appointed by the Speaker of the House of Representatives, in consultation with the Minority Leader of the House of Representatives, of whom not more than 4 shall be of the same political party.*

*(2) COMPTROLLER GENERAL.—The Comptroller General of the United States shall advise the Commission on the methodology to be used in identifying problems and analyzing potential solutions in accordance with the duties of the Commission described in subsection (c).*

*(3) TERMS OF APPOINTMENT.—The members shall serve on the Commission for the life of the Commission.*

*(4) MEETINGS.—The Commission shall locate its headquarters in the District of Columbia, and shall meet at the call of the Chairperson.*

*(5) QUORUM.—Ten members of the Commission shall constitute a quorum, but a lesser number may hold hearings.*

*(6) CHAIRPERSON.—The Speaker of the House of Representatives, in consultation with the Majority Leader of the Senate, shall designate 1 of the members appointed under paragraph (1) as Chairperson of the Commission.*

*(7) VACANCIES.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made not later than 30 days after the Commission is given notice of the vacancy.*

*(8) COMPENSATION.—Members of the Commission shall receive no additional pay, allowances, or benefits by reason of their service on the Commission.*

*(9) EXPENSES.—Each member of the Commission shall receive travel expenses and per diem in lieu of subsistence in accordance with sections 5702 and 5703 of title 5, United States Code.*

*(e) STAFF AND SUPPORT SERVICES.—*

*(1) EXECUTIVE DIRECTOR.—*

*(A) APPOINTMENT.—The Chairperson shall appoint an executive director of the Commission.*

*(B) COMPENSATION.—The executive director shall be paid the rate of basic pay for level V of the Executive Schedule.*

*(2) STAFF.—With the approval of the Commission, the executive director may appoint such personnel as the executive director considers appropriate.*

*(3) APPLICABILITY OF CIVIL SERVICE LAWS.—The staff of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).*

*(4) EXPERTS AND CONSULTANTS.—With the approval of the Commission, the executive director may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.*

*(5) STAFF OF FEDERAL AGENCIES.—Upon the request of the Commission, the head of any Federal agency may detail any of the personnel of such agency to the Commission to assist in carrying out the duties of the Commission.*

*(6) OTHER RESOURCES.—The Commission shall have reasonable access to materials, resources, statistical data, and other information from the Library of Congress and agencies and elected representatives of the executive and legislative branches of the Federal Government. The Chairperson of the Commission shall make requests for such access in writing when necessary.*

*(7) PHYSICAL FACILITIES.—The Administrator of the General Services Administration shall locate suitable office space for the operation of the Commission. The facilities shall serve as the headquarters of the Commission and shall include all necessary equipment and incidentals required for the proper functioning of the Commission.*

*(f) POWERS OF COMMISSION.—*

*(1) HEARINGS.—The Commission may conduct public hearings or forums at the discretion of the Commission, at any time and place the Commission is able to secure facilities and witnesses, for the purpose of carrying out the duties of the Commission.*

*(2) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.*

*(3) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.*

*(g) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit a report to the President and Congress which shall contain a detailed statement of the recommendations, findings, and conclusions of the Commission.*

*(h) TERMINATION.—The Commission shall terminate on the date which is 30 days after the date the Commission submits its report to the President and to Congress under subsection (g).*

*(i) FUNDING.—There is authorized to be appropriated to the Commission such sums as are necessary to carry out the purposes of this section. Sums appropriated under this subsection shall be paid equally from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t).*

***SEC. 5022. MEDICARE PAYMENT ADVISORY COMMISSION.***

*(a) IN GENERAL.—Title XVIII is amended by inserting after section 1804 the following new section:*

*''MEDICARE PAYMENT ADVISORY COMMISSION*

*''SEC. 1805. (a) ESTABLISHMENT.—There is hereby established the Medicare Payment Advisory Commission (in this section referred to as the 'Commission').*

*''(b) DUTIES.—*

*''(1) REVIEW OF PAYMENT POLICIES AND ANNUAL REPORTS.—The Commission shall—*

*''(A) review payment policies under this title, including the topics described in paragraph (2);*

*''(B) make recommendations to Congress concerning such payment policies;*

*''(C) by not later than March 1 of each year (beginning with 1998), submit a report to Congress containing the results of such reviews and its recommendations concerning such policies; and*

*''(D) by not later than June 1 of each year (beginning with 1998), submit a report to Congress containing an examination of issues affecting the medicare program, including the implications of changes in health care delivery in the United States and in the market for health care services on the medicare program.*

*''(2) SPECIFIC TOPICS TO BE REVIEWED.—*

*''(A) MEDICARE CHOICE PROGRAM.—Specifically, the Commission shall review, with respect to the Medicare Choice program under part C, the following:*

*''(i) The methodology for making payment to plans under such program, including the making of differential payments and the distribution of differential updates among different payment areas.*

*''(ii) The mechanisms used to adjust payments for risk and the need to adjust such mechanisms to take into account health status of beneficiaries.*

*''(iii) The implications of risk selection both among Medicare Choice organizations and between the Medicare Choice option and the traditional medicare fee-for-service option.*

*''(iv) The development and implementation of mechanisms to assure the quality of care for those enrolled with Medicare Choice organizations.*

*''(v) The impact of the Medicare Choice program on access to care for medicare beneficiaries.*

*''(vi) Other major issues in implementation and further development of the Medicare Choice program.*

*''(B) TRADITIONAL MEDICARE FEE-FOR-SERVICE SYSTEM.—Specifically, the Commission shall review payment policies under parts A and B, including—*

*''(i) the factors affecting expenditures for services in different sectors, including the process for updating hospital, skilled nursing facility, physician, and other fees,*

*''(ii) payment methodologies, and*

*''(iii) their relationship to access and quality of care for medicare beneficiaries.*

*''(C) INTERACTION OF MEDICARE PAYMENT POLICIES WITH HEALTH CARE DELIVERY GENERALLY.—Specifically, the Commission shall review the effect of payment policies under this title on the delivery of health care services other than under this title and assess the implications of changes in health care delivery in the United States and in the general market for health care services on the medicare program.*

*''(3) COMMENTS ON CERTAIN SECRETARIAL REPORTS.—If the Secretary submits to Congress (or a committee of Congress) a report that is required by law and that relates to payment policies under this title, the Secretary shall transmit a copy of the report to the Commission. The Commission shall review the report and, not later than 6 months after the date of submittal of the Secretary's report to Congress, shall submit to the appropriate committees of Congress written comments on such report. Such comments may include such recommendations as the Commission deems appropriate.*

*''(4) AGENDA AND ADDITIONAL REVIEWS.—The Commission shall consult periodically with the chairmen and ranking minority members of the appropriate committees of Congress regarding the Commission's agenda and progress towards achieving the agenda. The Commission may conduct additional reviews, and submit additional reports to the appropriate committees of Congress, from time to time on such topics relating to the program under this title as may be requested by such chairmen and members and as the Commission deems appropriate.*

*''(5) AVAILABILITY OF REPORTS.—The Commission shall transmit to the Secretary a copy of each report submitted under this subsection and shall make such reports available to the public.*

*''(6) APPROPRIATE COMMITTEES OF CONGRESS.—For purposes of this section, the term 'appropriate committees of Congress' means the Committees on Ways and Means and Commerce of the House of Representatives and the Committee on Finance of the Senate.*

*''(c) MEMBERSHIP.—*

*''(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of 15 members appointed by the Comptroller General.*

*''(2) QUALIFICATIONS.—*

*''(A) IN GENERAL.—The membership of the Commission shall include individuals with national recognition for their expertise in health finance and economics, actuarial science, health facility management, health plans and integrated delivery systems, reimbursement of health facilities, allopathic and osteopathic physicians, and other providers of health services, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives.*

*''(B) INCLUSION.—The membership of the Commission shall include (but not be limited to) physicians and other health professionals, employers, third-party payers, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research and expertise in outcomes and effectiveness research and technology assessment. Such membership shall also include representatives of consumers and the elderly.*

*''(C) MAJORITY NONPROVIDERS.—Individuals who are directly involved in the provision, or management of the delivery, of items and services covered under this title shall not constitute a majority of the membership of the Commission.*

*''(D) ETHICAL DISCLOSURE.—The Comptroller General shall establish a system for public disclosure by members of the Commission of financial and other potential conflicts of interest relating to such members.*

*''(3) TERMS.—*

*''(A) IN GENERAL.—The terms of members of the Commission shall be for 3 years except that the Comptroller General shall designate staggered terms for the members first appointed.*

*''(B) VACANCIES.—Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor has taken office. A vacancy in the Commission shall be filled in the manner in which the original appointment was made.*

*''(4) COMPENSATION.—While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and the member's regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, United States Code, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.*

''(5) CHAIRMAN; VICE CHAIRMAN.—The Comptroller General shall designate a member of the Commission, at the time of appointment of the member, as Chairman and a member as Vice Chairman for that term of appointment.

''(6) MEETINGS.—The Commission shall meet at the call of the Chairman.

''(d) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

''(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out its duties (without regard to the provisions of title 5, United States Code, governing appointments in the competitive service);

''(2) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

''(3) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 3709 of the Revised Statutes (41 U.S.C. 5));

''(4) make advance, progress, and other payments which relate to the work of the Commission;

''(5) provide transportation and subsistence for persons serving without compensation; and

''(6) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

''(e) POWERS.—

''(1) OBTAINING OFFICIAL DATA.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of that department or agency shall furnish that information to the Commission on an agreed upon schedule.

''(2) DATA COLLECTION.—In order to carry out its functions, the Commission shall—

''(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

''(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate, and

''(C) adopt procedures allowing any interested party to submit information for the Commission's use in making reports and recommendations.

''(3) ACCESS OF GAO TO INFORMATION.—The Comptroller General shall have unrestricted access to all deliberations, records, and nonproprietary data of the Commission, immediately upon request.

''(4) PERIODIC AUDIT.—The Commission shall be subject to periodic audit by the Comptroller General.

''(f) AUTHORIZATION OF APPROPRIATIONS.—

''(1) REQUEST FOR APPROPRIATIONS.—The Commission shall submit requests for appropriations in the same manner as the Comptroller General submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Comptroller General.

''(2) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Sixty percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 40 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''.

(b) ABOLITION OF PROPAC AND PPRC.—

(1) PROPAC.—

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

(i) by striking paragraphs (2) and (6); and

(ii) in paragraph (3), by striking ''(A) The Commission'' and all that follows through ''(B)''.

(B) CONFORMING AMENDMENT.—Section 1862 (42 U.S.C. 1395y) is amended by striking ''Prospective Payment Assessment Commission'' each place it appears in subsection (a)(1)(D) and subsection (i) and inserting ''Medicare Payment Advisory Commission''.

(2) PPRC.—

(A) IN GENERAL.—Title XVIII is amended by striking section 1845 (42 U.S.C. 1395w–1).

(B) ELIMINATION OF CERTAIN REPORTS.—Section 1848 (42 U.S.C. 1395w–4) is amended—

(i) by striking subparagraph (F) of subsection (d)(2),

(ii) by striking subparagraph (B) of subsection (f)(1), and

(iii) in subsection (f)(3), by striking ''Physician Payment Review Commission,''.

(C) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w–4) is amended by striking ''Physician Payment Review Commission'' and inserting ''Medicare Payment Advisory Commission'' each place it appears in subsections (c)(2)(B)(iii), (g)(6)(C), and (g)(7)(C).

(c) EFFECTIVE DATE; TRANSITION.—

(1) IN GENERAL.—The Comptroller General shall first provide for appointment of members to the Medicare Payment Advisory Commission (in this subsection referred to as ''MedPAC'') by not later than September 30, 1997.

(2) TRANSITION.—As quickly as possible after the date a majority of members of MedPAC are first appointed, the Comptroller General, in consultation with the Prospective Payment Assessment Commission (in this subsection referred to as ''ProPAC'') and the Physician Payment Review Commission (in this subsection referred to as ''PPRC''), shall provide for the termination of the ProPAC and the PPRC. As of the date of termination of the respective Commissions, the amendments made by paragraphs (1) and (2), respectively, of subsection (b) become effective. The Comptroller General, to the extent feasible, shall provide for the transfer to the MedPAC of assets and staff of the ProPAC and the PPRC, without any loss of benefits or seniority by virtue of such transfers. Fund balances available to the ProPAC or the PPRC for any period shall be available to the MedPAC for such period for like purposes.

(3) CONTINUING RESPONSIBILITY FOR REPORTS.—The MedPAC shall be responsible for the preparation and submission of reports required by law to be submitted (and which have not been submitted by the date of establishment of the MedPAC) by the ProPAC and the PPRC, and, for this purpose, any reference in law to either such Commission is deemed, after the appointment of the MedPAC, to refer to the MedPAC.

## CHAPTER 4—MEDIGAP PROTECTIONS

### SEC. 5031. MEDIGAP PROTECTIONS.

(a) GUARANTEEING ISSUE WITHOUT PREEXISTING CONDITIONS FOR CONTINUOUSLY COVERED INDIVIDUALS.—Section 1882(s) (42 U.S.C. 1395ss(s)) is amended—

(1) in paragraph (3), by striking ''paragraphs (1) and (2)'' and inserting ''this subsection'',

(2) by redesignating paragraph (3) as paragraph (4), and

(3) by inserting after paragraph (2) the following new paragraph:

''(3)(A) The issuer of a medicare supplemental policy—

''(i) may not deny or condition the issuance or effectiveness of a medicare supplemental policy described in subparagraph (C) that is offered and is available for issuance to new enrollees by such issuer;

''(ii) may not discriminate in the pricing of such policy, because of health status, claims experience, receipt of health care, or medical condition; and

''(iii) may not impose an exclusion of benefits based on a pre-existing condition under such policy,

in the case of an individual described in subparagraph (B) who seeks to enroll under the policy not later than 63 days after the date of the termination of enrollment described in such subparagraph and who submits evidence of the date of termination or disenrollment along with the application for such medicare supplemental policy.

''(B) An individual described in this subparagraph is an individual described in any of the following clauses:

''(i) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under this title and the plan terminates or ceases to provide all such supplemental health benefits to the individual.

''(ii) The individual is enrolled with a Medicare Choice organization under a Medicare Choice plan under part C, and there are circumstances permitting discontinuance of the individual's election of the plan under section 1851(e)(4).

''(iii) The individual is enrolled with an eligible organization under a contract under section 1876, a similar organization operating under demonstration project authority, with an organization under an agreement under section 1833(a)(1)(A), or with an organization under a policy described in subsection (t), and such enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section 1851(c)(4) and, in the case of a policy described in subsection (t), there is no provision under applicable State law for the continuation of coverage under such policy.

''(iv) The individual is enrolled under a medicare supplemental policy under this section and such enrollment ceases because—

''(I) of the bankruptcy or insolvency of the issuer or because of other involuntary termination of coverage or enrollment under such policy and there is no provision under applicable State law for the continuation of such coverage;

''(II) the issuer of the policy substantially violated a material provision of the policy; or

''(III) the issuer (or an agent or other entity acting on the issuer's behalf) materially misrepresented the policy's provisions in marketing the policy to the individual.

''(v) The individual—

''(I) was enrolled under a medicare supplemental policy under this section,

''(II) subsequently terminates such enrollment and enrolls, for the first time, with any Medicare Choice organization under a Medicare Choice plan under part C, any eligible organization under a contract under section 1876, any similar organization operating under demonstration project authority, any organization under an agreement under section 1833(a)(1)(A), or any policy described in subsection (t), and

''(III) the subsequent enrollment under subclause (II) is terminated by the enrollee during the first 12 months of such enrollment.

''(vi) The individual, upon first becoming eligible for medicare at age 65, enrolls in a Medicare Choice plan and within 12 months of such enrollment, disenrolls from such plan.

''(C)(i) Subject to clauses (ii), a medicare supplemental policy described in this subparagraph is a policy the benefits under which are comparable or lessor in relation to the benefits under the plan, policy, or contract described in the applicable clause of subparagraph (B).

''(ii) Only for purposes of an individual described in subparagraph (B)(vi), a medicare supplemental policy described in this subparagraph shall include any medicare supplemental policy.

''(D) At the time of an event described in subparagraph (B) because of which an individual ceases enrollment or loses coverage or benefits under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, the insurer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the rights of the individual, and obligations of issuers of medicare supplemental policies, under subparagraph (A).''.

(b) LIMITATION ON IMPOSITION OF PRE-EXISTING CONDITION EXCLUSION DURING INITIAL OPEN ENROLLMENT PERIOD.—Section 1882(s)(2)(42 U.S.C. 1395ss(s)(2)) is amended—

(1) in subparagraph (B), by striking ''subparagraph (C)'' and inserting ''subparagraphs (C) and (D)'', and

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

''(D) In the case of a policy issued during the 6-month period described in subparagraph (A) to an individual who is 65 years of age or older as of the date of issuance and who as of the date of the application for enrollment has a continuous period of creditable coverage (as defined in section 2701(c) of the Public Health Service Act) of—

''(i) at least 6 months, the policy may not exclude benefits based on a pre-existing condition; or

''(ii) less than 6 months, if the policy excludes benefits based on a preexisting condition, the policy shall reduce the period of any preexisting condition exclusion by the aggregate of the periods of creditable coverage (if any, as so defined) applicable to the individual as of the enrollment date.

The Secretary shall specify the manner of the reduction under clause (ii), based upon the rules used by the Secretary in carrying out section 2701(a)(3) of such Act.''.

(c) EXTENDING 6-MONTH INITIAL ENROLLMENT PERIOD TO NON-ELDERLY MEDICARE BENEFICIARIES.—Section 1882(s)(2)(A)(ii) of (42 U.S.C. 1395ss(s)(2)(A)) is amended by striking ''is submitted'' and all that follows and inserting the following: ''is submitted—

''(I) before the end of the 6-month period beginning with the first month 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

''(II) at the time the individual first becomes eligible for benefits under part A pursuant to section 226(b) and is enrolled for benefits under part B, before the end of the 6-month period beginning with the first month as of the first day on which the individual is so eligible and so enrolled.''.

(d) EFFECTIVE DATES.—

(1) GUARANTEED ISSUE.—The amendment made by subsection (a) shall take effect on July 1, 1998.

(2) LIMIT ON PREEXISTING CONDITION EXCLUSIONS.—The amendment made by subsection (b) shall apply to policies issued on or after July 1, 1998.

(3) NONELDERLY MEDICARE BENEFICIARIES.—

(A) IN GENERAL.—The amendment made by subsection (c) shall apply to policies issued on and after July 1, 1998.

(B) TRANSITION RULE.—In the case of an individual who first became eligible for benefits under part A of title XVIII of the Social Security Act pursuant to section 226(b) of such Act and enrolled for benefits under part B of such title before July 1, 1998, the 6-month period described in section 1882(s)(2)(A) of such Act shall begin on July 1, 1998. Before July 1, 1998, the Secretary of Health and Human Services shall notify any individual described in the previous sentence of their rights in connection with medicare supplemental policies under section 1882 of such Act, by reason of the amendment made by subsection (c).

(e) 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 9 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 NAIC Model regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as modified pursuant to section 171(m)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432) and as modified pursuant to section 1882(d)(3)(A)(vi)(IV) of the Social Security Act, as added by section 271(a) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(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 revised regulation incorporating the modifications shall be considered to be the appropriate Regulation for the purposes of such section.

(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 1999 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 July 1, 1999. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

**SEC. 5032. ADDITION OF HIGH DEDUCTIBLE MEDIGAP POLICY.**

(a) IN GENERAL.—Section 1882(p) (42 U.S.C. 1395ss(p)) is amended by adding at the end the following:

''(11)(A) On and after the date specified in subparagraph (C)—

''(i) each State with an approved regulatory program, and

''(ii) in the case of a State without an approved regulatory program, the Secretary,

shall, in addition to the 10 policies allowed under paragraph (2)(C), allow at least 1 other policy described in subparagraph (B).

''(B)(i) A policy is described in this subparagraph if it consists of—

''(I) one of the 10 benefit packages described in paragraph (2)(C), and

''(II) a high deductible feature.

''(ii) For purposes of clause (i), a high deductible feature is one which requires the beneficiary of the policy to pay annual out-of-pocket expenses (other than premiums) of $1,500 before the policy begins payment of benefits.

''(C)(i) Subject to clause (ii), the date described in this subparagraph is one year after the date of the enactment of this paragraph.

''(ii) In the case of a State which the Secretary identifies as—

''(I) requiring State legislation (other than legislation appropriating funds) in order to meet the requirements of this paragraph, but

''(II) having a legislature which is not scheduled to meet in 1997 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1998. 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.''.

(b) CONFORMING AMENDMENT.—Section 1882(p)(2)(C) (42 U.S.C. 1395ss(p)(2)(C)) is amended by inserting ''or (11)'' after ''paragraph (4)(B)''.

## CHAPTER 5—DEMONSTRATIONS

### Subchapter A—Medicare Choice Competitive Pricing Demonstration Project

### PART I—IN GENERAL

**SEC. 5041. MEDICARE CHOICE COMPETITIVE PRICING DEMONSTRATION PROJECT.**

(a) ESTABLISHMENT.—The Secretary of Health and Human Services (in this subchapter referred to as the ''Secretary'') shall, beginning January 1, 1999, conduct demonstration projects in applicable areas (in this section referred to as the ''project'') for the purpose of—

(1) applying a pricing methodology for payments to Medicare Choice organizations under part C of title XVIII of the Social Security Act (as amended by section 5001 of this Act) that uses the competitive market approach described in section 5042;

(2) applying a benefit structure and beneficiary premium structure described in section 5043;

(3) applying the information and quality programs under part II; and

(4) evaluating the effects of the methodology and structures described in the preceding paragraphs on medicare fee-for-service spending under parts A and B of the Social Security Act in the project area.

(b) APPLICABLE AREA DEFINED.—

(1) IN GENERAL.—In subsection (a), the term ''applicable area'' means, as determined by the Secretary—

(A) 10 urban areas with respect to which less than 25 percent of medicare beneficiaries are enrolled with an eligible organization under section 1876 of the Social Security Act (42 U.S.C. 1395mm); and

(B) 3 rural areas not described in paragraph (1).

(2) TREATMENT AS MEDICARE CHOICE PAYMENT AREA.—For purposes of this subchapter and part C of title XVIII of the Social Security Act, any applicable area shall be treated as a Medicare Choice payment area (hereinafter referred to as the ''applicable Medicare Choice payment area'').

(c) TECHNICAL ADVISORY GROUP.—Upon the selection of an area for inclusion in the project, the Secretary shall appoint a technical advisory group, composed of representatives of Medicare Choice organizations, medicare beneficiaries, employers, and other persons in the area affected by the project who have technical expertise relative to the design and implementation of the project to advise the Secretary concerning how the project will be implemented in the area.

(d) EVALUATION.—

(1) IN GENERAL.—Not later than December 31, 2001, the Secretary shall submit to the President a report regarding the demonstration projects conducted under this section.

(2) CONTENTS OF REPORT.—The report described in paragraph (1) shall include the following:

(A) A description of the demonstration projects conducted under this section.

(B) An evaluation of the effectiveness of the demonstration projects conducted under this section and any legislative recommendations determined appropriate by the Secretary.

(C) Any other information regarding the demonstration projects conducted under this section that the Secretary determines to be appropriate.

*(D) An evaluation as to whether the method of payment under section 5042 which was used in the demonstration projects for payment to Medicare Choice plans should be extended to the entire medicare population and if such evaluation determines that such method should not be extended, legislative recommendations to modify such method so that it may be applied to the entire medicare population.*

*(3) SUBMISSION TO CONGRESS.—The President shall submit the report under paragraph (2) to the Congress and if the President determines appropriate, any legislative recommendations for extending the project to the entire medicare population.*

*(e) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of titles XI, XVIII, and XIX of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.*

***SEC. 5042. DETERMINATION OF ANNUAL MEDICARE CHOICE CAPITATION RATES.***

*(a) IN GENERAL.—In the case of an applicable Medicare Choice payment area within which a project is being conducted under section 5041, the annual Medicare Choice capitation rate under part C of title XVIII of the Social Security Act for Medicare Choice plans within such area shall be the standardized payment amount determined under this section rather than the amount determined under section 1853 of such Act.*

*(b) DETERMINATION OF STANDARDIZED PAYMENT AMOUNT.—*

*(1) SUBMISSION AND CHARGING OF PREMIUMS.—*

*(A) IN GENERAL.—Not later than June 1 of each calendar year, each Medicare Choice organization offering one or more Medicare Choice plans in an applicable Medicare Choice payment area shall file with the Secretary, in a form and manner and at a time specified by the Secretary, a bid which contains the amount of the monthly premium for coverage under each such Medicare Choice plan.*

*(B) UNIFORM PREMIUM.—The premiums charged by a Medicare Choice plan sponsor under this part may not vary among individuals who reside in the same applicable Medicare Choice payment area.*

*(C) TERMS AND CONDITIONS OF IMPOSING PREMIUMS.—Each Medicare Choice organization shall permit the payment of premiums on a monthly basis.*

*(2) ANNOUNCEMENT OF STANDARDIZED PAYMENT AMOUNT.—*

*(A) AUTHORITY TO NEGOTIATE.—After bids are submitted under paragraph (1), the Secretary may negotiate with Medicare Choice organizations in order to modify such bids if the Secretary determined that the bids do not provide enough revenues to ensure the plan's actuarial soundness, are too high relative to the applicable Medicare Choice payment area, foster adverse selection, or otherwise require renegotiation under this paragraph.*

*(B) IN GENERAL.—Not later than July 31 of each calendar year (beginning with 1998), the Secretary shall determine, and announce in a manner intended to provide notice to interested parties, a standardized payment amount determined in accordance with this paragraph for the following calendar year for each applicable Medicare Choice payment area.*

*(3) CALCULATION OF PAYMENT AMOUNTS.—*

*(A) IN GENERAL.—The standardized payment amount for a calendar year after 1998 for any applicable Medicare Choice payment area shall be equal to the maximum premium determined for such area under subparagraph (B).*

*(B) MAXIMUM PREMIUM.—The maximum premium for any applicable Medicare Choice payment area shall be equal to the amount determined under subparagraph (C) for the payment area, but in no case shall such amount be greater than the sum of—*

*(i) the average per capita amount, as determined by the Secretary as appropriate for the population eligible to enroll in Medicare Choice plans in such payment area, for such calendar year that the Secretary would have expended for an individual in such payment area enrolled under the medicare fee-for-service program under parts A and B, plus*

*(ii) the amount equal to the actuarial value of deductibles, coinsurance, and copayments charged an individual for services provided under the medicare fee-for-service program (as determined by the Secretary).*

*(C) DETERMINATION OF AMOUNT.—*

*(i) IN GENERAL.—The Secretary shall determine for each applicable Medicare Choice payment area for each calendar year an amount equal to the average of the bids (weighted based on capacity) submitted to the Secretary under paragraph (1)(A) for that payment area.*

*(ii) DISREGARD CERTAIN PLANS.—In determining the amount under clause (i), the Secretary may disregard any plan that the Secretary determines would unreasonably distort the amount determined under such subparagraph.*

*(4) ADJUSTMENTS FOR PAYMENTS TO PLAN SPONSORS.—*

*(A) IN GENERAL.—For purposes of determining the amount of payment under part C of title XVIII of the Social Security Act to a Medicare Choice organization with respect to any Medicare Choice eligible individual enrolled in a Medicare Choice plan of the sponsor, the standardized payment amount for the applicable Medicare Choice payment area and the premium charged by the plan sponsor shall be adjusted with respect to such individual for such risk factors as age, disability status, gender, institutional status, health status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.*

*(B) RECOMMENDATIONS.—*

*(i) IN GENERAL.—In addition to any other duties required by law, the Physician Payment Review Commission and the Prospective Payment Assessment Commission (or their successors) shall each develop recommendations on—*

*(I) the risk factors that the Secretary should use in adjusting the standardized payment amount and premium under subparagraph (A), and*

*(II) the methodology that the Secretary should use in determining the risk factors to be used in adjusting the standardized payment amount and premium under subparagraph (A).*

*(ii) TIME.—The recommendations described in clause (i) shall be developed not later than January 1, 1999.*

*(iii) ANNUAL REPORT.—The Physician Payment Review Commission and the Prospective Payment Assessment Commission (or their successors) shall include the recommendations described in clause (i) in their respective annual reports to Congress.*

*(c) PAYMENTS TO PLAN SPONSORS.—*

*(1) MONTHLY PAYMENTS.—*

*(A) IN GENERAL.—Subject to paragraph (4), for each individual enrolled with a plan under this subchapter, the Secretary shall make monthly payments in advance to the Medicare Choice organization of the Medicare Choice plan with which the individual is enrolled in an amount equal to 1/12 of the amount determined under paragraph (2).*

*(B) RETROACTIVE ADJUSTMENTS.—The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.*

*(2) AMOUNT OF PAYMENT TO MEDICARE CHOICE PLANS.—The amount determined under this paragraph with respect to any individual shall be equal to the sum of—*

*(A) the lesser of—*

*(i) the standardized payment amount for the applicable Medicare Choice payment area, as adjusted for such individual under subsection (a)(4), or*

*(ii) the premium charged by the plan for such individual, as adjusted for such individual under section (a)(4), minus*

*(B) the amount such individual paid to the plan pursuant to section 5043 (relating to 10 percent of the premium).*

*(3) PAYMENTS FROM TRUST FUNDS.—The payment to a Medicare Choice organization or to a Medicare Choice account under this section for a medicare-eligible individual shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund in such proportion as the Secretary determines reflects the relative weight that benefits under parts A and B are representative of the actuarial value of the total benefits under this part.*

*(4) LIMITATION ON AMOUNTS AN OUT-OF-PLAN PHYSICIAN OR OTHER ENTITY MAY COLLECT.—A physician or other entity (other than a provider of services) that does not have a contract establishing payment amounts for services furnished to an individual enrolled under this subchapter with a Medicare Choice organization shall accept as payment in full for services that are furnished to such an individual the amounts that the physician or other entity could collect if the individual were not so enrolled. Any penalty or other provision of law that applies to such a payment with respect to an individual entitled to benefits under this title (but not enrolled with a Medicare Choice organization under this part) also applies with respect to an individual so enrolled.*

*(d) OFFICE OF COMPETITION.—*

*(1) ESTABLISHMENT.—There is established within the Department of Health and Human Services an office to be known as the 'Office of Competition'.*

*(2) DIRECTOR.—The Secretary shall appoint the Director of the Office of Competition.*

*(3) DUTIES.—*

*(A) IN GENERAL.—The Director shall administer this subchapter and so much of part C of title XVIII of the Social Security Act as relates to this subchapter.*

*(B) TRANSFER AUTHORITY.—The Secretary shall transfer such personnel, administrative support systems, assets, records, funds, and other resources in the Health Care Financing Administration to the Office of Competition as are used in the administration of section 1876 and as may be required to implement the provisions of this part promptly and efficiently.*

*(4) USE OF NON-FEDERAL ENTITIES.—The Secretary shall, to the maximum extent feasible, enter into contracts with appropriate non-Federal entities to carry out activities under this subchapter.*

***SEC. 5043. BENEFITS AND BENEFICIARY PREMIUMS.***

*(a) BENEFITS PROVIDED TO INDIVIDUALS.—*

*(1) BASIC BENEFIT PLAN.—Each Medicare Choice plan in an applicable Medicare Choice payment area shall provide to members enrolled under this subchapter, through providers and other persons that meet the applicable requirements of title XVIII of the Social Security Act and part A of title XI of such Act—*

*(A) those items and services covered under parts A and B of title XVIII of such Act which are available to individuals residing in such area, subject to nominal copayments as determined by the Secretary,*

*(B) prescription drugs, subject to such limits as established by the Secretary, and*

*(C) additional health services as the Secretary may approve.*

*(2) SUPPLEMENTAL BENEFITS.—*

*(A) IN GENERAL.—Each Medicare Choice plan may offer any of the optional supplemental benefit plans described in subparagraph (B) to an individual enrolled in the basic benefit plan offered by such organization under this subchapter for an additional premium amount. If*

*the supplemental benefits are offered only to individuals enrolled in the sponsor's plan under this subchapter, the additional premium amount shall be the same for all enrolled individuals in the applicable Medicare Choice payment area. Such benefits may be marketed and sold by the Medicare Choice organization outside of the enrollment process described in part C of title XVIII of the Social Security Act.*

*(B) OPTIONAL SUPPLEMENTAL BENEFIT PLANS DESCRIBED.—The Secretary shall provide for 2 optional supplemental benefit plans. Such plans shall include such standardized items and services that the Secretary determines must be provided to enrollees of such plans described in order to offer the plans to Medicare Choice eligible individuals.*

*(C) LIMITATION.—A Medicare Choice organization may not offer an optional benefit plan to a Medicare Choice eligible individual unless such individual is enrolled in a basic benefit plan offered by such organization.*

*(D) LIMITATION ON PREMIUM.—If a Medicare Choice organization provides to individuals enrolled in a Medicare Choice plan supplemental benefits described in subparagraph (A), the sum of—*

*(i) the annual premiums for such benefits, plus*

*(ii) the actuarial value of any deductibles, coinsurance, and copayments charged with respect to such benefits for the year,*

*shall not exceed the amount that would have been charged for a plan in the applicable Medicare Choice payment area which is not a Medicare Choice plan (adjusted in such manner as the Secretary may prescribe to reflect that only medicare beneficiaries are enrolled in such plan). The Secretary shall negotiate the limitation under this subparagraph with each plan to which this paragraph applies.*

*(3) OTHER RULES.—Rules similar to rules of paragraphs (3) and (4) of section 1852 of the Social Security Act (relating to national coverage determinations and secondary payor provisions) shall apply for purposes of this subchapter.*

*(b) PREMIUM REQUIREMENTS FOR BENEFICIARIES.—*

*(1) PREMIUM DIFFERENTIALS.—If a Medicare Choice eligible individual enrolls in a Medicare Choice plan under this subchapter, the individual shall be required to pay—*

*(A) 10 percent of the plan's premium;*

*(B) if the premium of the plan is higher than the standardized payment amount (as determined under section 5042), 100 percent of such difference; and*

*(C) an amount equal to cost-sharing under the medicare fee-for-service program, except that such amount shall not exceed the actuarial value of the deductibles and coinsurance under such program less the actual value of nominal copayments for benefits under such plan for basic benefits described in subsection (a)(1).*

*(2) PART B PREMIUM.—An individual enrolled in a Medicare Choice plan under this subchapter shall not be required to pay the premium amount (determined under section 1839 of the Social Security Act) under part B of title XVIII of such Act for so long as such individual is so enrolled.*

## *PART II—INFORMATION AND QUALITY STANDARDS*

### *Subpart A—Information*

#### *SEC. 5044. INFORMATION REQUIREMENTS.*

*(a) IN GENERAL.—The Secretary shall provide that in the case of a demonstration plan conducted under part I, the information and comparative reports described in this section shall be used in lieu of that provided under part C of title XVIII of the Social Security Act.*

*(b) SECRETARY'S MATERIALS; CONTENTS.—The notice and informational materials mailed by the Secretary under this part shall be written and formatted in the most easily understandable manner possible, and shall include, at a minimum, the following:*

*(1) GENERAL INFORMATION.—General information with respect to coverage under this part during the next calendar year, including—*

*(A) the part B premium rates that will be charged for part B coverage, and a statement of the fact that enrollees in demonstration plans are not required to pay such premium,*

*(B) the deductible, copayment, and coinsurance amounts for coverage under the traditional medicare program,*

*(C) a description of the coverage under the traditional medicare program and any changes in coverage under the program from the prior year,*

*(D) a description of the individual's medicare payment area, and the standardized medicare payment amount available with respect to such individual,*

*(E) information and instructions on how to enroll in a demonstration plan,*

*(F) the right of each demonstration plan sponsor by law to terminate or refuse to renew its contract and the effect the termination or nonrenewal of its contract may have on individuals enrolled with the demonstration plan under this part,*

*(G) appeal rights of enrollees, including the right to address grievances to the Secretary or the applicable external review entity, and*

*(H) the benefits offered by plans in basic benefit plans under section 1895H(a), and how those benefits differ from the benefits offered under parts A and B.*

*(2) COMPARATIVE REPORT.—A copy of the most recent comparative report (as established by the Secretary under subsection (c)) for the demonstration plans in the individual's medicare payment area.*

*(c) COMPARATIVE REPORT.—*

*(1) IN GENERAL.—The Secretary shall develop an understandable standardized comparative report on the demonstration plans offered by demonstration plan sponsors, that will assist demonstration eligible individuals in their decisionmaking regarding medical care and treatment by allowing such individuals to compare the demonstration plans that such individuals are eligible to enroll with. In developing such report the Secretary shall consult with outside organizations, including groups representing the elderly, demonstration plan sponsors, providers of services, and physicians and other health care professionals, in order to assist the Secretary in developing the report.*

*(2) REPORT.—The report described in paragraph (1) shall include a comparison for each demonstration plan of—*

*(A) the plan's medicare service area;*

*(B) coverage by the plan of emergency services and urgently needed care;*

*(C) the amount of any deductibles, coinsurance, or any monetary limits on benefits;*

*(D) the number of individuals who disenrolled from the plan within 3 months of enrollment during the previous fiscal year (excluding individuals whose disenrollment was due to death or moving outside of the plan's service area) stated as percentages of the total number of individuals in the plan;*

*(E) process, outcome, and enrollee satisfaction measures, as recommended by the Quality Advisory Institute as established under section 5044B;*

*(F) information on access and quality of services obtained from the analysis described in section 5044B;*

*(G) the procedures used by the plan to control utilization of services and expenditures, including any financial incentives;*

*(H) the number of applications during the previous fiscal year requesting that the plan cover or pay for certain medical services that were denied by the plan (and the number of such denials that were subsequently reversed by the plan), stated as a percentage of the total number of applications during such period requesting that the plan cover such services;*

*(I) the number of times during the previous fiscal year (after an appeal was filed with the Secretary) that the Secretary upheld or reversed a denial of a request that the plan cover certain medical services;*

*(J) the restrictions (if any) on payment for services provided outside the plan's health care provider network;*

*(K) the process by which services may be obtained through the plan's health care provider network;*

*(L) coverage for out-of-area services;*

*(M) any exclusions in the types of health care providers participating in the plan's health care provider network;*

*(N) whether the plan is, or has within the past two years been, out-of-compliance with any requirements of this part (as determined by the Secretary);*

*(O) the plan's premium price for the basic benefit plan submitted under part C of title XVIII of the Social Security Act, an indication of the difference between such premium price and the standardized medicare payment amount, and the portion of the premium an individual must pay out of pocket;*

*(P) whether the plan offers any of the optional supplemental benefit plans, and if so, the plan's premium price for such benefits; and*

*(Q) any additional information that the Secretary determines would be helpful for demonstration eligible individuals to compare the demonstration plans that such individuals are eligible to enroll with.*

*(3) ADDITIONAL INFORMATION.—The comparative report shall also include—*

*(A) a comparison of each demonstration plan to the fee-for-service program under parts A and B of title XVIII of the Social Security Act;*

*(B) an explanation of medicare supplemental policies under section 1882 of such Act and how to obtain specific information regarding such policies; and*

*(C) a phone number for each demonstration plan that will enable demonstration eligible individuals to call to receive a printed listing of all health care providers participating in the plan's health care provider network.*

*(4) UPDATE.—The Secretary shall, not less than annually, update each comparative report.*

*(5) DEFINITIONS.—In this subsection—*

*(A) HEALTH CARE PROVIDER.—The term ''health care provider'' means anyone licensed under State law to provide health care services under part A or B.*

*(B) NETWORK.—The term ''network'' means, with respect to a demonstration plan sponsor, the health care providers who have entered into a contract or agreement with the plan sponsor under which such providers are obligated to provide items, treatment, and services under this section to individuals enrolled with the plan sponsor under this part.*

*(C) OUT-OF-NETWORK.—The term ''out-of-network'' means services provided by health care providers who have not entered into a contract agreement with the demonstration plan sponsor under which such providers are obligated to provide items, treatment, and services under this section to individuals enrolled with the plan sponsor under this part.*

*(6) COST SHARING.—Each demonstration plan sponsor shall pay to the Secretary its pro rata share of the estimated costs incurred by the Secretary in carrying out the requirements of this section and section 4360 of the Omnibus Reconciliation Act of 1990. There are hereby appropriated to the Secretary the amount of the payments under this paragraph for purposes of defraying the cost described in the preceding sentence. Such amounts shall remain available until expended.*

### *Subpart B—Quality in Demonstration Plans*

#### *SEC. 5044A. DEFINITIONS.*

*In this subpart:*

*(1) COMPARATIVE REPORT.—The term ''comparative report'' means the comparative report developed under section 5044.*

*(2) DIRECTOR.—The term ''Director'' means the Director of the Office of Competition within*

*the Department of Health and Human Services as established under part I.*

*(3) MEDICARE PROGRAM.—The term ''medicare program'' means the program of health care benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.).*

*(4) DEMONSTRATION PLAN.—The term ''demonstration plan'' means a plan established under part I.*

*(5) DEMONSTRATION PLAN SPONSOR.—The term ''demonstration plan sponsor'' means a sponsor of a demonstration plan.*

***SEC. 5044B. QUALITY ADVISORY INSTITUTE.***

*(a) ESTABLISHMENT.—There is established an Institute to be known as the ''Quality Advisory Institute'' (in this subpart referred to as the ''Institute'') to make recommendations to the Director concerning licensing and certification criteria and comparative measurement methods under this subpart.*

*(b) MEMBERSHIP.—*

*(1) COMPOSITION.—The Institute shall be composed of 5 members to be appointed by the Director from among individuals who have demonstrable expertise in—*

*(A) health care quality measurement;*

*(B) health plan certification criteria setting;*

*(C) the analysis of information that is useful to consumers in making choices regarding health coverage options, health plans, health care providers, and decisions regarding health treatments; and*

*(D) the analysis of health plan operations.*

*(2) TERMS AND VACANCIES.—The members of the Institute shall be appointed for 5-year terms with the terms of the initial members staggered as determined appropriate by the Director. Vacancies shall be filled in a manner provided for by the Director.*

*(c) DUTIES.—The Institute shall—*

*(1) not later than 1 year after the date on which all members of the Institute are appointed under subsection (b)(2), provide advice to the Director concerning the initial set of criteria for the certification of demonstration plans;*

*(2) analyze the use of the criteria for the certification of demonstration plans implemented by the Director under this subpart and recommend modifications in such criteria as needed;*

*(3) analyze the use of the comparative measurements implemented by the Director in developing comparative reports and recommend modifications in such measurements as needed;*

*(4) perform, or enter into contracts with other entities for the performance of, an analysis of access to services and clinical outcomes based on patient encounter data;*

*(5) enter into contracts with other entities for the development of such criteria and measurements and to otherwise carry out its duties under this section; and*

*(6) carry out any other activities determined appropriate by the Institute to carry out its duties under this section.*

*The analysis described in paragraph (4) should focus on conditions and procedures of significance to beneficiaries under the medicare program, as determined by the Institute, and should be designed, and the results summarized, in a manner that facilitates comparisons across health plans.*

***SEC. 5044C. DUTIES OF DIRECTOR.***

*(a) IN GENERAL.—The Director shall—*

*(1) adopt, adapt, or develop criteria in accordance with sections 5044F through 5044I to be used in the licensing of certifying entities and in the certification of demonstration plans, including any minimum criteria needed for the operation of demonstration plans during the transition period described in section 5044F(c);*

*(2) issue licenses to certifying entities that meet the criteria developed under paragraph (1) for the purpose of enabling such entities to certify demonstration plans in accordance with this subpart;*

*(3) develop comparative health care measures in addition to those implemented by the Director in developing comparative reports in order to guide consumer choice under the medicare program and to improve the delivery of quality health care under such program;*

*(4) develop procedures, consistent with section 5044A, for the dissemination of certification and comparative quality information provided to the Director;*

*(5) contract with an independent entity for the conduct of audits concerning certification and quality measurement and require that as part of the certification process performed by licensed certification entities that there include an onsite evaluation, using performance-based standards, of the providers of items and services under a demonstration plan;*

*(6) at least quarterly, meet jointly with the Agency for Health Care Policy and Research to review innovative health outcomes measures, new measurement processes, and other matters determined appropriate by the Director;*

*(7) at least annually, meet with the Institute concerning certification criteria;*

*(8) not later than January 1, 1999, and each January 1 thereafter, prepare and submit to demonstration plan sponsors and to Congress, a report concerning the activities of the Director for the previous year;*

*(9) advise the President and Congress concerning health insurance and health care provided under demonstration plans and make recommendations concerning measures that may be implemented to protect the health of all enrollees in demonstration plans; and*

*(10) carry out other activities determined appropriate by the Director.*

*(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to limit the authority of the Director or the Secretary of Health and Human Services with respect to requirements other than those applied under this subpart with respect to demonstration plans.*

***SEC. 5044D. COMPLIANCE.***

*(a) IN GENERAL.—Not later than January 1, 1999, the Director shall ensure that a demonstration plan may not be offered unless it has been certified in accordance with this subpart.*

*(b) CONTRACTS OR REIMBURSEMENTS.—In carrying out subsection (a), the Director—*

*(1) may not enter into a contract with a demonstration plan sponsor for the provision of a demonstration plan unless the demonstration plan is certified in accordance with this subpart;*

*(2) may not reimburse a demonstration plan sponsor for items and services provided under a demonstration plan unless the demonstration plan is certified in accordance with this subpart; and*

*(3) shall, after providing notice to the demonstration plan sponsor operating a demonstration plan and an opportunity for such demonstration plan to be certified, and in accordance with any applicable grievance and appeals procedures under section 5044I, terminate any contract with a demonstration plan sponsor for the operation of a demonstration plan if such demonstration plan is not certified in accordance with this subpart.*

***SEC. 5044E. PAYMENTS FOR VALUE.***

*(a) ESTABLISHMENT OF PROGRAM.—The Director shall establish a program under which payments are made to various demonstration plans to reward such plans for meeting or exceeding quality targets.*

*(b) PERFORMANCE MEASURES.—In carrying out the program under subsection (a), the Director shall establish broad categories of quality targets and performance measures. Such targets and measures shall be designed to permit the Director to determine whether a demonstration plan is being operated in a manner consistent with this subpart.*

*(c) USE OF FUNDS.—*

*(1) IN GENERAL.—The Secretary shall withhold 0.50 percent from any payment that a demonstration plan sponsor receives with respect to an individual enrolled with such plan under part I.*

*(2) PAYMENTS.—The Director shall use amounts collected under paragraph (1) to make annual payments to those demonstration plans that have been determined by the Director to meet or exceed the quality targets and performance measures established under subsection (b). Any amounts collected under such paragraph for a fiscal year and remaining available after payments are made under subsection (d), shall be used for deficit reduction.*

*(d) AMOUNT OF PAYMENT.—*

*(1) FORMULA.—The amount of any payment made to a demonstration plan under this section shall be determined in accordance with a formula to be developed by the Director. The formula shall ensure that a payment made to a demonstration plan under this section be in an amount equal to—*

*(A) with respect to a demonstration plan that is determined to be in the first quintile, 1 percent of the amount allocated to the plan under this subpart;*

*(B) with respect to a demonstration plan that is determined to be in the second quintile, 0.75 percent of the amount allocated to the plan under this subpart;*

*(C) with respect to a demonstration plan that is determined to be in the third quintile, 0.50 percent of the amount allocated by the plan under this subpart; and*

*(D) with respect to a demonstration plan that is determined to be in the fourth quintile, 0.25 percent of the amount allocated by the plan under this subpart.*

*(2) NO PAYMENT.—A demonstration plan that is determined by the Director to be in the fifth quintile shall not be eligible to receive a payment under this section.*

*(3) DETERMINATION OF QUINTILES.—Not later than April 30 of each calendar year, the Director shall rank each demonstration plan based on the performance of the plan during the preceding year as determined using the quality targets and performance measures established under subsection (b). Such rankings shall be divided into quintiles with the first quintile containing the highest ranking plans and the fifth quintile containing the lowest ranking plans. Each such quintile shall contain plans that in the aggregate cover an equal number of beneficiaries as compared to another quintile.*

***SEC. 5044F. CERTIFICATION REQUIREMENT.***

*(a) IN GENERAL.—To be eligible to enter into a contract with the Director to enroll individuals in a demonstration plan, a demonstration plan sponsor shall participate in the certification process and have the demonstration plans offered by such plan sponsor certified in accordance with this subpart.*

*(b) EFFECT OF MERGERS OR PURCHASE.—*

*(1) CERTIFIED PLANS.—Where 2 or more demonstration plan sponsors offering certified demonstration plans are merged or where 1 such plan sponsor is purchased by another plan sponsor, the resulting plan sponsor may continue to operate and enroll individuals for coverage under the demonstration plan as if the demonstration plan involved were certified. The certification of any resulting demonstration plan shall be reviewed by the applicable certifying entity to ensure the continued compliance of the contract with the certification criteria.*

*(2) NONCERTIFIED PLANS.—The certification of a demonstration plan shall be terminated upon the merger of the demonstration plan sponsor involved or the purchase of the plan sponsor by another entity that does not offer any certified demonstration plans. Any demonstration plans offered through the resulting plan sponsor may reapply for certification after the completion of the merger or purchase.*

*(c) TRANSITION FOR NEW PLANS.—*

*(1) IN GENERAL.—A demonstration plan that has not provided health insurance coverage to individuals prior to the effective date of this Act*

shall be permitted to contract with the Director and operate and enroll individuals under a demonstration plan without being certified for the 2-year period beginning on the date on which such demonstration plan sponsor enrolls the first individual in the demonstration plan. Such demonstration plan must be certified in order to continue to provide coverage under the contract after such period.

(2) LIMITATION.—A new demonstration plan described in paragraph (1) shall, during the period referred to in paragraph (1) prior to certification, comply with the minimum criteria developed by the Director under section 5044F(a)(1).

**SEC. 5044G. LICENSING OF CERTIFICATION ENTITIES.**

(a) IN GENERAL.—The Director shall develop procedures for the licensing of entities to certify demonstration plans under this subpart.

(b) REQUIREMENTS.—The procedures developed under subsection (a) shall ensure that—

(1) to be licensed under this section a certification entity shall apply the requirements of this subpart to demonstration plans seeking certification;

(2) a certification entity has procedures in place to suspend or revoke the certification of a demonstration plan that is failing to comply with the certification requirements; and

(3) the Director will give priority to licensing entities that are accrediting health plans that contract with the Director on the date of enactment of this Act.

**SEC. 5044H. CERTIFICATION CRITERIA.**

(a) ESTABLISHMENT.—The Director shall establish minimum criteria under this section to be used by licensed certifying entities in the certification of demonstration plans under this subpart.

(b) REQUIREMENTS.—Criteria established by the Director under subsection (a) shall require that, in order to be certified, a demonstration plan shall comply at a minimum with the following:

(1) QUALITY IMPROVEMENT PLAN.—The demonstration plan shall implement a total quality improvement plan that is designed to improve the clinical and administrative processes of the demonstration plan on an ongoing basis and demonstrate that improvements in the quality of items and services provided under the demonstration plan have occurred as a result of such improvement plan.

(2) PROVIDER CREDENTIALS.—The demonstration plan shall compile and annually provide to the licensed certifying entity documentation concerning the credentials of the hospitals, physicians, and other health care professionals reimbursed under the demonstration plan.

(3) COMPARATIVE INFORMATION.—The demonstration plan shall compile and provide, as requested by the Secretary of Health and Human Services, to the such Secretary the information necessary to develop a comparative report.

(4) ENCOUNTER DATA.—The demonstration plan shall maintain patient encounter data in accordance with standards established by the Institute, and shall provide these data, as requested by the Institute, to the Institute in support of conducting the analysis described in section 5044B(c)(4).

(5) OTHER REQUIREMENTS.—The demonstration plan shall comply with other requirements authorized under this subpart and implemented by the Director.

**SEC. 5044I. GRIEVANCE AND APPEALS.**

The Director shall develop grievance and appeals procedures under which a demonstration plan that is denied certification under this subpart may appeal such denial to the Director.

***Subchapter B—Other Projects***

**SEC. 5045. MEDICARE ENROLLMENT DEMONSTRATION PROJECT.**

(a) DEMONSTRATION PROJECT.—

(1) ESTABLISHMENT.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall implement a demonstration project (in this section referred to as the ''project'') for the purpose of evaluating the use of a third-party contractor to conduct the Medicare Choice plan enrollment and disenrollment functions, as described in part C of the Social Security Act (as added by section 5001 of this Act), in an area.

(2) CONSULTATION.—Before implementing the project under this section, the Secretary shall consult with affected parties on—

(A) the design of the project;

(B) the selection criteria for the third-party contractor; and

(C) the establishment of performance standards, as described in paragraph (3).

(3) PERFORMANCE STANDARDS.—

(A) IN GENERAL.—The Secretary shall establish performance standards for the accuracy and timeliness of the Medicare Choice plan enrollment and disenrollment functions performed by the third-party contractor.

(B) NONCOMPLIANCE.—If the Secretary determines that a third-party contractor is out of compliance with the performance standards established under subparagraph (A), such enrollment and disenrollment functions shall be performed by the Medicare Choice plan until the Secretary appoints a new third-party contractor.

(C) DISPUTE.—In the event that there is a dispute between the Secretary and a Medicare Choice plan regarding whether or not the third-party contractor is in compliance with the performance standards, such enrollment and disenrollment functions shall be performed by the Medicare Choice plan.

(b) REPORT TO CONGRESS.—The Secretary shall periodically report to Congress on the progress of the project conducted pursuant to this section.

(c) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of part C of the Social Security Act (as amended by section 5001 of this Act) to such extent and for such period as the Secretary determines is necessary to conduct the project.

(d) DURATION.—A demonstration project under this section shall be conducted for a 3-year period.

(e) SEPARATE FROM OTHER DEMONSTRATION PROJECTS.—A project implemented by the Secretary under this section shall not be conducted in conjunction with any other demonstration project.

**SEC. 5046. MEDICARE COORDINATED CARE DEMONSTRATION PROJECT.**

(a) DEMONSTRATION PROJECTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct demonstration projects for the purpose of evaluating methods, such as case management and other models of coordinated care, that—

(A) improve the quality of items and services provided to target individuals; and

(B) reduce expenditures under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for items and services provided to target individuals.

(2) TARGET INDIVIDUAL DEFINED.—In this section, the term ''target individual'' means an individual that has a chronic illness, as defined and identified by the Secretary, and is enrolled under the fee-for-service program under parts A and B of title XVIII of the Social Security Act (42 U.S.C. 1395c et seq.; 1395j et seq.).

(b) PROGRAM DESIGN.—

(1) INITIAL DESIGN.—The Secretary shall evaluate best practices in the private sector of methods of coordinated care for a period of 1 year and design the demonstration project based on such evaluation.

(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of enactment of this Act, the Secretary shall implement at least 9 demonstration projects, including—

(A) 6 projects in urban areas; and

(B) 3 projects in rural areas.

(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—

(A) EXPANSION OF PROJECTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

(i) reduce expenditures under the medicare program; or

(ii) do not increase expenditures under the medicare program and increase the quality of health care services provided to target individuals and satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

(B) IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If a report under subsection (c) contains an evaluation as described in subparagraph (A), the Secretary may issue regulations to implement, on a permanent basis, the components of the demonstration project that are beneficial to the medicare program.

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the Secretary implements the initial demonstration projects under this section, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects conducted under this section.

(2) CONTENTS OF REPORT.—The report in paragraph (1) shall include the following:

(A) A description of the demonstration projects conducted under this section.

(B) An evaluation of—

(i) the cost-effectiveness of the demonstration projects;

(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

(iii) beneficiary and health care provider satisfaction under the demonstration project.

(C) Any other information regarding the demonstration projects conducted under this section that the Secretary determines to be appropriate.

(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of titles XI, XVIII, and XIX of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(e) FUNDING.—

(1) DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—The Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund under title XVIII of the Social Security Act (42 U.S.C. 1395i, 1395t), in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects under this section.

(B) LIMITATION.—In conducting the demonstration project under this section, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the amount which the Secretary would have paid if the demonstration projects under this section were not implemented.

(2) EVALUATION AND REPORT.—There are authorized to be appropriated such sums as are necessary for the purpose of developing and submitting the report to Congress under subsection (c).

**SEC. 5047. ESTABLISHMENT OF MEDICARE REIMBURSEMENT DEMONSTRATION PROJECTS.**

Title XVIII (42 U.S.C. 1395 et seq.) (as amended by section 5343) is amended by adding at the end the following:

''MEDICARE SUBVENTION DEMONSTRATION PROJECT FOR VETERANS

''SEC. 1896. (a) DEFINITIONS.—In this section:

''(1) ADMINISTERING SECRETARIES.—The term 'administering Secretaries' means the Secretary and the Secretary of Veterans Affairs acting jointly.

''(2) DEMONSTRATION PROJECT; PROJECT.—The terms 'demonstration project' and 'project' mean the demonstration project carried out under this section.

''(3) MILITARY RETIREE.—The term 'military retiree' means a member or former member of the Armed Forces who is entitled to retired pay.

''(4) TARGETED MEDICARE-ELIGIBLE VETERAN.—The term 'targeted medicare-eligible veteran' means an individual who—

''(A) is a veteran (as defined in section 101(2) of title 38, United States Code) and is described in section 1710(a)(3) of title 38, United States Code; and

''(B) is entitled to benefits under part A of this title and is enrolled under part B of this title.

''(5) TRUST FUNDS.—The term 'trust funds' means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.

''(b) DEMONSTRATION PROJECT.—

''(1) IN GENERAL.—

''(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish a demonstration project (under an agreement entered into by the administering Secretaries) under which the Secretary shall reimburse the Secretary of Veterans Affairs, from the trust funds, for medicare health care services furnished to certain targeted medicare-eligible veterans.

''(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—

''(i) a description of the benefits to be provided to the participants of the demonstration project established under this section;

''(ii) a description of the eligibility rules for participation in the demonstration project, including any criteria established under subsection (c) and any cost sharing under subsection (d);

''(iii) a description of how the demonstration project will satisfy the requirements under this title;

''(iv) a description of the sites selected under paragraph (2);

''(v) a description of how reimbursement and maintenance of effort requirements under subsection (l) will be implemented in the demonstration project; and

''(vi) a statement that the Secretary shall have access to all data of the Department of Veterans Affairs that the Secretary determines is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the demonstration project.

''(2) NUMBER OF SITES.—The administering Secretaries shall establish a plan for the selection of up to 12 medical centers under the jurisdiction of the Secretary of Veterans Affairs and located in geographically dispersed locations to participate in the project.

''(3) GENERAL CRITERIA.—The selection plan shall favor selection of those medical centers that are suited to serve targeted medicare-eligible individuals because—

''(A) there is a high potential demand by targeted medicare-eligible veterans for their services;

''(B) they have sufficient capability in billing and accounting to participate;

''(C) they have favorable indicators of quality of care, including patient satisfaction;

''(D) they deliver a range of services required by targeted medicare-eligible veterans; and

''(E) they meet other relevant factors identified in the plan.

''(4) MEDICAL CENTER NEAR CLOSED BASE.—The administering Secretaries shall endeavor to include at least 1 medical center that is in the same catchment area as a military medical facility which was closed pursuant to either of the following laws:

''(A) The Defense Base Closure and Realignment Act of 1990.

''(B) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act.

''(5) RESTRICTION.—No new facilities will be built or expanded with funds from the demonstration project.

''(6) DURATION.—The administering Secretaries shall conduct the demonstration project during the 3-year period beginning on January 1, 1998.

''(c) VOLUNTARY PARTICIPATION.—Participation of targeted medicare-eligible veterans in the demonstration project shall be voluntary, subject to the capacity of participating medical centers and the funding limitations specified in subsection (l), and shall be subject to such terms and conditions as the administering Secretaries may establish. In the case of a demonstration project at a medical center described in subsection (b)(3), targeted medicare-eligible veterans who are military retirees shall be given preference in participating in the project.

''(d) COST SHARING.—The Secretary of Veterans Affairs may establish cost-sharing requirements for veterans participating in the demonstration project. If such cost sharing requirements are established, those requirements shall be the same as the requirements that apply to targeted medicare-eligible patients at nongovernmental facilities.

''(e) CREDITING OF PAYMENTS.—A payment received by the Secretary of Veterans Affairs under the demonstration project shall be credited to the applicable Department of Veterans Affairs medical appropriation and (within that appropriation) to funds that have been allotted to the medical center that furnished the services for which the payment is made. Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Veterans Affairs during the fiscal year during which the payment is received.

''(f) AUTHORITY TO WAIVE CERTAIN MEDICARE REQUIREMENTS.—The Secretary may, to the extent necessary to carry out the demonstration project, waive any requirement under this title. If the Secretary waives any such requirement, the Secretary shall include a description of such waiver in the agreement described in subsection (b)(1)(B).

''(g) INSPECTOR GENERAL.—Nothing in the agreement entered into under subsection (b) shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this title for the demonstration project, including compliance with the provisions of this title and all other relevant laws.

''(h) REPORT.—At least 30 days prior to the commencement of the demonstration project, the administering Secretaries shall submit a copy of the agreement entered into under subsection (b) to the committees of jurisdiction in Congress.

''(i) MANAGED HEALTH CARE PLANS.—(1) In carrying out the demonstration project, the Secretary of Veterans Affairs may establish and operate managed health care plans.

''(2) Any such plan shall be operated by or through a Department of Veterans Affairs medical center or group of medical centers and may include the provision of health care services through other facilities under the jurisdiction of the Secretary of Veterans Affairs as well as public and private entities under arrangements made between the Department and the other public or private entity concerned. Any such managed health care plan shall be established and operated in conformance with standards prescribed by the administering Secretaries.

''(3) The administering Secretaries shall prescribe the minimum health care benefits to be provided under such a plan to veterans enrolled in the plan. Those benefits shall include at least all health care services covered under the medicare program under this title.

''(4) The establishment of a managed health care plan under this section shall be counted as the selection of a medical center for purposes of applying the numerical limitation under subsection (b)(1).

''(j) MEDICAL CENTER REQUIREMENTS.—The Secretary of Veterans Affairs may establish a managed health care plan using 1 or more medical centers and other facilities only after the Secretary of Veterans Affairs submits to Congress a report setting forth a plan for the use of such centers and facilities. The plan may not be implemented until the Secretary of Veterans Affairs has received from the Inspector General of the Department of Veterans Affairs, and has forwarded to Congress, certification of each of the following:

''(1) The cost accounting system of the Veterans Health Administration (known as the Decision Support System) is operational and is providing reliable cost information on care delivered on an inpatient and outpatient basis at such centers and facilities.

''(2) The centers and facilities have operated in conformity with the eligibility reform amendments made by title I of the Veterans Health Care Act of 1996 for not less than 3 months.

''(3) The centers and facilities have developed a credible plan (on the basis of market surveys, data from the Decision Support System, actuarial analysis, and other appropriate methods and taking into account the level of payment under subsection (l) and the costs of providing covered services at the centers and facilities) to minimize, to the extent feasible, the risk that appropriated funds allocated to the centers and facilities will be required to meet the centers' and facilities' obligation to targeted medicare-eligible veterans under the demonstration project.

''(4) The centers and facilities collectively have available capacity to provide the contracted benefits package to a sufficient number of targeted medicare-eligible veterans.

''(5) The entity administering the health plan has sufficient systems and safeguards in place to minimize any risk that instituting the managed care model will result in reducing the quality of care delivered to enrollees in the demonstration project or to other veterans receiving care under paragraphs subsection (1) or (2) of section 1710(a) of title 38, United States Code.

''(k) RESERVES.—The Secretary of Veterans Affairs shall maintain such reserves as may be necessary to ensure against the risk that appropriated funds, allocated to medical centers and facilities participating in the demonstration project through a managed health care plan under this section, will be required to meet the obligations of those medical centers and facilities to targeted medicare-eligible veterans.

''(l) PAYMENTS BASED ON REGULAR MEDICARE PAYMENT RATES.—

''(1) PAYMENTS.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall reimburse the Secretary of Veterans Affairs for services provided under the demonstration project at the following rates:

''(i) NONCAPITATION.—Except as provided in clause (ii) and subject to subparagraphs (B)(i) and (D), at a rate equal to 95 percent of the amounts that otherwise would be payable under this title on a noncapitated basis for such services if the medical center were not a Federal medical center, were participating in the program, and imposed charges for such services.

''(ii) CAPITATION.—Subject to subparagraphs (B)(ii) and (D), in the case of services provided to an enrollee under a managed health care plan established under subsection (i), at a rate equal to 95 percent of the amount paid to a Medicare Choice organization under part C with respect to such an enrollee.

In cases in which a payment amount may not otherwise be readily computed, the Secretaries shall establish rules for computing equivalent or comparable payment amounts.

''(B) EXCLUSION OF CERTAIN AMOUNTS.—

''(i) NONCAPITATION.—In computing the amount of payment under subparagraph (A)(i), the following shall be excluded:

*(i) DISPROPORTIONATE SHARE HOSPITAL ADJUSTMENT.—Any amount attributable to an adjustment under subsection (d)(5)(F) of section 1886 of the Social Security Act (42 U.S.C. 1395ww).*

*(ii) DIRECT GRADUATE MEDICAL EDUCATION PAYMENTS.—Any amount attributable to a payment under subsection (h) of such section.*

*(iii) PERCENTAGE OF INDIRECT MEDICAL EDUCATION ADJUSTMENT.—40 percent of any amount attributable to the adjustment under subsection (d)(5)(B) of such section.*

*(iv) PERCENTAGE OF CAPITAL PAYMENTS.—67 percent of any amounts attributable to payments for capital-related costs under subsection (g) of such section.*

*''(ii) CAPITATION.—In the case of years before 2001, in computing the amount of payment under subparagraph (A)(ii), the payment rate shall be computed as though the amounts excluded under clause (i) had been excluded in the determination of the amount paid to a Medicare Choice organization under part C with respect to an enrollee.*

*''(C) PERIODIC PAYMENTS FROM MEDICARE TRUST FUNDS.—Payments under this subsection shall be made—*

*''(i) on a periodic basis consistent with the periodicity of payments under this title; and*

*''(ii) in appropriate part, as determined by the Secretary, from the trust funds.*

*''(D) ANNUAL LIMIT ON MEDICARE PAYMENTS.—The amount paid to the Department of Veterans Affairs under this subsection for any year for the demonstration project may not exceed $50,000,000.*

*''(2) REDUCTION IN PAYMENT FOR VA FAILURE TO MAINTAIN EFFORT.—*

*''(A) IN GENERAL.—In order to avoid shifting onto the medicare program under this title costs previously assumed by the Department of Veterans Affairs for the provision of medicare-covered services to targeted medicare-eligible veterans, the payment amount under this subsection for the project for a fiscal year shall be reduced by the amount (if any) by which—*

*''(i) the amount of the VA effort level for targeted veterans (as defined in subparagraph (B)) for the fiscal year ending in such year, is less than*

*''(ii) the amount of the VA effort level for targeted veterans for fiscal year 1997.*

*''(B) VA EFFORT LEVEL FOR TARGETED VETERANS DEFINED.—For purposes of subparagraph (A), the term 'VA effort level for targeted veterans' means, for a fiscal year, the amount, as estimated by the administering Secretaries, that would have been expended under the medicare program under this title for VA-provided medicare-covered services for targeted veterans (as defined in subparagraph (C)) for that fiscal year if benefits were available under the medicare program for those services. Such amount does not include expenditures attributable to services for which reimbursement is made under the demonstration project.*

*''(C) VA-PROVIDED MEDICARE-COVERED SERVICES FOR TARGETED VETERANS.—For purposes of subparagraph (B), the term 'VA-provided medicare-covered services for targeted veterans' means, for a fiscal year, items and services—*

*''(i) that are provided during the fiscal year by the Department of Veterans Affairs to targeted medicare-eligible veterans;*

*''(ii) that constitute hospital care and medical services under chapter 17 of title 38, United States Code; and*

*''(iii) for which benefits would be available under the medicare program under this title if they were provided other than by a Federal provider of services that does not charge for those services.*

*''(3) ASSURING NO INCREASE IN COST TO MEDICARE PROGRAM.—*

*''(A) MONITORING EFFECT OF DEMONSTRATION PROGRAM ON COSTS TO MEDICARE PROGRAM.—*

*''(i) IN GENERAL.—The Secretaries, in consultation with the Comptroller General, shall closely monitor the expenditures made under the medicare program for targeted medicare-eligible veterans during the period of the demonstration project compared to the expenditures that would have been made for such veterans during that period if the demonstration project had not been conducted.*

*''(ii) ANNUAL REPORT BY THE COMPTROLLER GENERAL.—Not later than December 31 of each year during which the demonstration project is conducted, the Comptroller General shall submit to the Secretaries and the appropriate committees of Congress a report on the extent, if any, to which the costs of the Secretary under the medicare program under this title increased during the preceding fiscal year as a result of the demonstration project.*

*''(B) REQUIRED RESPONSE IN CASE OF INCREASE IN COSTS.—*

*''(i) IN GENERAL.—If the administering Secretaries find, based on subparagraph (A), that the expenditures under the medicare program under this title increased (or are expected to increase) during a fiscal year because of the demonstration project, the administering Secretaries shall take such steps as may be needed—*

*''(I) to recoup for the medicare program the amount of such increase in expenditures; and*

*''(II) to prevent any such increase in the future.*

*''(ii) STEPS.—Such steps—*

*''(I) under clause (i)(I) shall include payment of the amount of such increased expenditures by the Secretary of Veterans Affairs from the current medical care appropriation of the Department of Veterans Affairs to the trust funds; and*

*''(II) under clause (i)(II) shall include suspending or terminating the demonstration project (in whole or in part) or lowering the amount of payment under paragraph (1)(A).*

*''(m) EVALUATION AND REPORTS.—*

*''(1) INDEPENDENT EVALUATION.—The administering Secretaries shall arrange for an independent entity with expertise in the evaluation of health services to conduct an evaluation of the demonstration project. The entity shall submit annual reports on the demonstration project to the administering Secretaries and to the committees of jurisdiction in the Congress. The first report shall be submitted not later than 12 months after the date on which the demonstration project begins operation, and the final report not later than 3½ years after that date. The evaluation and reports shall include an assessment, based on the agreement entered into under subsection (b), of the following:*

*''(A) The cost to the Department of Veterans Affairs of providing care to veterans under the project.*

*''(B) Compliance of participating medical centers with applicable measures of quality of care, compared to such compliance for other medicare-participating medical centers.*

*''(C) A comparison of the costs of medical centers' participation in the program with the reimbursements provided for services of such medical centers.*

*''(D) Any savings or costs to the medicare program under this title from the project.*

*''(E) Any change in access to care or quality of care for targeted medicare-eligible veterans participating in the project.*

*''(F) Any effect of the project on the access to care and quality of care for targeted medicare-eligible veterans not participating in the project and other veterans not participating in the project.*

*''(G) The provision of services under managed health care plans under subsection (l), including the circumstances (if any) under which the Secretary of Veterans Affairs uses reserves described in subsection (k) and the Secretary of Veterans Affairs' response to such circumstances (including the termination of managed health care plans requiring the use of such reserves).*

*''(H) Any effect that the demonstration project has on the enrollment in Medicare Choice organizations under part C of this title in the established site areas.*

*''(2) REPORT ON EXTENSION AND EXPANSION OF DEMONSTRATION PROJECT.—Not later than six months after the date of the submission of the penultimate report under paragraph (1), the administering Secretaries shall submit to Congress a report containing their recommendation as to—*

*''(A) whether to extend the demonstration project or make the project permanent;*

*''(B) whether to expand the project to cover additional sites and areas and to increase the maximum amount of reimbursement (or the maximum amount of reimbursement permitted for managed health care plans under this section) under the project in any year; and*

*''(C) whether the terms and conditions of the project should be continued (or modified) if the project is extended or expanded.*

*''MEDICARE SUBVENTION DEMONSTRATION PROJECT FOR MILITARY RETIREES*

*''SEC. 1897. (a) DEFINITIONS.—In this section:*

*''(1) ADMINISTERING SECRETARIES.—The term 'administering Secretaries' means the Secretary and the Secretary of Defense acting jointly.*

*''(2) DEMONSTRATION PROJECT; PROJECT.—The terms 'demonstration project' and 'project' mean the demonstration project carried out under this section.*

*''(3) DESIGNATED PROVIDER.—The term 'designated provider' has the meaning given that term in section 721(5) of the National Defense Authorization Act For Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2593; 10 U.S.C. 1073 note).*

*''(4) MEDICARE-ELIGIBLE MILITARY RETIREE OR DEPENDENT.—The term 'medicare-eligible military retiree or dependent' means an individual described in section 1074(b) or 1076(b) of title 10, United States Code, who—*

*''(A) would be eligible for health benefits under section 1086 of such title by reason of subsection (c)(1) of such section 1086 but for the operation of subsection (d) of such section 1086;*

*''(B)(i) is entitled to benefits under part A of this title; and*

*''(ii) if the individual was entitled to such benefits before July 1, 1996, received health care items or services from a health care facility of the uniformed services before that date, but after becoming entitled to benefits under part A of this title;*

*''(C) is enrolled for benefits under part B of this title; and*

*''(D) has attained age 65.*

*''(5) MEDICARE HEALTH CARE SERVICES.—The term 'medicare health care services' means items or services covered under part A or B of this title.*

*''(6) MILITARY TREATMENT FACILITY.—The term 'military treatment facility' means a facility referred to in section 1074(a) of title 10, United States Code.*

*''(7) TRICARE.—The term 'TRICARE' has the same meaning as the term 'TRICARE program' under section 711 of the National Defense Authorization Act for Fiscal Year 1996 (10 U.S.C. 1073 note).*

*''(5) TRUST FUNDS.—The term 'trust funds' means the Federal Hospital Insurance Trust Fund established in section 1817 and the Federal Supplementary Medical Insurance Trust Fund established in section 1841.*

*''(b) DEMONSTRATION PROJECT.—*

*''(1) IN GENERAL.—*

*''(A) ESTABLISHMENT.—The administering Secretaries are authorized to establish a demonstration project (under an agreement entered into by the administering Secretaries) under which the Secretary shall reimburse the Secretary of Defense, from the trust funds, for medicare health care services furnished to certain medicare-eligible military retirees or dependents.*

*''(B) AGREEMENT.—The agreement entered into under subparagraph (A) shall include at a minimum—*

*''(i) a description of the benefits to be provided to the participants of the demonstration project established under this section;*

''(ii) a description of the eligibility rules for participation in the demonstration project, including any cost sharing requirements established under subsection (h);

''(iii) a description of how the demonstration project will satisfy the requirements under this title;

''(iv) a description of the sites selected under paragraph (2);

''(v) a description of how reimbursement and maintenance of effort requirements under subsection (j) will be implemented in the demonstration project; and

''(vi) a statement that the Secretary shall have access to all data of the Department of Defense that the Secretary determines is necessary to conduct independent estimates and audits of the maintenance of effort requirement, the annual reconciliation, and related matters required under the demonstration project.

''(2) IN GENERAL.—The project established under this section shall be conducted in no more than 6 sites, designated jointly by the administering Secretaries after review of all TRICARE regions.

''(3) RESTRICTION.—No new military treatment facilities will be built or expanded with funds from the demonstration project.

''(4) DURATION.—The administering Secretaries shall conduct the demonstration project during the 3-year period beginning on January 1, 1998.

''(c) CREDITING OF PAYMENTS.—A payment received by the Secretary of Defense under the demonstration project shall be credited to the applicable Department of Defense medical appropriation and (within that appropriation). Any such payment received during a fiscal year for services provided during a prior fiscal year may be obligated by the Secretary of Defense during the fiscal year during which the payment is received.

''(d) AUTHORITY TO WAIVE CERTAIN MEDICARE REQUIREMENTS.—The Secretary may, to the extent necessary to carry out the demonstration project, waive any requirement under this title. If the Secretary waives any such requirement, the Secretary shall include a description of such waiver in the agreement described in subsection (b).

''(e) INSPECTOR GENERAL.—Nothing in the agreement entered into under subsection (b) shall limit the Inspector General of the Department of Health and Human Services from investigating any matters regarding the expenditure of funds under this title for the demonstration project, including compliance with the provisions of this title and all other relevant laws.

''(f) REPORT.—At least 30 days prior to the commencement of the demonstration project, the administering Secretaries shall submit a copy of the agreement entered into under subsection (b) to the committees of jurisdiction in Congress.

''(g) VOLUNTARY PARTICIPATION.—Participation of medicare-eligible military retirees or dependents in the demonstration project shall be voluntary, subject to the capacity of participating military treatment facilities and designated providers and the funding limitations specified in subsection (j), and shall be subject to such terms and conditions as the administering Secretaries may establish.

''(h) COST-SHARING BY DEMONSTRATION ENROLLEES.—The Secretary of Defense may establish cost-sharing requirements for medicare-eligible military retirees and dependents who enroll in the demonstration project consistent with part C of this title.

''(i) TRICARE HEALTH CARE PLANS.—

''(1) TRICARE PROGRAM ENROLLMENT FEE WAIVER.—The Secretary of Defense shall waive the enrollment fee applicable to any medicare-eligible military retiree or dependent enrolled in the managed care option of the TRICARE program for any period for which reimbursement is made under this section with respect to such retiree or dependent.

''(2) MODIFICATION OF TRICARE CONTRACTS.—In carrying out the demonstration project, the Secretary of Defense is authorized to amend existing TRICARE contracts in order to provide the medicare health care services to the medicare-eligible military retirees and dependents enrolled in the demonstration project.

''(3) HEALTH CARE BENEFITS.—The administering Secretaries shall prescribe the minimum health care benefits to be provided under such a plan to medicare-eligible military retirees or dependents enrolled in the plan. Those benefits shall include at least all medicare health care services covered under this title.

''(j) PAYMENTS BASED ON REGULAR MEDICARE PAYMENT RATES.—

''(1) PAYMENTS.—

''(A) IN GENERAL.—Subject to the succeeding provisions of this subsection, the Secretary shall reimburse the Secretary of Defense for services provided under the demonstration project at the following rates:

''(i) NONCAPITATION.—Except as provided in clause (ii) and subject to subparagraphs (B)(i) and (D), at a rate equal to 95 percent of the amounts that otherwise would be payable under this title on a noncapitated basis for such services if the military treatment facility or designated provider were not a Federal medical center, were participating in the program, and imposed charges for such services.

''(ii) CAPITATION.—Subject to subparagraphs (B)(ii) and (D), in the case of services provided to an enrollee under a managed health care plan established under subsection (i), at a rate equal to 95 percent of the amount paid to a Medicare Choice organization under part C with respect to such an enrollee.

In cases in which a payment amount may not otherwise be readily computed, the Secretaries shall establish rules for computing equivalent or comparable payment amounts.

''(B) EXCLUSION OF CERTAIN AMOUNTS.—

''(i) NONCAPITATION.—In computing the amount of payment under subparagraph (A)(i), the following shall be excluded:

''(I) SPECIAL PAYMENTS.—Any amount attributable to an adjustment under subparagraphs (B) and (F) of section 1886(d)(5) and subsection (h) of such section.

''(II) PERCENTAGE OF CAPITAL PAYMENTS.—An amount determined by the administering Secretaries for amounts attributable to payments for capital-related costs under subsection (g) of such section.

''(ii) CAPITATION.—In the case of years before 2001, in computing the amount of payment under subparagraph (A)(ii), the payment rate shall be computed as though the amounts excluded under clause (i) had been excluded in the determination of the amount paid to a Medicare Choice organization under part C with respect to an enrollee.

''(C) PERIODIC PAYMENTS FROM MEDICARE TRUST FUNDS.—Payments under this subsection shall be made—

''(i) on a periodic basis consistent with the periodicity of payments under this title; and

''(ii) in appropriate part, as determined by the Secretary, from the trust funds.

''(D) CAP ON AMOUNT.—The aggregate amount to be reimbursed under this paragraph pursuant to the agreement entered into between the administering Secretaries under subsection (b) shall not exceed a total of—

''(i) $55,000,000 for calendar year 1998;

''(ii) $65,000,000 for calendar year 1999; and

''(iii) $75,000,000 for calendar year 2000.

''(2) ASSURING NO INCREASE IN COST TO MEDICARE PROGRAM.—

''(A) MONITORING EFFECT OF DEMONSTRATION PROGRAM ON COSTS TO MEDICARE PROGRAM.—

''(i) IN GENERAL.—The Secretaries, in consultation with the Comptroller General, shall closely monitor the expenditures made under the medicare program for medicare-eligible military retirees or dependents during the period of the demonstration project compared to the expenditures that would have been made for such medicare-eligible military retirees or dependents during that period if the demonstration project had not been conducted. The agreement entered into by the administering Secretaries under subsection (b) shall require any participating military treatment facility to maintain the level of effort for space available care to medicare-eligible military retirees or dependents.

''(ii) ANNUAL REPORT BY THE COMPTROLLER GENERAL.—Not later than December 31 of each year during which the demonstration project is conducted, the Comptroller General shall submit to the Secretaries and the appropriate committees of Congress a report on the extent, if any, to which the costs of the Secretary under the medicare program under this title increased during the preceding fiscal year as a result of the demonstration project.

''(B) REQUIRED RESPONSE IN CASE OF INCREASE IN COSTS.—

''(i) IN GENERAL.—If the administering Secretaries find, based on subparagraph (A), that the expenditures under the medicare program under this title increased (or are expected to increase) during a fiscal year because of the demonstration project, the administering Secretaries shall take such steps as may be needed—

''(I) to recoup for the medicare program the amount of such increase in expenditures; and

''(II) to prevent any such increase in the future.

''(ii) STEPS.—Such steps—

''(I) under clause (i)(I) shall include payment of the amount of such increased expenditures by the Secretary of Defense from the current medical care appropriation of the Department of Defense to the trust funds; and

''(II) under clause (i)(II) shall include suspending or terminating the demonstration project (in whole or in part) or lowering the amount of payment under paragraph (1)(A).

''(k) EVALUATION AND REPORTS.—

''(1) INDEPENDENT EVALUATION.—The administering Secretaries shall arrange for an independent entity with expertise in the evaluation of health services to conduct an evaluation of the demonstration project. The entity shall submit annual reports on the demonstration project to the administering Secretaries and to the committees of jurisdiction in the Congress. The first report shall be submitted not later than 12 months after the date on which the demonstration project begins operation, and the final report not later than 3½ years after that date. The evaluation and reports shall include an assessment, based on the agreement entered into under subsection (b), of the following:

''(A) The number of medicare-eligible military retirees and dependents opting to participate in the demonstration project instead of receiving health benefits through another health insurance plan (including benefits under this title).

''(B) Compliance by the Department of Defense with the requirements under this title.

''(C) The cost to the Department of Defense of providing care to medicare-eligible military retirees and dependents under the demonstration project.

''(D) Compliance by the Department of Defense with the standards of quality required of entities that furnish medicare health care services.

''(E) An analysis of whether, and in what manner, easier access to the uniformed services treatment system affects the number of medicare-eligible military retirees and dependents receiving medicare health care services.

''(F) Any savings or costs to the medicare program under this title resulting from the demonstration project.

''(G) An assessment of the access to care and quality of care for medicare-eligible military retirees and dependents under the demonstration project.

''(H) Any impact of the demonstration project on the access to care for medicare-eligible military retirees and dependents who did not enroll in the demonstration project and for other individuals entitled to benefits under this title.

''(I) Any impact of the demonstration project on private health care providers.

''(J) Any impact of the demonstration project on access to care for active duty military personnel and their dependents.

''(K) A list of the health insurance plans and programs that were the primary payers for medicare-eligible military retirees and dependents during the year prior to their participation in the demonstration project and the distribution of their previous enrollment in such plans and programs.

''(L) An identification of cost-shifting (if any) between the medicare program under this title and the Defense health program as a result of the demonstration project and a description of the nature of any such cost-shifting.

''(M) An analysis of how the demonstration project affects the overall accessibility of the uniformed services treatment system and the amount of space available for point-of-service care, and a description of the unintended effects (if any) upon the normal treatment priority system.

''(N) A description of the difficulties (if any) experienced by the Department of Defense in managing the demonstration project.

''(O) A description of the effects of the demonstration project on military treatment facility readiness and training and the probable effects of the project on overall Department of Defense medical readiness and training.

''(P) A description of the effects that the demonstration project, if permanent, would be expected to have on the overall budget of the Defense health program, the budgets of individual military treatment facilities and designated providers, and on the budget of the medicare program under this title.

''(Q) An analysis of whether the demonstration project affects the cost to the Department of Defense of prescription drugs or the accessibility, availability, and cost of such drugs to demonstration program beneficiaries.

''(R) Any additional elements specified in the agreement entered into under subsection (b).

''(2) REPORT ON EXTENSION AND EXPANSION OF DEMONSTRATION PROJECT.—Not later than six months after the date of the submission of the penultimate report under paragraph (1), the administering Secretaries shall submit to Congress a report containing their recommendation as to—

''(A) whether to extend the demonstration project or make the project permanent;

''(B) whether to expand the project to cover additional sites and areas and to increase the maximum amount of reimbursement (or the maximum amount of reimbursement permitted for managed health care plans under this section) under the project in any year; and

''(C) whether the terms and conditions of the project should be continued (or modified) if the project is extended or expanded.''.

## CHAPTER 6—TAX TREATMENT OF HOSPITALS PARTICIPATING IN PROVIDER-SPONSORED ORGANIZATIONS

### SEC. 5049. TAX TREATMENT OF HOSPITALS WHICH PARTICIPATE IN PROVIDER-SPONSORED ORGANIZATIONS.

(a) IN GENERAL.—Section 501 of the Internal Revenue Code of 1986 (relating to exemption from tax on corporations, certain trusts, etc.) is amended by redesignating subsection (o) as subsection (p) and by inserting after subsection (n) the following new subsection:

''(o) TREATMENT OF HOSPITALS PARTICIPATING IN PROVIDER-SPONSORED ORGANIZATIONS.—An organization shall not fail to be treated as organized and operated exclusively for a charitable purpose for purposes of subsection (c)(3) solely because a hospital which is owned and operated by such organization participates in a provider-sponsored organization (as defined in section 1853(e) of the Social Security Act), whether or not the provider-sponsored organization is exempt from tax. For purposes of subsection (c)(3), any person with a material financial interest in such a provider-sponsored organization shall be treated as a private shareholder or individual with respect to the hospital.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

## Subtitle B—Prevention Initiatives

### SEC. 5101. ANNUAL SCREENING MAMMOGRAPHY FOR WOMEN OVER AGE 39.

(a) IN GENERAL.—Section 1834(c)(2)(A) (42 U.S.C. 1395m(c)(2)(A)) is amended by striking clauses (iii), (iv), and (v) and inserting the following:

''(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.''.

(b) WAIVER OF COINSURANCE.—

(1) IN GENERAL.—Section 1834(c)(1)(C) (42 U.S.C. 1395m(c)(1)(C)) is amended by striking ''80 percent of''.

(2) WAIVER OF COINSURANCE IN OUTPATIENT HOSPITAL SETTINGS.—The third sentence of section 1866(a)(2)(A) (42 U.S.C. 1395cc(a)(2)(A)) is amended by inserting after ''1861(s)(10)(A)'' the following: '', with respect to screening mammography (as defined in section 1861(jj),''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) apply to items and services furnished on or after January 1, 1998.

### SEC. 5102. COVERAGE OF COLORECTAL SCREENING.

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) in subsection (s)(2)—

(A) by striking ''and'' at the end of subparagraphs (N) and (O); and

(B) by inserting after subparagraph (O) the following:

''(P) colorectal cancer screening tests (as defined in subsection (oo)); and''; and

(2) by adding at the end the following:

''Colorectal Cancer Screening Test

''(oo)(1)(A) The term 'colorectal cancer screening test' means a procedure furnished to an individual that the Secretary prescribes in regulations as appropriate for the purpose of early detection of colorectal cancer, taking into account availability, effectiveness, costs, changes in technology and standards of medical practice, and such other factors as the Secretary considers appropriate.

''(B) The Secretary shall consult with appropriate organizations in prescribing regulations under subparagraph (A).''.

(b) FREQUENCY AND PAYMENT LIMITS.—Section 1834 (42 U.S.C. 1395m) is amended by inserting after subsection (c) the following new subsection:

''(d) FREQUENCY AND PAYMENT LIMITS FOR COLORECTAL CANCER SCREENING TESTS.—

''(1) IN GENERAL.—The Secretary shall prescribe regulations that—

''(A) establish frequency limits for colorectal cancer screening tests that take into account the risk status of an individual and that are consistent with frequency limits for similar or related services; and

''(B) establish payment limits (including limits on charges of nonparticipating physicians) for colorectal cancer screening tests that are consistent with payment limits for similar or related services.

''(2) REVISIONS.—The Secretary shall periodically review and, to the extent the Secretary considers appropriate, revise the frequency and payment limits established under paragraph (1).

''(3) FACTORS TO DETERMINE INDIVIDUALS AT RISK.—In establishing criteria for determining whether an individual is at risk for purposes of this subsection, the Secretary shall take into consideration family history, prior experience of cancer, a history of chronic digestive disease condition, and the presence of any appropriate recognized gene markers for colorectal cancer.

''(4) CONSULTATION.—In establishing and revising frequency and payment limits under this subsection, the Secretary shall consult with appropriate organizations.''.

(c) CONFORMING AMENDMENTS.—(1) Paragraphs (1)(D) and (2)(D) of section 1833(a) (42 U.S.C. 1395l(a)) are each amended by inserting ''or section 1834(d)'' after ''subsection (h)(1)''.

(2) Section 1833(h)(1)(A) (42 U.S.C. 1395l(h)(1)(A)) is amended by striking ''The Secretary'' and inserting ''Subject to section 1834(d), the Secretary''.

(3) Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking ''and'' at the end,

(ii) in subparagraph (F), by striking the semicolon at the end and inserting '', and'', and

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

''(G) in the case of colorectal cancer screening tests, which are performed more frequently than is covered under section 1834(d);''; and

(B) in paragraph (7), by striking ''paragraph (1)(B) or under paragraph (1)(F)'' and inserting ''subparagraph (B), (F), or (G) of paragraph (1)''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to items and services furnished on or after January 1, 1998.

(2) REGULATIONS.—The Secretary of Health and Human Services shall issue final regulations described in sections 1861(oo) and 1834(d) of the Social Security Act (as added by this section) within 3 months after the date of enactment of this Act.

### SEC. 5103. DIABETES SCREENING TESTS.

(a) DIABETES OUTPATIENT SELF-MANAGEMENT TRAINING SERVICES.—

(1) IN GENERAL.—Section 1861(s) (42 U.S.C. 1395x(s)), as amended by section 5102, is amended—

(A) in subsection (s)(2)—

(i) by striking ''and'' at the end of subparagraph (P);

(ii) by inserting ''and'' at the end of subparagraph (Q); and

(iii) by adding at the end the following:

''(R) diabetes outpatient self-management training services (as defined in subsection (pp));'', and

(B) by adding at the end the following:

''Diabetes Outpatient Self-Management Training Services

''(pp)(1) The term 'diabetes outpatient self-management training services' means educational and training services furnished to an individual with diabetes by a certified provider (as described in paragraph (2)(A)) in an outpatient setting by an individual or entity that meets the quality standards described in paragraph (2)(B), but only if the physician who is managing the individual's diabetic condition certifies that the services are needed under a comprehensive plan of care related to the individual's diabetic condition to provide the individual with necessary skills and knowledge (including skills related to the self-administration of injectable drugs) to participate in the management of the individual's condition.

''(2) In paragraph (1)—

''(A) a 'certified provider' is a physician, or other individual or entity designated by the Secretary, that, in addition to providing diabetes outpatient self-management training services, provides other items or services for which payment may be made under this title; and

''(B) a physician, or other such individual or entity, meets the quality standards described in this subparagraph if the physician, or individual or entity, meets quality standards established by the Secretary, except that the physician, or other individual or entity, shall be deemed to have met such standards if the physician or other individual or entity—

''(i) meets applicable standards originally established by the National Diabetes Advisory Board and subsequently revised by organizations who participated in the establishment of standards by such Board, or

''(ii) is recognized by an organization that represents individuals (including individuals under this title) with diabetes as meeting standards for furnishing the services.''.

(2) CONSULTATION WITH ORGANIZATIONS IN ESTABLISHING PAYMENT AMOUNTS FOR SERVICES PROVIDED BY PHYSICIANS.—In establishing payment amounts under section 1848 of the Social Security Act for physicians' services consisting of diabetes outpatient self-management training services, the Secretary of Health and Human Services shall consult with appropriate organizations, including such organizations representing individuals or medicare beneficiaries with diabetes, in determining the relative value for such services under section 1848(c)(2) of such Act.

(b) BLOOD-TESTING STRIPS FOR INDIVIDUALS WITH DIABETES.—

(1) INCLUDING STRIPS AND MONITORS AS DURABLE MEDICAL EQUIPMENT.—The first sentence of section 1861(n) (42 U.S.C. 1395x(n)) is amended by inserting before the semicolon the following: '', and includes blood-testing strips and blood glucose monitors for individuals with diabetes without regard to whether the individual has Type I or Type II diabetes or to the individual's use of insulin (as determined under standards established by the Secretary in consultation with the appropriate organizations)''.

(2) 10 PERCENT REDUCTION IN PAYMENTS FOR TESTING STRIPS.—Section 1834(a)(2)(B)(iv) (42 U.S.C. 1395m(a)(2)(B)(iv)) is amended by adding before the period the following: ''(reduced by 10 percent, in the case of a blood glucose testing strip furnished after 1997 for an individual with diabetes)''.

(c) ESTABLISHMENT OF OUTCOME MEASURES FOR BENEFICIARIES WITH DIABETES.—

(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with appropriate organizations, shall establish outcome measures, including glysolated hemoglobin (past 90-day average blood sugar levels), for purposes of evaluating the improvement of the health status of medicare beneficiaries with diabetes mellitus.

(2) RECOMMENDATIONS FOR MODIFICATIONS TO SCREENING BENEFITS.—Taking into account information on the health status of medicare beneficiaries with diabetes mellitus as measured under the outcome measures established under subparagraph (A), the Secretary shall from time to time submit recommendations to Congress regarding modifications to the coverage of services for such beneficiaries under the medicare program.

(d) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after January 1, 1998.

**SEC. 5104. COVERAGE OF BONE MASS MEASUREMENTS.**

(a) IN GENERAL.—Section 1861 (42 U.S.C. 1395x) is amended—

(1) in subsection (s)—

(A) in paragraph (12)(C), by striking ''and'' at the end;

(B) by striking the period at the end of paragraph (14) and inserting ''; and'';

(C) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(D) by inserting after paragraph (14) the following:

''(15) bone mass measurement (as defined in subsection (oo)).''; and

(2) by inserting after subsection (pp), as added by section 5103, the following:

''Bone Mass Measurement

''(gg)(1) The term 'bone mass measurement' means a radiologic or radioscopic procedure or other Food and Drug Administration approved technology performed on a qualified individual (as defined in paragraph (2)) for the purpose of identifying bone mass, detecting bone loss, or determining bone quality, and includes a physician's interpretation of the results of the procedure.

''(2) For purposes of paragraph (1), the term 'qualified individual' means an individual who is (in accordance with regulations prescribed by the Secretary)—

''(A) an estrogen-deficient woman at clinical risk for osteoporosis and who is considering treatment;

''(B) an individual with vertebral abnormalities;

''(C) an individual receiving long-term glucocorticoid steroid therapy;

''(D) an individual with primary hyperparathyroidism; or

''(E) an individual being monitored to assess the response to or efficacy of an approved osteoporosis drug therapy.''.

(b) CONFORMING AMENDMENTS.—Sections 1864(a), 1865(a), 1902(a)(9)(C), and 1915(a)(1)(B)(ii)(I) (42 U.S.C. 1395aa(a), 1395bb(a), 1396a(a)(9)(C), and 1396n(a)(1)(B)(ii)(I)) are amended by striking ''paragraphs (15) and (16)'' each place such term appears and inserting ''paragraphs (16) and (17)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bone mass measurements performed on or after January 1, 1998.

**SEC. 5105. STUDY ON MEDICAL NUTRITION THERAPY SERVICES.**

(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, in conjunction with the United States Preventive Services Task Force, to analyze the expansion or modification of the preventive benefits provided to medicare beneficiaries under title XVIII of the Social Security Act to include medical nutrition therapy services by a registered dietitian.

(b) REPORT.—

(1) INITIAL REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a report on the findings of the analysis conducted under subsection (a) to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate.

(2) CONTENTS.—Such report shall include specific findings with respect to the expansion or modification of coverage of medical nutrition therapy services by a registered dietitian for medicare beneficiaries regarding—

(A) cost to the medicare system;

(B) savings to the medicare system;

(C) clinical outcomes; and

(D) short and long term benefits to the medicare system.

(3) FUNDING.—From funds appropriated to the Department of Health and Human Services for fiscal years 1998 and 1999, the Secretary shall provide for such funding as may be necessary for the conduct of the analysis by the National Academy of Sciences under this section.

***Subtitle C—Rural Initiatives***

**SEC. 5151. SOLE COMMUNITY HOSPITALS.**

Section 1886(b)(3)(C) (42 U.S.C. 1395ww(b)(3)(C)) is amended—

(1) in clause (i), by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively;

(2) by redesignating clauses (i), (ii), (iii), and (iv) as subclauses (I), (II), (III), and (IV), respectively;

(3) by striking ''(C) In'' and inserting ''(C)(i) Subject to clause (ii), in''; and

(4) by striking the last sentence and inserting the following:

''(ii)(I) There shall be substituted for the base cost reporting period described in clause (i)(I) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

''(II) Beginning with discharges occurring in fiscal year 1998, there shall be substituted for the base cost reporting period described in clause (i)(I) either—

''(aa) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital's cost reporting period (if any) beginning during fiscal year 1994 increased (in a compounded manner) by the applicable percentage increases applied to the hospital under this paragraph for discharges occurring in fiscal years 1995, 1996, 1997, and 1998, or

''(bb) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for the hospital's cost reporting period (if any) beginning during fiscal year 1995 increased (in a compounded manner) by the applicable percentage increase applied to the hospital under this paragraph for discharges occurring in fiscal years 1995, 1996, 1997, and 1998,

if such substitution results in an increase in the target amount for the hospital.''.

**SEC. 5152. MEDICARE-DEPENDENT, SMALL RURAL HOSPITAL PAYMENT EXTENSION.**

(a) SPECIAL TREATMENT EXTENDED.—

(1) PAYMENT METHODOLOGY.—Section 1886(d)(5)(G) (42 U.S.C. 1395ww(d)(5)(G)) is amended—

(A) in clause (i), by striking ''October 1, 1994,'' and inserting ''October 1, 1994, or beginning on or after October 1, 1997, and before October 1, 2001,''; and

(B) in clause (ii)(II), by striking ''October 1, 1994,'' and inserting ''October 1, 1994, or beginning on or after October 1, 1997, and before October 1, 2001,''.

(2) EXTENSION OF TARGET AMOUNT.—Section 1886(b)(3)(D) (42 U.S.C. 1395ww(b)(3)(D)) is amended—

(A) in the matter preceding clause (i), by striking ''September 30, 1994,'' and inserting ''September 30, 1994, and for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2001,'';

(B) in clause (ii), by striking ''and'' at the end;

(C) in clause (iii), by striking the period at the end and inserting '', and''; and

(D) by adding after clause (iii) the following new clause:

''(iv) with respect to discharges occurring during fiscal year 1998 through fiscal year 2000, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).''.

(3) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—Section 13501(e)(2) of OBRA–93 (42 U.S.C. 1395ww note) is amended by striking ''or fiscal year 1994'' and inserting '', fiscal year 1994, fiscal year 1998, fiscal year 1999, or fiscal year 2000''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to discharges occurring on or after October 1, 1997.

**SEC. 5153. MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.**

(a) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—Section 1820 (42 U.S.C. 1395i–4) is amended to read as follows:

''MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM

''SEC. 1820. (a) ESTABLISHMENT.—Any State that submits an application in accordance with subsection (b) may establish a medicare rural hospital flexibility program described in subsection (c).

''(b) APPLICATION.—A State may establish a medicare rural hospital flexibility program described in subsection (c) if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing—

''(1) assurances that the State—

''(A) has developed, or is in the process of developing, a State rural health care plan that—

''(i) provides for the creation of 1 or more rural health networks (as defined in subsection (d)) in the State;

''(ii) promotes regionalization of rural health services in the State; and

''(iii) improves access to hospital and other health services for rural residents of the State; and

''(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State, rural hospitals located in the State, and the State Office of Rural Health (or, in the case of a State in the process of developing such plan, that assures the Secretary that the State will consult with its State hospital association, rural hospitals located in the State, and the State Office of Rural Health in developing such plan);

''(2) assurances that the State has designated (consistent with the rural health care plan described in paragraph (1)(A)), or is in the process of so designating, rural nonprofit or public hospitals or facilities located in the State as critical access hospitals; and

''(3) such other information and assurances as the Secretary may require.

''(c) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM DESCRIBED.—

''(1) IN GENERAL.—A State that has submitted an application in accordance with subsection (b), may establish a medicare rural hospital flexibility program that provides that—

''(A) the State shall develop at least 1 rural health network (as defined in subsection (d)) in the State; and

''(B) at least 1 facility in the State shall be designated as a critical access hospital in accordance with paragraph (2).

''(2) STATE DESIGNATION OF FACILITIES.—

''(A) IN GENERAL.—A State may designate 1 or more facilities as a critical access hospital in accordance with subparagraph (B).

''(B) CRITERIA FOR DESIGNATION AS CRITICAL ACCESS HOSPITAL.—A State may designate a facility as a critical access hospital if the facility—

''(i) is a nonprofit or public hospital and is located in a county (or equivalent unit of local government) in a rural area (as defined in section 1886(d)(2)(D)) that—

''(I) is located more than a 35-mile drive from a hospital, or another facility described in this subsection; or

''(II) is certified by the State as being a necessary provider of health care services to residents in the area;

''(ii) makes available 24-hour emergency care services that a State determines are necessary for ensuring access to emergency care services in each area served by a critical access hospital;

''(iii) provides not more than 15 acute care inpatient beds (meeting such standards as the Secretary may establish) for providing inpatient care for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis;

''(iv) meets such staffing requirements as would apply under section 1861(e) to a hospital located in a rural area, except that—

''(I) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open and fully staffed, except insofar as the facility is required to make available emergency care services as determined under clause (ii) and must have nursing services available on a 24-hour basis, but need not otherwise staff the facility except when an inpatient is present;

''(II) the facility may provide any services otherwise required to be provided by a full-time, on site dietitian, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off site basis under arrangements as defined in section 1861(w)(1); and

''(III) the inpatient care described in clause (iii) may be provided by a physician's assistant, nurse practitioner, or clinical nurse specialist subject to the oversight of a physician who need not be present in the facility; and

''(v) meets the requirements of section 1861(aa)(2)(I).

''(d) DEFINITION OF RURAL HEALTH NETWORK.—

''(1) IN GENERAL.—In this section, the term 'rural health network' means, with respect to a State, an organization consisting of—

''(A) at least 1 facility that the State has designated or plans to designate as a critical access hospital; and

''(B) at least 1 hospital that furnishes acute care services.

''(2) AGREEMENTS.—

''(A) IN GENERAL.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to each item described in subparagraph (B) with at least 1 hospital that is a member of the network.

''(B) ITEMS DESCRIBED.—The items described in this subparagraph are the following:

''(i) Patient referral and transfer.

''(ii) The development and use of communications systems including (where feasible)—

''(I) telemetry systems; and

''(II) systems for electronic sharing of patient data.

''(iii) The provision of emergency and nonemergency transportation among the facility and the hospital.

''(C) CREDENTIALING AND QUALITY ASSURANCE.—Each critical access hospital that is a member of a rural health network shall have an agreement with respect to credentialing and quality assurance with at least—

''(i) 1 hospital that is a member of the network;

''(ii) 1 peer review organization or equivalent entity; or

''(iii) 1 other appropriate and qualified entity identified in the State rural health care plan.

''(e) CERTIFICATION BY THE SECRETARY.—The Secretary shall certify a facility as a critical access hospital if the facility—

''(1) is located in a State that has established a medicare rural hospital flexibility program in accordance with subsection (c);

''(2) is designated as a critical access hospital by the State in which it is located; and

''(3) meets such other criteria as the Secretary may require.

''(f) PERMITTING MAINTENANCE OF SWING BEDS.—Nothing in this section shall be construed to prohibit a critical access hospital from entering into an agreement with the Secretary under section 1883 under which the facility's inpatient hospital facilities are used for the furnishing of extended care services.

''(g) GRANTS.—

''(1) MEDICARE RURAL HOSPITAL FLEXIBILITY PROGRAM.—The Secretary may award grants to States that have submitted applications in accordance with subsection (b) for—

''(A) engaging in activities relating to planning and implementing a rural health care plan;

''(B) engaging in activities relating to planning and implementing rural health networks; and

''(C) designating facilities as critical access hospitals.

''(2) RURAL EMERGENCY MEDICAL SERVICES.—

''(A) IN GENERAL.—The Secretary may award grants to States that have submitted applications in accordance with subparagraph (B) for the establishment or expansion of a program for the provision of rural emergency medical services.

''(B) APPLICATION.—An application is in accordance with this subparagraph if the State submits to the Secretary at such time and in such form as the Secretary may require an application containing the assurances described in subparagraphs (A)(ii), (A)(iii), and (B) of subsection (b)(1) and paragraph (3) of that subsection.

''(h) GRANDFATHERING OF CERTAIN FACILITIES.—

''(1) IN GENERAL.—Any medical assistance facility operating in Montana and any rural primary care hospital designated by the Secretary under this section prior to the date of the enactment of the Balanced Budget Act of 1997 shall be deemed to have been certified by the Secretary under subsection (e) as a critical access hospital if such facility or hospital is otherwise eligible to be designated by the State as a critical access hospital under subsection (c).

''(2) CONTINUATION OF MEDICAL ASSISTANCE FACILITY AND RURAL PRIMARY CARE HOSPITAL TERMS.—Notwithstanding any other provision of this title, with respect to any medical assistance facility or rural primary care hospital described in paragraph (1), any reference in this title to a 'critical access hospital' shall be deemed to be a reference to a 'medical assistance facility' or 'rural primary care hospital'.

''(i) WAIVER OF CONFLICTING PART A PROVISIONS.—The Secretary is authorized to waive such provisions of this part and part D as are necessary to conduct the program established under this section.

''(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for making grants to all States under subsection (g), $25,000,000 in each of the fiscal years 1998 through 2002.''.

(b) REPORT ON ALTERNATIVE TO 96-HOUR RULE.—Not later than January 1, 1998, the Administrator of the Health Care Financing Administration shall submit to Congress a report on the feasibility of, and administrative requirements necessary to establish an alternative for certain medical diagnoses (as determined by the Administrator) to the 96-hour limitation for inpatient care in critical access hospitals required by section 1820(c)(2)(B)(iii) of the Social Security Act (42 U.S.C. 1395i–4), as added by subsection (a) of this section.

(c) CONFORMING AMENDMENTS RELATING TO RURAL PRIMARY CARE HOSPITALS AND CRITICAL ACCESS HOSPITALS.—

(1) IN GENERAL.—Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) and title XVIII of that Act (42 U.S.C. 1395 et seq.) are each amended by striking ''rural primary care'' each place it appears and inserting ''critical access''.

(2) DEFINITIONS.—Section 1861(mm) of the Social Security Act (42 U.S.C. 1395x(mm)) is amended to read as follows:

''CRITICAL ACCESS HOSPITAL; CRITICAL ACCESS HOSPITAL SERVICES

''(mm)(1) The term 'critical access hospital' means a facility certified by the Secretary as a critical access hospital under section 1820(e).

''(2) The term 'inpatient critical access hospital services' means items and services, furnished to an inpatient of a critical access hospital by such facility, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

''(3) The term 'outpatient critical access hospital services' means medical and other health services furnished by a critical access hospital on an outpatient basis.''.

(3) PART A PAYMENT.—Section 1814 of the Social Security Act (42 U.S.C. 1395f) is amended—

(A) in subsection (a)(8), by striking ''72'' and inserting ''96''; and

(B) by amending subsection (l) to read as follows:

''Payment for Inpatient Critical Access Hospital Services

''(l) The amount of payment under this part for inpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.''.

(4) PAYMENT CONTINUED TO DESIGNATED EACHS.—Section 1886(d)(5)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(D)) is amended—

(A) in clause (iii)(III), by inserting ''as in effect on September 30, 1997'' before the period at the end; and

(B) in clause (v)—

(i) by inserting ''as in effect on September 30, 1997'' after ''1820(i)(1)''; and

(ii) by striking ''1820(g)'' and inserting ''1820(d)''.

(5) PART B PAYMENT.—Section 1834(g) of the Social Security Act (42 U.S.C. 1395m(g)) is amended to read as follows:

''(g) PAYMENT FOR OUTPATIENT CRITICAL ACCESS HOSPITAL SERVICES.—The amount of payment under this part for outpatient critical access hospital services is the reasonable costs of the critical access hospital in providing such services.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1997.

**SEC. 5154. PROHIBITING DENIAL OF REQUEST BY RURAL REFERRAL CENTERS FOR RECLASSIFICATION ON BASIS OF COMPARABILITY OF WAGES.**

(a) IN GENERAL.—Section 1886(d)(10)(D) (42 U.S.C. 1395ww(d)(10)(D)) is amended—

(1) by redesignating clause (iii) as clause (iv); and

(2) by inserting after clause (ii) the following new clause:

''(iii) Under the guidelines published by the Secretary under clause (i), in the case of a hospital which has ever been classified by the Secretary as a rural referral center under paragraph (5)(C), the Board may not reject the application of the hospital under this paragraph on the basis of any comparison between the average hourly wage of the hospital and the average hourly wage of hospitals in the area in which it is located.''.

(b) CONTINUING TREATMENT OF PREVIOUSLY DESIGNATED CENTERS.—

(1) IN GENERAL.—Any hospital classified as a rural referral center by the Secretary of Health and Human Services under section 1886(d)(5)(C) of the Social Security Act for fiscal year 1991 shall be classified as such a rural referral center for fiscal year 1998 and each subsequent fiscal year.

(2) BUDGET NEUTRALITY.—The provisions of section 1886(d)(8)(D) of the Social Security Act shall apply to reclassifications made pursuant to paragraph (1) in the same manner as such provisions apply to a reclassification under section 1886(d)(10) of such Act.

**SEC. 5155. RURAL HEALTH CLINIC SERVICES.**

(a) PER-VISIT PAYMENT LIMITS FOR PROVIDER-BASED CLINICS.—

(1) EXTENSION OF LIMIT.—

(A) IN GENERAL.—The matter in section 1833(f) (42 U.S.C. 1395l(f)) preceding paragraph (1) is amended by striking ''independent rural health clinics'' and inserting ''rural health clinics (other than such clinics in rural hospitals with less than 50 beds)''.

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) applies to services furnished after 1997.

(2) TECHNICAL CLARIFICATION.—Section 1833(f)(1) (42 U.S.C. 1395l(f)(1)) is amended by inserting ''per visit'' after ''$46''.

(b) ASSURANCE OF QUALITY SERVICES.—

(1) IN GENERAL.—Subparagraph (I) of the first sentence of section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended to read as follows:

''(I) has a quality assessment and performance improvement program, and appropriate procedures for review of utilization of clinic services, as the Secretary may specify,''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on January 1, 1998.

(c) WAIVER OF CERTAIN STAFFING REQUIREMENTS LIMITED TO CLINICS IN PROGRAM.—

(1) IN GENERAL.—Section 1861(aa)(7)(B)) (42 U.S.C. 1395x(aa)(7)(B)) is amended by inserting before the period '', or if the facility has not yet been determined to meet the requirements (including subparagraph (J) of the first sentence of paragraph (2)) of a rural health clinic.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) applies to waiver requests made after 1997.

(d) REFINEMENT OF SHORTAGE AREA REQUIREMENTS.—

(1) DESIGNATION REVIEWED TRIENNIALLY.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended in the second sentence, in the matter in clause (i) preceding subclause (I)—

(A) by striking ''and that is designated'' and inserting ''and that, within the previous 3-year period, has been designated''; and

(B) by striking ''or that is designated'' and inserting ''or designated''.

(2) AREA MUST HAVE SHORTAGE OF HEALTH CARE PRACTITIONERS.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)), as amended by paragraph (1), is further amended in the second sentence, in the matter in clause (i) preceding subclause (I)—

(A) by striking the comma after ''personal health services''; and

(B) by inserting ''and in which there are insufficient numbers of needed health care practitioners (as determined by the Secretary),'' after ''Bureau of the Census)''.

(3) PREVIOUSLY QUALIFYING CLINICS GRANDFATHERED ONLY TO PREVENT SHORTAGE.—

(A) IN GENERAL.—Section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) is amended in the third sentence by inserting before the period ''if it is determined, in accordance with criteria established by the Secretary in regulations, to be essential to the delivery of primary care services that would otherwise be unavailable in the geographic area served by the clinic''.

(B) PAYMENT FOR CERTAIN PHYSICIAN ASSISTANT SERVICES.—

(i) IN GENERAL.—With respect to any regulations issued to implement section 1861(aa)(2) (42 U.S.C. 1395x(aa)(2)) (as amended by subparagraph (A)), the Secretary of Health and Human Services shall include in such regulations provisions providing for the direct payment to the physician assistant for any physician assistant services as described in clause (ii).

(ii) SERVICES DESCRIBED.—Services described in this clause are physician assistant services provided at a rural health clinic that is principally owned, as determined by the Secretary, by a physician assistant—

(I) as of the date of enactment of this Act; and

(II) continuously from such date through the date on which such services are provided.

(iii) SUNSET.—The provisions of this subparagraph shall not apply after January 1, 2003.

(4) EFFECTIVE DATES; IMPLEMENTING REGULATIONS.—

(A) IN GENERAL.—Except as otherwise provided, the amendments made by the preceding paragraphs take effect on January 1 of the first calendar year beginning at least 1 month after enactment of this Act.

(B) CURRENT RURAL HEALTH CLINICS.—The amendments made by the preceding paragraphs take effect, with respect to entities that are rural health clinics under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) on the date of enactment of this Act, on January 1 of the second calendar year following the calendar year specified in subparagraph (A).

(C) GRANDFATHERED CLINICS.—

(i) IN GENERAL.—The amendment made by paragraph (3) shall take effect on the effective date of regulations issued by the Secretary under clause (ii).

(ii) REGULATIONS.—The Secretary shall issue final regulations implementing paragraph (3) that shall take effect no later than January 1 of the third calendar year beginning at least 1 month after the date of enactment of this Act.

**SEC. 5156. MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES.**

(a) IN GENERAL.—Not later than July 1, 1998, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall make payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) in accordance with the methodology described in subsection (b) for professional consultation via telecommunications systems with a health care provider furnishing a service for which payment may be made under such part to a beneficiary under the medicare program residing in a county in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D))) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)) or a rural county that is not adjacent to a Metropolitan Statistical Area, notwithstanding that the individual health care provider providing the professional consultation is not at the same location as the health care provider furnishing the service to that beneficiary.

(b) METHODOLOGY FOR DETERMINING AMOUNT OF PAYMENTS.—Taking into account the findings of the report required under section 192 of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 1988), the findings of the report required under paragraph (c), and any other findings related to the clinical efficacy and cost-effectiveness of telehealth applications, the Secretary shall establish a methodology for determining the amount of payments made under subsection (a) within the following parameters:

(1) The payment shall include a bundled payment to be shared between the referring health care provider and the consulting health care provider. The amount of such bundled payment shall not be greater than the current fee schedule of the consulting health care provider for the health care services provided.

(2) The payment shall not include any reimbursement for any line charges or any facility fees.

(c) SUPPLEMENTAL REPORT.—Not later than January 1, 1998, the Secretary shall submit a report to Congress which shall contain a detailed analysis of—

(1) how telemedicine and telehealth systems are expanding access to health care services;

(2) the clinical efficacy and cost-effectiveness of telemedicine and telehealth applications;

(3) the quality of telemedicine and telehealth services delivered; and

(4) the reasonable cost of telecommunications charges incurred in practicing telemedicine and telehealth in rural, frontier, and underserved areas.

(d) EXPANSION OF TELEHEALTH SERVICES FOR CERTAIN MEDICARE BENEFICIARIES.—

(1) IN GENERAL.—Not later than January 1, 1999, the Secretary shall submit a report to Congress that examines the possibility of making payments from the Federal Supplementary Medical Insurance Trust Fund under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.) for professional consultation via telecommunications systems with a health care provider furnishing a service for which payment may be made under such part to a beneficiary described in paragraph (2), notwithstanding that the individual health care provider providing the professional consultation is not at the same location as the health care provider furnishing the service to that beneficiary.

(2) BENEFICIARY DESCRIBED.—A beneficiary described in this paragraph is a beneficiary under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) who does not reside in a rural area (as so defined) that is designated as a health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A)), who is homebound or nursing homebound, and for whom being transferred for health care services imposes a serious hardship.

(3) REPORT.—The report described in paragraph (1) shall contain a detailed statement of the potential costs to the medicare program of

making the payments described in that paragraph using various reimbursement schemes.

**SEC. 5157. TELEMEDICINE, INFORMATICS, AND EDUCATION DEMONSTRATION PROJECT.**

(a) PURPOSE AND AUTHORIZATION.—

(1) IN GENERAL.—Not later than 9 months after the date of enactment of this section, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a demonstration project described in paragraph (2).

(2) DESCRIPTION OF PROJECT.—The demonstration project described in this paragraph is a single demonstration project to study the use of eligible health care provider telemedicine networks to implement high-capacity computing and advanced networks to improve primary care (and prevent health care complications), improve access to specialty care, and provide educational and training support to rural practitioners.

(3) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of titles XI, XVIII, and XIX of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct the demonstration project.

(4) DURATION OF PROJECT.—The project shall be conducted for a 5-year period.

(b) OBJECTIVES OF PROJECT.—The objectives of the demonstration project conducted under this section shall include the following:

(1) The improvement of patient access to primary and specialty care and the reduction of inappropriate hospital visits in order to improve patient quality-of-life and reduce overall health care costs.

(2) The development of a curriculum to train and development of standards for required credentials and licensure of health professionals (particularly primary care health professionals) in the use of medical informatics and telecommunications.

(3) The demonstration of the application of advanced technologies such as video-conferencing from a patient's home and remote monitoring of a patient's medical condition.

(4) The development of standards in the application of telemedicine and medical informatics.

(5) The development of a model for cost-effective delivery of primary and related care in both a managed care environment and in a fee-for-service environment.

(c) ELIGIBLE HEALTH CARE PROVIDER TELEMEDICINE NETWORK DEFINED.—In this section, the term ''eligible health care provider telemedicine network'' means a consortium that—

(1) includes—

(A) at least 1 tertiary care hospital with an existing telemedicine network with an existing relationship with a medical school; and

(B) not more than 6 facilities, including at least 3 rural referral centers, in rural areas; and

(2) meets the following requirements:

(A) The consortium is located in a region that is predominantly rural.

(B) The consortium submits to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including a description of the use the consortium would make of any amounts received under the demonstration project and the source and amount of non-Federal funds used in the project.

(C) The consortium guarantees that it will be responsible for payment for all costs of the project that are not paid under this section and that the maximum amount of payment that may be made to the consortium under this section shall not exceed the amount specified in subsection (d)(3).

(d) COVERAGE AS MEDICARE PART B SERVICES.—

(1) IN GENERAL.—Subject to the succeeding provisions of this section, services for medicare beneficiaries furnished under the demonstration project shall be considered to be services covered under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j).

(2) PAYMENTS.—

(A) IN GENERAL.—Subject to paragraph (3), payment for services provided under this section shall be made at a rate of 50 percent of the costs that are reasonable and related to the provision of such services. In computing such costs, the Secretary shall include costs described in subparagraph (B), but may not include costs described in subparagraph (C).

(B) COSTS THAT MAY BE INCLUDED.—The costs described in this subparagraph are the permissible costs (as recognized by the Secretary) for the following:

(i) The acquisition of telemedicine equipment for use in patients' homes (but only in the case of patients located in medically underserved areas).

(ii) Curriculum development and training of health professionals in medical informatics and telemedicine.

(iii) Payment of telecommunications costs including salaries, maintenance of equipment, and costs of telecommunications between patients' homes and the eligible network and between the network and other entities under the arrangements described in subsection (c).

(iv) Payments to practitioners and providers under the medicare programs.

(C) OTHER COSTS.—The costs described in this subparagraph include the following:

(i) The purchase or installation of transmission equipment (other than such equipment used by health professionals to deliver medical informatics services under the project).

(ii) The establishment or operation of a telecommunications common carrier network.

(iii) Construction that is limited to minor renovations related to the installation of equipment.

(3) LIMITATION AND FUNDS.—The Secretary shall make the payments under the demonstration project conducted under this section from the Federal Supplementary Medical Insurance Trust Fund, established under section 1841 of the Social Security Act (42 U.S.C. 1395t), except that the total amount of the payments that may be made by the Secretary under this section shall not exceed $27,000,000.

## Subtitle D—Anti-Fraud and Abuse Provisions and Improvements in Protecting Program Integrity

### CHAPTER 1—REVISIONS TO SANCTIONS FOR FRAUD AND ABUSE

**SEC. 5201. AUTHORITY TO REFUSE TO ENTER INTO MEDICARE AGREEMENTS WITH INDIVIDUALS OR ENTITIES CONVICTED OF FELONIES.**

(a) MEDICARE PART A.—Section 1866(b)(2) (42 U.S.C. 1395cc(b)(2)) is amended—

(1) in subparagraph (B), by striking ''or'' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting '', or''; and

(3) by adding at the end the following:

''(D) has ascertained that the provider has been convicted of a felony under Federal or State law for an offense that the Secretary determines is inconsistent with the best interests of program beneficiaries.''.

(b) MEDICARE PART B.—Section 1842 (42 U.S.C. 1395u) is amended by adding at the end the following:

''(s) The Secretary may refuse to enter into an agreement with a physician or supplier under subsection (h), or may terminate or refuse to renew such agreement, in the event that such physician or supplier has been convicted of a felony under Federal or State law for an offense which the Secretary determines is inconsistent with the best interests of program beneficiaries.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and apply to the entry and renewal of contracts on or after such date.

**SEC. 5202. EXCLUSION OF ENTITY CONTROLLED BY FAMILY MEMBER OF A SANCTIONED INDIVIDUAL.**

(a) IN GENERAL.—Section 1128 (42 U.S.C. 1320a–7) is amended—

(1) in subsection (b)(8)(A)—

(A) in clause (i), by striking ''or'' at the end;

(B) in clause (ii), by striking the dash at the end and inserting ''; or''; and

(C) by inserting after clause (ii) the following:

''(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1)) or a member of the household of the person (as defined in subsection (j)(2)) who continues to maintain an interest described in such clause—''; and

(2) by adding at the end the following:

''(j) DEFINITION OF IMMEDIATE FAMILY MEMBER AND MEMBER OF HOUSEHOLD.—For purposes of subsection (b)(8)(A)(iii):

''(1) The term 'immediate family member' means, with respect to a person—

''(A) the husband or wife of the person;

''(B) the natural or adoptive parent, child, or sibling of the person;

''(C) the stepparent, stepchild, stepbrother, or stepsister of the person;

''(D) the father-, mother-, daughter-, son-, brother-, or sister-in-law of the person;

''(E) the grandparent or grandchild of the person; and

''(F) the spouse of a grandparent or grandchild of the person.

''(2) The term 'member of the household' means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 45 days after the date of the enactment of this Act.

**SEC. 5203. IMPOSITION OF CIVIL MONEY PENALTIES.**

(a) CIVIL MONEY PENALTIES FOR PERSONS THAT CONTRACT WITH EXCLUDED INDIVIDUALS.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)) is amended—

(1) in paragraph (4), by striking ''or'' at the end;

(2) in paragraph (5), by adding ''or'' at the end; and

(3) by inserting after paragraph (5) the following:

''(6) arranges or contracts (by employment or otherwise) with an individual or entity that the person knows or should know is excluded from participation in a Federal health care program (as defined in section 1128B(f)), for the provision of items or services for which payment may be made under such a program;''.

(b) CIVIL MONEY PENALTIES FOR SERVICES ORDERED OR PRESCRIBED BY AN EXCLUDED INDIVIDUAL OR ENTITY.—Section 1128A(a)(1) (42 U.S.C. 1320a–7a(a)(1)) is amended—

(1) in subparagraph (D)—

(A) by inserting '', ordered, or prescribed by such person'' after ''other item or service furnished'';

(B) by inserting ''(pursuant to this title or title XVIII)'' after ''period in which the person was excluded'';

(C) by striking ''pursuant to a determination by the Secretary'' and all that follows through ''the provisions of section 1842(j)(2)''; and

(D) by striking ''or'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) is for a medical or other item or service ordered or prescribed by a person excluded pursuant to this title or title XVIII from the program under which the claim was made, and the

person furnishing such item or service knows or should know of such exclusion, or''.

(c) CIVIL MONEY PENALTIES FOR KICKBACKS.—

(1) PERMITTING SECRETARY TO IMPOSE CIVIL MONEY PENALTY.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by subsection (a), is amended—

(A) in paragraph (5), by striking ''or'' at the end;

(B) in paragraph (6), by adding ''or'' at the end; and

(C) by adding after paragraph (6) the following:

''(7) commits an act described in paragraph (1) or (2) of section 1128B(b);''.

(2) DESCRIPTION OF CIVIL MONEY PENALTY APPLICABLE.—Section 1128A(a) (42 U.S.C. 1320a–7a(a)), as amended by paragraph (1), is amended in the matter following paragraph (7)—

(A) by striking ''occurs).'' and inserting ''occurs; or in cases under paragraph (7), $50,000 for each such act).''; and

(B) by inserting after ''of such claim'' the following: ''(or, in cases under paragraph (7), damages of not more than 3 times the total amount of remuneration offered, paid, solicited, or received, without regard to whether a portion of such remuneration was offered, paid, solicited, or received for a lawful purpose)''.

(d) EFFECTIVE DATES.—

(1) CONTRACTS WITH EXCLUDED PERSONS.—The amendments made by subsection (a) shall apply to arrangements and contracts entered into after the date of the enactment of this Act.

(2) SERVICES ORDERED OR PRESCRIBED.—The amendments made by subsection (b) shall apply to items and services furnished, ordered, or prescribed after the date of the enactment of this Act.

(3) KICKBACKS.—The amendments made by subsection (c) shall apply to acts taken after the date of the enactment of this Act.

## CHAPTER 2—IMPROVEMENTS IN PROTECTING PROGRAM INTEGRITY

### SEC. 5211. DISCLOSURE OF INFORMATION, SURETY BONDS, AND ACCREDITATION.

(a) DISCLOSURE OF INFORMATION, SURETY BOND, AND ACCREDITATION REQUIREMENT FOR SUPPLIERS OF DURABLE MEDICAL EQUIPMENT.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by inserting after paragraph (15) the following:

''(16) DISCLOSURE OF INFORMATION, SURETY BOND, AND ACCREDITATION.—The Secretary shall not provide for the issuance (or renewal) of a provider number for a supplier of durable medical equipment, for purposes of payment under this part for durable medical equipment furnished by the supplier, unless the supplier provides the Secretary on a continuing basis—

''(A) with—

''(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1124(a)(3)) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

''(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1124(a)(2)) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity;

''(B) with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000; and

''(C) at the discretion of the Secretary, with evidence of compliance with the applicable conditions or requirements of this title through an accreditation survey conducted by a national accreditation body under section 1865(b).

The Secretary may waive the requirement of a bond under subparagraph (B) in the case of a supplier that provides a comparable surety bond under State law.''.

(b) SURETY BOND REQUIREMENT FOR HOME HEALTH AGENCIES.—

(1) IN GENERAL.—Section 1861(o) (42 U.S.C. 1395x(o)) is amended—

(A) in paragraph (7), by inserting ''and including providing the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000'' after ''financial security of the program''; and

(B) by adding at the end the following: ''The Secretary may waive the requirement of a surety bond under paragraph (7) in the case of an agency or organization that provides a comparable surety bond under State law.''.

(2) CONFORMING AMENDMENTS.—Section 1861(v)(1)(H) (42 U.S.C. 1395x(v)(1)(H)) is amended—

(A) in clause (i), by striking ''the financial security requirement'' and inserting ''the financial security and surety bond requirements''; and

(B) in clause (ii), by striking ''the financial security requirement described in subsection (o)(7) applies'' and inserting ''the financial security and surety bond requirements described in subsection (o)(7) apply''.

(3) REFERENCE TO CURRENT DISCLOSURE REQUIREMENT.—For additional provisions requiring home health agencies to disclose information on ownership and control interests, see section 1124 of the Social Security Act (42 U.S.C. 1320a–3).

(c) AUTHORIZING APPLICATION OF DISCLOSURE AND SURETY BOND REQUIREMENTS TO AMBULANCE SERVICES AND CERTAIN CLINICS.—Section 1834(a)(16) (42 U.S.C. 1395m(a)(16)), as added by subsection (a), is amended by adding at the end the following flush sentence:

The Secretary, in the Secretary's discretion, may impose the requirements of the previous sentence with respect to some or all classes of suppliers of ambulance services described in section 1861(s)(7) and clinics that furnish medical and other health services (other than physicians' services) under this part.''.

(d) APPLICATION TO COMPREHENSIVE OUTPATIENT REHABILITATION FACILITIES (CORFS).—Section 1861(cc)(2) (42 U.S.C. 1395x(cc)(2)) is amended—

(1) in subparagraph (I), by inserting before the period at the end the following: ''and providing the Secretary on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000''; and

(2) by adding at the end the following flush sentence:

''The Secretary may waive the requirement of a bond under subparagraph (I) in the case of a facility that provides a comparable surety bond under State law.''.

(e) APPLICATION TO REHABILITATION AGENCIES.—Section 1861(p) (42 U.S.C. 1395x(p)) is amended—

(1) in paragraph (4)(A)(v), by inserting after ''as the Secretary may find necessary,'' the following: ''and provides the Secretary, to the extent required by the Secretary, on a continuing basis with a surety bond in a form specified by the Secretary and in an amount that is not less than $50,000,'', and

(2) by adding at the end the following: ''The Secretary may waive the requirement of a bond under paragraph (4)(A)(v) in the case of a clinic or agency that provides a comparable surety bond under State law.''.

(f) EFFECTIVE DATES.—

(1) SUPPLIERS OF DURABLE MEDICAL EQUIPMENT.—The amendment made by subsection (a) shall apply to suppliers of durable medical equipment with respect to such equipment furnished on or after January 1, 1998.

(2) HOME HEALTH AGENCIES.—The amendments made by subsection (b) shall apply to home health agencies with respect to services furnished on or after January 1, 1998. The Secretary of Health and Human Services shall modify participation agreements under section 1866(a)(1) of the Social Security Act (42 U.S.C. 1395cc(a)(1)) with respect to home health agencies to provide for implementation of such amendments on a timely basis.

(3) OTHER AMENDMENTS.—The amendments made by subsections (c) through (e) shall take effect on the date of the enactment of this Act and may be applied with respect to items and services furnished on or after the date specified in paragraph (1).

### SEC. 5212. PROVISION OF CERTAIN IDENTIFICATION NUMBERS.

(a) REQUIREMENTS TO DISCLOSE EMPLOYER IDENTIFICATION NUMBERS (EINS) AND SOCIAL SECURITY ACCOUNT NUMBERS (SSNS).—Section 1124(a)(1) (42 U.S.C. 1320a–3(a)(1)) is amended by inserting before the period at the end the following: ''and supply the Secretary with the both the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 205(c)(2)(B)) of the disclosing entity, each person with an ownership or control interest (as defined in subsection (a)(3)), and any subcontractor in which the entity directly or indirectly has a 5 percent or more ownership interest''.

(b) OTHER MEDICARE PROVIDERS.—Section 1124A (42 U.S.C. 1320a–3a) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''and'' at the end;

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) including the employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986) and social security account number (assigned under section 205(c)(2)(B)) of the disclosing part B provider and any person, managing employee, or other entity identified or described under paragraph (1) or (2).''; and

(2) in subsection (c)(1), by inserting ''(or, for purposes of subsection (a)(3), any entity receiving payment)'' after ''on an assignment-related basis''.

(c) VERIFICATION BY SOCIAL SECURITY ADMINISTRATION (SSA).—Section 1124A (42 U.S.C. 1320a–3a), as amended by subsection (b), is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

''(c) VERIFICATION.—

''(1) TRANSMITTAL BY HHS.—The Secretary shall transmit—

''(A) to the Commissioner of Social Security information concerning each social security account number (assigned under section 205(c)(2)(B)), and

''(B) to the Secretary of the Treasury information concerning each employer identification number (assigned pursuant to section 6109 of the Internal Revenue Code of 1986),

supplied to the Secretary pursuant to subsection (a)(3) or section 1124(c) to the extent necessary for verification of such information in accordance with paragraph (2).

''(2) VERIFICATION.—The Commissioner of Social Security and the Secretary of the Treasury shall verify the accuracy of, or correct, the information supplied by the Secretary to such official pursuant to paragraph (1), and shall report such verifications or corrections to the Secretary.

''(3) FEES FOR VERIFICATION.—The Secretary shall reimburse the Commissioner and Secretary of the Treasury, at a rate negotiated between the Secretary and such official, for the costs incurred by such official in performing the verification and correction services described in this subsection.''.

(d) REPORT.—The Secretary of Health and Human Services shall submit to Congress a report on steps the Secretary has taken to assure the confidentiality of social security account numbers that will be provided to the Secretary under the amendments made by this section.

(e) EFFECTIVE DATES.—

(1) DISCLOSURE REQUIREMENTS.—The amendment made by subsection (a) shall apply to the application of conditions of participation, and entering into and renewal of contracts and agreements, occurring more than 90 days after the date of submission of the report under subsection (d).

(2) OTHER PROVIDERS.—The amendments made by subsection (b) shall apply to payment for items and services furnished more than 90 days after the date of submission of such report.

**SEC. 5213. APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE.**

(a) RESTRICTED APPLICABILITY OF BANKRUPTCY STAY, DISCHARGE, AND PREFERENTIAL TRANSFER PROVISIONS TO MEDICARE AND MEDICAID DEBTS.—Part A of title XI (42 U.S.C. 1301 et seq.) is amended by inserting after section 1143 the following:

''APPLICATION OF CERTAIN PROVISIONS OF THE BANKRUPTCY CODE

''SEC. 1144. (a) MEDICARE AND MEDICAID-RELATED ACTIONS NOT STAYED BY BANKRUPTCY PROCEEDINGS.—The commencement or continuation of any action against a debtor under this title or title XVIII or XIX (other than an action with respect to health care services for the debtor under title XVIII), including any action or proceeding to exclude or suspend the debtor from program participation, assess civil money penalties, recoup or set off overpayments, or deny or suspend payment of claims shall not be subject to the provisions of section 362(a) of title 11, United States Code.

''(b) CERTAIN MEDICARE- AND MEDICAID-RELATED DEBT NOT DISCHARGEABLE IN BANKRUPTCY.—A debt owed to the United States or to a State for an overpayment under title XVIII or XIX (other than an overpayment for health care services for the debtor under title XVIII) resulting from the fraudulent actions of the debtor, or for a penalty, fine, or assessment under this title or title XVIII or XIX, shall not be dischargeable under any provision of title 11, United States Code.

''(c) REPAYMENT OF CERTAIN DEBTS CONSIDERED FINAL.—Payments made to repay a debt to the United States or to a State with respect to items or services provided, or claims for payment made, under title XVIII or XIX (including repayment of an overpayment (other than an overpayment for health care services for the debtor under title XVIII) resulting from the fraudulent actions of the debtor), or to pay a penalty, fine, or assessment under this title or title XVIII or XIX, shall be considered final and not preferential transfers under section 547 of title 11, United States Code.''.

(b) MEDICARE RULES APPLICABLE TO BANKRUPTCY PROCEEDINGS.—Title XVIII (42 U.S.C. 1395 et seq.) is amended by adding at the end the following:

''APPLICATION OF PROVISIONS OF THE BANKRUPTCY CODE

''SEC. 1894. (a) USE OF MEDICARE STANDARDS AND PROCEDURES.—Notwithstanding any provision of title 11, United States Code, or any other provision of law, in the case of claims by a debtor in bankruptcy for payment under this title, the determination of whether the claim is allowable and of the amount payable, shall be made in accordance with the provisions of this title and title XI and implementing regulations.

''(b) NOTICE TO CREDITOR OF BANKRUPTCY PETITIONER.—In the case of a debt owed to the United States with respect to items or services provided, or claims for payment made, under this title (including a debt arising from an overpayment or a penalty, fine, or assessment under title XI or this title), the notices to the creditor of bankruptcy petitions, proceedings, and relief required under title 11, United States Code (including under section 342 of that title and section 2002(j) of the Federal Rules of Bankruptcy Procedure), shall be given to the Secretary. Provision of such notice to a fiscal agent of the Secretary shall not be considered to satisfy this requirement.

''(c) TURNOVER OF PROPERTY TO THE BANKRUPTCY ESTATE.—For purposes of section 542(b) of title 11, United States Code, a claim for payment under this title shall not be considered to be a matured debt payable to the estate of a debtor until such claim has been allowed by the Secretary in accordance with procedures under this title.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to bankruptcy petitions filed after the date of the enactment of this Act.

**SEC. 5214. REPLACEMENT OF REASONABLE CHARGE METHODOLOGY BY FEE SCHEDULES.**

(a) IN GENERAL.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended in the matter preceding subparagraph (A) by striking ''the reasonable charges for the services'' and inserting ''the lesser of the actual charges for the services and the amounts determined by the applicable fee schedules developed by the Secretary for the particular services''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) in subparagraph (A), by striking ''reasonable charges for'' and inserting ''payment bases otherwise applicable to'';

(B) in subparagraph (B), by striking ''reasonable charges'' and inserting ''fee schedule amounts''; and

(C) by inserting after subparagraph (F) the following: ''(G) with respect to services described in clause (i) or (ii) of section 1861(s)(2)(K) (relating to physician assistants and nurse practitioners), the amounts paid shall be 80 percent of the lesser of the actual charge for the services and the applicable amount determined under subclause (I) or (II) of section 1842(b)(12)(A)(ii),''.

(2) Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended—

(A) in subparagraph (B), in the matter preceding clause (i), by striking ''(C), (D),'' and inserting ''(D)''; and

(B) by striking subparagraph (C).

(3) Section 1833(l) (42 U.S.C. 1395l(l)) is amended—

(A) in paragraph (3)—

(i) by striking subparagraph (B); and

(ii) by striking ''(3)(A)'' and inserting ''(3)''; and

(B) by striking paragraph (6).

(4) Section 1834(a)(10)(B) (42 U.S.C. 1395m(a)(10)(B)) is amended by striking ''paragraphs (8) and (9)'' and all that follows through ''section 1848(i)(3).'' and inserting ''section 1842(b)(8) to covered items and suppliers of such items and payments under this subsection as such provisions would otherwise apply to physicians' services and physicians.''.

(5) Section 1834(g)(1)(A)(ii) (42 U.S.C. 1395m(g)(1)(A)(ii)) is amended in the heading by striking ''REASONABLE CHARGES FOR PROFESSIONAL'' and inserting ''PROFESSIONAL''.

(6) Section 1842(a) (42 U.S.C. 1395u(a)) is amended—

(A) in the matter preceding paragraph (1), by striking ''reasonable charge'' and inserting ''fee schedule''; and

(B) in paragraph (1)(A), by striking ''reasonable charge'' and inserting ''other''.

(7) Section 1842(b)(3) (42 U.S.C. 1395u(b)(3)) is amended—

(A) in subparagraph (B)—

(i) in the matter preceding clause (i), by striking ''where payment'' and all that follows through ''made—'' and inserting ''where payment under this part for a service is on a basis other than a cost basis, such payment will (except as otherwise provided in section 1870(f)) be made—''; and

(ii) by striking clause (ii)(I) and inserting the following: ''(I) the amount determined by the applicable payment basis under this part is the full charge for the service,''; and

(B) by striking the second, third, fourth, fifth, sixth, eighth, and ninth sentences.

(8) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended to read as follows:

''(4) In the case of an enteral or parenteral pump that is furnished on a rental basis during a period of medical need—

''(A) monthly rental payments shall not be made under this part for more than 15 months during that period, and

''(B) after monthly rental payments have been made for 15 months during that period, payment under this part shall be made for maintenance and servicing of the pump in amounts that the Secretary determines to be reasonable and necessary to ensure the proper operation of the pump.''.

(9) Section 6112(b) (42 U.S.C. 1395m note; Public Law 101–239) of OBRA—1989 is repealed.

(10) Section 1842(b)(7) (42 U.S.C. 1395u(b)(7)) is amended—

(A) in subparagraph (D)(i), in the matter preceding subclause (I), by striking '', to the extent that such payment is otherwise allowed under this paragraph,'';

(B) in subparagraph (D)(ii), by striking ''subparagraph'' and inserting ''paragraph'';

(C) by striking ''(7)(A) In the case of'' and all that follows through subparagraph (C);

(D) by striking ''(D)(i)'' and inserting ''(7)(A)'';

(E) by redesignating clauses (ii) and (iii) as subparagraphs (B) and (C), respectively; and

(F) by redesignating subclauses (I), (II), and (III) of subparagraph (A) (as redesignated by subparagraph (D) of this paragraph) as clauses (i), (ii), and (iii), respectively.

(11) Section 1842(b)(9) (42 U.S.C. 1395u(b)(9)) is repealed.

(12) Section 1842(b)(10) (42 U.S.C. 1395u(b)(10)) is repealed.

(13) Section 1842(b)(11) (42 U.S.C. 1395u(b)(11)) is amended—

(A) by striking subparagraphs (B) through (D);

(B) by striking ''(11)(A)'' and inserting ''(11)''; and

(C) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively.

(14) Section 1842(b)(12)(A)(ii) (42 U.S.C. 1395u(b)(12)(A)(ii)) is amended—

(A) in the matter preceding subclause (I), by striking ''prevailing charges determined under paragraph (3)'' and inserting ''the amounts determined under section 1833(a)(1)(G)''; and

(B) in subclause (II), by striking ''prevailing charge rate'' and all that follows up to the period and inserting ''fee schedule amount specified in section 1848 for such services performed by physicians''.

(15) Paragraphs (14) through (17) of section 1842(b) (42 U.S.C. 1395u(b)) are repealed.

(16) Section 1842(b) (42 U.S.C. 1395u(b)) is amended—

(A) in paragraph (18)(A), by striking ''reasonable charge or''; and

(B) by redesignating paragraph (18) as paragraph (14).

(17) Section 1842(j)(1) (42 U.S.C. 1395u(j)) is amended to read as follows:

''(j)(1) See subsections (k), (l), (m), (n), and (p) as to the cases in which sanctions may be applied under paragraph (2).''.

(18) Section 1842(j)(4) (42 U.S.C. 1395u(j)(4)) is amended by striking ''under paragraph (1)''.

(19) Section 1842(n)(1)(A) (42 U.S.C. 1395u(n)(1)(A)) is amended by striking ''reasonable charge (or other applicable limit)'' and inserting ''other applicable limit''.

(20) Section 1842(q) (42 U.S.C. 1395u(q)) is amended—

(A) by striking paragraph (1)(B); and

(B) by striking ''(q)(1)(A)'' and inserting ''(q)(1)''.

(21) Section 1845(b)(1) (42 U.S.C. 1395w–1(b)(1)) is amended by striking ''adjustments to the reasonable charge levels for physicians' services recognized under section 1842(b) and''.

(22) Section 1848(i)(3) (42 U.S.C. 1395w–4(i)(3)) is repealed.

(23) Section 1866(a)(2)(A)(ii) (42 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by striking ''reasonable charges'' and all that follows through ''provider)'' and inserting ''amount customarily charged for the items and services by the provider''.

(24) Section 1881(b)(3)(A) (42 U.S.C. 1395rr(b)(3)(A)) is amended by striking ''a reasonable charge'' and all that follows through ''section 1848)'' and inserting ''the basis described in section 1848''.

(25) Section 9340 of OBRA—1986 (42 U.S.C. 1395u note; Public Law 99-509) is repealed.

(c) EFFECTIVE DATES.—The amendments made by this section to the extent such amendments substitute fee schedules for reasonable charges, shall apply to particular services as of the date specified by the Secretary of Health and Human Services.

(d) INITIAL BUDGET NEUTRALITY.—The Secretary, in developing a fee schedule for particular services (under the amendments made by this section), shall set amounts for the first year period to which the fee schedule applies at a level so that the total payments under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) for those services for that year period shall be approximately equal to the estimated total payments if those amendments had not been made.

**SEC. 5215. APPLICATION OF INHERENT REASONABLENESS TO ALL PART B SERVICES OTHER THAN PHYSICIANS' SERVICES.**

(a) IN GENERAL.—Section 1842(b)(8) (42 U.S.C. 1395u(b)(8)) is amended to read as follows:

''(8) The Secretary shall describe by regulation the factors to be used in determining the cases (of particular items or services) in which the application of this part (other than to physicians' services paid under section 1848) results in the determination of an amount that, because of its being grossly excessive or grossly deficient, is not inherently reasonable, and provide in those cases for the factors to be considered in establishing an amount that is realistic and equitable.''.

(b) CONFORMING AMENDMENT.—Section 1834(a)(10) (42 U.S.C. 1395m(a)(10)(B)) is amended—

(1) by striking subparagraph (B); and

(2) by redesignating subparagraph (C) as subparagraph (B).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

**SEC. 5216. REQUIREMENT TO FURNISH DIAGNOSTIC INFORMATION.**

(a) INCLUSION OF NON-PHYSICIAN PRACTITIONERS IN REQUIREMENT TO PROVIDE DIAGNOSTIC CODES FOR PHYSICIAN SERVICES.—Paragraphs (1) and (2) of section 1842(p) (42 U.S.C. 1395u(p)) are each amended by inserting ''or practitioner specified in subsection (b)(18)(C)'' after ''by a physician''.

(b) REQUIREMENT TO PROVIDE DIAGNOSTIC INFORMATION WHEN ORDERING CERTAIN ITEMS OR SERVICES FURNISHED BY ANOTHER ENTITY.—Section 1842(p) (42 U.S.C. 1395u(p)), is amended by adding at the end the following:

''(4) In the case of an item or service defined in paragraph (3), (6), (8), or (9) of subsection 1861(s) ordered by a physician or a practitioner specified in subsection (b)(18)(C), but furnished by another entity, if the Secretary (or fiscal agent of the Secretary) requires the entity furnishing the item or service to provide diagnostic or other medical information for payment to be made to the entity, the physician or practitioner shall provide that information to the entity at the time that the item or service is ordered by the physician or practitioner.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items and services furnished on or after January 1, 1998.

**SEC. 5217. REPORT BY GAO ON OPERATION OF FRAUD AND ABUSE CONTROL PROGRAM.**

Section 1817(k)(6) (42 U.S.C. 1395i(k)(6)) is amended by inserting ''June 1, 1998, and'' after ''Not later than''.

**SEC. 5218. COMPETITIVE BIDDING.**

(a) GENERAL RULE.—Part B of title XVIII (42 U.S.C. 1395j et seq.) is amended by inserting after section 1846 the following:

**''SEC. 1847. COMPETITIVE ACQUISITION OF ITEMS AND SERVICES.**

''(a) ESTABLISHMENT OF BIDDING AREAS.—

''(1) IN GENERAL.—The Secretary shall establish competitive acquisition areas for contract award purposes for the furnishing under this part after 1997 of the items and services described in subsection (c). The Secretary may establish different competitive acquisition areas under this subsection for different classes of items and services.

''(2) CRITERIA FOR ESTABLISHMENT.—The competitive acquisition areas established under paragraph (1) shall be chosen based on the availability and accessibility of entities able to furnish items and services, and the probable savings to be realized by the use of competitive bidding in the furnishing of items and services in the area.

''(b) AWARDING OF CONTRACTS IN AREAS.—

''(1) IN GENERAL.—The Secretary shall conduct a competition among individuals and entities supplying items and services described in subsection (c) for each competitive acquisition area established under subsection (a) for each class of items and services.

''(2) CONDITIONS FOR AWARDING CONTRACT.—The Secretary may not award a contract to any entity under the competition conducted pursuant to paragraph (1) to furnish an item or service unless the Secretary finds that the entity meets quality standards specified by the Secretary, and subject to paragraph (3), that the total amounts to be paid under the contract are expected to be less than the total amounts that would otherwise be paid.

''(3) LIMIT ON AMOUNT OF PAYMENT.—The Secretary may not under a contract awarded under this section provide for payment for an item or service in an amount in excess of the applicable fee schedule under this part for similar or related items or services. The preceding sentence shall not apply if the Secretary determines that an amount in excess of such amount is warranted by reason of technological innovation, quality improvement, or similar reasons, except that the total amount paid under the contract shall not exceed the limit under paragraph (2).

''(4) CONTENTS OF CONTRACT.—A contract entered into with an entity under the competition conducted pursuant to paragraph (1) is subject to terms and conditions that the Secretary may specify.

''(5) LIMIT ON NUMBER OF CONTRACTORS.—The Secretary may limit the number of contractors in a competitive acquisition area to the number needed to meet projected demand for items and services covered under the contracts.

''(c) SERVICES DESCRIBED.—The items and services to which this section applies are all items and services covered under this part (except for physician services as defined by 1861(r)) that the Secretary may specify.''.

(b) ITEMS AND SERVICES TO BE FURNISHED ONLY THROUGH COMPETITIVE ACQUISITION.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended—

(1) by striking ''or'' at the end of paragraph (14),

(2) by striking the period at the end of paragraph (15) and inserting ''; or'', and

(3) by inserting after paragraph (15) the following:

''(16) where the expenses are for an item or service furnished in a competitive acquisition area (as established by the Secretary under section 1847(a)) by an entity other than an entity with which the Secretary has entered into a contract under section 1847(b) for the furnishing of such an item or service in that area, unless the Secretary finds that the expenses were incurred in a case of urgent need, or in other circumstances specified by the Secretary.''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to items and services furnished after December 31, 1997.

**SEC. 5219. IMPROVING INFORMATION TO MEDICARE BENEFICIARIES.**

(a) CLARIFICATION OF REQUIREMENT TO PROVIDE EXPLANATION OF MEDICARE BENEFITS.—Section 1804 of the Social Security Act (42 U.S.C. 1395b–2) is amended by adding at the end the following new subsection:

''(c)(1) The Secretary shall provide a statement which explains the benefits provided under this title with respect to each item or service for which payment may be made under this title which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to such item or service.

''(2) Each explanation of benefits provided under paragraph (1) shall include—

''(A) a statement which indicates that because errors do occur and because medicare fraud, waste and abuse is a significant problem, beneficiaries should carefully check the statement for accuracy and report any errors or questionable charges by calling the toll-free phone number described in subparagraph (C);

''(B) a statement of the beneficiary's right to request an itemized bill (as provided in section 1128A(n)); and

''(C) a toll-free telephone number for reporting errors, questionable charges or other acts that would constitute medicare fraud, waste, or abuse, which may be the same number as described in subsection (b).''.

(b) REQUEST FOR ITEMIZED BILL FOR MEDICARE ITEMS AND SERVICES.—

(1) IN GENERAL.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended by adding at the end the following new subsection:

''(m) WRITTEN REQUEST FOR ITEMIZED BILL.—

''(1) IN GENERAL.—A beneficiary may submit a written request for an itemized bill for medical or other items or services provided to such beneficiary by any person (including an organization, agency, or other entity) that receives payment under title XVIII for providing such items or services to such beneficiary.

''(2) 30-DAY PERIOD TO RECEIVE BILL.—

''(A) IN GENERAL.—Not later than 30 days after the date on which a request under paragraph (1) has been received, a person described in such paragraph shall furnish an itemized bill describing each medical or other item or service provided to the beneficiary requesting the itemized bill.

''(B) PENALTY.—Whoever knowingly fails to furnish an itemized bill in accordance with subparagraph (A) shall be subject to a civil fine of not more than $100 for each such failure.

''(3) REVIEW OF ITEMIZED BILL.—

''(A) IN GENERAL.—Not later than 90 days after the receipt of an itemized bill furnished under paragraph (1), a beneficiary may submit a written request for a review of the itemized bill to the appropriate fiscal intermediary or carrier with a contract under section 1816 or 1842.

''(B) SPECIFIC ALLEGATIONS.—A request for a review of the itemized bill shall identify—

''(i) specific medical or other items or services that the beneficiary believes were not provided as claimed, or

''(ii) any other billing irregularity (including duplicate billing).

''(4) FINDINGS OF FISCAL INTERMEDIARY OR CARRIER.—Each fiscal intermediary or carrier with a contract under section 1816 or 1842 shall, with respect to each written request submitted to the fiscal intermediary or carrier under paragraph (3), determine whether the itemized bill identifies specific medical or other items or services that were not provided as claimed or any other billing irregularity (including duplicate

billing) that has resulted in unnecessary payments under the title XVIII.

''(5) RECOVERY OF AMOUNTS.—The Secretary shall require fiscal intermediaries and carriers to take all appropriate measures to recover amounts unnecessarily paid under title XVIII with respect to a bill described in paragraph (4).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical or other items or services provided on or after January 1, 1998.

**SEC. 5220. PROHIBITING UNNECESSARY AND WASTEFUL MEDICARE PAYMENTS FOR CERTAIN ITEMS.**

Section 1861(v) of the Social Security Act is amended by adding at the end the following new paragraph:

''(8) ITEMS UNRELATED TO PATIENT CARE.—Reasonable costs do not include costs for the following—

''(i) entertainment;

''(ii) gifts or donations;

''(iii) costs for fines and penalties resulting from violations of Federal, State, or local laws; and

''(iv) education expenses for spouses or other dependents of providers of services, their employees or contractors.''.

**SEC. 5221. REDUCING EXCESSIVE BILLINGS AND UTILIZATION FOR CERTAIN ITEMS.**

Section 1834(a)(15) of the Social Security Act (42 U.S.C. 1395m(a)(15)) is amended by striking ''Secretary may'' both places it appears and inserting ''Secretary shall''.

**SEC. 5222. IMPROVING INFORMATION TO MEDICARE BENEFICIARIES.**

(a) CLARIFICATION OF REQUIREMENT TO PROVIDE EXPLANATION OF MEDICARE BENEFITS.—Section 1804 of the Social Security Act (42 U.S.C. 1395b–2) is amended by adding at the end the following new subsection:

''(c)(1) The Secretary shall provide a statement which explains the benefits provided under this title with respect to each item or service for which payment may be made under this title which is furnished to an individual, without regard to whether or not a deductible or coinsurance may be imposed against the individual with respect to such item or service.

''(2) Each explanation of benefits provided under paragraph (1) shall include—

''(A) a statement which indicates that because errors do occur and because medicare fraud, waste and abuse is a significant problem, beneficiaries should carefully check the statement for accuracy and report any errors or questionable charges by calling the toll-free phone number described in subparagraph (C);

''(B) a statement of the beneficiary's right to request an itemized bill (as provided in section 1128A(n)); and

''(C) a toll-free telephone number for reporting errors, questionable charges or other acts that would constitute medicare fraud, waste, or abuse, which may be the same number as described in subsection (b).''.

(b) REQUEST FOR ITEMIZED BILL FOR MEDICARE ITEMS AND SERVICES.—

(1) IN GENERAL.—Section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) is amended by adding at the end the following new subsection:

''(m) WRITTEN REQUEST FOR ITEMIZED BILL.—

''(1) IN GENERAL.—A beneficiary may submit a written request for an itemized bill for medical or other items or services provided to such beneficiary by any person (including an organization, agency, or other entity) that receives payment under title XVIII for providing such items or services to such beneficiary.

''(2) 30-DAY PERIOD TO RECEIVE BILL.—

''(A) IN GENERAL.—Not later than 30 days after the date on which a request under paragraph (1) has been received, a person described in such paragraph shall furnish an itemized bill describing each medical or other item or service provided to the beneficiary requesting the itemized bill.

''(B) PENALTY.—Whoever knowingly fails to furnish an itemized bill in accordance with subparagraph (A) shall be subject to a civil fine of not more than $100 for each such failure.

''(3) REVIEW OF ITEMIZED BILL.—

''(A) IN GENERAL.—Not later than 90 days after the receipt of an itemized bill furnished under paragraph (1), a beneficiary may submit a written request for a review of the itemized bill to the appropriate fiscal intermediary or carrier with a contract under section 1816 or 1842.

''(B) SPECIFIC ALLEGATIONS.—A request for a review of the itemized bill shall identify—

''(i) specific medical or other items or services that the beneficiary believes were not provided as claimed, or

''(ii) any other billing irregularity (including duplicate billing).

''(4) FINDINGS OF FISCAL INTERMEDIARY OR CARRIER.—Each fiscal intermediary or carrier with a contract under section 1816 or 1842 shall, with respect to each written request submitted to the fiscal intermediary or carrier under paragraph (3), determine whether the itemized bill identifies specific medical or other items or services that were not provided as claimed or any other billing irregularity (including duplicate billing) that has resulted in unnecessary payments under the title XVIII.

''(5) RECOVERY OF AMOUNTS.—The Secretary shall require fiscal intermediaries and carriers to take all appropriate measures to recover amounts unnecessarily paid under title XVIII with respect to a bill described in paragraph (4).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical or other items or services provided on or after January 1, 1998.

**SEC. 5223. PROHIBITING UNNECESSARY AND WASTEFUL MEDICARE PAYMENTS FOR CERTAIN ITEMS.**

Notwithstanding any other provision of law, including any regulation or payment policy, the following categories of charges shall not be reimbursable under title XVIII of the Social Security Act:

(1) Entertainment costs, including the costs of tickets to sporting and other entertainment events.

(2) Gifts or donations.

(3) Personal use of motor vehicles.

(4) Costs for fines and penalties resulting from violations of Federal, State, or local laws.

(5) Tuition or other education fees for spouses or dependents of providers of services, their employees, or contractors.

**SEC. 5224. REDUCING EXCESSIVE BILLINGS AND UTILIZATION FOR CERTAIN ITEMS.**

Section 1834(a)(15) of the Social Security Act (42 U.S.C. 1395m(a)(15)) is amended by striking ''Secretary may'' both places it appears and inserting ''Secretary shall''.

**SEC. 5225. IMPROVED CARRIER AUTHORITY TO REDUCE EXCESSIVE MEDICARE PAYMENTS.**

Section 1834(i) of the Social Security Act (42 U.S.C. 1395m(i)) is amended by adding at the end the following new paragraph:

''(3) GROSSLEY EXCESSIVE PAYMENT AMOUNTS.—Notwithstanding paragraph (1), the Secretary may apply the provisions of section 1842(b)(8) to payments under this subsection.''.

**SEC. 5226. ITEMIZATION OF SURGICAL DRESSING BILLS SUBMITTED BY HOME HEALTH AGENCIES.**

Section 1834(i)(2) (42 U.S.C. 1395m(i)(2)) is amended to read as follows:

''(2) EXCEPTION.—Paragraph (1) shall not apply to surgical dressings that are furnished as an incident to a physician's professional service.''.

## CHAPTER 3—CLARIFICATIONS AND TECHNICAL CHANGES

**SEC. 5231. OTHER FRAUD AND ABUSE RELATED PROVISIONS.**

(a) REFERENCE CORRECTION.—(1) Section 1128D(b)(2)(D) (42 U.S.C. 1320a–7d(b)(2)(D)), as added by section 205 of the Health Insurance Portability and Accountability Act of 1996, is amended by striking ''1128B(b)'' and inserting ''1128A(b)''.

(2) Section 1128E(g)(3)(C) (42 U.S.C. 1320a–7e(g)(3)(C)) is amended by striking ''Veterans' Administration'' and inserting ''Department of Veterans Affairs''.

(b) LANGUAGE IN DEFINITION OF CONVICTION.—Section 1128E(g)(5) (42 U.S.C. 1320a–7e(g)(5)), as inserted by section 221(a) of the Health Insurance Portability and Accountability Act of 1996, is amended by striking ''paragraph (4)'' and inserting ''paragraphs (1) through (4)''.

(c) IMPLEMENTATION OF EXCLUSIONS.—Section 1128 (42 U.S.C. 1320a–7) is amended—

(1) in subsection (a), by striking ''any program under title XVIII and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h))'' and inserting ''any Federal health care program (as defined in section 1128B(f))''; and

(2) in subsection (b), by striking ''any program under title XVIII and may direct that the following individuals and entities be excluded from participation in any State health care program'' and inserting ''any Federal health care program (as defined in section 1128B(f))''.

(d) SANCTIONS FOR FAILURE TO REPORT.—Section 1128E(b) (42 U.S.C. 1320a–7e(b)), as inserted by section 221(a) of the Health Insurance Portability and Accountability Act of 1996, is amended by adding at the end the following:

''(6) SANCTIONS FOR FAILURE TO REPORT.—

''(A) HEALTH PLANS.—Any health plan that fails to report information on an adverse action required to be reported under this subsection shall be subject to a civil money penalty of not more than $25,000 for each such adverse action not reported. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1128A are imposed and collected under that section.

''(B) GOVERNMENTAL AGENCIES.—The Secretary shall provide for a publication of a public report that identifies those Government agencies that have failed to report information on adverse actions as required to be reported under this subsection.''.

(e) CLARIFICATION OF TREATMENT OF CERTAIN WAIVERS AND PAYMENTS OF PREMIUMS.—

(1) Section 1128A(i)(6) (42 U.S.C. 1320a–7a(i)(6)) is amended—

(A) in subparagraph (A)(iii)—

(i) in subclause (I), by adding ''or'' at the end;

(ii) in subclause (II), by striking ''or'' at the end; and

(iii) by striking subclause (III);

(B) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D); and

(C) by inserting after subparagraph (A) the following:

''(B) any permissible waiver as specified in section 1128B(b)(3) or in regulations issued by the Secretary;''.

(2) Section 1128A(i)(6) (42 U.S.C. 1320a–7a(i)(6)), is amended—

(A) in subparagraph (C), as redesignated by paragraph (1), by striking ''or'' at the end;

(B) in subparagraph (D), as so redesignated, by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(D) the waiver of deductible and coinsurance amounts pursuant to medicare supplemental policies under section 1882(t).''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall be effective as if included in the enactment of the Health Insurance Portability and Accountability Act of 1996.

(2) FEDERAL HEALTH PROGRAM.—The amendments made by subsection (c) shall take effect on the date of the enactment of this Act.

*(3) SANCTION FOR FAILURE TO REPORT.—The amendment made by subsection (d) shall apply to failures occurring on or after the date of the enactment of this Act.*

*(4) CLARIFICATION.—The amendments made by subsection (e)(2) shall take effect on the date of the enactment of this Act.*

***Subtitle E—Prospective Payment Systems***

***CHAPTER 1—PROVISIONS RELATING TO PART A***

***SEC. 5301. PROSPECTIVE PAYMENT FOR INPATIENT REHABILITATION HOSPITAL SERVICES.***

*(a) IN GENERAL.—Section 1886 (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:*

*''(j) PROSPECTIVE PAYMENT FOR INPATIENT REHABILITATION SERVICES.—*

*''(1) PAYMENT DURING TRANSITION PERIOD.—*

*''(A) IN GENERAL.—Notwithstanding section 1814(b), but subject to the provisions of section 1813, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation hospital or a rehabilitation unit (in this subsection referred to as a 'rehabilitation facility'), in a cost reporting period beginning on or after October 1, 2000, and before October 1, 2003, is equal to the sum of—*

*''(i) the TEFRA percentage (as defined in subparagraph (C)) of the amount that would have been paid under part A of this title with respect to such costs if this subsection did not apply, and*

*''(ii) the prospective payment percentage (as defined in subparagraph (C)) of the product of (I) the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs, and (II) the number of such payment units occurring in the cost reporting period.*

*''(B) FULLY IMPLEMENTED SYSTEM.—Notwithstanding section 1814(b), but subject to the provisions of section 1813, the amount of the payment with respect to the operating and capital costs of inpatient hospital services of a rehabilitation facility for a payment unit in a cost reporting period beginning on or after October 1, 2003, is equal to the per unit payment rate established under this subsection for the fiscal year in which the payment unit of service occurs.*

*''(C) TEFRA AND PROSPECTIVE PAYMENT PERCENTAGES SPECIFIED.—For purposes of subparagraph (A), for a cost reporting period beginning—*

*''(i) on or after October 1, 2000, and before October 1, 2001, the 'TEFRA percentage' is 75 percent and the 'prospective payment percentage' is 25 percent;*

*''(ii) on or after October 1, 2001, and before October 1, 2002, the 'TEFRA percentage' is 50 percent and the 'prospective payment percentage' is 50 percent; and*

*''(iii) on or after October 1, 2002, and before October 1, 2003, the 'TEFRA percentage' is 25 percent and the 'prospective payment percentage' is 75 percent.*

*''(D) PAYMENT UNIT.—For purposes of this subsection, the term 'payment unit' means a discharge, day of inpatient hospital services, or other unit of payment defined by the Secretary.*

*''(2) PATIENT CASE MIX GROUPS.—*

*''(A) ESTABLISHMENT.—The Secretary shall establish—*

*''(i) classes of patients of rehabilitation facilities (each in this subsection referred to as a 'case mix group'), based on such factors as the Secretary deems appropriate, which may include impairment, age, related prior hospitalization, comorbidities, and functional capability of the patient; and*

*''(ii) a method of classifying specific patients in rehabilitation facilities within these groups.*

*''(B) WEIGHTING FACTORS.—For each case mix group the Secretary shall assign an appropriate weighting which reflects the relative facility resources used with respect to patients classified within that group compared to patients classified within other groups.*

*''(C) ADJUSTMENTS FOR CASE MIX.—*

*''(i) IN GENERAL.—The Secretary shall from time to time adjust the classifications and weighting factors established under this paragraph as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under this title, and other factors which may affect the relative use of resources. Such adjustments shall be made in a manner so that changes in aggregate payments under the classification system are a result of real changes and are not a result of changes in coding that are unrelated to real changes in case mix.*

*''(ii) ADJUSTMENT.—Insofar as the Secretary determines that such adjustments for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under the classification system during the fiscal year that are a result of changes in the coding or classification of patients that do not reflect real changes in case mix, the Secretary shall adjust the per payment unit payment rate for subsequent years so as to discount the effect of such coding or classification changes.*

*''(D) DATA COLLECTION.—The Secretary is authorized to require rehabilitation facilities that provide inpatient hospital services to submit such data as the Secretary deems necessary to establish and administer the prospective payment system under this subsection.*

*''(3) PAYMENT RATE.—*

*''(A) IN GENERAL.—The Secretary shall determine a prospective payment rate for each payment unit for which such rehabilitation facility is entitled to receive payment under this title. Subject to subparagraph (B), such rate for payment units occurring during a fiscal year shall be based on the average payment per payment unit under this title for inpatient operating and capital costs of rehabilitation facilities using the most recent data available (as estimated by the Secretary as of the date of establishment of the system) adjusted—*

*''(i) by updating such per-payment-unit amount to the fiscal year involved by the weighted average of the applicable percentage increases provided under subsection (b)(3)(B)(ii) (for cost reporting periods beginning during the fiscal year) covering the period from the midpoint of the period for such data through the midpoint of fiscal year 2000 and by an increase factor (described in subparagraph (C)) specified by the Secretary for subsequent fiscal years up to the fiscal year involved;*

*''(ii) by reducing such rates by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on prospective payment amounts which are additional payments described in paragraph (4) (relating to outlier and related payments) or paragraph (7);*

*''(iii) for variations among rehabilitation facilities by area under paragraph (6);*

*''(iv) by the weighting factors established under paragraph (2)(B); and*

*''(v) by such other factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.*

*''(B) BUDGET NEUTRAL RATES.—The Secretary shall establish the prospective payment amounts under this subsection for payment units during fiscal years 2001 through 2004 at levels such that, in the Secretary's estimation, the amount of total payments under this subsection for such fiscal years (including any payment adjustments pursuant to paragraph (7)) shall be equal to 99 percent of the amount of payments that would have been made under this title during the fiscal years for operating and capital costs of rehabilitation facilities had this subsection not been enacted. In establishing such payment amounts, the Secretary shall consider the effects of the prospective payment system established under this subsection on the total number of payment units from rehabilitation facilities and other factors described in subparagraph (A).*

*''(C) INCREASE FACTOR.—For purposes of this subsection for payment units in each fiscal year (beginning with fiscal year 2001), the Secretary shall establish an increase factor. Such factor shall be based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii).*

*''(4) OUTLIER AND SPECIAL PAYMENTS.—*

*''(A) OUTLIERS.—*

*''(i) IN GENERAL.—The Secretary may provide for an additional payment to a rehabilitation facility for patients in a case mix group, based upon the patient being classified as an outlier based on an unusual length of stay, costs, or other factors specified by the Secretary.*

*''(ii) PAYMENT BASED ON MARGINAL COST OF CARE.—The amount of such additional payment under clause (i) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i).*

*''(iii) TOTAL PAYMENTS.—The total amount of the additional payments made under this subparagraph for payment units in a fiscal year may not exceed 5 percent of the total payments projected or estimated to be made based on prospective payment rates for payment units in that year.*

*''(B) ADJUSTMENT.—The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of rehabilitation facilities located in Alaska and Hawaii.*

*''(5) PUBLICATION.—The Secretary shall provide for publication in the Federal Register, on or before September 1 before each fiscal year (beginning with fiscal year 2001, of the classification and weighting factors for case mix groups under paragraph (2) for such fiscal year and a description of the methodology and data used in computing the prospective payment rates under this subsection for that fiscal year.*

*''(6) AREA WAGE ADJUSTMENT.—The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related costs, of the prospective payment rates computed under paragraph (3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under this paragraph for a fiscal year shall be made in a manner that assures that the aggregated payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.*

*''(7) ADDITIONAL ADJUSTMENTS.—The Secretary may provide by regulation for—*

*''(A) an additional payment to take into account indirect costs of medical education and the special circumstances of hospitals that serve a significantly disproportionate number of low-income patients in a manner similar to that provided under subparagraphs (B) and (F), respectively, of subsection (d)(5); and*

*''(B) such other exceptions and adjustments to payment amounts under this subsection in a manner similar to that provided under subsection (d)(5)(I) in relation to payments under subsection (d).*

''(8) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise of the establishment of—

''(A) case mix groups, of the methodology for the classification of patients within such groups, and of the appropriate weighting factors thereof under paragraph (2),

''(B) the prospective payment rates under paragraph (3),

''(C) outlier and special payments under paragraph (4),

''(D) area wage adjustments under paragraph (6), and

''(E) additional adjustments under paragraph (7).''.

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

(1) in paragraph (1), by inserting ''and other than a rehabilitation facility described in subsection (j)(1)'' after ''subsection (d)(1)(B)'', and

(2) in paragraph (3)(B)(i), by inserting ''and subsection (j)'' after ''For purposes of subsection (d)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 2000, except that the Secretary of Health and Human Services may require the submission of data under section 1886(j)(2)(D) of the Social Security Act (as added by subsection (a)) on and after the date of the enactment of this section.

**SEC. 5302. STUDY AND REPORT ON PAYMENTS FOR LONG-TERM CARE HOSPITALS.**

(a) STUDY.—The Secretary of Health and Human Services shall—

(1) collect data to develop, establish, administer and evaluate a case-mix adjusted prospective payment system for hospitals described in section 1886(d)(1)(B)(iv) (42 U.S.C. 1395ww(d)(1)(B)(iv)); and

(2) develop a legislative proposal for establishing and administering such a payment system that includes an adequate patient classification system that reflects the differences in patient resource use and costs among such hospitals.

(b) REPORT.—Not later than October 1, 1999, the Secretary of Health and Human Services shall submit the proposal described in subsection (a)(2) to the appropriate committees of Congress.

## CHAPTER 2—PROVISIONS RELATING TO PART B

### Subchapter A—Payment for Hospital Outpatient Department Services

**SEC. 5311. ELIMINATION OF FORMULA-DRIVEN OVERPAYMENTS (FDO) FOR CERTAIN OUTPATIENT HOSPITAL SERVICES.**

(a) ELIMINATION OF FDO FOR AMBULATORY SURGICAL CENTER PROCEDURES.—Section 1833(i)(3)(B)(i)(II) (42 U.S.C. 1395l(i)(3)(B)(i)(II)) is amended—

(1) by striking ''of 80 percent''; and

(2) by striking the period at the end and inserting the following: '', less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A).''.

(b) ELIMINATION OF FDO FOR RADIOLOGY SERVICES AND DIAGNOSTIC PROCEDURES.—Section 1833(n)(1)(B)(i) (42 U.S.C. 1395l(n)(1)(B)(i)) is amended—

(1) by striking ''of 80 percent'', and

(2) by inserting before the period at the end the following: '', less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished during portions of cost reporting periods occurring on or after October 1, 1997.

**SEC. 5312. EXTENSION OF REDUCTIONS IN PAYMENTS FOR COSTS OF HOSPITAL OUTPATIENT SERVICES.**

(a) REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS.—Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by striking ''through 1998'' and inserting ''through 1999 and during fiscal year 2000 before January 1, 2000''.

(b) REDUCTION IN PAYMENTS FOR OTHER COSTS.—Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking ''through 1998'' and inserting ''through 1999 and during fiscal year 2000 before January 1, 2000''.

**SEC. 5313. PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.**

(a) IN GENERAL.—Section 1833 (42 U.S.C. 1395l) is amended by adding at the end the following:

''(t) PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.—

''(1) IN GENERAL.—With respect to hospital outpatient services designated by the Secretary (in this section referred to as 'covered OPD services') and furnished during a year beginning with 1999, the amount of payment under this part shall be determined under a prospective payment system established by the Secretary in accordance with this subsection.

''(2) SYSTEM REQUIREMENTS.—Under the payment system—

''(A) the Secretary shall develop a classification system for covered OPD services;

''(B) the Secretary may establish groups of covered OPD services, within the classification system described in subparagraph (A), so that services classified within each group are comparable clinically and with respect to the use of resources;

''(C) the Secretary shall, using data on claims from 1997 and using data from the most recent available cost reports, establish relative payment weights for covered OPD services (and any groups of such services described in subparagraph (B)) based on median hospital costs and shall determine projections of the frequency of utilization of each such service (or group of services) in 1999;

''(D) the Secretary shall determine a wage adjustment factor to adjust the portion of payment and coinsurance attributable to labor-related costs for relative differences in labor and labor-related costs across geographic regions in a budget neutral manner;

''(E) the Secretary shall establish other adjustments as determined to be necessary to ensure equitable payments, such as outlier adjustments or adjustments for certain classes of hospitals; and

''(F) the Secretary shall develop a method for controlling unnecessary increases in the volume of covered OPD services.

''(3) CALCULATION OF BASE AMOUNTS.—

''(A) AGGREGATE AMOUNTS THAT WOULD BE PAYABLE IF DEDUCTIBLES WERE DISREGARDED.—The Secretary shall estimate the total amounts that would be payable from the Trust Fund under this part for covered OPD services in 1999, determined without regard to this subsection, as though the deductible under section 1833(b) did not apply, and as though the coinsurance described in section 1866(a)(2)(A)(ii) (as in effect before the date of the enactment of this subsection) continued to apply.

''(B) UNADJUSTED COPAYMENT AMOUNT.—

''(i) IN GENERAL.—For purposes of this subsection, subject to clause (ii), the 'unadjusted copayment amount' applicable to a covered OPD service (or group of such services) is 20 percent of the national median of the charges for the service (or services within the group) furnished during 1997, updated to 1999 using the Secretary's estimate of charge growth during the period.

''(ii) ADJUSTMENTS WHEN FULLY PHASED IN.—If the pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year would be equal to or exceed 80 percent, then the unadjusted copayment amount shall be 25 percent of amount determined under subparagraph (D)(i).

''(iii) RULES FOR NEW SERVICES.—The Secretary shall establish rules for establishment of an unadjusted copayment amount for a covered OPD service not furnished during 1997, based upon its classification within a group of such services.

''(C) CALCULATION OF CONVERSION FACTORS.—

''(i) FOR 1999.—

''(I) IN GENERAL.—The Secretary shall establish a 1999 conversion factor for determining the medicare pre-deductible OPD fee payment amounts for each covered OPD service (or group of such services) furnished in 1999. Such conversion factor shall be established—

''(aa) on the basis of the weights and frequencies described in paragraph (2)(C), and

''(bb) in such manner that the sum of the products determined under subclause (II) for each service or group equals the total project amount described in subparagraph (A).

''(II) PRODUCT.—The Secretary shall determine for each service or group the product of the medicare pre-deductible OPD fee payment amount (taking into account appropriate adjustments described in paragraphs (2)(D) and (2)(E)) and the frequencies for such service or group.

''(ii) SUBSEQUENT YEARS.—Subject to paragraph (8)(B), the Secretary shall establish a conversion factor for covered OPD services furnished in subsequent years in an amount equal to the conversion factor established under this subparagraph and applicable to such services furnished in the previous year increased by the OPD payment increase factor specified under clause (iii) for the year involved.

''(iii) OPD PAYMENT INCREASE FACTOR.—For purposes of this subparagraph, the 'OPD payment increase factor' for services furnished in a year is equal to the sum of—

''(I) the market basket percentage increase applicable under section 1886(b)(3)(B)(iii) to hospital discharges occurring during the fiscal year ending in such year, plus

''(II) in the case of a covered OPD service (or group of such services) furnished in a year in which the pre-deductible payment percentage would not exceed 80 percent, 3.5 percentage points.

In applying the previous sentence for years beginning with 2000, the Secretary may substitute for the market basket percentage increase under subclause (I) an annual percentage increase that is computed and applied with respect to covered OPD services furnished in a year in the same manner as the market basket percentage increase is determined and applied to inpatient hospital services for discharges occurring in a fiscal year.

''(D) PRE-DEDUCTIBLE PAYMENT PERCENTAGE.—The pre-deductible payment percentage for a covered OPD service (or group of such services) furnished in a year is equal to the ratio of—

''(i) the conversion factor established under subparagraph (C) for the year, multiplied by the weighting factor established under paragraph (2)(C) for the service (or group), to

''(ii) the sum of the amount determined under clause (i) and the unadjusted copayment amount determined under subparagraph (B) for such service or group.

''(E) CALCULATION OF MEDICARE OPD FEE SCHEDULE AMOUNTS.—The Secretary shall compute a medicare OPD fee schedule amount for each covered OPD service (or group of such services) furnished in a year, in an amount equal to the product of—

''(i) the conversion factor computed under subparagraph (C) for the year, and

''(ii) the relative payment weight (determined under paragraph (2)(C)) for the service or group.

''(4) MEDICARE PAYMENT AMOUNT.—The amount of payment made from the Trust Fund under this part for a covered OPD service (and such services classified within a group) furnished in a year is determined as follows:

''(A) FEE SCHEDULE AND COPAYMENT AMOUNT.—Add (i) the medicare OPD fee schedule amount (computed under paragraph (3)(E)) for the service or group and year, and (ii) the

*unadjusted copayment amount (determined under paragraph (3)(B)) for the service or group.*

*''(B) SUBTRACT APPLICABLE DEDUCTIBLE.—Reduce the sum under subparagraph (A) by the amount of the deductible under section 1833(b), to the extent applicable.*

*''(C) APPLY PAYMENT PROPORTION TO REMAINDER.—Multiply the amount determined under subparagraph (B) by the pre-deductible payment percentage (as determined under paragraph (3)(D)) for the service or group and year involved.*

*''(D) LABOR-RELATED ADJUSTMENT.—The amount of payment is the product determined under subparagraph (C) with the labor-related portion of such product adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under paragraph (2)(D).*

*''(5) COPAYMENT AMOUNT.—*

*''(A) IN GENERAL.—Except as provided in subparagraph (B), the copayment amount under this subsection is determined as follows:*

*''(i) UNADJUSTED COPAYMENT.—Compute the amount by which the amount described in paragraph (4)(B) exceeds the amount of payment determined under paragraph (4)(C).*

*''(ii) LABOR ADJUSTMENT.—The copayment amount is the difference determined under clause (i) with the labor-related portion of such difference adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under paragraphs (2)(D). The adjustment under this clause shall be made in a manner that does not result in any change in the aggregate copayments made in any year if the adjustment had not been made.*

*''(B) ELECTION TO OFFER REDUCED COPAYMENT AMOUNT.—The Secretary shall establish a procedure under which a hospital, before the beginning of a year (beginning with 1999), may elect to reduce the copayment amount otherwise established under subparagraph (A) for some or all covered OPD services to an amount that is not less than 25 percent of the medicare OPD fee schedule amount (computed under paragraph (3)(E)) for the service involved, adjusted for relative differences in the cost of labor and other factors determined by the Secretary, as computed under subparagraphs (D) and (E) of paragraph (2). Under such procedures, such reduced copayment amount may not be further reduced or increased during the year involved and the hospital may disseminate information on the reduction of copayment amount effected under this subparagraph.*

*''(C) NO IMPACT ON DEDUCTIBLES.—Nothing in this paragraph shall be construed as affecting a hospital's authority to waive the charging of a deductible under section 1833(b).*

*''(6) PERIODIC REVIEW AND ADJUSTMENTS COMPONENTS OF PROSPECTIVE PAYMENT SYSTEM.—*

*''(A) PERIODIC REVIEW.—The Secretary may periodically review and revise the groups, the relative payment weights, and the wage and other adjustments described in paragraph (2) to take into account changes in medical practice, changes in technology, the addition of new services, new cost data, and other relevant information and factors.*

*''(B) BUDGET NEUTRALITY ADJUSTMENT.—If the Secretary makes adjustments under subparagraph (A), then the adjustments for a year may not cause the estimated amount of expenditures under this part for the year to increase or decrease from the estimated amount of expenditures under this part that would have been made if the adjustments had not been made.*

*''(C) UPDATE FACTOR.—If the Secretary determines under methodologies described in subparagraph (2)(F) that the volume of services paid for under this subsection increased beyond amounts established through those methodologies, the Secretary may appropriately adjust the update to the conversion factor otherwise applicable in a subsequent year.*

*''(7) SPECIAL RULE FOR AMBULANCE SERVICES.—The Secretary shall pay for hospital outpatient services that are ambulance services on the basis described in the matter in subsection (a)(1) preceding subparagraph (A).*

*''(8) SPECIAL RULES FOR CERTAIN HOSPITALS.—In the case of hospitals described in section 1886(d)(1)(B)(v)—*

*''(A) the system under this subsection shall not apply to covered OPD services furnished before January 1, 2000; and*

*''(B) the Secretary may establish a separate conversion factor for such services in a manner that specifically takes into account the unique costs incurred by such hospitals by virtue of their patient population and service intensity.*

*''(9) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise of—*

*''(A) the development of the classification system under paragraph (2), including the establishment of groups and relative payment weights for covered OPD services, of wage adjustment factors, other adjustments, and methods described in paragraph (2)(F);*

*''(B) the calculation of base amounts under paragraph (3);*

*''(C) periodic adjustments made under paragraph (6); and*

*''(D) the establishment of a separate conversion factor under paragraph (8)(B).''.*

*(b) COINSURANCE.—Section 1866(a)(2)(A)(ii) (42 U.S.C. 1395cc(a)(2)(A)(ii)) is amended by adding at the end the following: ''In the case of items and services for which payment is made under part B under the prospective payment system established under section 1833(t), clause (ii) of the first sentence shall be applied by substituting for 20 percent of the reasonable charge, the applicable copayment amount established under section 1833(t)(5).''.*

*(c) TREATMENT OF REDUCTION IN COPAYMENT AMOUNT.—Section 1128A(i)(6) (42 U.S.C. 1320a–7a(i)(6)) 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) a reduction in the copayment amount for covered OPD services under section 1833(t)(5)(B).''.*

*(d) CONFORMING AMENDMENTS.—*

*(1) APPROVED ASC PROCEDURES PERFORMED IN HOSPITAL OUTPATIENT DEPARTMENTS.—*

*(A)(i) Section 1833(i)(3)(A) (42 U.S.C. 1395l(i)(3)(A)) is amended—*

*(I) by inserting ''before January 1, 1999'' after ''furnished'', and*

*(II) by striking ''in a cost reporting period''.*

*(ii) The amendment made by clause (i) shall apply to services furnished on or after January 1, 1999.*

*(B) Section 1833(a)(4) (42 U.S.C. 1395l(a)(4)) is amended by inserting ''or subsection (t)'' before the semicolon.*

*(2) RADIOLOGY AND OTHER DIAGNOSTIC PROCEDURES.—*

*(A) Section 1833(n)(1)(A) (42 U.S.C. 1395l(n)(1)(A)) is amended by inserting ''and before January 1, 1999'' after ''October 1, 1988,'' and after ''October 1, 1989,''.*

*(B) Section 1833(a)(2)(E) (42 U.S.C. 1395l(a)(2)(E)) is amended by inserting ''or , for services or procedures performed on or after January 1, 1999, subsection (t)'' before the semicolon.*

*(3) OTHER HOSPITAL OUTPATIENT SERVICES.—Section 1833(a)(2)(B) (42 U.S.C. 1395l(a)(2)(B)) is amended—*

*(A) in clause (i), by inserting ''furnished before January 1, 1999,'' after ''(i)'',*

*(B) in clause (ii), by inserting ''before January 1, 1999,'' after ''furnished'',*

*(C) by redesignating clause (iii) as clause (iv), and*

*(D) by inserting after clause (ii), the following new clause:*

*''(iii) if such services are furnished on or after January 1, 1999, the amount determined under subsection (t), or''.*

***Subchapter B—Ambulance Services***

***SEC. 5321. PAYMENTS FOR AMBULANCE SERVICES.***

*(a) INTERIM REDUCTIONS.—*

*(1) PAYMENTS DETERMINED ON REASONABLE COST BASIS.—Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:*

*''(V) In determining the reasonable cost of ambulance services (as described in subsection (s)(7)) provided during a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2002), the Secretary shall not recognize any costs in excess of costs recognized as reasonable for ambulance services provided during the previous fiscal year (after application of this subparagraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the fiscal year involved reduced in the case of fiscal year 1998 by 1.0 percentage point.''.*

*(2) PAYMENTS DETERMINED ON REASONABLE CHARGE BASIS.—Section 1842(b) (42 U.S.C. 1395u(b)) is amended by adding at the end the following new paragraph:*

*''(19) For purposes of section 1833(a)(1), the reasonable charge for ambulance services (as described in section 1861(s)(7)) provided during a fiscal year (beginning with fiscal year 1998 and ending with fiscal year 2002) may not exceed the reasonable charge for such services provided during the previous fiscal year (after application of this paragraph), increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved reduced in the case of fiscal year 1998 by 1.0 percentage point.''.*

*(b) ESTABLISHMENT OF PROSPECTIVE FEE SCHEDULE.—*

*(1) PAYMENT IN ACCORDANCE WITH FEE SCHEDULE.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—*

*(A) by striking ''and (P)'' and inserting ''(P)''; and*

*(B) by striking the semicolon at the end and inserting the following: '', and (Q) with respect to ambulance service, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary under section 1834(k);''.*

*(2) ESTABLISHMENT OF SCHEDULE.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:*

*''(k) ESTABLISHMENT OF FEE SCHEDULE FOR AMBULANCE SERVICES.—*

*''(1) IN GENERAL.—The Secretary shall establish a fee schedule for payment for ambulance services under this part through a negotiated rulemaking process described in title 5, United States Code, and in accordance with the requirements of this subsection.*

*''(2) CONSIDERATIONS.—In establishing such fee schedule, the Secretary shall—*

*''(A) establish mechanisms to control increases in expenditures for ambulance services under this part;*

*''(B) establish definitions for ambulance services which link payments to the type of services provided;*

*''(C) consider appropriate regional and operational differences;*

*''(D) consider adjustments to payment rates to account for inflation and other relevant factors; and*

*''(E) phase in the application of the payment rates under the fee schedule in an efficient and fair manner.*

*''(3) SAVINGS.—In establishing such fee schedule, the Secretary shall—*

*''(A) ensure that the aggregate amount of payments made for ambulance services under this part during 1999 does not exceed the aggregate amount of payments which would have*

been made for such services under this part during such year if the amendments made by section 5321 of the Balanced Budget Act of 1997 had not been made; and

''(B) set the payment amounts provided under the fee schedule for services furnished in 2000 and each subsequent year at amounts equal to the payment amounts under the fee schedule for service furnished during the previous year, 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 June of the previous year reduced (but not below zero) by 1.0 percentage points.

''(4) CONSULTATION.—In establishing the fee schedule for ambulance services under this subsection, the Secretary shall consult with various national organizations representing individuals and entities who furnish and regulate ambulance services and share with such organizations relevant data in establishing such schedule.

''(5) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869 or otherwise of the amounts established under the fee schedule for ambulance services under this subsection, including matters described in paragraph (2).

''(6) RESTRAINT ON BILLING.—The provisions of subparagraphs (A) and (B) of section 1842(b)(18) shall apply to ambulance services for which payment is made under this subsection in the same manner as they apply to services provided by a practitioner described in section 1842(b)(18)(C).''.

(3) EFFECTIVE DATE.—The amendments made by this section apply to ambulance services furnished on or after January 1, 1999.

(c) AUTHORIZING PAYMENT FOR PARAMEDIC INTERCEPT SERVICE PROVIDERS IN RURAL COMMUNITIES.—In promulgating regulations to carry out section 1861(s)(7) of the Social Security Act (42 U.S.C. 1395x(s)(7)) with respect to the coverage of ambulance service, the Secretary of Health and Human Services may include coverage of advanced life support services (in this subsection referred to as ''ALS intercept services'') provided by a paramedic intercept service provider in a rural area if the following conditions are met:

(1) The ALS intercept services are provided under a contract with one or more volunteer ambulance services and are medically necessary based on the health condition of the individual being transported.

(2) The volunteer ambulance service involved—

(A) is certified as qualified to provide ambulance service for purposes of such section,

(B) provides only basic life support services at the time of the intercept, and

(C) is prohibited by State law from billing for any services.

(3) The entity supplying the ALS intercept services—

(A) is certified as qualified to provide such services under the medicare program under title XVIII of the Social Security Act, and

(B) bills all recipients who receive ALS intercept services from the entity, regardless of whether or not such recipients are medicare beneficiaries.

## CHAPTER 3—PROVISIONS RELATING TO PARTS A AND B

### Subchapter A—Payments to Skilled Nursing Facilities

#### SEC. 5331. EXTENSION OF COST LIMITS.

The last sentence of section 1888(a) (42 U.S.C. 1395yy(a)) is amended by striking ''subsection'' the last place it appears and all that follows and inserting ''subsection, except that the limits effective for cost reporting periods beginning on or after October 1, 1997, shall be based on the limits effective for cost reporting periods beginning on or after October 1, 1996.''.

#### SEC. 5332. PROSPECTIVE PAYMENT FOR SKILLED NURSING FACILITY SERVICES.

(a) IN GENERAL.—Section 1888 (42 U.S.C. 1395yy) is amended by adding at the end the following new subsection:

''(e) PROSPECTIVE PAYMENT.—

''(1) PAYMENT PROVISION.—Notwithstanding any other provision of this title, subject to paragraph (7), the amount of the payment for all costs (as defined in paragraph (2)(B)) of covered skilled nursing facility services (as defined in paragraph (2)(A)) for each day of such services furnished—

''(A) in a cost reporting period during the transition period (as defined in paragraph (2)(E)), is equal to the sum of—

''(i) the non-Federal percentage of the facility-specific per diem rate (computed under paragraph (3)), and

''(ii) the Federal percentage of the adjusted Federal per diem rate (determined under paragraph (4)) applicable to the facility; and

''(B) after the transition period is equal to the adjusted Federal per diem rate applicable to the facility.

''(2) DEFINITIONS.—For purposes of this subsection:

''(A) COVERED SKILLED NURSING FACILITY SERVICES.—

''(i) IN GENERAL.—The term 'covered skilled nursing facility services'—

''(I) means post-hospital extended care services as defined in section 1861(i) for which benefits are provided under part A; and

''(II) includes all items and services (other than services described in clause (ii)) for which payment may be made under part B and which are furnished to an individual who is a resident of a skilled nursing facility during the period in which the individual is provided covered post-hospital extended care services.

''(ii) SERVICES EXCLUDED.—Services described in this clause are physicians' services, services described by clauses (i) through (iii) of section 1861(s)(2)(K), certified nurse-midwife services, qualified psychologist services, services of a certified registered nurse anesthetist, items and services described in subparagraphs in (F) and (O) of section 1861(s)(2), and, only with respect to services furnished during 1998, the transportation costs of electrocardiogram equipment for electrocardiogram tests services (HCPCS Code R0076). Services described in this clause do not include any physical, occupational, or speech-language therapy services regardless of whether or not the services are furnished by, or under the supervision of, a physician or other health care professional.

''(B) ALL COSTS.—The term 'all costs' means routine service costs, ancillary costs, and capital-related costs of covered skilled nursing facility services, but does not include costs associated with approved educational activities.

''(C) NON-FEDERAL PERCENTAGE; FEDERAL PERCENTAGE.—For—

''(i) the first cost reporting period (as defined in subparagraph (D)) of a facility, the 'non-Federal percentage' is 75 percent and the 'Federal percentage' is 25 percent;

''(ii) the next cost reporting period of such facility, the 'non-Federal percentage' is 50 percent and the 'Federal percentage' is 50 percent; and

''(iii) the subsequent cost reporting period of such facility, the 'non-Federal percentage' is 25 percent and the 'Federal percentage' is 75 percent.

''(D) FIRST COST REPORTING PERIOD.—The term 'first cost reporting period' means, with respect to a skilled nursing facility, the first cost reporting period of the facility beginning on or after July 1, 1998.

''(E) TRANSITION PERIOD.—

''(i) IN GENERAL.—The term 'transition period' means, with respect to a skilled nursing facility, the 3 cost reporting periods of the facility beginning with the first cost reporting period.

''(ii) TREATMENT OF NEW SKILLED NURSING FACILITIES.—In the case of a skilled nursing facility that does not have a settled cost report for a cost reporting period before July 1, 1998, payment for such services shall be made under this subsection as if all services were furnished after the transition period.

''(3) DETERMINATION OF FACILITY SPECIFIC PER DIEM RATES.—The Secretary shall determine a facility-specific per diem rate for each skilled nursing facility for a cost reporting period as follows:

''(A) DETERMINING BASE PAYMENTS.—The Secretary shall determine, on a per diem basis, the total of—

''(i) the allowable costs of extended care services for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

''(ii) an estimate of the amounts that would be payable under part B (disregarding any applicable deductibles, coinsurance and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

''(B) UPDATE TO COST REPORTING PERIODS THROUGH 1998.—The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase.

''(C) UPDATING TO APPLICABLE COST REPORTING PERIOD.—The Secretary shall further update such amount for each cost reporting period beginning with the first cost reporting period and up to and including the cost reporting period involved by a factor equal to the skilled nursing facility market basket percentage increase.

''(D) CERTAIN DEMONSTRATION PROJECTS.—In the case of a facility participating in the Nursing Home Case-Mix and Quality Demonstration (RUGS–III), the Secretary shall determine the facility specific per diem rate for any year after 1997 by computing the base period payments by using the RUGS–III rate received by the facility for 1997, increased by a factor equal to the skilled nursing facility market basket percentage increase.

''(4) FEDERAL PER DIEM RATE.—

''(A) DETERMINATION OF HISTORICAL PER DIEM FOR FACILITIES.—For each skilled nursing facility that received payments for post-hospital extended care services during a cost reporting period beginning in fiscal year 1995 and that was subject to (and not exempted from) the per diem limits referred to in paragraph (1) or (2) of subsection (a) (and facilities described in subsection (d)), the Secretary shall estimate, on a per diem basis for such cost reporting period, the total of—

''(i) subject to subparagraph (I), the allowable costs of extended care services for the facility for cost reporting periods beginning in 1995 with appropriate adjustments (as determined by the Secretary) to non-settled cost reports, and

''(ii) an estimate of the amounts that would be payable under part B (disregarding any applicable deductibles, coinsurance and copayments) for covered skilled nursing facility services described in paragraph (2)(A)(i)(II) furnished during such period to an individual who is a resident of the facility, regardless of whether or not the payment was made to the facility or to another entity.

''(B) UPDATE TO COST REPORTING PERIODS THROUGH 1998.—The Secretary shall update the amount determined under subparagraph (A), for each cost reporting period after the cost reporting period described in subparagraph (A)(i) and up to the first cost reporting period by a factor equal to the skilled nursing facility market basket percentage increase reduced (on an annualized basis) by 1 percentage point.

''(C) COMPUTATION OF STANDARDIZED PER DIEM RATE.—The Secretary shall standardize

*the amount updated under subparagraph (B) for each facility by—*

*''(i) adjusting for variations among facility by area in the average facility wage level per diem, and*

*''(ii) adjusting for variations in case mix per diem among facilities.*

*''(D) COMPUTATION OF WEIGHTED AVERAGE PER DIEM RATE.—The Secretary shall compute a weighted average per diem rate by computing an average of the standardized amounts computed under subparagraph (C), weighted for each facility by the number of days of extended care services furnished during the cost reporting period referred to in subparagraph (A). The Secretary may compute and apply such average separately for facilities located in urban and rural areas (as defined in section 1886(d)(2)(D)).*

*''(E) UPDATING.—*

*''(i) FISCAL YEAR 1999.—For fiscal year 1999, the Secretary shall compute for each skilled nursing facility an unadjusted Federal per diem rate equal to the weighted average per diem rate computed under subparagraph (D) and applicable to the facility increased by skilled nursing facility market basket percentage change for the fiscal year involved.*

*''(ii) SUBSEQUENT FISCAL YEARS.—For each subsequent fiscal year the Secretary shall compute for each skilled nursing facility an unadjusted Federal per diem rate equal to the Federal per diem rate computed under this subparagraph for the previous fiscal year and applicable to the facility increased by the skilled nursing facility market basket percentage change for the fiscal year involved.*

*''(F) ADJUSTMENT FOR CASE MIX CREEP.—Insofar as the Secretary determines that such adjustments under subparagraph (G)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of residents that do not reflect real changes in case mix, the Secretary may adjust unadjusted Federal per diem rates for subsequent years so as to discount the effect of such coding or classification changes.*

*''(G) APPLICATION TO SPECIFIC FACILITIES.—The Secretary shall compute for each skilled nursing facility for each fiscal year (beginning with fiscal year 1998) an adjusted Federal per diem rate equal to the unadjusted Federal per diem rate determined under subparagraph (E), as adjusted under subparagraph (F), and as further adjusted as follows:*

*''(i) ADJUSTMENT FOR CASE MIX.—The Secretary shall provide for an appropriate adjustment to account for case mix. Such adjustment shall be based on a resident classification system, established by the Secretary, that accounts for the relative resource utilization of different patient types. The case mix adjustment shall be based on resident assessment data and other data that the Secretary considers appropriate.*

*''(ii) ADJUSTMENT FOR GEOGRAPHIC VARIATIONS IN LABOR COSTS.—The Secretary shall adjust the portion of such per diem rate attributable to wages and wage-related costs for the area in which the facility is located compared to the national average of such costs using an appropriate wage index as determined by the Secretary. Such adjustment shall be done in a manner that does not result in aggregate payments under this subsection that are greater or less than those that would otherwise be made if such adjustment had not been made.*

*''(H) PUBLICATION OF INFORMATION ON PER DIEM RATES.—The Secretary shall provide for publication in the Federal Register, before the July 1 preceding each fiscal year (beginning with fiscal year 1999), of—*

*''(i) the unadjusted Federal per diem rates to be applied to days of covered skilled nursing facility services furnished during the fiscal year,*

*''(ii) the case mix classification system to be applied under subparagraph (G)(i) with respect to such services during the fiscal year, and*

*''(iii) the factors to be applied in making the area wage adjustment under subparagraph (G)(ii) with respect to such services.*

*''(I) EXCLUSION OF EXCEPTION PAYMENTS FROM DETERMINATION OF HISTORICAL PER DIEM.—In determining allowable costs under subparagraph (A)(i), the Secretary shall not take into account any payments described in subsection (c).*

*''(5) SKILLED NURSING FACILITY MARKET BASKET INDEX AND PERCENTAGE.—For purposes of this subsection:*

*''(A) SKILLED NURSING FACILITY MARKET BASKET INDEX.—The Secretary shall establish a skilled nursing facility market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered skilled nursing facility services.*

*''(B) SKILLED NURSING FACILITY MARKET BASKET PERCENTAGE.—The term 'skilled nursing facility market basket percentage' means, for a fiscal year or other annual period and as calculated by the Secretary, the percentage change in the skilled nursing facility market basket index (established under subparagraph (A)) from the midpoint of the prior fiscal year (or period) to the midpoint of the fiscal year (or other period) involved.*

*''(6) SUBMISSION OF RESIDENT ASSESSMENT DATA.—A skilled nursing facility shall provide the Secretary, in a manner and within the timeframes prescribed by the Secretary, the resident assessment data necessary to develop and implement the rates under this subsection. For purposes of meeting such requirement, a skilled nursing facility may submit the resident assessment data required under section 1819(b)(3), using the standard instrument designated by the State under section 1819(e)(5).*

*''(7) TRANSITION FOR MEDICARE SWING BED HOSPITALS.—*

*''(A) IN GENERAL.—The Secretary shall determine an appropriate manner in which to apply this subsection to the facilities described in subparagraph (B), taking into account the purposes of this subsection, and shall provide that at the end of the transition period (as defined in paragraph (2)(E)) such facilities shall be paid only under this subsection. Payment shall not be made under this subsection to such facilities for cost reporting periods beginning before such date (not earlier than July 1, 1999) as the Secretary specifies.*

*''(B) FACILITIES DESCRIBED.—The facilities described in this subparagraph are facilities that have in effect an agreement described in section 1883, for which payment is made for the furnishing of extended care services on a reasonable cost basis under section 1814(l) (as in effect on and after such date).*

*''(8) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise of—*

*''(A) the establishment of Federal per diem rates under paragraph (4), including the computation of the standardized per diem rates under paragraph (4)(C), adjustments and corrections for case mix under paragraphs (4)(F) and (4)(G)(i), and adjustments for variations in labor-related costs under paragraph (4)(G)(ii); and*

*''(B) the establishment of transitional amounts under paragraph (7).''.*

*(b) CONSOLIDATED BILLING.—*

*(1) FOR SNF SERVICES.—Section 1862(a) (42 U.S.C. 1395y(a)) is amended—*

*(A) by striking ''or'' at the end of paragraph (15),*

*(B) by striking the period at the end of paragraph (16) and inserting ''; or'', and*

*(C) by inserting after paragraph (16) the following new paragraph:*

*''(17) which are covered skilled nursing facility services described in section 1888(e)(2)(A)(i)(II) and which are furnished to an individual who is a resident of a skilled nursing facility by an entity other than the skilled nursing facility, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the skilled nursing facility, or such services are furnished by a physician described in section 1861(r)(1).''.*

*(2) REQUIRING PAYMENT FOR ALL PART B ITEMS AND SERVICES TO BE MADE TO FACILITY.—The first sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended—*

*(A) by striking ''and (D)'' and inserting ''(D)''; and*

*(B) by striking the period at the end and inserting the following: '', and (E) in the case of an item or service (other than services described in section 1888(e)(2)(A)(ii)) furnished to an individual who (at the time the item or service is furnished) is a resident of a skilled nursing facility, payment shall be made to the facility (without regard to whether or not the item or service was furnished by the facility, by others under arrangement with them made by the facility, under any other contracting or consulting arrangement, or otherwise).''.*

*(3) PAYMENT RULES.—Section 1888(e) (42 U.S.C. 1395yy(e)), as added by subsection (a), is amended by adding at the end the following:*

*''(9) PAYMENT FOR CERTAIN SERVICES.—*

*''(A) IN GENERAL.—In the case of an item or service furnished by a skilled nursing facility (or by others under arrangement with them made by a skilled nursing facility or under any other contracting or consulting arrangement or otherwise) for which payment would otherwise (but for this paragraph) be made under part B in an amount determined in accordance with section 1833(a)(2)(B), the amount of the payment under such part shall be based on the part B methodology applicable to the item or service, except that for items and services that would be included in a facility's cost report if not for this section, the facility may continue to use a cost report for reimbursement purposes until the prospective payment system established under this section is implemented.*

*''(B) THERAPY AND PATHOLOGY SERVICES.—Payment for physical therapy, occupational therapy, respiratory therapy, and speech language pathology services shall reflect new salary equivalency guidelines calculated pursuant to section 1861(v)(5) when finalized through the regulatory process.*

*''(10) REQUIRED CODING.—No payment may be made under part B for items and services (other than services described in paragraph (2)(A)(ii)) furnished to an individual who is a resident of a skilled nursing facility unless the claim for such payment includes a code (or codes) under a uniform coding system specified by the Secretary that identifies the items or services delivered.''.*

*(4) CONFORMING AMENDMENTS.—*

*(A) Section 1819(b)(3)(C)(i) (42 U.S.C. 1395i–3(b)(3)(C)(i)) is amended by striking ''Such'' and inserting ''Subject to the timeframes prescribed by the Secretary under section 1888(t)(6), such''.*

*(B) Section 1832(a)(1) (42 U.S.C. 1395k(a)(1)) is amended by striking ''(2);'' and inserting ''(2) and section 1842(b)(6)(E);''.*

*(C) Section 1833(a)(2)(B) (42 U.S.C. 1395l(a)(2)(B)) is amended by inserting ''or section 1888(e)(9)'' after ''section 1886''.*

*(D) Section 1861(h) (42 U.S.C 1395x(h)) is amended—*

*(i) in the opening paragraph, by striking ''paragraphs (3) and (6)'' and inserting ''paragraphs (3), (6), and (7)'', and*

*(ii) in paragraph (7), after ''skilled nursing facilities'', by inserting '', or by others under arrangements with them made by the facility''.*

*(E) Section 1866(a)(1)(H) (42 U.S.C. 1395cc(a)(1)(H)) is amended—*

*(i) by redesignating clauses (i) and (ii) as subclauses (I) and (II) respectively,*

*(ii) by inserting ''(i)'' after ''(H)'', and*

*(iii) by adding after clause (i), as so redesignated, the following new clause:*

*''(ii) in the case of skilled nursing facilities which provide covered skilled nursing facility services—*

''(I) that are furnished to an individual who is a resident of the skilled nursing facility, and

''(II) for which the individual is entitled to have payment made under this title,

to have items and services (other than services described in section 1888(e)(2)(A)(ii)) furnished by the skilled nursing facility or otherwise under arrangements (as defined in section 1861(w)(1)) made by the skilled nursing facility,''.

(c) MEDICAL REVIEW PROCESS.—In order to ensure that medicare beneficiaries are furnished appropriate services in skilled nursing facilities, the Secretary of Health and Human Services shall establish and implement a thorough medical review process to examine the effects of the amendments made by this section on the quality of covered skilled nursing facility services furnished to medicare beneficiaries. In developing such a medical review process, the Secretary shall place a particular emphasis on the quality of non-routine covered services and physicians' services for which payment is made under title XVIII of the Social Security Act for which payment is made under section 1848 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section are effective for cost reporting periods beginning on or after July 1, 1998; except that the amendments made by subsection (b) shall apply to items and services furnished on or after July 1, 1998.

### Subchapter B—Home Health Services and Benefits

### PART I—PAYMENTS FOR HOME HEALTH SERVICES

**SEC. 5341. RECAPTURING SAVINGS RESULTING FROM TEMPORARY FREEZE ON PAYMENT INCREASES FOR HOME HEALTH SERVICES.**

(a) BASING UPDATES TO PER VISIT COST LIMITS ON LIMITS FOR FISCAL YEAR 1993.—Section 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)) is amended by adding at the end the following:

''(iv) In establishing limits under this subparagraph for cost reporting periods beginning after September 30, 1997, the Secretary shall not take into account any changes in the home health market basket, as determined by the Secretary, with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.''.

(b) NO EXCEPTIONS PERMITTED BASED ON AMENDMENT.—The Secretary of Health and Human Services shall not consider the amendment made by subsection (a) in making any exemptions and exceptions pursuant to section 1861(v)(1)(L)(ii) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)(ii)).

**SEC. 5342. INTERIM PAYMENTS FOR HOME HEALTH SERVICES.**

(a) REDUCTIONS IN COST LIMITS.—Section 1861(v)(1)(L)(i) (42 U.S.C. 1395x(v)(1)(L)(i)) is amended—

(1) by moving the indentation of subclauses (I) through (III) 2-ems to the left;

(2) in subclause (I), by inserting ''of the mean of the labor-related and nonlabor per visit costs for freestanding home health agencies'' before the comma at the end;

(3) in subclause (II), by striking '', or'' and inserting ''of such mean,'';

(4) in subclause (III)—

(A) by inserting ''and before October 1, 1997,'' after ''July 1, 1987'', and

(B) by striking the period at the end and inserting ''of such mean, or''; and

(5) by striking the matter following subclause (III) and inserting the following:

''(IV) October 1, 1997, 105 percent of the median of the labor-related and nonlabor per visit costs for freestanding home health agencies.''.

(b) DELAY IN UPDATES.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by inserting '', or on or after July 1, 1997, and before October 1, 1997'' after ''July 1, 1996''.

(c) ADDITIONS TO COST LIMITS.—Section 1861(v)(1)(L) (42 U.S.C. 1395x(v)(1)(L)), as amended by section 5341(a), is amended by adding at the end the following:

''(v) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, the Secretary shall provide for an interim system of limits. Payment shall be the lower of—

''(I) costs determined under the preceding provisions of this subparagraph, or

''(II) an agency-specific per beneficiary annual limitation calculated from the agency's 12-month cost reporting period ending on or after January 1, 1994, and on or before December 31, 1994, based on reasonable costs (including non-routine medical supplies), updated by the home health market basket index.

The per beneficiary limitation in subclause (II) shall be multiplied by the agency's unduplicated census count of patients (entitled to benefits under this title) for the cost reporting period subject to the limitation to determine the aggregate agency-specific per beneficiary limitation.

''(vi) For services furnished by home health agencies for cost reporting periods beginning on or after October 1, 1997, the following rules apply:

''(I) For new providers and those providers without a 12-month cost reporting period ending in calendar year 1994, the per beneficiary limitation shall be equal to the median of these limits (or the Secretary's best estimates thereof) applied to other home health agencies as determined by the Secretary. A home health agency that has altered its corporate structure or name shall not be considered a new provider for this purpose.

''(II) For beneficiaries who use services furnished by more than one home health agency, the per beneficiary limitations shall be prorated among the agencies.''.

(d) DEVELOPMENT OF CASE MIX SYSTEM.—The Secretary of Health and Human Services shall expand research on a prospective payment system for home health agencies under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) that ties prospective payments to a unit of service, including an intensive effort to develop a reliable case mix adjuster that explains a significant amount of the variances in costs.

(e) SUBMISSION OF DATA FOR CASE MIX SYSTEM.—Effective for cost reporting periods beginning on or after October 1, 1997, the Secretary of Health and Human Services may require all home health agencies to submit additional information that the Secretary considers necessary for the development of a reliable case mix system.

**SEC. 5343. PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES.**

(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.), as amended by section 5011, is amended by adding at the end the following new section:

''PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES

''SEC. 1895. (a) IN GENERAL.—Notwithstanding section 1861(v), the Secretary shall provide, for cost reporting periods beginning on or after October 1, 1999, for payments for home health services in accordance with a prospective payment system established by the Secretary under this section.

''(b) SYSTEM OF PROSPECTIVE PAYMENT FOR HOME HEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary shall establish under this subsection a prospective payment system for payment for all costs of home health services. Under the system under this subsection all services covered and paid on a reasonable cost basis under the medicare home health benefit as of the date of the enactment of the this section, including medical supplies, shall be paid for on the basis of a prospective payment amount determined under this subsection and applicable to the services involved. In implementing the system, the Secretary may provide for a transition (of not longer than 4 years) during which a portion of such payment is based on agency-specific costs, but only if such transition does not result in aggregate payments under this title that exceed the aggregate payments that would be made if such a transition did not occur.

''(2) UNIT OF PAYMENT.—In defining a prospective payment amount under the system under this subsection, the Secretary shall consider an appropriate unit of service and the number, type, and duration of visits provided within that unit, potential changes in the mix of services provided within that unit and their cost, and a general system design that provides for continued access to quality services.

''(3) PAYMENT BASIS.—

''(A) INITIAL BASIS.—

''(i) IN GENERAL.—Under such system the Secretary shall provide for computation of a standard prospective payment amount (or amounts). Such amount (or amounts) shall initially be based on the most current audited cost report data available to the Secretary and shall be computed in a manner so that the total amounts payable under the system for fiscal year 2000 shall be equal to the total amount that would have been made if the system had not been in effect but if the reduction in limits described in clause (ii) had been in effect. Such amount shall be standardized in a manner that eliminates the effect of variations in relative case mix and wage levels among different home health agencies in a budget neutral manner consistent with the case mix and wage level adjustments provided under paragraph (4)(A). Under the system, the Secretary may recognize regional differences or differences based upon whether or not the services or agency are in an urbanized area.

''(ii) REDUCTION.—The reduction described in this clause is a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1861(v)(1)(L), as those limits are in effect on September 30, 1999.

''(B) ANNUAL UPDATE.—

''(i) IN GENERAL.—The standard prospective payment amount (or amounts) shall be adjusted for each fiscal year (beginning with fiscal year 2001) in a prospective manner specified by the Secretary by the home health market basket percentage increase applicable to the fiscal year involved.

''(ii) HOME HEALTH MARKET BASKET PERCENTAGE INCREASE.—For purposes of this subsection, the term 'home health market basket percentage increase' means, with respect to a fiscal year, a percentage (estimated by the Secretary before the beginning of the fiscal year) determined and applied with respect to the mix of goods and services included in home health services in the same manner as the market basket percentage increase under section 1886(b)(3)(B)(iii) is determined and applied to the mix of goods and services comprising inpatient hospital services for the fiscal year.

''(C) ADJUSTMENT FOR OUTLIERS.—The Secretary shall reduce the standard prospective payment amount (or amounts) under this paragraph applicable to home health services furnished during a period by such proportion as will result in an aggregate reduction in payments for the period equal to the aggregate increase in payments resulting from the application of paragraph (5) (relating to outliers).

''(4) PAYMENT COMPUTATION.—

''(A) IN GENERAL.—The payment amount for a unit of home health services shall be the applicable standard prospective payment amount adjusted as follows:

''(i) CASE MIX ADJUSTMENT.—The amount shall be adjusted by an appropriate case mix adjustment factor (established under subparagraph (B)).

''(ii) AREA WAGE ADJUSTMENT.—The portion of such amount that the Secretary estimates to be attributable to wages and wage-related costs shall be adjusted for geographic differences in such costs by an area wage adjustment factor

(established under subparagraph (C)) for the area in which the services are furnished or such other area as the Secretary may specify.

''(B) ESTABLISHMENT OF CASE MIX ADJUSTMENT FACTORS.—The Secretary shall establish appropriate case mix adjustment factors for home health services in a manner that explains a significant amount of the variation in cost among different units of services.

''(C) ESTABLISHMENT OF AREA WAGE ADJUSTMENT FACTORS.—The Secretary shall establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. Such factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E).

''(5) OUTLIERS.—The Secretary may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. The total amount of the additional payments or payment adjustments made under this paragraph with respect to a fiscal year may not exceed 5 percent of the total payments projected or estimated to be made based on the prospective payment system under this subsection in that year.

''(6) PRORATION OF PROSPECTIVE PAYMENT AMOUNTS.—If a beneficiary elects to transfer to, or receive services from, another home health agency within the period covered by the prospective payment amount, the payment shall be prorated between the home health agencies involved.

''(c) REQUIREMENTS FOR PAYMENT INFORMATION.—With respect to home health services furnished on or after October 1, 1998, no claim for such a service may be paid under this title unless—

''(1) the claim has the unique identifier for the physician who prescribed the services or made the certification described in section 1814(a)(2) or 1835(a)(2)(A); and

''(2) in the case of a service visit described in paragraph (1), (2), (3), or (4) of section 1861(m), the claim has information (coded in an appropriate manner) on the length of time of the service visit, as measured in 15 minute increments.

''(d) LIMITATION ON REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise of—

''(1) the establishment of a transition period under subsection (b)(1);

''(2) the definition and application of payment units under subsection (b)(2);

''(3) the computation of initial standard prospective payment amounts under subsection (b)(3)(A) (including the reduction described in clause (ii) of such subsection);

''(4) the adjustment for outliers under subsection (b)(3)(C);

''(5) case mix and area wage adjustments under subsection (b)(4);

''(6) any adjustments for outliers under subsection (b)(5); and

''(7) the amounts or types of exceptions or adjustments under subsection (b)(7).''.

(b) ELIMINATION OF PERIODIC INTERIM PAYMENTS FOR HOME HEALTH AGENCIES.—Section 1815(e)(2) (42 U.S.C. 1395g(e)(2)) is amended—

(1) by inserting ''and'' at the end of subparagraph (C),

(2) by striking subparagraph (D), and

(3) by redesignating subparagraph (E) as subparagraph (D).

(c) CONFORMING AMENDMENTS.—

(1) PAYMENTS UNDER PART A.—Section 1814(b) (42 U.S.C. 1395f(b)) is amended in the matter preceding paragraph (1) by striking ''and 1886'' and inserting ''1886, and 1895''.

(2) TREATMENT OF ITEMS AND SERVICES PAID UNDER PART B.—

(A) PAYMENTS UNDER PART B.—Section 1833(a)(2) (42 U.S.C. 1395l(a)(2)) is amended—

(i) by amending subparagraph (A) to read as follows:

''(A) with respect to home health services (other than a covered osteoporosis drug) (as defined in section 1861(kk)), the amount determined under the prospective payment system under section 1895;'';

(ii) by striking ''and'' at the end of subparagraph (E);

(iii) by adding ''and'' at the end of subparagraph (F); and

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

''(G) with respect to items and services described in section 1861(s)(10)(A), the lesser of—

''(i) the reasonable cost of such services, as determined under section 1861(v), or

''(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1814(b)(2);''.

(B) REQUIRING PAYMENT FOR ALL ITEMS AND SERVICES TO BE MADE TO AGENCY.—

(i) IN GENERAL.—The first sentence of section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) (as amended by section 5332(b)(2)) is amended—

(I) by striking ''and (E)'' and inserting ''(E)''; and

(II) by striking the period at the end and inserting the following: '', and (F) in the case of home health services furnished to an individual who (at the time the item or service is furnished) is under a plan of care of a home health agency, payment shall be made to the agency (without regard to whether or not the item or service was furnished by the agency, by others under arrangement with them made by the agency, or when any other contracting or consulting arrangement, or otherwise).''.

(ii) CONFORMING AMENDMENT.—Section 1832(a)(1) (42 U.S.C. 1395k(a)(1)) (as amended by section 5332(b)(4)(B)) is amended by striking ''section 1842(b)(6)(E);'' and inserting ''subparagraphs (E) and (F) of section 1842(b)(6);''.

(C) EXCLUSIONS FROM COVERAGE.—Section 1862(a) (42 U.S.C. 1395y(a)), as amended by section 5332(b)(1), is amended—

(i) by striking ''or'' at the end of paragraph (16);

(ii) by striking the period at the end of paragraph (17) and inserting ''or''; and

(iii) by inserting after paragraph (17) the following:

''(18) where such expenses are for home health services furnished to an individual who is under a plan of care of the home health agency if the claim for payment for such services is not submitted by the agency.''.

(d) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall apply to cost reporting periods beginning on or after October 1, 1999.

(e) CONTINGENCY.—If the Secretary of Health and Human Services for any reason does not establish and implement the prospective payment system for home health services described in section 1895(b) of the Social Security Act (as added by subsection (a)) for cost reporting periods described in subsection (d), for such cost reporting periods the Secretary shall provide for a reduction by 15 percent in the cost limits and per beneficiary limits described in section 1861(v)(1)(L) of such Act, as those limits would otherwise be in effect on September 30, 1999.

**SEC. 5344. PAYMENT BASED ON LOCATION WHERE HOME HEALTH SERVICE IS FURNISHED.**

(a) CONDITIONS OF PARTICIPATION.—Section 1891 (42 U.S.C. 1395bbb) is amended by adding at the end the following:

''(g) PAYMENT ON BASIS OF LOCATION OF SERVICE.—A home health agency shall submit claims for payment for home health services under this title only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.''.

(b) WAGE ADJUSTMENT.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking ''agency is located'' and inserting ''service is furnished''.

(c) EFFECTIVE DATE.—The amendments made by this section apply to cost reporting periods beginning on or after October 1, 1997.

## PART II—HOME HEALTH BENEFITS

**SEC. 5361. MODIFICATION OF PART A HOME HEALTH BENEFIT FOR INDIVIDUALS ENROLLED UNDER PART B.**

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

(1) in subsection (a)(3), by striking ''home health services'' and inserting ''for individuals not enrolled in part B, home health services, and for individuals so enrolled, part A home health services (as defined in subsection (g))'';

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

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

''(g)(1) For purposes of this section, the term 'part A home health services' means—

''(A) for services furnished during each year beginning with 1998 and ending with 2003, home health services subject to the transition reduction applied under paragraph (2)(C) for services furnished during the year, and

''(B) for services furnished on or after January 1, 2004, post-institutional home health services for up to 100 visits during a home health spell of illness.

''(2) For purposes of paragraph (1)(A), the Secretary shall specify, before the beginning of each year beginning with 1998 and ending with 2003, a transition reduction in the home health services benefit under this part as follows:

''(A) The Secretary first shall estimate the amount of payments that would have been made under this part for home health services furnished during the year if—

''(i) part A home health services were all home health services, and

''(ii) part A home health services were limited to services described in paragraph (1)(B).

''(B)(i) The Secretary next shall compute a transfer reduction amount equal to the appropriate proportion (specified under clause (ii)) of the amount by which the amount estimated under subparagraph (A)(i) for the year exceeds the amount estimated under subparagraph (A)(ii) for the year.

''(ii) For purposes of clause (i), the 'appropriate proportion' is equal to—

''(I) 1/7 for 1998,

''(II) 2/7 for 1999,

''(III) 3/7 for 2000,

''(IV) 4/7 for 2001,

''(V) 5/7 for 2002, and

''(VI) 6/7 for 2003.

''(C) The Secretary shall establish a transition reduction by specifying such a visit limit (during a home health spell of illness) or such a post-institutional limitation on home health services furnished under this part during the year as the Secretary estimates will result in a reduction in the amount of payments that would otherwise be made under this part for home health services furnished during the year equal to the transfer amount computed under subparagraph (B)(i) for the year.

''(3) Payment under this part for home health services furnished an individual enrolled under part B—

''(A) during a year beginning with 1998 and ending with 2003, may not be made for services that are not within the visit limit or other limitation specified by the Secretary under the transition reduction under paragraph (3)(C) for services furnished during the year; or

''(B) on or after January 1, 2004, may not be made for home health services that are not post-institutional home health services or for post-institutional furnished to the individual after

such services have been furnished to the individual for a total of 100 visits during a home health spell of illness.''.

(b) POST-INSTITUTIONAL HOME HEALTH SERVICES DEFINED.—Section 1861 (42 U.S.C. 1395x), as amended by sections 5102(a) and 5103(a), is amended by adding at the end the following:

''Post-Institutional Home Health Services; Home Health Spell of Illness

''(qq)(1) The term 'post-institutional home health services' means home health services furnished to an individual—

''(A) after discharge from a hospital or rural primary care hospital in which the individual was an inpatient for not less than 3 consecutive days before such discharge if such home health services were initiated within 14 days after the date of such discharge; or

''(B) after discharge from a skilled nursing facility in which the individual was provided post-hospital extended care services if such home health services were initiated within 14 days after the date of such discharge.

''(2) The term 'home health spell of illness' with respect to any individual means a period of consecutive days—

''(A) beginning with the first day (not included in a previous home health spell of illness) (i) on which such individual is furnished post-institutional home health services, and (ii) which occurs in a month for which the individual is entitled to benefits under part A, and

''(B) ending with the close of the first period of 60 consecutive days thereafter on each of which the individual is neither an inpatient of a hospital or rural primary care hospital nor an inpatient of a facility described in section 1819(a)(1) or subsection (y)(1) nor provided home health services.''.

(c) MAINTAINING APPEAL RIGHTS FOR HOME HEALTH SERVICES.—Section 1869(b)(2)(B) (42 U.S.C. 1395ff(b)(2)(B)) is amended by inserting ''(or $100 in the case of home health services)'' after ''$500''.

(d) MAINTAINING SEAMLESS ADMINISTRATION THROUGH FISCAL INTERMEDIARIES.—Section 1842(b)(2) (42 U.S.C. 1395u(b)(2)) is amended by adding at the end the following:

''(E) With respect to the payment of claims for home health services under this part that, but for the amendments made by section 5361, would be payable under part A instead of under this part, the Secretary shall continue administration of such claims through fiscal intermediaries under section 1816.''.

(e) EFFECTIVE DATE.—The amendments made by this section apply to services furnished on or after January 1, 1998. For the purpose of applying such amendments, any home health spell of illness that began, but did not end, before such date shall be considered to have begun as of such date.

**SEC. 5362. IMPOSITION OF $5 COPAYMENT FOR PART B HOME HEALTH SERVICES.**

(a) IN GENERAL.—Section 1833(a)(2)(A) (42 U.S.C. 1395l(a)(2)(A)) (as amended by section 5343(c)(2)) is amended by striking ''1895'' and inserting ''1895, less a copayment amount equal to $5 per visit, not to exceed a total annual copayment amount equal to the inpatient hospital deductible determined under section 1813 for the calendar year in which such service is furnished''.

(b) PROVIDER CHARGES.—Section 1866(a)(2)(A)(i) (42 U.S.C. 1395cc(a)(2)(A)(i)) is amended—

(1) by striking ''deduction or coinsurance'' and inserting ''deduction, coinsurance, or copayment''; and

(2) by striking ''section 1833(b)'' and inserting ''subsection (a)(2)(A) or (b) of section 1833''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after October 1, 1997.

**SEC. 5363. CLARIFICATION OF PART-TIME OR INTERMITTENT NURSING CARE.**

(a) IN GENERAL.—Section 1861(m) (42 U.S.C. 1395x(m)) is amended by adding at the end the following: ''For purposes of paragraphs (1) and (4), the term 'part-time or intermittent services' means skilled nursing and home health aide services furnished any number of days per week as long as they are furnished (combined) less than 8 hours each day and 28 or fewer hours each week (or, subject to review on a case-by-case basis as to the need for care, less than 8 hours each day and 35 or fewer hours per week). For purposes of sections 1814(a)(2)(C) and 1835(a)(2)(A), 'intermittent' means skilled nursing care that is either provided or needed on fewer than 7 days each week, or less than 8 hours of each day for periods of 21 days or less (with extensions in exceptional circumstances when the need for additional care is finite and predictable).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to services furnished on or after October 1, 1997.

**SEC. 5364. STUDY ON DEFINITION OF HOMEBOUND.**

(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the criteria that should be applied, and the method of applying such criteria, in the determination of whether an individual is homebound for purposes of qualifying for receipt of benefits for home health services under the medicare program. Such criteria shall include the extent and circumstances under which a person may be absent from the home but nonetheless qualify.

(b) REPORT.—Not later than October 1, 1998, the Secretary shall submit a report to the Congress on the study conducted under subsection (a). The report shall include specific recommendations on such criteria and methods.

**SEC. 5365. NORMATIVE STANDARDS FOR HOME HEALTH CLAIMS DENIALS.**

(a) IN GENERAL.—Section 1862(a)(1) (42 U.S.C. 1395y(a)(1)), as amended by section 5102(c), is amended—

(1) by striking ''and'' at the end of subparagraph (F),

(2) by striking the semicolon at the end of subparagraph (G) and inserting '', and'', and

(3) by inserting after subparagraph (G) the following new subparagraph:

''(H) the frequency and duration of home health services which are in excess of normative guidelines that the Secretary shall establish by regulation;''.

(b) NOTIFICATION.—The Secretary of Health and Human Services may establish a process for notifying a physician in cases in which the number of home health service visits furnished under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) pursuant to a prescription or certification of the physician significantly exceeds such threshold (or thresholds) as the Secretary specifies. The Secretary may adjust such threshold to reflect demonstrated differences in the need for home health services among different beneficiaries.

(c) EFFECTIVE DATE.—The amendments made by this section apply to services furnished on or after October 1, 1997.

**SEC. 5366. INCLUSION OF COST OF SERVICE IN EXPLANATION OF MEDICARE BENEFITS.**

(a) IN GENERAL.—Section 1842(h)(7) of the Social Security Act (42 U.S.C. 1395u(h)(7)) is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period at the end and inserting '', and''; and

(3) by adding at the end the following:

''(E) in the case of home health services furnished to an individual enrolled under this part, the total amount that the home health agency or other provider of such services billed for such services.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to explanation of benefits provided on and after October 1, 1997.

## Subtitle F—Provisions Relating to Part A

### CHAPTER 1—PAYMENT OF PPS HOSPITALS

**SEC. 5401. PPS HOSPITAL PAYMENT UPDATE.**

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

(1) in subclause (XII)—

(A) by inserting ''and the period beginning on October 1, 1997, and ending on December 31, 1997,'' after ''fiscal year 1997,''; and

(B) by striking ''and'' at the end; and

(2) by striking subclause (XIII) and inserting the following:

''(XIII) for calendar year 1998 for hospitals in all areas, the market basket percentage increase minus 2.5 percentage points,

''(XIV) for calendar year 1999 for hospitals in all areas, the market basket percentage increase minus 1.3 percentage points,

''(XV) for calendar years 2000 through 2002 for hospitals in all areas, the market basket percentage increase minus 1.0 percentage points, and

''(XVI) for calendar year 2003 and each subsequent calendar year for hospitals in all areas, the market basket percentage increase.''.

(b) RULE OF CONSTRUCTION.—Section 1886 (42 U.S.C. 1395ww) is amended by adding at the end the following new subsection:

''(j) PPS CALENDAR YEAR PAYMENTS.—Notwithstanding any other provision of this title, any updates or payment amounts determined under this section shall on and after December 31, 1998, take effect and be applied on a calendar year basis. With respect to any cost reporting periods that relate to any such updates or payment amounts, the Secretary shall revise such cost reporting periods to ensure that on and after December 31, 1998, such cost reporting periods relate to updates and payment amounts made under this section on a calendar year basis in the same manner as such cost reporting periods applied to updates and payment amounts under this section on the day before the date of enactment of this subsection.''.

**SEC. 5402. CAPITAL PAYMENTS FOR PPS HOSPITALS.**

(a) MAINTAINING SAVINGS FROM TEMPORARY REDUCTION IN PPS CAPITAL RATES.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended by adding at the end the following: ''In addition to the reduction described in the preceding sentence, for discharges occurring on or after October 1, 1997, the Secretary shall apply the budget neutrality adjustment factor used to determine the Federal capital payment rate in effect on September 30, 1995 (as described in section 412.352 of title 42 of the Code of Federal Regulations), to (i) the unadjusted standard Federal capital payment rate (as described in section 412.308(c) of that title, as in effect on September 30, 1997), and (ii) the unadjusted hospital-specific rate (as described in section 412.328(e)(1) of that title, as in effect on September 30, 1997).''.

(b) SYSTEM EXCEPTION PAYMENTS FOR TRANSITIONAL CAPITAL.—

(1) IN GENERAL.—Section 1886(g)(l) (42 U.S.C. 1395ww(g)(1)) is amended—

(A) by redesignating subparagraph (C) as subparagraph (F), and

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

''(C) The exceptions under the system provided by the Secretary under subparagraph (B)(iii) shall include the provision of exception payments under the special exceptions process provided under section 412.348(g) of title 42, Code of Federal Regulations (as in effect on September 1, 1995), except that the Secretary shall revise such process, effective for discharges occurring after September 30, 1997, as follows:

''(i) Eligible hospital requirements, as described in section 412.348(g)(1) of title 42, Code of Federal Regulations, shall apply except that subparagraph (ii) shall be revised to require that hospitals located in an urban area with at least 300 beds shall be eligible under such process and

*that such a hospital shall be eligible without regard to its disproportionate patient percentage under subsection (d)(5)(F) or whether it qualifies for additional payment amounts under such subsection.*

*''(ii) Project size requirements, as described in section 412.348(g)(5) of title 42, Code of Federal Regulations, shall apply except that subparagraph (ii) shall be revised to require that the project costs of a hospital are at least 150 percent of its operating cost during the first 12 month cost reporting period beginning on or after October 1, 1991.*

*''(iii) The minimum payment level for qualifying hospitals shall be 85 percent.*

*''(iv) A hospital shall be considered to meet the requirement that it complete the project involved no later than the end of the last cost reporting period of the hospital beginning before October l, 2001, if—*

*''(I) the hospital has obtained a certificate of need for the project approved by the State or a local planning authority by September 1, 1995; and*

*''(II) by September 1, 1995, the hospital has expended on the project at least $750,000 or 10 percent of the estimated cost of the project.*

*''(v) Offsetting amounts, as described in section 412.348(g)(8)(ii) of title 42, Code of Federal Regulations, shall apply except that subparagraph (B) of such section shall be revised to require that the additional payment that would otherwise be payable for the cost reporting period shall be reduced by the amount (if any) by which the hospital's current year medicare capital payments (excluding, if applicable, 75 percent of the hospital's capital-related disproportionate share payments) exceeds its medicare capital costs for such year.*

*''(D)(i) The Secretary shall reduce the Federal capital and hospital rates up to $50,000,000 for a calendar year to ensure that the application of subparagraph (C) does not result in an increase in the total amount that would have been paid under this subsection in the fiscal year if such subparagraph did not apply.*

*''(ii) Payments made pursuant to the application of subparagraph (C) shall not be considered for purposes of calculating total estimated payments under section 412.348(h), title 42, Code of Federal Regulations.*

*''(E) The Secretary shall provide for publication in the Federal Register each year (beginning with 1999) of a description of the distributional impact of the application of subparagraph (C) on hospitals which receive, and do not receive, an exception payment under such subparagraph.''.*

*(2) CONFORMING AMENDMENT.—Section 1886(g)(1)(B)(iii) (42 U.S.C. 1395ww(g)(1)(B)(iii)) is amended by striking ''may provide'' and inserting ''shall provide (in accordance with subparagraph (C))''.*

## *CHAPTER 2—PAYMENT OF PPS EXEMPT HOSPITALS*

### *SEC. 5421. PAYMENT UPDATE.*

*(a) IN GENERAL.—Section 1886(b)(3)(B)(ii) (42 U.S.C. 1395ww(b)(3)(B)(ii)) is amended—*

*(1) by striking ''and'' at the end of subclause (V);*

*(2) by redesignating subclause (VI) as subclause (VIII); and*

*(3) by inserting after subclause (V), the following subclauses:*

*''(VI) for fiscal years 1998 through 2001, is 0 percent;*

*''(VII) for fiscal year 2002, is the market basket percentage increase minus 3.0 percentage points, and''.*

*(b) NO EFFECT OF PAYMENT REDUCTION ON EXCEPTIONS AND ADJUSTMENTS.—Section 1886(b)(4)(A)(ii) (42 U.S.C. 1395ww(b)(4)(A)(ii)) is amended by adding at the end the following new sentence: ''In making such reductions, the Secretary shall treat the applicable update factor described in paragraph (3)(B)(vi) for a fiscal year as being equal to the market basket percentage for that year.''.*

### *SEC. 5422. REDUCTIONS TO CAPITAL PAYMENTS FOR CERTAIN PPS-EXEMPT HOSPITALS AND UNITS.*

*Section 1886(g) (42 U.S.C. 1395ww(g)) is amended by adding at the end the following new paragraph:*

*''(4) In determining the amount of the payments that are attributable to portions of cost reporting periods occurring during fiscal years 1998 through 2002 and that may be made under this title with respect to capital-related costs of inpatient hospital services of a hospital which is described in clause (i), (ii), or (iv) of subsection (d)(1)(B) or a unit described in the matter after clause (v) of such subsection, the Secretary shall reduce the amounts of such payments otherwise determined under this title by 15 percent.''.*

### *SEC. 5423. CAP ON TEFRA LIMITS.*

*Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is amended—*

*(1) in subparagraph (A) by striking ''subparagraphs (C), (D), and (E)'' and inserting ''subparagraph (C) and succeeding subparagraphs'', and*

*(2) by adding at the end the following:*

*''(F)(i) Except as provided in clause (ii), in the case of a hospital or unit that is within a class of hospital described in clause (iii), for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, such target amount may not be greater than the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods beginning during that fiscal year (determined without regard to clause (ii)).*

*''(ii) In the case of a hospital or unit—*

*''(I) that is within a class of hospital described in clause (iii); and*

*''(II) whose operating costs of inpatient hospital services recognized under this title for the most recent cost reporting period for which information is available are less than the target amount for the hospital or unit under clause (i) (determined without regard to this clause) for its cost reporting period beginning on or after October 1, 1997, and before October 1, 1998,*

*clause (i) shall be applied for cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, by substituting for the dollar limit on the target amounts established under such clause for such period a dollar limit that is equal to the greater of 90 percent of such dollar limit or the operating costs of the hospital or unit determined under subclause (II).*

*''(iii) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:*

*''(I) Hospitals described in clause (i) of subsection (d)(1)(B) and psychiatric units described in the matter following clause (v) of such subsection.*

*''(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.*

*''(III) Hospitals described in clause (iv) of such subsection.''.*

### *SEC. 5424. CHANGE IN BONUS AND RELIEF PAYMENTS.*

*(a) CHANGE IN BONUS PAYMENT.—Section 1886(b)(1)(A) (42 U.S.C. 1395ww(b)(1)(A)) is amended by striking all that follows ''plus—'' and inserting the following:*

*''(i) in the case of a hospital with a target amount that is less than 135 percent of the median of the target amounts for hospitals in the same class of hospital, the lesser of 40 percent of the amount by which the target amount exceeds the amount of the operating costs or 4 percent of the target amount;*

*''(ii) in the case of a hospital with a target amount that equals or exceeds 135 of such median but is less than 150 percent of such median, the lesser of 30 percent of the amount by which the target amount exceeds the amount of the operating costs or 3 percent of the target amount; and*

*''(iii) in the case of a hospital with a target amount that equals or exceeds 150 of such median, the lesser of 20 percent of the amount by which the target amount exceeds the amount of the operating costs or 2 percent of the target amount; or''.*

*(b) CHANGE IN RELIEF PAYMENTS.—Section 1886(b)(1) (42 U.S.C. 1395ww(b)(1)) is amended—*

*(1) in subparagraph (B)—*

*(A) by striking ''greater than the target amount'' and inserting ''greater than 110 percent of the target amount'',*

*(B) by striking ''exceed the target amount'' and inserting ''exceed 110 percent of the target amount'',*

*(C) by striking ''10 percent'' and inserting ''20 percent'', and*

*(D) by redesignating such subparagraph as subparagraph (C); and*

*(2) by inserting after subparagraph (A) the following new subparagraph:*

*''(B) are greater than the target amount but do not exceed 110 percent of the target amount, the amount of the payment with respect to those operating costs payable under part A on a per discharge basis shall equal the target amount; or''.*

### *SEC. 5425. TARGET AMOUNTS FOR REHABILITATION HOSPITALS, LONG-TERM CARE HOSPITALS, AND PSYCHIATRIC HOSPITALS.*

*Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is amended—*

*(1) in subparagraph (A), in the matter preceding clause (i), by striking ''and (E)'' and inserting ''(E), (F), and (G)''; and*

*(2) by adding at the end the following new subparagraphs:*

*''(F) In the case of a rehabilitation hospital (or unit thereof) (as described in clause (ii) of subsection (d)(1)(B)), for cost reporting periods beginning on or after October 1, 1997—*

*''(i) in the case of a hospital which first receives payments under this section before October 1, 1997, the target amount determined under subparagraph (A) for such hospital or unit for a cost reporting period beginning during a fiscal year shall not be less than 50 percent of the national mean of the target amounts determined under such subparagraph for all such hospitals for cost reporting periods beginning during such fiscal year (determined without regard to this subparagraph); and*

*''(ii) in the case of a hospital which first receives payments under this section on or after October 1, 1997, such target amount may not be greater than 110 percent of the national mean of the target amounts for such hospitals (and units thereof) for cost reporting periods beginning during fiscal year 1991.*

*''(G) In the case of a hospital which has an average inpatient length of stay of greater than 25 days (as described in clause (iv) of subsection (d)(1)(B)), for cost reporting periods beginning on or after October 1, 1997—*

*''(i) in the case of a hospital which first receives payments under this section as a hospital that is not a subsection (d) hospital or a subsection (d) Puerto Rico hospital before October 1, 1997, the target amount determined under subparagraph (A) for such hospital for a cost reporting period beginning during a fiscal year shall not be less than 50 percent of the national mean of the target amounts determined under such subparagraph for all such hospitals for cost reporting periods beginning during such fiscal year (determined without regard to this subparagraph); and*

*''(ii) in the case of any other hospital which first receives payment under this section on or after October 1, 1997, such target amount may not be greater than 110 percent of such national mean of the target amounts for such hospitals for cost reporting periods beginning during fiscal year 1991.*

*''(H) In the case of a psychiatric hospital (as defined in section 1861(f)), for cost reporting periods beginning on or after October 1, 1997—*

*''(i) in the case of a hospital which first receives payments under this section before October 1, 1997, the target amount determined under*

*subparagraph (A) for such hospital for a cost reporting period beginning during a fiscal year shall not be less than 50 percent of the national mean of the target amounts determined under such subparagraph for all such hospitals for cost reporting periods beginning during such fiscal year (determined without regard to this subparagraph); and*

*''(ii) in the case of any other hospital which first receives payment under this section on or after October 1, 1997, such target amount may not be greater than 110 percent of such national mean of the target amounts for such hospitals for cost reporting periods beginning during fiscal year 1991.''.*

***SEC. 5426. TREATMENT OF CERTAIN LONG-TERM CARE HOSPITALS LOCATED WITHIN OTHER HOSPITALS.***

*(a) IN GENERAL.—Section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) is amended by adding at the end the following new sentence: ''A hospital that was classified by the Secretary on or before September 30, 1995, as a hospital described in clause (iv) shall continue to be so classified notwithstanding that it is located in the same building as, or on the same campus as, another hospital.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to discharges occurring on or after October 1, 1995.*

***SEC. 5426A. REBASING.***

*Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)), as amended by section 5423, is amended by adding at the end the following:*

*''(G)(i) In the case of a hospital (or unit described in the matter following clause (v) of subsection (d)(1)(B)) that received payment under this subsection for inpatient hospital services furnished before January 1, 1990, that is within a class of hospital described in clause (iii), and that elects (in a form and manner determined by the Secretary) this subparagraph to apply to the hospital, the target amount for the hospital's 12-month cost reporting period beginning during fiscal year 1998 is equal to the average described in clause (ii).*

*''(ii) The average described in this clause for a hospital or unit shall be determined by the Secretary as follows:*

*''(I) The Secretary shall determine the allowable operating costs for inpatient hospital services for the hospital or unit for each of the 5 cost reporting periods for which the Secretary has the most recent settled cost reports as of the date of the enactment of this subparagraph.*

*''(II) The Secretary shall increase the amount determined under subclause (I) for each cost reporting period by the applicable percentage increase under subparagraph (B)(ii) for each subsequent cost reporting period up to the cost reporting period described in clause (i).*

*''(III) The Secretary shall identify among such 5 cost reporting periods the cost reporting periods for which the amount determined under subclause (II) is the highest, and the lowest.*

*''(IV) The Secretary shall compute the averages of the amounts determined under subclause (II) for the 3 cost reporting periods not identified under subclause (III).*

*''(iii) For purposes of this subparagraph, each of the following shall be treated as a separate class of hospital:*

*''(I) Hospitals described in clause (i) of subsection (d)(1)(B) and psychiatric units described in the matter following clause (v) of such subsection.*

*''(II) Hospitals described in clause (ii) of such subsection and rehabilitation units described in the matter following clause (v) of such subsection.*

*''(III) Hospitals described in clause (iii) of such subsection.*

*''(IV) Hospitals described in clause (iv) of such subsection.*

*''(V) Hospitals described in clause (v) of such subsection.''.*

***SEC. 5427. ELIMINATION OF EXEMPTIONS; REPORT ON EXCEPTIONS AND ADJUSTMENTS.***

*(a) ELIMINATION OF EXEMPTIONS.—*

*(1) IN GENERAL.—Section 1886(b)(4)(A)(i) (42 U.S.C. 1395ww(b)(4)(A)(i)) is amended by striking ''exemption from, or an exception and adjustment to,'' and inserting ''an exception and adjustment to'' each place it appears.*

*(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to hospitals that first qualify as a hospital described in clause (i), (ii), or (iv) of section 1886(d)(1)(B) (42 U.S.C. 1395ww(d)(1)(B)) on or after October 1, 1997.*

*(b) REPORT.—The Secretary of Health and Human Services shall publish annually in the Federal Register a report describing the total amount of payments made to hospitals by reason of section 1886(b)(4) of the Social Security Act (42 U.S.C. 1395ww(b)(4)), as amended by subsection (a), for cost reporting periods ending during the previous fiscal year.*

***SEC. 5428. TECHNICAL CORRECTION RELATING TO SUBSECTION (d) HOSPITALS.***

*(a) IN GENERAL.—Section 1886(d)(1) (42 U.S.C. 1395ww(d)(1)) is amended—*

*(1) in subparagraph (B)(v)—*

*(A) by inserting ''(I)'' after ''(v)''; and*

*(B) by striking the semicolon at the end and inserting '', or''; and*

*(C) by adding at the end the following:*

*''(II) a hospital that—*

*''(aa) was recognized as a comprehensive cancer center or clinical cancer research center by the National Cancer Institute of the National Institutes of Health as of April 20, 1983, or is able to demonstrate, for any six-month period, that at least 50 percent of its total discharges have a principal diagnosis that reflects a finding of neoplastic disease, as defined in subparagraph (E);*

*''(bb) applied on or before December 31, 1990, for classification as a hospital involved extensively in treatment for or research on cancer under this clause (as in effect on the day before the date of the enactment of this subclause), but was not approved for such classification; and*

*''(cc) is located in a State which, as of December 19, 1989, was not operating a demonstration project under section 1814(b);''; and*

*(2) by adding at the end the following:*

*''(E) For purposes of subparagraph (B)(v)(II)(aa), the term 'principal diagnosis that reflects a finding of neoplastic disease' means the condition established after study to be chiefly responsible for occasioning the admission of a patient to a hospital, except that only discharges with ICD–9–CM principal diagnosis codes of 140 through 239, V58.0, V58.1, V66.1, V66.2, or 990 will be considered to reflect such a principal diagnosis.''.*

*(b) PAYMENTS.—Any classification by reason of section 1886(d)(1)(B)(v)(II) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(v)(II)) (as added by subsection (a)) shall apply to all cost reporting periods beginning on or after January 1, 1991. Any payments owed to a hospital as a result of such section (as so amended) shall be made expeditiously, but in no event later than 1 year after the date of enactment of this Act.*

***SEC. 5429. CERTAIN CANCER HOSPITALS.***

*(a) IN GENERAL.—Section 1886(d)(1) (42 U.S.C. 1395ww(d)(1)), as amended by section 5428, is amended—*

*(1) in subparagraph (B)(v), by striking the semicolon at the end of subclause (II)(cc) and inserting the following: '', or'', and by adding at the end the following:*

*''(III) a hospital—*

*''(aa) that was classified under subsection (iv) beginning on or before December 31, 1990, and through December 31, 1995; and*

*''(bb) throughout the period described in item (aa) and currently has greater than 49 percent of its total patient discharges with a principal diagnosis that reflects a finding of neoplastic disease;''; and*

*(2) by adding at the end the following:*

*''(F) In the case of a hospital that is classified under subparagraph (B)(v)(III), no rebasing is permitted by such hospital and such hospital shall use the base period in effect at the time of such hospital's December 31, 1995, cost report.''.*

## *CHAPTER 3—GRADUATE MEDICAL EDUCATION PAYMENTS*

### *Subchapter A—Direct Medical Education*

***SEC. 5441. LIMITATION ON NUMBER OF RESIDENTS AND ROLLING AVERAGE FTE COUNT.***

*Section 1886(h)(4) (42 U.S.C. 1395ww(h)(4)) is amended by adding after subparagraph (E) the following:*

*''(F) LIMITATION ON NUMBER OF RESIDENTS IN ALLOPATHIC AND OSTEOPATHIC MEDICINE.—Except as provided in subparagraph (H), such rules shall provide that for purposes of a cost reporting period beginning on or after October 1, 1997, the total number of full-time equivalent residents before application of weighting factors (as determined under this paragraph) with respect to a hospital's approved medical residency training program in the fields of allopathic medicine and osteopathic medicine may not exceed the number of full-time equivalent residents with respect to such programs for the hospital's most recent cost reporting period ending on or before December 31, 1996.*

*''(G) COUNTING INTERNS AND RESIDENTS FOR 1998 AND SUBSEQUENT YEARS.—*

*''(i) IN GENERAL.—For cost reporting periods beginning on or after October 1, 1997, subject to the limit described in subparagraph (F) and except as provided in subparagraph (H), the total number of full-time equivalent residents for determining a hospital's graduate medical education payment shall equal the average of the full-time equivalent resident counts for the cost reporting period and the preceding two cost reporting periods.*

*''(ii) ADJUSTMENT FOR SHORT PERIODS.—If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent resident counts pursuant to clause (ii) are based on the equivalent of full twelve-month cost reporting periods.*

*''(iii) TRANSITION RULE FOR 1998.—In the case of a hospital's first cost reporting period beginning on or after October 1, 1997, clause (i) shall be applied by using the average for such period and the preceding cost reporting period.*

*''(H) SPECIAL RULES FOR NEW FACILITIES.—*

*''(i) IN GENERAL.—If a hospital is an applicable facility under clause (iii) for any year with respect to any approved medical residency training program described in subsection (h)—*

*''(I) subject to the applicable annual limit under clause (ii), the Secretary may provide an additional amount of full-time equivalent residents which may be taken into account with respect to such program under subparagraph (F) for cost reporting periods beginning during such year, and*

*''(II) the averaging rules under subparagraph (G) shall not apply for such year.*

*''(ii) APPLICABLE ANNUAL LIMIT.—The total of additional full-time equivalent residents which the Secretary may authorize under clause (i) for all applicable facilities for any year shall not exceed the amount which would result in the number of full-time equivalent residents with respect to approved medical residency training programs in the fields of allopathic and osteopathic medicine for all hospitals exceeding such number for the preceding year. In allocating such additional residents, the Secretary shall give special consideration to facilities that meet the needs of underserved rural areas.*

*''(iii) APPLICABLE FACILITY.—For purposes of this subparagraph, a hospital shall be treated as an applicable facility with respect to an approved medical residency training program only during the first 5 years during which such program is in existence. A hospital shall not be*

*treated as such a facility if the 5-year period described in the preceding sentence ended on or before December 31, 1996.*

*''(iv) COORDINATION WITH LIMIT.—For purposes of applying subparagraph (F), the number of full-time equivalent residents of an applicable facility with respect to any approved medical residency training program in the fields of allopathic and osteopathic medicine for the facility's most recent cost reporting period ending on or before December 31, 1996, shall be increased by the number of such residents allocated to such facility under clause (i).''.*

***SEC. 5442. PERMITTING PAYMENT TO NONHOSPITAL PROVIDERS.***

*(a) IN GENERAL.—Section 1886 (42 U.S.C. 1395ww) is amended by adding at the end the following:*

*''(j) PAYMENT TO NONHOSPITAL PROVIDERS.—*

*''(1) IN GENERAL.—For cost reporting periods beginning on or after October 1, 1997, the Secretary may establish rules for payment to qualified nonhospital providers for their direct costs of medical education, if those costs are incurred in the operation of an approved medical residency training program described in subsection (h). Such rules shall specify the amounts, form, and manner in which payments will be made and the portion of such payments that will be made from each of the trust funds under this title.*

*''(2) QUALIFIED NONHOSPITAL PROVIDERS.—For purposes of this subsection, the term 'qualified nonhospital providers' means—*

*''(A) a federally qualified health center, as defined in section 1861(aa)(4);*

*''(B) a rural health clinic, as defined in section 1861(aa)(2); and*

*''(C) such other providers (other than hospitals) as the Secretary determines to be appropriate.''.*

*(b) PROHIBITION ON DOUBLE PAYMENTS.—Section 1886(h)(3)(B) (42 U.S.C. 1395ww(h)(3)(B)) is amended by adding at the end the following:*

*''The Secretary shall reduce the aggregate approved amount to the extent payment is made under subsection (j) for residents included in the hospital's count of full-time equivalent residents.''.*

***SEC. 5443. MEDICARE SPECIAL REIMBURSEMENT RULE FOR PRIMARY CARE COMBINED RESIDENCY PROGRAMS.***

*(a) IN GENERAL.—Section 1886(h)(5)(G) of the Social Security Act (42 U.S.C. 1395ww(h)(5)(G)) is amended—*

*(1) in clause (i), by striking ''and (iii)'' and inserting '', (iii), and (iv)''; and*

*(2) by adding at the end the following:*

*''(iv) SPECIAL RULE FOR PRIMARY CARE COMBINED RESIDENCY PROGRAMS.—(I) In the case of a resident enrolled in a combined medical residency training program in which all of the individual programs (that are combined) are for training a primary care resident (as defined in subparagraph (H)), the period of board eligibility shall be the minimum number of years of formal training required to satisfy the requirements for initial board eligibility in the longest of the individual programs plus one additional year.*

*''(II) A resident enrolled in a combined medical residency training program that includes an obstetrics and gynecology program qualifies for the period of board eligibility under subclause (I) if the other programs such resident combines with such obstetrics and gynecology program are for training a primary care resident.''.*

*(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to combined medical residency training programs in effect on or after January 1, 1998.*

***Subchapter B—Indirect Medical Education***

***SEC. 5446. INDIRECT GRADUATE MEDICAL EDUCATION PAYMENTS.***

*(a) MULTIYEAR TRANSITION REGARDING PERCENTAGES.—*

*(1) IN GENERAL.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended to read as follows:*

*''(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor is equal to c (((1+r) to the nth power) − 1), where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds and 'n' equals .405. For discharges occurring—*

*''(I) on or after May 1, 1986, and before October 1, 1997, 'c' is equal to 1.89;*

*''(II) during fiscal year 1998, 'c' is equal to 1.72;*

*''(III) during fiscal year 1999, 'c' is equal to 1.6;*

*''(IV) during fiscal year 2000, 'c' is equal to 1.47; and*

*''(V) on or after October 1, 2000, 'c' is equal to 1.35.''.*

*(2) NO RESTANDARDIZATION OF PAYMENT AMOUNTS REQUIRED.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended by adding at the end the following: ''except that the Secretary shall not take into account any reduction in the amount of additional payments under paragraph (5)(B)(ii) resulting from the amendment made by section 5446(a)(1) of the Balanced Budget Act of 1997,''.*

*(b) LIMITATION.—*

*(1) IN GENERAL.—Section 1886(d)(5)(B) (42 U.S.C. 1395ww(d)(5)(B)) is amended by adding after clause (iv) the following:*

*''(v) In determining the adjustment with respect to a hospital for discharges occurring on or after October 1, 1997, the total number of full-time equivalent interns and residents in either a hospital or nonhospital setting may not exceed the number of such full-time equivalent interns and residents in the hospital with respect to the hospital's most recent cost reporting period ending on or before December 31, 1996.*

*''(vi) For purposes of clause (ii)—*

*''(I) 'r' may not exceed the ratio of the number of interns and residents as determined under clause (v) with respect to the hospital for its most recent cost reporting period ending on or before December 31, 1996, to the hospital's available beds (as defined by the Secretary) during that cost reporting period, and*

*''(II) for the hospital's cost reporting periods beginning on or after October 1, 1997, subject to the limits described in clauses (iv) and (v), the total number of full-time equivalent residents for payment purposes shall equal the average of the actual full-time equivalent resident count for the cost reporting period and the preceding two cost reporting periods.*

*In the case of the first cost reporting period beginning on or after October 1, 1997, subclause (II) shall be applied by using the average for such period and the preceding cost reporting period.*

*''(vii)(I) If a hospital is an applicable facility under subclause (III) for any year with respect to any approved medical residency training program described in subsection (h)—*

*''(aa) subject to the applicable annual limit under subclause (II), the Secretary may provide an additional amount of full-time equivalent interns and residents which may be taken into account with respect to such program under clauses (v) and (vi) for cost reporting periods beginning during such year, and*

*''(bb) the averaging rules under clause (vi)(II) shall not apply for such year.*

*''(II) The total of additional full-time equivalent interns and residents which the Secretary may authorize under subclause (I) for all applicable facilities for any year shall not exceed the amount which would result in the number of full-time equivalent interns or residents for all hospitals exceeding such number for the preceding year. In allocating such additional residents, the Secretary shall give special consideration to facilities that meet the needs of underserved rural areas.*

*''(III) For purposes of this clause, a hospital shall be treated as an applicable facility with respect to an approved medical residency training program only during the first 5 years during which such program is in existence. A hospital shall not be treated as such a facility if the 5-year period described in the preceding sentence ended on or before December 31, 1996.*

*''(IV) For purposes of applying clause (v), the number of full-time equivalent residents of an applicable facility with respect to any approved medical residency training program for the facility's most recent cost reporting period ending on or before December 31, 1996, shall be increased by the number of such residents allocated to such facility under subclause (I).*

*''(viii) If any cost reporting period beginning on or after October 1, 1997, is not equal to twelve months, the Secretary shall make appropriate modifications to ensure that the average full-time equivalent residency count pursuant to subclause (II) of clause (vi) is based on the equivalent of full twelve-month cost reporting periods.''.*

*(2) PAYMENT FOR INTERNS AND RESIDENTS PROVIDING OFF-SITE SERVICES.—Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended to read as follows:*

*''(iv) Effective for discharges occurring on or after October 1, 1997, all the time spent by an intern or resident in patient care activities under an approved medical residency training program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting.''.*

***Subchapter C—Graduate Medical Education Payments for Managed Care Enrollees***

***SEC. 5451. DIRECT AND INDIRECT MEDICAL EDUCATION PAYMENTS TO HOSPITALS FOR MANAGED CARE ENROLLEES.***

*(a) PAYMENTS TO HOSPITALS FOR DIRECT COSTS OF GRADUATE MEDICAL EDUCATION.—Section 1886(h)(3) (42 U.S.C. 1395ww(h)(3)) is amended by adding after subparagraph (C) the following:*

*''(D) PAYMENT FOR MEDICARE CHOICE ENROLLEES.—*

*''(i) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount under this subsection for services furnished to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 and who are entitled to part A or with a Medicare Choice organization under part C. The amount of such a payment shall equal the applicable percentage of the product of—*

*''(I) the aggregate approved amount (as defined in subparagraph (B)) for that period; and*

*''(II) the fraction of the total number of inpatient-bed days (as established by the Secretary) during the period which are attributable to such enrolled individuals.*

*''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is—*

*''(I) 25 percent in 1998,*

*''(II) 50 percent in 1999,*

*''(III) 75 percent in 2000, and*

*''(IV) 100 percent in 2001 and subsequent years.*

*''(iii) SPECIAL RULE FOR HOSPITALS UNDER REIMBURSEMENT SYSTEM.—The Secretary shall establish rules for the application of this subparagraph to a hospital reimbursed under a reimbursement system authorized under section 1814(b)(3) in the same manner as it would apply to the hospital if it were not reimbursed under such section.''.*

*(b) PAYMENT TO HOSPITALS OF INDIRECT MEDICAL EDUCATION COSTS.—Section 1886(d) (42 U.S.C. 1395ww(d)) is amended by adding at the end the following:*

*''(11) ADDITIONAL PAYMENTS FOR MANAGED CARE SAVINGS.—*

*''(A) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount for each applicable discharge of any subsection (d) hospital (or any*

hospital reimbursed under a reimbursement system authorized under section 1814(b)(3)) that has an approved medical residency training program.

''(B) APPLICABLE DISCHARGE.—For purposes of this paragraph, the term 'applicable discharge' means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1876 and who is entitled to benefits under part A or any individual who is enrolled with a Medicare Choice organization under part C.

''(C) DETERMINATION OF AMOUNT.—The amount of the payment under this paragraph with respect to any applicable discharge shall be equal to the applicable percentage (as defined in subsection (h)(3)(D)(ii)) of the estimated average per discharge amount that would otherwise have been paid under paragraph (1)(A) if the individuals had not been enrolled as described in subparagraph (B).''.

**SEC. 5452. DEMONSTRATION PROJECT ON USE OF CONSORTIA.**

(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall establish a demonstration project under which, instead of making payments to teaching hospitals pursuant to section 1886(h) of the Social Security Act, the Secretary shall make payments under this section to each consortium that meets the requirements of subsection (b).

(b) QUALIFYING CONSORTIA.—For purposes of subsection (a), a consortium meets the requirements of this subsection if the consortium is in compliance with the following:

(1) The consortium consists of an approved medical residency training program in a teaching hospital and one or more of the following entities:

(A) A school of allopathic medicine or osteopathic medicine.

(B) Another teaching hospital, which may be a children's hospital.

(C) Another approved medical residency training program.

(D) A federally qualified health center.

(E) A medical group practice.

(F) A managed care entity.

(G) An entity furnishing outpatient services.

(I) Such other entity as the Secretary determines to be appropriate.

(2) The members of the consortium have agreed to participate in the programs of graduate medical education that are operated by the entities in the consortium.

(3) With respect to the receipt by the consortium of payments made pursuant to this section, the members of the consortium have agreed on a method for allocating the payments among the members.

(4) The consortium meets such additional requirements as the Secretary may establish.

(c) AMOUNT AND SOURCE OF PAYMENT.—The total of payments to a qualifying consortium for a fiscal year pursuant to subsection (a) shall not exceed the amount that would have been paid under section 1886(h) of the Social Security Act for the teaching hospital (or hospitals) in the consortium. Such payments shall be made in such proportion from each of the trust funds established under title XVIII of such Act as the Secretary specifies.

## CHAPTER 4—OTHER HOSPITAL PAYMENTS

**SEC. 5461. DISPROPORTIONATE SHARE PAYMENTS TO HOSPITALS FOR MANAGED CARE AND MEDICARE CHOICE ENROLLEES.**

Section 1886(d) (42 U.S.C. 1395ww(d)) (as amended by section 5451) is amended by adding at the end the following:

''(12) ADDITIONAL PAYMENTS FOR MANAGED CARE AND MEDICARE CHOICE SAVINGS.—

''(A) IN GENERAL.—For portions of cost reporting periods occurring on or after January 1, 1998, the Secretary shall provide for an additional payment amount for each applicable discharge of—

(i) any subsection (d) hospital that is a disproportionate share hospital (as described in paragraph (5)(F)(i)); or

(ii) any hospital reimbursed under a reimbursement system authorized under section 1814(b)(3)) if such hospital would qualify as a disproportionate share hospital were it not so reimbursed.

''(B) APPLICABLE DISCHARGE.—For purposes of this paragraph, the term 'applicable discharge' means the discharge of any individual who is enrolled under a risk-sharing contract with an eligible organization under section 1876 and who is entitled to benefits under part A or any individual who is enrolled with a Medicare Choice organization under part C.

''(C) DETERMINATION OF AMOUNT.—The amount of the payment under this paragraph with respect to any applicable discharge shall be equal to the applicable percentage (as defined in subsection (h)(3)(D)(ii)) of the estimated average per discharge amount that would otherwise have been paid under paragraph (1)(A) if the individuals had not been enrolled as described in subparagraph (B).''.

**SEC. 5462. REFORM OF DISPROPORTIONATE SHARE PAYMENTS TO HOSPITALS SERVING VULNERABLE POPULATIONS.**

(a) IN GENERAL.—Section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(1) in clause (i), by inserting ''and before December 31, 1998,'' after ''May, 1, 1986,'';

(2) in clause (ii), by striking ''The amount'' and inserting ''Subject to clauses (ix) and (x), the amount''; and

(3) by adding at the end the following:

''(ix) In the case of discharges occurring on or after October 1, 1997, and before December 31, 1998, the additional payment amount otherwise determined under clause (ii) shall be reduced by 4 percent.

''(x)(I) In the case of discharges occurring during calendar years 1999 and succeeding calendar years, the additional payment amount shall be determined in accordance with the formula established under subclause (II).

''(II) Not later than January 1, 1999, the Secretary shall establish a formula for determining additional payment amounts under this subparagraph. In determining such formula the Secretary shall—

''(aa) establish a single threshold for costs incurred by hospitals in serving low-income patients,

''(bb) consider the costs described in subclause (III), and

''(cc) ensure that such formula complies with the requirement described in subclause (IV).

''(III) The costs described in this subclause are as follows:

''(aa) The costs incurred by the hospital during a period (as determined by the Secretary) of furnishing inpatient and outpatient hospital services to individuals who are entitled to benefits under part A of this title and are entitled to supplemental security income benefits under title XVI (excluding any supplementation of those benefits by a State under section 1616).

''(bb) The costs incurred by the hospital during a period (as so determined) of furnishing inpatient and outpatient hospital services to individuals who are eligible for medical assistance under the State plan under title XIX and are not entitled to benefits under part A of this title (including individuals enrolled in a health maintenance organization (as defined in section 1903(m)(1)(A)) or any other managed care plan under such title, individuals who are eligible for medical assistance under such title pursuant to a waiver approved by the Secretary under section 1115, and individuals who are eligible for medical assistance under the State plan under title XIX (regardless of whether the State has provided reimbursement for any such assistance provided under such title)).

''(cc) The costs incurred by the hospital during a period (as so determined) of furnishing inpatient and outpatient hospital services to individuals who are not described in item (aa) or (bb) and who do not have health insurance coverage (or any other source of third party payment for such services) and for which the hospital did not receive compensation.

''(IV)(aa) The requirement described in this subclause is that for each calendar year for which the formula established under this clause applies, the additional payment amount determined for such calendar year under such formula shall not exceed an amount equal to the additional payment amount that, in the absence of such formula, would have been determined under this subparagraph, reduced by the applicable percentage for such calendar year.

''(bb) For purposes of subclause (aa), the applicable percentage for—

''(AA) calendar year 1999 is 8 percent;

''(BB) calendar year 2000 is 12 percent;

''(CC) calendar year 2001 is 16 percent;

''(DD) calendar year 2002 is 20 percent;

''(EE) calendar year 2003 and subsequent calendar years, is 0 percent''.

(b) DATA COLLECTION.—

(1) IN GENERAL.—In developing the formula under section 1886(g)(5)(F)(x) of the Social Security Act (42 U.S.C. 1395ww(g)(5)(F)(x)), as added by subsection (a), and in implementing the provisions of and amendments made by this section, the Secretary of Health and Human Services may require any subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B))) receiving additional payments by reason of section 1886(d)(5)(F) of that Act (42 U.S.C. 1395ww(d)(5)(F)) (as amended by subsection (a) of this section) to submit to the Secretary any information that the Secretary determines is necessary to implement the provisions of and amendments made by this section.

(2) FAILURE TO COMPLY.—Any subsection (d) hospital (as so defined) that fails to submit to the Secretary of Health and Human Services any information requested under paragraph (1), shall be deemed ineligible for an additional payment amount under section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)) (as amended by subsection (a) of this section).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to discharges occurring on and after October 1, 1997.

**SEC. 5463. MEDICARE CAPITAL ASSET SALES PRICE EQUAL TO BOOK VALUE.**

(a) IN GENERAL.—Section 1861(v)(1)(O) (42 U.S.C. 1395x(v)(1)(O)) is amended—

(1) in clause (i)—

(A) by striking ''and (if applicable) a return on equity capital'';

(B) by striking ''hospital or skilled nursing facility'' and inserting ''provider of services'';

(C) by striking ''clause (iv)'' and inserting ''clause (iii)''; and

(D) by striking ''the lesser of the allowable acquisition cost'' and all that follows and inserting ''the historical cost of the asset, as recognized under this title, less depreciation allowed, to the owner of record as of the date of enactment of the Balanced Budget Act of 1997 (or, in the case of an asset not in existence as of that date, the first owner of record of the asset after that date).'';

(2) by striking clause (ii); and

(3) by redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to changes of ownership that occur after the third month beginning after the date of enactment of this section.

**SEC. 5464. ELIMINATION OF IME AND DSH PAYMENTS ATTRIBUTABLE TO OUTLIER PAYMENTS.**

(a) INDIRECT MEDICAL EDUCATION.—Section 1886(d)(5)(B)(i)(I) (42 U.S.C. 1395ww(d)(5)(B)(i)(I)) is amended by inserting '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital under subparagraph (A)''.

*(b) DISPROPORTIONATE SHARE ADJUSTMENTS.—Section 1886(d)(5)(F)(ii)(I) (42 U.S.C. 1395ww(d)(5)(F)(ii)(I)) is amended by inserting '', for cases qualifying for additional payment under subparagraph (A)(i),'' before ''the amount paid to the hospital under subparagraph (A)''.*

*(c) COST OUTLIER PAYMENTS.—Section 1886(d)(5)(A)(ii) (42 U.S.C. 1395ww(d)(5)(A)(ii)) is amended by striking ''exceed the applicable DRG prospective payment rate'' and inserting ''exceed the sum of the applicable DRG prospective payment rate plus any amounts payable under subparagraphs (B) and (F) of subsection (d)(5)''.*

*(d) EFFECTIVE DATE.—The amendments made by this section apply to discharges occurring after September 30, 1997.*

***SEC. 5465. TREATMENT OF TRANSFER CASES.***

*(a) TRANSFERS TO PPS EXEMPT HOSPITALS AND SKILLED NURSING FACILITIES.—Section 1886(d)(5)(I) (42 U.S.C. 1395ww(d)(5)(I)) is amended by adding at the end the following new clause:*

*''(iii) In carrying out this subparagraph, the Secretary shall treat the term 'transfer case' as including the case of an individual who, immediately upon discharge from, and pursuant to the discharge planning process (as defined in section 1861(ee)) of, a subsection (d) hospital—*

*''(I) is admitted as an inpatient to a hospital or hospital unit that is not a subsection (d) hospital for the receipt of inpatient hospital services; or*

*''(II) is admitted to a skilled nursing facility or facility described in section 1861(y)(1) for the receipt of extended care services.''.*

*(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to discharges occurring on or after October 1, 1997.*

***SEC. 5466. REDUCTIONS IN PAYMENTS FOR ENROLLEE BAD DEBT.***

*Section 1861(v)(1) (42 U.S.C. 1395x(v)(1)) is amended by adding at the end the following new subparagraph:*

*''(T) In determining such reasonable costs for hospitals, the amount of bad debts otherwise treated as allowable costs which are attributable to the deductibles and coinsurance amounts under this title shall be reduced—*

*''(i) for cost reporting periods beginning on or after October 1, 1997 and on or before December 31, 1998, by 25 percent of such amount otherwise allowable,*

*''(ii) for cost reporting periods beginning during calendar year 1999, by 40 percent of such amount otherwise allowable, and*

*''(iii) for cost reporting periods beginning during a subsequent calendar year, by 50 percent of such amount otherwise allowable.''.*

***SEC. 5467. FLOOR ON AREA WAGE INDEX.***

*(a) IN GENERAL.—For purposes of section 1886(d)(3)(E) of the Social Security Act (42 U.S.C. 1395ww(d)(3)(E)) for discharges occurring on or after October 1, 1997, the area wage index applicable under such section to any hospital which is not located in a rural area (as defined in section 1886(d)(2)(D) of such Act (42 U.S.C. 1395ww(d)(2)(D)) may not be less than the average of the area wage indices applicable under such section to hospitals located in rural areas in the State in which the hospital is located.*

*(b) IMPLEMENTATION.—The Secretary of Health and Human Services shall adjust the area wage indices referred to in subsection (a) for hospitals not described in such subsection in a manner which assures that the aggregate payments made under section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)) in a fiscal year for the operating costs of inpatient hospital services are not greater or less than those which would have been made in the year if this section did not apply.*

*(c) EXCLUSION OF CERTAIN WAGES.—In the case of a hospital that is owned by a municipality and that was reclassified as an urban hospital under section 1886(d)(10) of the Social Security Act for fiscal year 1996, in calculating the hospital's average hourly wage for purposes of geographic reclassification under such section for fiscal year 1998, the Secretary of Health and Human Services shall exclude the general service wages and hours of personnel associated with a skilled nursing facility that is owned by the hospital of the same municipality and that is physically separated from the hospital to the extent that such wages and hours of such personnel are not shared with the hospital and are separately documented. A hospital that applied for and was denied reclassification as an urban hospital for fiscal year 1998, but that would have received reclassification had the exclusion required by this section been applied to it, shall be reclassified as an urban hospital for fiscal year 1998.*

***SEC. 5468. INCREASE BASE PAYMENT RATE TO PUERTO RICO HOSPITALS.***

*Section 1886(d)(9)(A) (42 U.S.C. 1395ww(d)(9)(A)) is amended—*

*(1) in the matter preceding clause (i), by striking ''in a fiscal year beginning on or after October 1, 1987,'',*

*(2) in clause (i), by striking ''75 percent'' and inserting ''for discharges beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987, and September 30, 1997, 75 percent)'', and*

*(3) in clause (ii), by striking ''25 percent'' and inserting ''for discharges beginning in a fiscal year beginning on or after October 1, 1997, 50 percent (and for discharges between October 1, 1987 and September 30, 1997, 25 percent)''.*

***SEC. 5469. PERMANENT EXTENSION OF HEMOPHILIA PASS-THROUGH.***

*Effective October 1, 1997, section 6011(d) of OBRA–1989 (as amended by section 13505 of OBRA–1993) is amended by striking ''and shall expire September 30, 1994''.*

***SEC. 5470. COVERAGE OF SERVICES IN RELIGIOUS NONMEDICAL HEALTH CARE INSTITUTIONS UNDER THE MEDICARE AND MEDICAID PROGRAMS.***

*(a) MEDICARE COVERAGE.—*

*(1) IN GENERAL.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) (as amended by section 5361) is amended—*

*(1) in the sixth sentence of subsection (e)—*

*(A) by striking ''includes'' and all that follows up to ''but only'' and inserting ''includes a religious nonmedical health care institution (as defined in subsection (rr)(1)),'', and*

*(B) by inserting ''consistent with section 1821'' before the period;*

*(2) in subsection (y)—*

*(A) by amending the heading to read as follows:*

*''Extended Care in Religious Nonmedical Health Care Institutions'',*

*(B) in paragraph (1), by striking ''includes'' and all that follows up to ''but only'' and inserting ''includes a religious nonmedical health care institution (as defined in subsection (rr)(1)),'', and*

*(C) by inserting ''consistent with section 1821'' before the period; and*

*(3) by adding at the end the following:*

*''Religious Nonmedical Health Care Institution*

*''(rr)(1) The term 'religious nonmedical health care institution' means an institution that—*

*''(A) is described in subsection (c)(3) of section 501 of the Internal Revenue Code of 1986 and is exempt from taxes under subsection (a) of such section;*

*''(B) is lawfully operated under all applicable Federal, State, and local laws and regulations;*

*''(C) provides only nonmedical nursing items and services exclusively to patients who choose to rely solely upon a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs;*

*''(D) provides such nonmedical items and services exclusively through nonmedical nursing personnel who are experienced in caring for the physical needs of such patients;*

*''(E) provides such nonmedical items and services to inpatients on a 24-hour basis;*

*''(F) on the basis of its religious beliefs, does not provide through its personnel or otherwise medical items and services (including any medical screening, examination, diagnosis, prognosis, treatment, or the administration of drugs) for its patients;*

*''(G) is not a part of, or owned by, or under common ownership with, or affiliated through ownership with, a health care facility that provides medical services;*

*''(H) has in effect a utilization review plan which—*

*''(i) provides for the review of admissions to the institution, of the duration of stays therein, of cases of continuous extended duration, and of the items and services furnished by the institution,*

*''(ii) requires that such reviews be made by an appropriate committee of the institution that includes the individuals responsible for overall administration and for supervision of nursing personnel at the institution,*

*''(iii) provides that records be maintained of the meetings, decisions, and actions of such committee, and*

*''(iv) meets such other requirements as the Secretary finds necessary to establish an effective utilization review plan;*

*''(I) provides the Secretary with such information as the Secretary may require to implement section 1821, to monitor quality of care, and to provide for coverage determinations; and*

*''(J) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.*

*''(2) If the Secretary finds that the accreditation of an institution by a State, regional, or national agency or association provides reasonable assurances that any or all of the requirements of paragraph (1) are met or exceeded, the Secretary shall, to the extent the Secretary deems it appropriate, treat such institution as meeting the condition or conditions with respect to which the Secretary made such finding.*

*''(3)(A)(i) In administering this subsection and section 1821, the Secretary shall not require any patient of a religious nonmedical health care institution to undergo any medical screening, examination, diagnosis, prognosis, or treatment or to accept any other medical health care service, if such patient (or legal representative of the patient) objects thereto on religious grounds.*

*''(ii) Clause (i) shall not be construed as preventing the Secretary from requiring under section 1821(a)(2) the provision of sufficient information regarding an individual's condition as a condition for receipt of benefits under part A for services provided in such an institution.*

*''(B)(i) In administering this subsection and section 1821, the Secretary shall not subject a religious nonmedical health care institution to any medical supervision, regulation, or control, insofar as such supervision, regulation, or control would be contrary to the religious beliefs observed by the institution.*

*''(ii) Clause (i) shall not be construed as preventing the Secretary from reviewing items and services billed by the institution to the extent the Secretary determines such review to be necessary to determine whether such items and services were not covered under part A, are excessive, or are fraudulent.''.*

*(2) CONDITIONS OF COVERAGE.—Part A of title XVIII of the Social Security Act is amended by adding at the end the following new section:*

*''CONDITIONS FOR COVERAGE OF RELIGIOUS NONMEDICAL HEALTH CARE INSTITUTIONAL SERVICES*

*''SEC. 1821. (a) IN GENERAL.—Subject to subsections (c) and (d), payment under this part may be made for inpatient hospital services or post-hospital extended care services furnished an individual in a religious nonmedical health care institution only if—*

''(1) the individual has an election in effect for such benefits under subsection (b); and

''(2) the individual has a condition such that the individual would qualify for benefits under this part for inpatient hospital services or extended care services, respectively, if the individual were an inpatient or resident in a hospital or skilled nursing facility that was not such an institution.

''(b) ELECTION.—

''(1) IN GENERAL.—An individual may make an election under this subsection in a form and manner specified by the Secretary consistent with this subsection. Unless otherwise provided, such an election shall take effect immediately upon its execution. Such an election, once made, shall continue in effect until revoked.

''(2) FORM.—The election form under this subsection shall include the following:

''(A) A statement, signed by the individual (or such individual's legal representative), that—

''(i) the individual is conscientiously opposed to acceptance of nonexcepted medical treatment; and

''(ii) the individual's acceptance of nonexcepted medical treatment would be inconsistent with the individual's sincere religious beliefs.

''(B) A statement that the receipt of non-excepted medical services shall constitute a revocation of the election and may limit further receipt of services described in subsection (a).

''(3) REVOCATION.—An election under this subsection by an individual may be revoked in a form and manner specified by the Secretary and shall be deemed to be revoked if the individual receives medicare reimbursable non-excepted medical treatment, regardless of whether or not benefits for such treatment are provided under this title.

''(4) LIMITATION ON SUBSEQUENT ELECTIONS.—Once an individual's election under this subsection has been made and revoked twice—

''(A) the next election may not become effective until the date that is 1 year after the date of most recent previous revocation, and

''(B) any succeeding election may not become effective until the date that is 5 years after the date of the most recent previous revocation.

''(5) EXCEPTED MEDICAL TREATMENT.—For purposes of this subsection:

''(A) EXCEPTED MEDICAL TREATMENT.—The term 'excepted medical treatment' means medical care or treatment (including medical and other health services)—

''(i) for the setting of fractured bones,

''(ii) received involuntarily, or

''(iii) required under Federal or State law or law of a political subdivision of a State.

''(B) NON-EXCEPTED MEDICAL TREATMENT.—The term 'nonexcepted medical treatment' means medical care or treatment (including medical and other health services) other than excepted medical treatment.

''(c) MONITORING AND SAFEGUARD AGAINST EXCESSIVE EXPENDITURES.—

''(1) ESTIMATE OF EXPENDITURES.—Before the beginning of each fiscal year (beginning with fiscal year 2000), the Secretary shall estimate the level of expenditures under this part for services described in subsection (a)for that fiscal year.

''(2) ADJUSTMENT IN PAYMENTS.—

''(A) PROPORTIONAL ADJUSTMENT.—If the Secretary determines that the level estimated under paragraph (1) for a fiscal year will exceed the trigger level (as defined in subparagraph (C)) for that fiscal year, the Secretary shall, subject to subparagraph (B), provide for such a proportional reduction in payment amounts under this part for services described in subsection (a) for the fiscal year involved as will assure that such level (taking into account any adjustment under subparagraph (B)) does not exceed the trigger level for that fiscal year.

''(B) ALTERNATIVE ADJUSTMENTS.—The Secretary may, instead of making some or all of the reduction described in subparagraph (A), impose such other conditions or limitations with respect to the coverage of covered services (including limitations on new elections of coverage and new facilities) as may be appropriate to reduce the level of expenditures described in paragraph (1) to the trigger level.

''(C) TRIGGER LEVEL.—For purposes of this subsection, subject to adjustment under paragraph (3)(B), the 'trigger level' for—

''(i) fiscal year 1998, is $20,000,000, or

''(ii) a succeeding fiscal year is the amount specified under this subparagraph for the previous fiscal year increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 12-month period ending with July preceding the beginning of the fiscal year.

''(D) PROHIBITION OF ADMINISTRATIVE AND JUDICIAL REVIEW.—There shall be no administrative or judicial review under section 1869, 1878, or otherwise of the estimation of expenditures under subparagraph (A) or the application of reduction amounts under subparagraph (B).

''(E) EFFECT ON BILLING.—Notwithstanding any other provision of this title, in the case of a reduction in payment provided under this subsection for services of a religious nonmedical health care institution provided to an individual, the amount that the institution is otherwise permitted to charge the individual for such services is increased by the amount of such reduction.

''(3) MONITORING EXPENDITURE LEVEL.—

''(A) IN GENERAL.—The Secretary shall monitor the expenditure level described in paragraph (2)(A) for each fiscal year (beginning with fiscal year 1999).

''(B) ADJUSTMENT IN TRIGGER LEVEL.—If the Secretary determines that such level for a fiscal year exceeded, or was less than, the trigger level for that fiscal year, then the trigger level for the succeeding fiscal year shall be reduced, or increased, respectively, by the amount of such excess or deficit.

''(d) SUNSET.—If the Secretary determines that the level of expenditures described in subsection (c)(1) for 3 consecutive fiscal years (with the first such year being not earlier than fiscal year 2002) exceeds the trigger level for such expenditures for such years (as determined under subsection (c)(2)), benefits shall be paid under this part for services described in subsection (a) and furnished on or after the first January 1 that occurs after such 3 consecutive years only with respect to an individual who has an election in effect under subsection (b) as of such January 1 and only during the duration of such election.

''(e) ANNUAL REPORT.—At the beginning of each fiscal year (beginning with fiscal year 1999), the Secretary shall submit to the Committees on Ways and Means of the House of Representatives and the Committee on Finance of the Senate an annual report on coverage and expenditures for services described in subsection (a) under this part and under State plans under title XIX. Such report shall include—

''(1) level of expenditures described in subsection (c)(1) for the previous fiscal year and estimated for the fiscal year involved;

''(2) trends in such level; and

''(3) facts and circumstances of any significant change in such level from the level in previous fiscal years.''.

(b) MEDICAID.—

(1) The third sentence of section 1902(a) of such Act (42 U.S.C. 1396a(a)) is amended by striking all that follows ''shall not apply'' and inserting ''to a religious nonmedical health care institution (as defined in section 1861(rr)(1)).''.

(2) Section 1908(e)(1) of such Act (42 U.S.C. 1396g–1(e)(1)) is amended by striking all that follows ''does not include'' and inserting ''a religious nonmedical health care institution (as defined in section 1861(rr)(1)).''.

(c) CONFORMING AMENDMENTS.—

(1) Section 1122(h) of such Act (42 U.S.C. 1320a–1(h)) is amended by striking all that follows ''shall not apply to'' and inserting ''a religious nonmedical health care institution (as defined in section 1861(rr)(1)).''.

(2) Section 1162 of such Act (42 U.S.C. 1320c–11) is amended—

(A) by amending the heading to read as follows:

''EXEMPTIONS FOR RELIGIOUS NONMEDICAL HEALTH CARE INSTITUTIONS''; and

(B) by striking all that follows ''shall not apply with respect to a'' and inserting ''religious nonmedical health care institution (as defined in section 1861(rr)(1)).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to items and services furnished on or after such date. By not later than July 1, 1998, the Secretary of Health and Human Services shall first issue regulations to carry out such amendments. Such regulations may be issued so they are effective on an interim basis pending notice and opportunity for public comment. For periods before the effective date of such regulations, such regulations shall recognize elections entered into in good faith in order to comply with the requirements of section 1821(b) of the Social Security Act.

## CHAPTER 5—PAYMENTS FOR HOSPICE SERVICES

### SEC. 5481. PAYMENT FOR HOME HOSPICE CARE BASED ON LOCATION WHERE CARE IS FURNISHED.

(a) IN GENERAL.—Section 1814(i)(2) (42 U.S.C. 1395f(i)(2)) is amended by adding at the end the following:

''(D) A hospice program shall submit claims for payment for hospice care furnished in an individual's home under this title only on the basis of the geographic location at which the service is furnished, as determined by the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to cost reporting periods beginning on or after October 1, 1997.

### SEC. 5482. HOSPICE CARE BENEFITS PERIODS.

(a) RESTRUCTURING OF BENEFIT PERIOD.—Section 1812 (42 U.S.C. 1395d) is amended in subsections (a)(4) and (d)(1), by striking '', a subsequent period of 30 days, and a subsequent extension period'' and inserting ''and an unlimited number of subsequent periods of 60 days each''.

(b) CONFORMING AMENDMENTS.—(1) Section 1812 (42 U.S.C. 1395d) is amended in subsection (d)(2)(B) by striking ''90- or 30-day period or a subsequent extension period'' and inserting ''90-day period or a subsequent 60-day period''.

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

(A) in clause (i), by inserting ''and'' at the end;

(B) in clause (ii)—

(i) by striking ''30-day'' and inserting ''60-day''; and

(ii) by striking '', and'' at the end and inserting a period; and

(C) by striking clause (iii).

### SEC. 5483. OTHER ITEMS AND SERVICES INCLUDED IN HOSPICE CARE.

Section 1861(dd)(1) (42 U.S.C. 1395x(dd)(1)) is amended—

(1) in subparagraph (G), by striking ''and'' at the end;

(2) in subparagraph (H), by striking the period at the end and inserting '', and''; and

(3) by inserting after subparagraph (H) the following:

''(I) any other item or service which is specified in the plan and for which payment may otherwise be made under this title.''.

### SEC. 5484. CONTRACTING WITH INDEPENDENT PHYSICIANS OR PHYSICIAN GROUPS FOR HOSPICE CARE SERVICES PERMITTED.

Section 1861(dd)(2) (42 U.S.C. 1395x(dd)(2)) is amended—

(1) in subparagraph (A)(ii)(I), by striking ''(F),''; and

(2) in subparagraph (B)(i), by inserting ''or, in the case of a physician described in subclause (I), under contract with'' after ''employed by''.

**SEC. 5485. WAIVER OF CERTAIN STAFFING REQUIREMENTS FOR HOSPICE CARE PROGRAMS IN NON-URBANIZED AREAS.**

Section 1861(dd)(5) (42 U.S.C. 1395x(dd)(5)) is amended—

(1) in subparagraph (B), by inserting ''or (C)'' after ''subparagraph (A)'' each place it appears; and

(2) by adding at the end the following:

''(C) The Secretary may waive the requirements of paragraph clauses (i) and (ii) of paragraph (2)(A) for an agency or organization with respect to the services described in paragraph (1)(B) and, with respect to dietary counseling, paragraph (1)(H), if such agency or organization—

''(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census), and

''(ii) demonstrates to the satisfaction of the Secretary that the agency or organization has been unable, despite diligent efforts, to recruit appropriate personnel.''.

**SEC. 5486. LIMITATION ON LIABILITY OF BENEFICIARIES FOR CERTAIN HOSPICE COVERAGE DENIALS.**

Section 1879 (42 U.S.C. 1395pp) is amended—

(1) in subsection (a), in the matter following paragraph (2), by inserting ''and except as provided in subsection (i),'' after ''to the extent permitted by this title,'';

(2) in subsection (g)—

(A) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting such subparagraphs appropriately;

(B) by striking ''is,'' and inserting ''is—'';

(C) by making the remaining text of subsection (g) (as amended) that follows ''is—'' a new paragraph (1) and indenting that paragraph appropriately;

(D) by striking the period at the end and inserting ''; and''; and

(E) by adding at the end the following:

''(2) with respect to the provision of hospice care to an individual, a determination that the individual is not terminally ill.''; and

(3) by adding at the end the following:

''(i) In any case involving a coverage denial with respect to hospice care described in subsection (g)(2), only the individual that received such care shall, notwithstanding such determination, be indemnified for any payments that the individual made to a provider or other person for such care that would, but for such denial, otherwise be paid to the individual under part A or B of this title.''.

**SEC. 5487. EXTENDING THE PERIOD FOR PHYSICIAN CERTIFICATION OF AN INDIVIDUAL'S TERMINAL ILLNESS.**

Section 1814(a)(7)(A)(i) (42 U.S.C. 1395f(a)(7)(A)(i)) is amended, in the matter following subclause (II), by striking '', not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated)'' and inserting ''at the beginning of the period''.

**SEC. 5488. EFFECTIVE DATE.**

Except as otherwise provided in this chapter, the amendments made by this chapter apply to benefits provided on or after the date of the enactment of this chapter, regardless of whether or not an individual has made an election under section 1812(d) of the Social Security Act (42 U.S.C. 1395d(d)) before such date.

## Subtitle G—Provisions Relating to Part B Only

## CHAPTER 1—PAYMENTS FOR PHYSICIANS AND OTHER HEALTH CARE PROVIDERS

**SEC. 5501. ESTABLISHMENT OF SINGLE CONVERSION FACTOR FOR 1998.**

(a) IN GENERAL.—Section 1848(d)(1) (42 U.S.C. 1395w–4(d)(1)) is amended to read as follows:

''(1) ESTABLISHMENT.—

''(A) IN GENERAL.—The conversion factor for each year shall be the conversion factor established under this subsection for the previous year, adjusted by the update established under paragraph (3) for the year involved.

''(B) SPECIAL RULE FOR 1998.—The single conversion factor for 1998 shall be the conversion factor for primary care services for 1997, increased by the Secretary's estimate of the weighted average of the 3 separate updates that would otherwise occur but for the enactment of chapter 1 of subtitle G of title V of the Balanced Budget Act of 1997.

''(C) PUBLICATION.—The Secretary shall, during the last 15 days of October of each year, publish the conversion factor which will apply to physicians' services for the following year and the update determined under paragraph (3) for such year.''.

(b) CONFORMING AMENDMENT.—Section 1848(i)(1)(C) (42 U.S.C. 1395w–4(i)(1)(C)) is amended by striking ''conversion factors'' and inserting ''the conversion factor''.

**SEC. 5502. ESTABLISHING UPDATE TO CONVERSION FACTOR TO MATCH SPENDING UNDER SUSTAINABLE GROWTH RATE.**

(a) UPDATE.—

(1) IN GENERAL.—Section 1848(d)(3) (42 U.S.C. 1395w–4(d)(3)) is amended to read as follows:

''(3) UPDATE.—

''(A) IN GENERAL.—Unless otherwise provided by law, subject to subparagraph (D) and the budget-neutrality factor determined by the Secretary under subsection (c)(2)(B)(ii), the update to the single conversion factor established in paragraph (1)(B) for a year beginning with 1999 is equal to the product of—

''(i) 1 plus the Secretary's estimate of the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year (divided by 100), and

''(ii) 1 plus the Secretary's estimate of the update adjustment factor for the year (divided by 100),

minus 1 and multiplied by 100.

''(B) UPDATE ADJUSTMENT FACTOR.—For purposes of subparagraph (A)(ii), the 'update adjustment factor' for a year is equal to the quotient (as estimated by the Secretary) of—

''(i) the difference between (I) the sum of the allowed expenditures for physicians' services (as determined under subparagraph (C)) for the period beginning July 1, 1997, and ending on June 30 of the year involved, and (II) the amount of actual expenditures for physicians' services furnished during the period beginning July 1, 1997, and ending on June 30 of the preceding year; divided by

''(ii) the actual expenditures for physicians' services for the 12-month period ending on June 30 of the preceding year, increased by the sustainable growth rate under subsection (f) for the fiscal year which begins during such 12-month period.

''(C) DETERMINATION OF ALLOWED EXPENDITURES.—For purposes of this paragraph, the allowed expenditures for physicians' services for the 12-month period ending with June 30 of—

''(i) 1997 is equal to the actual expenditures for physicians' services furnished during such 12-month period, as estimated by the Secretary; or

''(ii) a subsequent year is equal to the allowed expenditures for physicians' services for the previous year, increased by the sustainable growth rate under subsection (f) for the fiscal year which begins during such 12-month period.

''(D) RESTRICTION ON VARIATION FROM MEDICARE ECONOMIC INDEX.—Notwithstanding the amount of the update adjustment factor determined under subparagraph (B) for a year, the update in the conversion factor under this paragraph for the year may not be—

''(i) greater than 100 times the following amount: (1.03 + (MEI percentage/100)) −1; or

''(ii) less than 100 times the following amount: (0.93 + (MEI percentage/100)) −1,

where 'MEI percentage' means the Secretary's estimate of the percentage increase in the MEI (as defined in section 1842(i)(3)) for the year involved.''.

(b) ELIMINATION OF REPORT.—Section 1848(d) (42 U.S.C. 1395w–4(d)) is amended by striking paragraph (2).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to the update for years beginning with 1999.

**SEC. 5503. REPLACEMENT OF VOLUME PERFORMANCE STANDARD WITH SUSTAINABLE GROWTH RATE.**

(a) IN GENERAL.—Section 1848(f) (42 U.S.C. 1395w–4(f)) is amended by striking paragraphs (2) through (5) and inserting the following:

''(2) SPECIFICATION OF GROWTH RATE.—The sustainable growth rate for all physicians' services for a fiscal year (beginning with fiscal year 1998) shall be equal to the product of—

''(A) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services in the fiscal year involved,

''(B) 1 plus the Secretary's estimate of the percentage change (divided by 100) in the average number of individuals enrolled under this part (other than Medicare Choice plan enrollees) from the previous fiscal year to the fiscal year involved,

''(C) 1 plus the Secretary's estimate of the projected percentage growth in real gross domestic product per capita (divided by 100) from the previous fiscal year to the fiscal year involved, and

''(D) 1 plus the Secretary's estimate of the percentage change (divided by 100) in expenditures for all physicians' services in the fiscal year (compared with the previous fiscal year) which will result from changes in law and regulations, determined without taking into account estimated changes in expenditures due to changes in the volume and intensity of physicians' services resulting from changes in the update to the conversion factor under subsection (d)(3),

minus 1 and multiplied by 100.

''(3) DEFINITIONS.—In this subsection:

''(A) SERVICES INCLUDED IN PHYSICIANS' SERVICES.—The term 'physicians' services' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to a Medicare Choice plan enrollee.

''(B) MEDICARE CHOICE PLAN ENROLLEE.—The term 'Medicare Choice plan enrollee' means, with respect to a fiscal year, an individual enrolled under this part who has elected to receive benefits under this title for the fiscal year through a Medicare Choice plan offered under part C, and also includes an individual who is receiving benefits under this part through enrollment with an eligible organization with a risk-sharing contract under section 1876.''.

(b) CONFORMING AMENDMENTS.—So much of section 1848(f) (42 U.S.C. 1395w–4(f)) as precedes paragraph (2) is amended to read as follows:

''(f) SUSTAINABLE GROWTH RATE.—

''(1) PUBLICATION.—The Secretary shall cause to have published in the Federal Register the sustainable growth rate for each fiscal year beginning with fiscal year 1998. Such publication shall occur in the last 15 days of October of the year in which the fiscal year begins, except that such rate for fiscal year 1998 shall be published not later than January 1, 1998.''.

**SEC. 5504. PAYMENT RULES FOR ANESTHESIA SERVICES.**

(a) IN GENERAL.—Section 1848(d)(1) (42 U.S.C. 1395w–4(d)(1)), as amended by section 5501, is amended—

(A) in subparagraph (B), striking ''The single'' and inserting ''Except as provided in subparagraph (C), the single'';

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

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

''(C) SPECIAL RULES FOR ANESTHESIA SERVICES.—The separate conversion factor for anesthesia services for a year shall be equal to 46 percent of the single conversion factor established for other physicians' services, except as adjusted for changes in work, practice expense, or malpractice relative value units.''.

(b) CLASSIFICATION OF ANESTHESIA SERVICES.—The first sentence of section 1848(j)(1) (42 U.S.C. 1395w–4(j)(1)) is amended—

(1) by striking ''and including anesthesia services''; and

(2) by inserting before the period the following: ''(including anesthesia services)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1998.

**SEC. 5505. IMPLEMENTATION OF RESOURCE-BASED METHODOLOGIES.**

(a) ADJUSTMENTS TO RELATIVE VALUE UNITS FOR 1998.—Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)) is amended by adding at the end the following new subparagraph:

''(G) ADJUSTMENTS IN RELATIVE VALUE UNITS FOR 1998.—

''(i) IN GENERAL.—The Secretary shall—

''(I) reduce the practice expense relative value units applied to any services described in clause (ii) furnished in 1998 to a number equal to 110 percent of the number of work relative value units, and

''(II) increase the practice expense relative value units for office visit procedure codes during 1998 by a uniform percentage which the Secretary estimates will result in an aggregate increase in payments for such services equal to the aggregate decrease in payments by reason of subclause (I).

''(ii) SERVICES COVERED.—For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iii) and for which—

''(I) there are work relative value units, and

''(II) the number of practice expense relative value units (determined for 1998) exceeds 110 percent of the number of work relative value units (determined for such year).

''(iii) EXCLUDED SERVICES.—For purposes of clause (ii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this title in an office setting.''.

(b) DELAY OF IMPLEMENTATION TO 1999; PHASEIN OF IMPLEMENTATION.—Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)), as amended by subsection (a), is amended—

(1) in subparagraph (C)(ii)—

(A) by striking ''1998'' each place it appears and inserting ''1999'', and

(B) by inserting '', to the extent provided under subparagraph (H),'' after ''based'' in the matter following subclause (II), and

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

''(H) 3-YEAR ADDITIONAL PHASEIN OF RESOURCE-BASED PRACTICE EXPENSE UNITS.—Notwithstanding subparagraph (C)(ii), the Secretary shall implement the resource-based practice expense unit methodology described in such subparagraph ratably over the 3-year period beginning with 1999 such that such methodology is fully implemented for 2001 and succeeding years.''.

(c) REVIEW BY COMPTROLLER GENERAL.—The Comptroller General of the United States shall review and evaluate the proposed rule on resource-based methodology for practice expenses issued by the Health Care Financing Administration. The Comptroller General shall, within 6 months of the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of its evaluation, including an analysis of—

(1) the adequacy of the data used in preparing the rule,

(2) categories of allowable costs,

(3) methods for allocating direct and indirect expenses,

(4) the potential impact of the rule on beneficiary access to services, and

(5) any other matters related to the appropriateness of resource-based methodology for practice expenses.

The Comptroller General shall consult with representatives of physicians' organizations with respect to matters of both data and methodology.

(d) CONSULTATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall assemble a group of physicians with expertise in both surgical and nonsurgical areas (including primary care physicians and academics), accounting experts, and the chair of the Prospective Payment Review Commission (or its successor) to solicit their individual views on whether sufficient data exist to allow the Health Care Financing Administration to proceed with implementation of the rule described in subsection (c). After hearing the views of individual members of the group, the Secretary shall determine whether sufficient data exists to proceed with practice expense relative value determination and shall report on such views of the individual members to the committees described in subsection (c), including any recommendations for modifying such rule.

(2) ACTION.—If the Secretary determines under paragraph (1) that insufficient data exists or that the rule described in subsection (c) needs to be revised, the Secretary shall provide for additional data collection and such other actions to correct any deficiencies.

(e) APPLICATION OF RESOURCE-BASED METHODOLOGY TO MALPRACTICE RELATIVE VALUE UNITS.—Section 1848(c)(2)(C)(iii) (42 U.S.C. 1395w–4(c)(2)(C)(iii)) is amended—

(1) by inserting ''for years before 1999'' before ''equal'', and

(2) by striking the period at the end and inserting a comma and by adding at the end the following flush matter:

''and for years beginning with 1999 based on the malpractice expense resources involved in furnishing the service''.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning on and after January 1, 1998.

(2) MALPRACTICE.—The amendments made by subsection (e) shall apply to years beginning on and after January 1, 1999.

**SEC. 5506. INCREASED MEDICARE REIMBURSEMENT FOR NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS.**

(a) REMOVAL OF RESTRICTIONS ON SETTINGS.—

(1) IN GENERAL.—Clause (ii) of section 1861(s)(2)(K) (42 U.S.C. 1395x(s)(2)(K)) is amended to read as follows:

''(ii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1)) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5)) working in collaboration (as defined in subsection (aa)(6)) with a physician (as defined in subsection (r)(1)) which the nurse practitioner or clinical nurse specialist is legally authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service, but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services;''.

(2) CONFORMING AMENDMENTS.—(A) Section 1861(s)(2)(K) of such Act (42 U.S.C. 1395x(s)(2)(K)) is further amended—

(i) in clause (i), by inserting ''and such services and supplies furnished as incident to such services as would be covered under subparagraph (A) if furnished incident to a physician's professional service; and'' after ''are performed,''; and

(ii) by striking clauses (iii) and (iv).

(B) Section 1861(b)(4) (42 U.S.C. 1395x(b)(4)) is amended by striking ''clauses (i) or (iii) of subsection (s)(2)(K)'' and inserting ''subsection (s)(2)(K)''.

(C) Section 1862(a)(14) (42 U.S.C. 1395y(a)(14)) is amended by striking ''section 1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)'' and inserting ''section 1861(s)(2)(K)''.

(D) Section 1866(a)(1)(H) (42 U.S.C. 1395cc(a)(1)(H)) is amended by striking ''section 1861(s)(2)(K)(i) or 1861(s)(2)(K)(iii)'' and inserting ''section 1861(s)(2)(K)''.

(E) Section 1888(e)(2)(A)(ii) (42 U.S.C. 1395yy(e)(2)(A)(ii)), as added by section 5301(a), is amended by striking ''through (iii)'' and inserting ''and (ii)''.

(b) INCREASED PAYMENT.—

(1) FEE SCHEDULE AMOUNT.—Clause (O) of section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended to read as follows: ''(O) with respect to services described in section 1861(s)(2)(K)(ii) (relating to nurse practitioner or clinical nurse specialist services), the amounts paid shall be equal to 80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1848, or (ii) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery; and''.

(2) CONFORMING AMENDMENTS.—(A) Section 1833(r) (42 U.S.C. 1395l(r)) is amended—

(i) in paragraph (1), by striking ''section 1861(s)(2)(K)(iii) (relating to nurse practitioner or clinical nurse specialist services provided in a rural area)'' and inserting ''section 1861(s)(2)(K)(ii) (relating to nurse practitioner or clinical nurse specialist services)'';

(ii) by striking paragraph (2);

(iii) in paragraph (3), by striking ''section 1861(s)(2)(K)(iii)'' and inserting ''section 1861(s)(2)(K)(ii)''; and

(iv) by redesignating paragraph (3) as paragraph (2).

(B) Section 1842(b)(12)(A) (42 U.S.C. 1395u(b)(12)(A)) is amended, in the matter preceding clause (i), by striking ''clauses (i), (ii), or (iv) of section 1861(s)(2)(K) (relating to a physician assistants and nurse practitioners)'' and inserting ''section 1861(s)(2)(K)(i) (relating to physician assistants)''.

(c) DIRECT PAYMENT FOR NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS.—

(1) IN GENERAL.—Section 1832(a)(2)(B)(iv) (42 U.S.C. 1395k(a)(2)(B)(iv)) is amended by striking ''provided in a rural area (as defined in section 1886(d)(2)(D))'' and inserting ''but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services''.

(2) CONFORMING AMENDMENT.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended—

(A) by striking ''clauses (i), (ii), or (iv)'' and inserting ''clause (i)''; and

(B) by striking ''or nurse practitioner''.

(d) DEFINITION OF CLINICAL NURSE SPECIALIST CLARIFIED.—Section 1861(aa)(5) (42 U.S.C. 1395x(aa)(5)) is amended—

(1) by inserting ''(A)'' after ''(5)'';

(2) by striking ''The term 'physician assistant'' and all that follows through ''who performs'' and inserting ''The term 'physician assistant' and the term 'nurse practitioner' mean, for purposes of this title, a physician assistant or nurse practitioner who performs''; and

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

''(B) The term 'clinical nurse specialist' means, for purposes of this title, an individual who—

''(i) is a registered nurse and is licensed to practice nursing in the State in which the clinical nurse specialist services are performed; and

''(ii) holds a master's degree in a defined clinical area of nursing from an accredited educational institution.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished and supplies provided on and after January 1, 1998.

**SEC. 5507. INCREASED MEDICARE REIMBURSEMENT FOR PHYSICIAN ASSISTANTS.**

(a) REMOVAL OF RESTRICTION ON SETTINGS.—Section 1861(s)(2)(K)(i) (42 U.S.C. 1395x(s)(2)(K)(i)), as amended by the section 5506, is amended—

(1) by striking ''(I) in a hospital'' and all that follows through ''shortage area,'', and

(2) by adding at the end the following: ''but only if no facility or other provider charges or is paid any amounts with respect to the furnishing of such services,''.

(b) INCREASED PAYMENT.—Paragraph (12) of section 1842(b) (42 U.S.C. 1395u(b)), as amended by section 5506(b)(2)(B), is amended to read as follows:

''(12) With respect to services described in section 1861(s)(2)(K)(i)—

''(A) payment under this part may only be made on an assignment-related basis; and

''(B) the amounts paid under this part shall be equal to 80 percent of (i) the lesser of the actual charge or 85 percent of the fee schedule amount provided under section 1848 for the same service provided by a physician who is not a specialist; or (ii) in the case of services as an assistant at surgery, the lesser of the actual charge or 85 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery.''.

(c) REMOVAL OF RESTRICTION ON EMPLOYMENT RELATIONSHIP.—Section 1842(b)(6) (42 U.S.C. 1395u(b)(6)) is amended by adding at the end the following new sentence: ''For purposes of clause (C) of the first sentence of this paragraph, an employment relationship may include any independent contractor arrangement, and employer status shall be determined in accordance with the law of the State in which the services described in such clause are performed.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to services furnished and supplies provided on and after January 1, 1998.

## CHAPTER 2—OTHER PAYMENT PROVISIONS

**SEC. 5521. REDUCTION IN UPDATES TO PAYMENT AMOUNTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS; STUDY ON LABORATORY SERVICES.**

(a) CHANGE IN UPDATE.—Section 1833(h)(2)(A)(ii) (42 U.S.C. 1395l(h)(2)(A)(ii)) 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 the following:

''(V) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1998 through 2002 shall be reduced (but not below zero) by 2.0 percentage points.''.

(b) LOWERING CAP ON PAYMENT AMOUNTS.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(1) in clause (vi), by striking ''and'' at the end;

(2) in clause (vii)—

(A) by inserting ''and before January 1, 1998,'' after ''1995,'', and

(B) by striking the period at the end and inserting '', and''; and

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

''(viii) after December 31, 1997, is equal to 74 percent of such median.''.

(c) STUDY AND REPORT ON CLINICAL LABORATORY SERVICES.—

(1) IN GENERAL.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct a study of payments under part B of title XVIII of the Social Security Act for clinical laboratory services. The study shall include a review of the adequacy of the current methodology and recommendations regarding alternative payment systems. The study shall also analyze and discuss the relationship between such payment systems and access to high quality laboratory services for medicare beneficiaries, including availability and access to new testing methodologies.

(2) REPORT TO CONGRESS.—The Secretary shall, not later than 2 years after the date of enactment of this section, report to the appropriate committees of Congress the results of the study described in paragraph (1), including any recommendations for legislation.

**SEC. 5522. IMPROVEMENTS IN ADMINISTRATION OF LABORATORY SERVICES BENEFIT.**

(a) SELECTION OF REGIONAL CARRIERS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall—

(A) divide the United States into no more than 5 regions, and

(B) designate a single carrier for each such region,

for the purpose of payment of claims under part B of title XVIII of the Social Security Act with respect to clinical diagnostic laboratory services furnished on or after such date (not later than January 1, 1999) as the Secretary specifies.

(2) DESIGNATION.—In designating such carriers, the Secretary shall consider, among other criteria—

(A) a carrier's timeliness, quality, and experience in claims processing, and

(B) a carrier's capacity to conduct electronic data interchange with laboratories and data matches with other carriers.

(3) SINGLE DATA RESOURCE.—The Secretary shall select one of the designated carriers to serve as a central statistical resource for all claims information relating to such clinical diagnostic laboratory services handled by all the designated carriers under such part.

(4) ALLOCATION OF CLAIMS.—The allocation of claims for clinical diagnostic laboratory services to particular designated carriers shall be based on whether a carrier serves the geographic area where the laboratory specimen was collected or other method specified by the Secretary.

(5) TEMPORARY EXCEPTION.—Paragraph (1) shall not apply with respect to clinical diagnostic laboratory services furnished by independent physician offices until such time as the Secretary determines that such offices would not be unduly burdened by the application of billing responsibilities with respect to more than one carrier.

(b) ADOPTION OF UNIFORM POLICIES FOR CLINICAL LABORATORY BENEFITS.—

(1) IN GENERAL.—Not later than July 1, 1998, the Secretary shall first adopt, consistent with paragraph (2), uniform coverage, administration, and payment policies for clinical diagnostic laboratory tests under part B of title XVIII of the Social Security Act, using a negotiated rulemaking process under subchapter III of chapter 5 of title 5, United States Code.

(2) CONSIDERATIONS IN DESIGN OF UNIFORM POLICIES.—The policies under paragraph (1) shall be designed to promote program integrity and uniformity and simplify administrative requirements with respect to clinical diagnostic laboratory tests payable under such part in connection with the following:

(A) Beneficiary information required to be submitted with each claim or order for laboratory services.

(B) Physicians' obligations regarding documentation requirements and recordkeeping.

(C) Procedures for filing claims and for providing remittances by electronic media.

(D) The documentation of medical necessity.

(E) Limitation on frequency of coverage for the same tests performed on the same individual.

(3) CHANGES IN LABORATORY POLICIES PENDING ADOPTION OF UNIFORM POLICY.—During the period that begins on the date of the enactment of this Act and ends on the date the Secretary first implements uniform policies pursuant to regulations promulgated under this subsection, a carrier under such part may implement changes relating to requirements for the submission of a claim for clinical diagnostic laboratory tests.

(4) USE OF INTERIM POLICIES.—After the date the Secretary first implements such uniform policies, the Secretary shall permit any carrier to develop and implement interim policies of the type described in paragraph (1), in accordance with guidelines established by the Secretary, in cases in which a uniform national policy has not been established under this subsection and there is a demonstrated need for a policy to respond to aberrant utilization or provision of unnecessary services. Except as the Secretary specifically permits, no policy shall be implemented under this paragraph for a period of longer than 2 years.

(5) INTERIM NATIONAL GUIDELINES.—After the date the Secretary first designates regional carriers under subsection (a), the Secretary shall establish a process under which designated carriers can collectively develop and implement interim national guidelines of the type described in paragraph (1). No such policy shall be implemented under this paragraph for a period of longer than 2 years.

(6) BIENNIAL REVIEW PROCESS.—Not less often than once every 2 years, the Secretary shall solicit and review comments regarding changes in the uniform policies established under this subsection. As part of such biennial review process, the Secretary shall specifically review and consider whether to incorporate or supersede interim, regional, or national policies developed under paragraph (4) or (5). Based upon such review, the Secretary may provide for appropriate changes in the uniform policies previously adopted under this subsection.

(7) REQUIREMENT AND NOTICE.—The Secretary shall ensure that any guidelines adopted under paragraph (3), (4), or (5) shall apply to all laboratory claims payable under part B of title XVIII of the Social Security Act, and shall provide for advance notice to interested parties and a 45-day period in which such parties may submit comments on the proposed change.

(c) INCLUSION OF LABORATORY REPRESENTATIVE ON CARRIER ADVISORY COMMITTEES.—The Secretary shall direct that any advisory committee established by such a carrier, to advise with respect to coverage, administration or payment policies under part B of title XVIII of the Social Security Act, shall include an individual to represent the interest and views of independent clinical laboratories and such other laboratories as the Secretary deems appropriate. Such individual shall be selected by such committee from among nominations submitted by national and local organizations that represent independent clinical laboratories.

**SEC. 5523. PAYMENTS FOR DURABLE MEDICAL EQUIPMENT.**

(a) REDUCTION IN PAYMENT AMOUNTS FOR ITEMS OF DURABLE MEDICAL EQUIPMENT.—

(1) FREEZE IN UPDATE FOR COVERED ITEMS.—Section 1834(a)(14) (42 U.S.C. 1395m(a)(14)) is amended to read as follows:

''(14) COVERED ITEM UPDATE.—In this subsection—

''(A) IN GENERAL.—The term 'covered item update' means, with respect to any year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

''(B) REDUCTION FOR CERTAIN YEARS.—In the case of each of the years 1998 through 2002, the covered item update under subparagraph (A) shall be reduced (but not below zero) by 2.0 percentage points.''.

(2) UPDATE FOR ORTHOTICS AND PROSTHETICS.—Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended to read as follows:

''(A) the term 'applicable percentage increase' means, with respect to any year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year, except that in each of the years 1998 through 2000, such increase shall be reduced (but not below zero) by 2.0 percentage points;''.

(3) EFFECTIVE DATE.—The amendments made by this subsection applies to items furnished on and after January 1, 1998.

(b) REDUCTION IN INCREASE FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT.—The reasonable charge under part B of title XVIII of the Social Security Act for parenteral and enteral nutrients, supplies, and equipment furnished during each of the years 1998 through 2002, shall not exceed the reasonable charge for such items furnished during the previous year (after application of this subsection), increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year reduced (but not below zero) by 2.0 percentage points.

**SEC. 5524. OXYGEN AND OXYGEN EQUIPMENT.**

(a) IN GENERAL.—Section 1834(a)(9)(B) (42 U.S.C. 1395m(a)(9)(B)) is amended—

(1) by striking ''and'' at the end of clause (iii);

(2) in clause (iv)—

(A) by striking ''a subsequent year'' and inserting ''1995, 1996, and 1997'', and

(B) by striking the period at the end and inserting a semicolon; and

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

''(v) in 1998, 75 percent of the amount determined under this subparagraph for 1997;

''(vi) in 1999, 62.5 percent of the amount determined under this subparagraph for 1997; and

''(vii) for each subsequent year, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.''.

(b) UPGRADED DURABLE MEDICAL EQUIPMENT.—Section 1834(a) (42 U.S.C. 1395m(a)) is amended by inserting after paragraph (15) the following new paragraph:

''(16) CERTAIN UPGRADED ITEMS.—

''(A) INDIVIDUAL'S RIGHT TO CHOOSE UPGRADED ITEM.—Notwithstanding any other provision of law, effective on the date on which the Secretary issues regulations under subparagraph (C), an individual may purchase or rent from a supplier an item of upgraded durable medical equipment for which payment would be made under this subsection if the item were a standard item.

''(B) PAYMENTS TO SUPPLIER.—In the case of the purchase or rental of an upgraded item under subparagraph (A)—

''(i) the supplier shall receive payment under this subsection with respect to such item as if such item were a standard item; and

''(ii) the individual purchasing or renting the item shall pay the supplier an amount equal to the difference between the supplier's charge and the amount under clause (i).

In no event may the supplier's charge for an upgraded item exceed the applicable fee schedule amount (if any) for such item.

''(C) CONSUMER PROTECTION SAFEGUARDS.—The Secretary shall issue regulations providing for consumer protection standards with respect to the furnishing of upgraded equipment under subparagraph (A). Such regulations shall provide for—

''(i) determination of fair market prices with respect to an upgraded item;

''(ii) full disclosure of the availability and price of standard items and proof of receipt of such disclosure information by the beneficiary before the furnishing of the upgraded item;

''(iii) conditions of participation for suppliers in the simplified billing arrangement;

''(iv) sanctions of suppliers who are determined to engage in coercive or abusive practices, including exclusion; and

''(v) such other safeguards as the Secretary determines are necessary.''.

(c) ESTABLISHMENT OF CLASSES FOR PAYMENT.—Section 1848(a)(9) (42 U.S.C. 1395m(a)(9)) is amended by adding at the end the following:

''(D) AUTHORITY TO CREATE CLASSES.—

''(i) IN GENERAL.—Subject to clause (ii), the Secretary may establish separate classes for any item of oxygen and oxygen equipment and separate national limited monthly payment rates for each of such classes.

''(ii) BUDGET NEUTRALITY.—The Secretary may take actions under clause (i) only to the extent such actions do not result in expenditures for any year to be more or less than the expenditures which would have been made if such actions had not been taken.''.

(d) STANDARDS AND ACCREDITATION.—The Secretary shall as soon as practicable establish service standards and accreditation requirements for persons seeking payment under part B of title XVIII of the Social Security Act for the providing of oxygen and oxygen equipment to beneficiaries within their homes.

(e) ACCESS TO HOME OXYGEN EQUIPMENT.—

(1) STUDY.—The Comptroller General of the United States shall study issues relating to access to home oxygen equipment and shall, within 6 months after the date of the enactment of this Act, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, including recommendations (if any) for legislation.

(2) PEER REVIEW EVALUATION.—The Secretary of Health and Human Services shall arrange for peer review organizations established under section 1154 of the Social Security Act to evaluate access to, and quality of, home oxygen equipment.

(f) DEMONSTRATION PROJECT.—Not later than 6 months after the date of enactment of this Act, the Secretary shall, in consultation with appropriate organizations, initiate a demonstration project in which the Secretary utilizes a competitive bidding process for the furnishing of home oxygen equipment to medicare beneficiaries under title XVIII of the Social Security Act.

(g) EFFECTIVE DATE.—

(1) OXYGEN.—The amendments made by subsection (a) shall apply to items furnished on and after January 1, 1998.

(2) OTHER PROVISIONS.—The amendments made by this section other than subsection (a) shall take effect on the date of the enactment of this Act.

**SEC. 5525. UPDATES FOR AMBULATORY SURGICAL SERVICES.**

Section 1833(i)(2)(C) (42 U.S.C. 1395l(i)(2)(C)) is amended by inserting at the end the following: ''In each of the fiscal years 1998 through 2002, the increase under this subparagraph shall be reduced (but not below zero) by 2.0 percentage points.''.

**SEC. 5526. REIMBURSEMENT FOR DRUGS AND BIOLOGICALS.**

(a) IN GENERAL.—Section 1842 (42 U.S.C. 1395u) is amended by inserting after subsection (n) the following new subsection:

''(o)(1) If a physician's, supplier's, or any other person's bill or request for payment for services includes a charge for a drug or biological for which payment may be made under this part and the drug or biological is not paid on a cost or prospective payment basis as otherwise provided in this part, the amount payable for the drug or biological is equal to 95 percent of the average wholesale price, as specified by the Secretary.

''(2)(A) In the case of a drug or biological for which payment was under this part on May 1, 1997, the amount determined under paragraph (1) for any drug or biological shall not exceed—

''(i) in the case of 1998, the amount of the payment under this part on May 1, 1997, and

''(ii) in the case of 1999 and each succeeding year, the amount determined under this subparagraph for the previous year, 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 June of the previous year.

''(B) In the case of a drug or biological not described in subparagraph (A), the amount determined under paragraph (1) for any year following the first year for which payment is made under this part for such drug or biological shall not exceed the amount payable under this part (after application of this subparagraph) for the previous year, 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 June of the previous year.

''(3) If payment for a drug or biological is made to a licensed pharmacy approved to dispense drugs or biologicals under this part, the Secretary shall pay a dispensing fee (less the applicable deductible and insurance amounts) to the pharmacy, as the Secretary determines appropriate.

''(4) The Secretary shall conduct such studies or surveys as are necessary to determine the average wholesale price (and such other price as the Secretary determines appropriate) of any drug or biological for purposes of paragraph (1). The Secretary shall, not later than 6 months after the date of the enactment of this subsection, report to the appropriate committees of Congress the results of the studies and surveys conducted under this paragraph.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to drugs and biologicals furnished on or after January 1, 1998.

## CHAPTER 3—PART B PREMIUM AND RELATED PROVISIONS

**SEC. 5541. PART B PREMIUM.**

(a) IN GENERAL.—Section 1839(a)(3) (42 U.S.C. 1395r(a)(3)) is amended by striking the first 3 sentences and inserting the following: ''The Secretary, during September of each year, shall determine and promulgate a monthly premium rate for the succeeding calendar year that is equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1), for that succeeding calendar year.''.

(b) CONFORMING AND TECHNICAL AMENDMENTS.—

(1) SECTION 1839.—Section 1839 (42 U.S.C. 1395r) is amended—

(A) in subsection (a)(2), by striking ''(b) and (e)'' and inserting ''(b), (c), and (f)'',

(B) in the last sentence of subsection (a)(3)—

(i) by inserting ''rate'' after ''premium'', and

(ii) by striking ''and the derivation of the dollar amounts specified in this paragraph'',

(C) by striking subsection (e), and

(D) by redesignating subsection (g) as subsection (e) and inserting that subsection after subsection (d).

(2) SECTION 1844.—Subparagraphs (A)(i) and (B)(i) of section 1844(a)(1) (42 U.S.C. 1395w(a)(1)) are each amended by striking ''or 1839(e), as the case may be''.

**SEC. 5542. INCOME-RELATED REDUCTION IN MEDICARE SUBSIDY.**

(a) IN GENERAL.—Section 1839 (42 U.S.C. 1395r) is amended by adding at the end the following:

''(h)(1) Notwithstanding the previous subsections of this section, in the case of an individual whose modified adjusted gross income for a taxable year ending with or within a calendar year (as initially determined by the Secretary in accordance with paragraph (3)) exceeds the threshold amount described in paragraph (5)(B), the Secretary shall increase the amount of the monthly premium for months in the calendar year by an amount equal to the difference between—

''(A) 200 percent of the monthly actuarial rate for enrollees age 65 and over as determined under subsection (a)(1) for that calendar year; and

''(B) the total of the monthly premiums paid by the individual under this section (determined without regard to subsection (b)) during such calendar year.

''(2) In the case of an individual described in paragraph (1) whose modified adjusted gross income exceeds the threshold amount by less than

*$50,000, the amount of the increase in the monthly premium applicable under paragraph (1) shall be an amount which bears the same ratio to the amount of the increase described in paragraph (1) (determined without regard to this paragraph) as such excess bears to $50,000.*

*''(3) The Secretary shall make an initial determination of the amount of an individual's modified adjusted gross income for a taxable year ending with or within a calendar year for purposes of this subsection as follows:*

*''(A) Not later than September 1 of the year preceding the year, the Secretary shall provide notice to each individual whom the Secretary finds (on the basis of the individual's actual modified adjusted gross income for the most recent taxable year for which such information is available or other information provided to the Secretary by the Secretary of the Treasury) will be subject to an increase under this subsection that the individual will be subject to such an increase, and shall include in such notice the Secretary's estimate of the individual's modified adjusted gross income for the year.*

*''(B) If, during the 30-day period beginning on the date notice is provided to an individual under subparagraph (A), the individual provides the Secretary with information on the individual's anticipated modified adjusted gross income for the year, the amount initially determined by the Secretary under this paragraph with respect to the individual shall be based on the information provided by the individual.*

*''(C) If an individual does not provide the Secretary with information under subparagraph (B), the amount initially determined by the Secretary under this paragraph with respect to the individual shall be the amount included in the notice provided to the individual under subparagraph (A).*

*''(4)(A) If the Secretary determines (on the basis of final information provided by the Secretary of the Treasury) that the amount of an individual's actual modified adjusted gross income for a taxable year ending with or within a calendar year is less than or greater than the amount initially determined by the Secretary under paragraph (3), the Secretary shall increase or decrease the amount of the individual's monthly premium under this section (as the case may be) for months during the following calendar year by an amount equal to 1/12 of the difference between—*

*''(i) the total amount of all monthly premiums paid by the individual under this section during the previous calendar year; and*

*''(ii) the total amount of all such premiums which would have been paid by the individual during the previous calendar year if the amount of the individual's modified adjusted gross income initially determined under paragraph (3) were equal to the actual amount of the individual's modified adjusted gross income determined under this paragraph.*

*''(B)(i) In the case of an individual for whom the amount initially determined by the Secretary under paragraph (3) is based on information provided by the individual under subparagraph (B) of such paragraph, if the Secretary determines under subparagraph (A) that the amount of the individual's actual modified adjusted gross income for a taxable year is greater than the amount initially determined under paragraph (3), the Secretary shall increase the amount otherwise determined for the year under subparagraph (A) by interest in an amount equal to the sum of the amounts determined under clause (ii) for each of the months described in clause (ii).*

*''(ii) Interest shall be computed for any month in an amount determined by applying the underpayment rate established under section 6621 of the Internal Revenue Code of 1986 (compounded daily) to any portion of the difference between the amount initially determined under paragraph (3) and the amount determined under subparagraph (A) for the period beginning on the first day of the month beginning after the individual provided information to the Secretary under subparagraph (B) of paragraph (3) and ending 30 days before the first month for which the individual's monthly premium is increased under this paragraph.*

*''(iii) Interest shall not be imposed under this subparagraph if the amount of the individual's modified adjusted gross income provided by the individual under subparagraph (B) of paragraph (3) was not less than the individual's modified adjusted gross income determined on the basis of information shown on the return of tax imposed by chapter 1 of the Internal Revenue Code of 1986 for the taxable year involved.*

*''(C) In the case of an individual who is not enrolled under this part for any calendar year for which the individual's monthly premium under this section for months during the year would be increased pursuant to subparagraph (A) if the individual were enrolled under this part for the year, the Secretary may take such steps as the Secretary considers appropriate to recover from the individual the total amount by which the individual's monthly premium for months during the year would have been increased under subparagraph (A) if the individual were enrolled under this part for the year.*

*''(D) In the case of a deceased individual for whom the amount of the monthly premium under this section for months in a year would have been decreased pursuant to subparagraph (A) if the individual were not deceased, the Secretary shall make a payment to the individual's surviving spouse (or, in the case of an individual who does not have a surviving spouse, to the individual's estate) in an amount equal to the difference between—*

*''(i) the total amount by which the individual's premium would have been decreased for all months during the year pursuant to subparagraph (A); and*

*''(ii) the amount (if any) by which the individual's premium was decreased for months during the year pursuant to subparagraph (A).*

*''(5) In this subsection, the following definitions apply:*

*''(A) The term 'modified adjusted gross income' means adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986)—*

*''(i) determined without regard to sections 135, 911, 931, and 933 of such Code, and*

*''(ii) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax under such Code.*

*''(B) The term 'threshold amount' means—*

*''(i) except as otherwise provided in this paragraph, $50,000,*

*''(ii) $75,000, in the case of a joint return (as defined in section 7701(a)(38) of such Code), and*

*''(iii) zero in the case of a taxpayer who—*

*''(I) is married at the close of the taxable year but does not file a joint return (as so defined) for such year, and*

*''(II) does not live apart from his spouse at all times during the taxable year.*

*''(6)(A) The Secretary shall transfer amounts received pursuant to this subsection to the Federal Hospital Insurance Trust Fund.*

*''(B) In applying section 1844(a), amounts attributable to clause (i) shall not be counted in determining the dollar amount of the premium per enrollee under paragraph (1)(A) or (1)(B).''.*

*(b) CONFORMING AMENDMENTS.—(1) Section 1839 (42 U.S.C. 1395r) is amended—*

*(A) in subsection (a)(2), by inserting ''or section subsection (h)'' after ''subsections (b) and (e)'';*

*(B) in subsection (a)(3) of section 1839(a), by inserting ''or subsection (h)'' after ''subsection (e)'';*

*(C) in subsection (b), inserting ''(and as increased under subsection (h))'' after ''subsection (a) or (e)''; and*

*(D) in subsection (f), by striking ''if an individual'' and inserting the following: ''if an individual (other than an individual subject to an increase in the monthly premium under this section pursuant to subsection (h))''.*

*(2) Section 1840(c) (42 U.S.C. 1395r(c)) is amended by inserting ''or an individual determines that the estimate of modified adjusted gross income used in determining whether the individual is subject to an increase in the monthly premium under section 1839 pursuant to subsection (h) of such section (or in determining the amount of such increase) is too low and results in a portion of the premium not being deducted,'' before ''he may''.*

*(c) REPORTING REQUIREMENTS FOR SECRETARY OF THE TREASURY.—*

*(1) IN GENERAL.—Subsection (l) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:*

*''(16) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT INCOME-RELATED REDUCTION IN MEDICARE PART B PREMIUM.—*

*''(A) IN GENERAL.—The Secretary may, upon written request from the Secretary of Health and Human Services, disclose to officers and employees of the Health Care Financing Administration return information with respect to a taxpayer who is required to pay a monthly premium under section 1839 of the Social Security Act. Such return information shall be limited to—*

*''(i) taxpayer identity information with respect to such taxpayer,*

*''(ii) the filing status of such taxpayer,*

*''(iii) the adjusted gross income of such taxpayer,*

*''(iv) the amounts excluded from such taxpayer's gross income under sections 135 and 911,*

*''(v) the interest received or accrued during the taxable year which is exempt from the tax imposed by chapter 1 to the extent such information is available, and*

*''(vi) the amounts excluded from such taxpayer's gross income by sections 931 and 933 to the extent such information is available.*

*''(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Health Care Financing Administration only for the purposes of, and to the extent necessary in, establishing the appropriate monthly premium under section 1839 of the Social Security Act.''.*

*(2) CONFORMING AMENDMENT.—Paragraphs (3)(A) and (4) of section 6103(p) of such Code are each amended by striking ''or (15)'' each place it appears and inserting ''(15), or (16)''.*

*(d) EFFECTIVE DATE.—*

*(1) IN GENERAL.—The amendments made by subsections (a) and (b) shall apply to the monthly premium under section 1839 of the Social Security Act for months beginning with January 1998.*

*(2) INFORMATION FOR PRIOR YEARS.—The Secretary of Health and Human Services may request information under section 6013(l)(16) of the Social Security Act (as added by subsection (c)) for taxable years beginning after December 31, 1994.*

***SEC. 5543. DEMONSTRATION PROJECT ON INCOME-RELATED PART B DEDUCTIBLE.***

*(a) ESTABLISHMENT OF PROJECT.—*

*(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct a demonstration project (in this section referred to as the ''project'') in which individuals otherwise responsible for an income-related premium by reason of section 1839(h) of the Social Security Act (42 U.S.C. 1395r(h)) (as added by section 5542 of this Act) would instead be responsible for an income-related deductible using the same income limits and administrative procedures provided for in such section 1839(h).*

*(2) SITES.—The Secretary shall conduct the project in a representative number of sites and*

*shall include a sufficient number of individuals in the project to ensure that the project produces statistically satisfactory findings.*

*(3) PARTICIPATION.—*

*(A) IN GENERAL.—Participation in the project shall be on a voluntary basis.*

*(B) MEDIGAP.—No individual shall be eligible to participate in the project if such individual is covered under a medicare supplemental policy under section 1882 of the Social Security Act (42 U.S.C. 1395ss).*

*(4) CONSULTATION.—In conducting the project, the Secretary shall consult with appropriate organizations and experts.*

*(5) DURATION.—The project shall be conducted for a period not to exceed 5 years.*

*(b) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of titles XI, XVIII, and XIX of the Social Security Act (42 U.S.C. 1301 et seq., 1395 et seq., 1396 et seq.) to such extent and for such period as the Secretary determines is necessary to conduct the project.*

*(c) REPORTS TO CONGRESS.—*

*(1) IN GENERAL.—Not later than 2 and 5 years after the date of enactment of this Act, and biannually thereafter, the Secretary shall submit to Congress a report regarding the project.*

*(2) CONTENTS OF REPORT.—The reports in paragraph (1) shall include the following:*

*(A) A description of the demonstration projects conducted under this section.*

*(B) A description of the utilization and health care status of individuals participating in the project.*

*(C) Any other information regarding the project that the Secretary determines to be appropriate.*

***SEC. 5544. LOW-INCOME MEDICARE BENEFICIARY BLOCK GRANT PROGRAM.***

*(a) IN GENERAL.—Title XVIII (42 U.S.C. 1395 et seq.), as amended by section 5047, is amended by adding at the end the following:*

*''LOW-INCOME MEDICARE BENEFICIARY BLOCK GRANT PROGRAM*

*''SEC. 1898. (a) ESTABLISHMENT.—The Secretary shall establish a program to award block grants to States for the payment of medicare cost sharing described in section 1905(p)(3)(A)(ii) on behalf of eligible low-income medicare beneficiaries.*

*''(b) APPLICATION.—To be eligible to receive a block grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.*

*''(c) PAYMENTS.—*

*''(1) AMOUNT OF GRANT.—From amounts appropriated under subsection (d) for a fiscal year, the Secretary shall award a grant to each State with an application approved under subsection (b), in an amount that bears the same ratio to such amounts as the total number of eligible low-income medicare beneficiaries in the State bears to the total number of eligible low-income medicare beneficiaries in all States.*

*''(2) 100 PERCENT FMAP.—Notwithstanding section 1905(b), the Federal medical assistance percentage for any State that receives a grant under this section shall be 100 percent.*

*''(d) APPROPRIATIONS.—*

*''(1) IN GENERAL.—The Secretary is authorized to transfer from the Federal Supplementary Medical Insurance Trust Fund under section 1841 for the purpose of carrying out this section, an amount equal to $200,000,000 in fiscal year 1998, $250,000,000 in fiscal year 1999, $300,000,000 in fiscal year 2000, $350,000,000 in fiscal year 2001, and $400,000,000 in fiscal year 2002, to remain available without fiscal year limitation.*

*''(2) STATE ENTITLEMENT.—This section constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided in accordance with the provisions of this section.*

*''(e) DEFINITIONS.—In this section:*

*''(1) ELIGIBLE LOW-INCOME MEDICARE BENEFICIARY.—The term 'eligible low-income medicare beneficiary' means an individual who is described in section 1902(a)(10)(E)(iii) but whose family income is greater than or equal to 120 percent of the poverty line and does not exceed 150 percent of the poverty line for a family of the size involved.*

*''(2) STATE.—The term 'State' means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.''.*

***Subtitle H—Provisions Relating to Parts A and B***

***CHAPTER 1—SECONDARY PAYOR PROVISIONS***

***SEC. 5601. EXTENSION AND EXPANSION OF EXISTING REQUIREMENTS.***

*(a) DATA MATCH.—*

*(1) ELIMINATION OF MEDICARE SUNSET.—Section 1862(b)(5)(C) (42 U.S.C. 1395y(b)(5)(C)) is amended by striking clause (iii).*

*(2) ELIMINATION OF INTERNAL REVENUE CODE SUNSET.—Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended by striking subparagraph (F).*

*(b) APPLICATION TO DISABLED INDIVIDUALS IN LARGE GROUP HEALTH PLANS.—*

*(1) IN GENERAL.—Section 1862(b)(1)(B) (42 U.S.C. 1395y(b)(1)(B)) is amended—*

*(A) in clause (i), by striking ''clause (iv)'' and inserting ''clause (iii)'';*

*(B) by striking clause (iii); and*

*(C) by redesignating clause (iv) as clause (iii).*

*(2) CONFORMING AMENDMENTS.—Paragraphs (1) through (3) of section 1837(i) (42 U.S.C. 1395p(i)) and the second sentence of section 1839(b) (42 U.S.C. 1395r(b)) are each amended by striking ''1862(b)(1)(B)(iv)'' each place it appears and inserting ''1862(b)(1)(B)(iii)''.*

*(c) INDIVIDUALS WITH END STAGE RENAL DISEASE.—Section 1862(b)(1)(C) (42 U.S.C. 1395y(b)(1)(C)) is amended—*

*(1) in the last sentence by striking ''October 1, 1998'' and inserting ''the date of enactment of the Balanced Budget Act of 1997''; and*

*(2) by adding at the end the following: ''Effective for items and services furnished on or after the date of enactment of the Balanced Budget Act of 1997, (with respect to periods beginning on or after the date that is 18 months prior to such date), clauses (i) and (ii) shall be applied by substituting '30-month' for '12-month' each place it appears.''.*

***SEC. 5602. IMPROVEMENTS IN RECOVERY OF PAYMENTS.***

*(a) PERMITTING RECOVERY AGAINST THIRD PARTY ADMINISTRATORS OF PRIMARY PLANS.—Section 1862(b)(2)(B)(ii) (42 U.S.C. 1395y(b)(2)(B)(ii)) is amended—*

*(1) by striking ''under this subsection to pay'' and inserting ''(directly, as a third-party administrator, or otherwise) to make payment''; and*

*(2) by adding at the end the following: ''The United States may not recover from a third-party administrator under this clause in cases where the third-party administrator would not be able to recover the amount at issue from the employer or group health plan for whom it provides administrative services due to the insolvency or bankruptcy of the employer or plan.''.*

*(b) EXTENSION OF CLAIMS FILING PERIOD.—Section 1862(b)(2)(B) (42 U.S.C. 1395y(b)(2)(B)) is amended by adding at the end the following:*

*''(v) CLAIMS-FILING PERIOD.—Notwithstanding any other time limits that may exist for filing a claim under an employer group health plan, the United States may seek to recover conditional payments in accordance with this subparagraph where the request for payment is submitted to the entity required or responsible under this subsection to pay with respect to the item or service (or any portion thereof) under a primary plan within the 3-year period beginning on the date on which the item or service was furnished.''.*

*(c) EFFECTIVE DATE.—The amendments made by this section apply to items and services furnished on or after the date of enactment of this Act.*

***CHAPTER 2—OTHER PROVISIONS***

***SEC. 5611. CONFORMING AGE FOR ELIGIBILITY UNDER MEDICARE TO RETIREMENT AGE FOR SOCIAL SECURITY BENEFITS.***

*(a) ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS.—Section 226 (42 U.S.C. 426) is amended by striking ''age 65'' each place such term appears and inserting ''retirement age''.*

*(b) HOSPITAL INSURANCE BENEFITS FOR THE AGED.—Section 1811 (42 U.S.C. 1395c) is amended by striking ''age 65'' each place such term appears and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(c) HOSPITAL INSURANCE BENEFITS FOR UNINSURED ELDERLY INDIVIDUALS NOT OTHERWISE ELIGIBLE.—Section 1818 (42 U.S.C. 1395i–2) is amended—*

*(1) in subsection (a)(1), by striking ''age of 65'' and inserting ''retirement age (as such term is defined in section 216(l)(1))'';*

*(2) in subsection (d)(1), by striking ''age 65'' and inserting ''retirement age (as such term is defined in section 216(l)(1))''; and*

*(3) in subsection (d)(3), by striking ''65'' and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(d) HOSPITAL INSURANCE BENEFITS FOR DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT.—Section 1818A(a)(1) (42 U.S.C. 1395i–2a(a)(1)) is amended by striking ''the age of 65'' and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(e) ELIGIBILITY FOR PART B BENEFITS.—*

*(1) IN GENERAL.—Section 1836 (42 U.S.C. 1395o) is amended by striking ''age 65'' each place such term appears and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(2) ENROLLMENT PERIODS.—Section 1837 (42 U.S.C. 1395p) is amended by striking ''age 65'' and ''the age of 65'' each place such terms appear and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(3) COVERAGE PERIOD.—Section 1838(c) (42 U.S.C. 1395q(c)) is amended by striking ''the age of 65'' and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(4) AMOUNTS OF PREMIUMS.—Section 1839 (42 U.S.C. 1395r) is amended by striking ''age 65'' and ''the age of 65'' each place such terms appear and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(f) APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND CONTINGENCY RESERVE.—Section 1844(a)(1) (42 U.S.C. 1395w) is amended by striking ''age 65'' each place such term appears and inserting ''retirement age''.*

*(g) MEDICARE SECONDARY PAYER.—Section 1862(b) (42 U.S.C. 1395y(b)) is amended by striking ''age 65'' each place such term appears and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

*(h) MEDICARE SUPPLEMENTAL POLICIES.—Section 1882(s)(2)(A) (42 U.S.C. 1395ss(s)(2)(A)) is amended by striking ''65 years of age'' and inserting ''retirement age (as such term is defined in section 216(l)(1))''.*

***SEC. 5612. INCREASED CERTIFICATION PERIOD FOR CERTAIN ORGAN PROCUREMENT ORGANIZATIONS.***

*Section 1138(b)(1)(A)(ii) (42 U.S.C. 1320b–8(b)(1)(A)(ii)) is amended by striking ''two years'' and inserting ''2 years (3 years if the Secretary determines appropriate for an organization on the basis of its past practices)''.*

***SEC. 5613. FACILITATING THE USE OF PRIVATE CONTRACTS UNDER THE MEDICARE PROGRAM.***

*(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by inserting after section 1804 of such Act (42 U.S.C. 1395b–2) the following:*

''CLARIFICATION OF PRIVATE CONTRACTS FOR HEALTH SERVICES

''SEC. 1805. (a) IN GENERAL.—Nothing in this title shall prohibit a physician or another health care professional who does not provide items or services under the program under this title from entering into a private contract with a medicare beneficiary for health services for which no claim for payment is to be submitted under this title.

''(b) LIMITATION ON ACTUAL CHARGE NOT APPLICABLE.—Section 1848(g) shall not apply with respect to a health service provided to a medicare beneficiary under a contract described in subsection (a).

''(c) DEFINITION OF MEDICARE BENEFICIARY.—In this section, the term 'medicare beneficiary' means an individual who is entitled to benefits under part A or enrolled under part B.

''(d) REPORT.—Not later than October 1, 2001, the Administrator of the Health Care Financing Administration shall submit a report to Congress on the effect on the program under this title of private contracts entered into under this section. Such report shall include—

''(1) analyses regarding—

''(A) the fiscal impact of such contracts on total Federal expenditures under this title and on out-of-pocket expenditures by medicare beneficiaries for health services under this title; and

''(B) the quality of the health services provided under such contracts; and

''(2) recommendations as to whether medicare beneficiaries should continue to be able to enter private contracts under this section and if so, what legislative changes, if any should be made to improve such contracts.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to contracts entered into on and after October 1, 1997.

### Subtitle I—Miscellaneous Provisions

**SEC. 5651. INCLUSION OF STANLY COUNTY, N.C. IN A LARGE URBAN AREA UNDER MEDICARE PROGRAM.**

(a) IN GENERAL.—For purposes of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), the large urban area of Charlotte-Gastonia-Rock Hill-North Carolina-South Carolina may be deemed to include Stanly County, North Carolina.

(b) EFFECTIVE DATE.—This section shall apply with respect to discharges occurring on or after October 1, 1997.

**SEC. 5652. MEDICARE ANTI-DUPLICATION PROVISION.**

(a) In section 1395ss(d)(3)(A)(v) of title 42, United States Code, insert ''(a)'' before ''For'', and after the first sentence insert:

''(b) For purposes of this subparagraph, a health insurance policy (which may be a contract with a health maintenance organization) is not considered to 'duplicate' health benefits under this title or title XIX or under another health insurance policy if it—

''(1) provides comprehensive health care benefits that replace the benefits provided by another health insurance policy,

''(2) is being provided to an individual entitled to benefits under part A or enrolled under part B on the basis of section 226(b), and

''(3) coordinates against items and services available or paid for under this title or title XIX, provided that payments under this title or title XIX shall not be treated as payments under such policy in determining annual or lifetime benefit limits.''.

(b) In section 1395ss(d)(3)(A)(v) of title 42, United States Code, insert ''(c)'' before ''For purposes of this clause''.

## DIVISION 2—MEDICAID AND CHILDREN'S HEALTH INSURANCE INITIATIVES

### Subtitle I—Medicaid

### CHAPTER 1—MEDICAID SAVINGS

### Subchapter A—Managed Care Reforms

**SEC. 5701. STATE OPTION FOR MANDATORY MANAGED CARE.**

(a) IN GENERAL.—Title XIX is amended—

(1) by inserting after the title heading the following:

''PART A—GENERAL PROVISIONS''; and

(2) by adding at the end the following new part:

''PART B—PROVISIONS RELATING TO MANAGED CARE

**''SEC. 1941. BENEFICIARY CHOICE; ENROLLMENT.**

''(a) STATE OPTIONS FOR ENROLLMENT OF BENEFICIARIES IN MANAGED CARE ARRANGEMENTS.—

''(1) IN GENERAL.—Subject to the succeeding provisions of this part and notwithstanding paragraphs (1), (10)(B), and (23)(A) of section 1902(a), a State may require an individual who is eligible for medical assistance under the State plan under this title and who is not a special needs individual (as defined in subsection (e)) to enroll with a managed care entity (as defined in section 1950(a)(1)) as a condition of receiving such assistance (and, with respect to assistance furnished by or under arrangements with such entity, to receive such assistance through the entity), if the following provisions are met:

''(A) ENTITY MEETS REQUIREMENTS.—The entity meets the applicable requirements of this part.

''(B) CONTRACT WITH STATE.—The entity enters into a contract with the State to provide services for the benefit of individuals eligible for benefits under this title under which prepaid payments to such entity are made on an actuarially sound basis. Such contract shall specify benefits the provision (or arrangement) for which the entity is responsible.

''(C) CHOICE OF COVERAGE.—

''(i) IN GENERAL.—The State permits an individual to choose a managed care entity from managed care organizations and primary care case managers who meet the requirements of this part but not less than from—

''(I) 2 medicaid managed care organizations,

''(II) a medicaid managed care organization and a primary care case manager, or

''(III) a primary care case manager as long as an individual may choose between 2 primary care case managers.

''(ii) STATE OPTION.—At the option of the State, a State shall be considered to meet the requirements of clause (i) in the case of an individual residing in a rural area, if the State—

''(I) requires the individual to enroll with a medicaid managed care organization or a primary care case manager if such organization or entity permits the individual to receive such assistance through not less than 2 physicians or case managers (to the extent that at least 2 physicians or case managers are available to provide such assistance in the area), and

''(II) permits the individual to obtain such assistance from any other provider in appropriate circumstances (as established by the State under regulations of the Secretary).

''(iii) RELIGIOUS CHOICE.—The State, in permitting an individual to choose a managed care entity under clause (i) shall permit the individual to have access to appropriate religiously-affiliated long-term care facilities that are not pervasively sectarian and that provide comparable non-sectarian medical care. With respect to such access, the State shall permit an individual to select a facility that is not a part of the network of the managed care entity if such network does not provide access to appropriate faith-based facilities. Such facility that provides care under this clause shall accept the terms and conditions offered by the managed care entity to other providers in the network. No facility may be compelled to admit an individual if the medical director of that facility believes that the facility cannot provide the specific nursing care and services an enrollee requires.

''(D) CHANGES IN ENROLLMENT.—The State—

''(i) provides the individual with the opportunity to change enrollment among managed care entities once annually and notifies the individual of such opportunity not later than 60 days prior to the first date on which the individual may change enrollment, and

''(ii) permits individuals to terminate their enrollment as provided under paragraph (2).

''(E) ENROLLMENT PRIORITIES.—The State establishes a method for establishing enrollment priorities in the case of a managed care entity that does not have sufficient capacity to enroll all such individuals seeking enrollment under which individuals already enrolled with the entity are given priority in continuing enrollment with the entity.

''(F) DEFAULT ENROLLMENT PROCESS.—The State establishes a default enrollment process which meets the requirements described in paragraph (3) and under which any such individual who does not enroll with a managed care entity during the enrollment period specified by the State shall be enrolled by the State with such an entity in accordance with such process.

''(G) SANCTIONS.—The State establishes the sanctions provided for in section 1949.

''(H) INDIAN ENROLLMENT.—No individual who is an Indian (as defined in section 4 of the Indian Health Care Improvement Act of 1976) is required to enroll in any entity that is not one of the following (and only if such entity is participating under the plan):

''(i) The Indian Health Service.

''(ii) An Indian health program operated by an Indian tribe or tribal organization pursuant to a contract, grant, cooperative agreement, or compact with the Indian Health Service pursuant to the Indian Self-Determination Act (25 U.S.C. 450 et seq.).

''(iii) An urban Indian health program operated by an urban Indian organization pursuant to a grant or contract with the Indian Health Service pursuant to title V of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

''(2) TERMINATION OF ENROLLMENT.—

''(A) IN GENERAL.—The State, enrollment broker, and managed care entity (if any) shall permit an individual eligible for medical assistance under the State plan under this title who is enrolled with the entity to terminate such enrollment for cause at any time, and without cause during the 90-day period beginning on the date the individual receives notice of enrollment and at least every 12 months thereafter, and shall notify each such individual of the opportunity to terminate enrollment under these conditions.

''(B) FRAUDULENT INDUCEMENT OR COERCION AS GROUNDS FOR CAUSE.—For purposes of subparagraph (A), an individual terminating enrollment with a managed care entity on the grounds that the enrollment was based on fraudulent inducement or was obtained through coercion or pursuant to the imposition against the managed care entity of the sanction described in section 1949(b)(3) shall be considered to terminate such enrollment for cause.

''(C) NOTICE OF TERMINATION.—

''(i) NOTICE TO STATE.—

''(I) BY INDIVIDUALS.—Each individual terminating enrollment with a managed care entity under subparagraph (A) shall do so by providing notice of the termination to an office of the State agency administering the State plan under this title, the State or local welfare agency, or an office of a managed care entity.

''(II) BY ORGANIZATIONS.—Any managed care entity which receives notice of an individual's termination of enrollment with such entity through receipt of such notice at an office of a managed care entity shall provide timely notice of the termination to the State agency administering the State plan under this title.

''(ii) NOTICE TO PLAN.—The State agency administering the State plan under this title or the State or local welfare agency which receives notice of an individual's termination of enrollment with a managed care entity under clause (i) shall provide timely notice of the termination to such entity.

''(3) DEFAULT ENROLLMENT PROCESS REQUIREMENTS.—The requirements of a default enrollment process established by a State under paragraph (1)(F) are as follows:

''(A) The process shall provide that the State may not enroll individuals with a managed care entity which is not in compliance with the applicable requirements of this part.

''(B) The process shall provide (consistent with subparagraph (A)) for enrollment of such an individual with a medicaid managed care organization—

''(i) that maintains existing provider-individual relationships or that has entered into contracts with providers (such as Federally qualified health centers, rural health clinics, hospitals that qualify for disproportionate share hospital payments under section 1886(d)(5)(F), and hospitals described in section 1886(d)(1)(B)(iii)) that have traditionally served beneficiaries under this title, and

''(ii) if there is no provider described in clause (i), in a manner that provides for an equitable distribution of individuals among all qualified managed care entities available to enroll individuals through such default enrollment process, consistent with the enrollment capacities of such entities.

''(C) The process shall permit and assist an individual enrolled with an entity under such process to change such enrollment to another managed care entity during a period (of at least 90 days) after the effective date of the enrollment.

''(D) The process may provide for consideration of factors such as quality, geographic proximity, continuity of providers, and capacity of the plan when conducting such process.

''(b) REENROLLMENT OF INDIVIDUALS WHO REGAIN ELIGIBILITY.—

''(1) IN GENERAL.—If an individual eligible for medical assistance under a State plan under this title and enrolled with a managed care entity with a contract under subsection (a)(1)(B) ceases to be eligible for such assistance for a period of not greater than 2 months, the State may provide for the automatic reenrollment of the individual with the entity as of the first day of the month in which the individual is again eligible for such assistance, and may consider factors such as quality, geographic proximity, continuity of providers, and capacity of the plan when conducting such reenrollment.

''(2) CONDITIONS.—Paragraph (1) shall only apply if—

''(A) the month for which the individual is to be reenrolled occurs during the enrollment period covered by the individual's original enrollment with the managed care entity,

''(B) the managed care entity continues to have a contract with the State agency under subsection (a)(1)(B) as of the first day of such month, and

''(C) the managed care entity complies with the applicable requirements of this part.

''(3) NOTICE OF REENROLLMENT.—The State shall provide timely notice to a managed care entity of any reenrollment of an individual under this subsection.

''(c) STATE OPTION OF MINIMUM ENROLLMENT PERIOD.—

''(1) IN GENERAL.—In the case of an individual who is enrolled with a managed care entity under this part and who would (but for this subsection) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in paragraph (2)), the State plan under this title may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1902(a)(23)(B), only with respect to such benefits provided to the individual as an enrollee of such entity.

''(2) MINIMUM ENROLLMENT PERIOD DEFINED.—For purposes of paragraph (1), the term 'minimum enrollment period' means, with respect to an individual's enrollment with an entity under a State plan, a period, established by the State, of not more than 6 months beginning on the date the individual's enrollment with the entity becomes effective, except that a State may extend such period for up to a total of 12 months in the case of an individual's enrollment with a managed care entity (as defined in section 1950(a)(1)) so long as such extension is done uniformly for all individuals enrolled with all such entities.

''(d) OTHER ENROLLMENT-RELATED PROVISIONS.—

''(1) NONDISCRIMINATION.—A managed care entity may not discriminate on the basis of health status or anticipated need for services in the enrollment, reenrollment, or disenrollment of individuals eligible to receive medical assistance under a State plan under this title or by discouraging enrollment (except as permitted by this section) by eligible individuals.

''(2) PROVISION OF INFORMATION.—

''(A) IN GENERAL.—Each State, enrollment broker, or managed care organization shall provide all enrollment notices and informational and instructional materials in a manner and form which may be easily understood by enrollees of the entity who are eligible for medical assistance under the State plan under this title, including enrollees and potential enrollees who are blind, deaf, disabled, or cannot read or understand the English language.

''(B) INFORMATION TO HEALTH CARE PROVIDERS, ENROLLEES, AND POTENTIAL ENROLLEES.—Each medicaid managed care organization shall—

''(i) upon request, make the information described in section 1945(c)(1) available to enrollees and potential enrollees in the organization's service area, and

''(ii) provide to enrollees and potential enrollees information regarding all items and services that are available to enrollees under the contract between the State and the organization that are covered either directly or through a method of referral and prior authorization.

''(3) PROVISION OF COMPARATIVE INFORMATION.—

''(A) BY STATE.—A State that requires individuals to enroll with managed care entities under this part shall annually provide to all enrollees and potential enrollees a list identifying the managed care entities that are (or will be) available and information described in subparagraph (C) concerning such entities. Such information shall be presented in a comparative, chart-like form.

''(B) BY ENTITY.—Upon the enrollment, or renewal of enrollment, of an individual with a managed care entity under this part, the entity shall provide such individual with the information described in subparagraph (C) concerning such entity and other entities available in the area, presented in a comparative, chart-like form.

''(C) REQUIRED INFORMATION.—Information under this subparagraph, with respect to a managed care entity for a year, shall include the following:

''(i) BENEFITS.—The benefits covered by the entity, including—

''(I) covered items and services beyond those provided under a traditional fee-for-service program;

''(II) any beneficiary cost sharing; and

''(III) any maximum limitations on out-of-pocket expenses.

''(ii) PREMIUMS.—The net monthly premium, if any, under the entity.

''(iii) SERVICE AREA.—The service area of the entity.

''(iv) QUALITY AND PERFORMANCE.—To the extent available, quality and performance indicators for the benefits under the entity (and how they compare to such indicators under the traditional fee-for-service programs in the area involved), including—

''(I) disenrollment rates for enrollees electing to receive benefits through the entity for the previous 2 years (excluding disenrollment due to death or moving outside the service area of the entity);

''(II) information on enrollee satisfaction;

''(III) information on health process and outcomes;

''(IV) grievance procedures;

''(V) the extent to which an enrollee may select the health care provider of their choice, including health care providers within the network of the entity and out-of-network health care providers (if the entity covers out-of-network items and services); and

''(VI) an indication of enrollee exposure to balance billing and the restrictions on coverage of items and services provided to such enrollee by an out-of-network health care provider.

''(v) SUPPLEMENTAL BENEFITS OPTIONS.—Whether the entity offers optional supplemental benefits and the terms and conditions (including premiums) for such coverage.

''(vi) PHYSICIAN COMPENSATION.—An overall summary description as to the method of compensation of participating physicians.

''(e) SPECIAL NEEDS INDIVIDUALS DESCRIBED.—In this part, the term 'special needs individual' means any of the following individuals:

''(1) SPECIAL NEEDS CHILD.—An individual who is under 19 years of age who—

''(A) is eligible for supplemental security income under title XVI;

''(B) is described under section 501(a)(1)(D);

''(C) is a child described in section 1902(e)(3); or

''(D) is not described in any preceding subparagraph but is in foster care or otherwise in an out-of-home placement.

''(2) MEDICARE BENEFICIARIES.—A qualified medicare beneficiary (as defined in section 1905(p)(1)) or an individual otherwise eligible for benefits under title XVIII.

''(f) RULE OF CONSTRUCTION.—Nothing in this part shall be construed as allowing a managed care entity that has entered into a contract with the State under this part to restrict the choice of an individual in receiving services described in section 1905(a)(4)(C).

**''SEC. 1942. BENEFICIARY ACCESS TO SERVICES GENERALLY.**

''(a) ACCESS TO SERVICES.—

''(1) IN GENERAL.—Each managed care entity shall provide or arrange for the provision of all medically necessary medical assistance under this title which is specified in the contract entered into between such entity and the State under section 1941(a)(1)(B) for enrollees who are eligible for medical assistance under the State plan under this title.

''(2) PRIMARY-CARE-PROVIDER-TO-ENROLLEE RATIO AND MAXIMUM TRAVEL TIME.—Each such entity shall assure adequate access to primary care services by meeting standards, established by the Secretary, relating to the maximum ratio of enrollees under this title to full-time-equivalent primary care providers available to serve such enrollees and to maximum travel time for such enrollees to access such providers. The Secretary may permit such a maximum ratio to vary depending on the area and population served. Such standards shall be based on standards commonly applied in the commercial market, commonly used in accreditation of managed care organizations, and standards used in the approval of waiver applications under section 1115, and shall be consistent with the requirements of section 1876(c)(4)(A) and part C of title XVIII.

''(b) REFERRAL TO SPECIALTY CARE FOR ENROLLEES REQUIRING TREATMENT BY SPECIALISTS.—

''(1) IN GENERAL.—In the case of an enrollee under a managed care entity and who has a condition or disease of sufficient seriousness and complexity to require treatment by a specialist, the entity shall make or provide for a referral to a specialist who is available and accessible to provide the treatment for such condition or disease.

''(2) SPECIALIST DEFINED.—For purposes of this subsection, the term 'specialist' means, with respect to a condition, a health care practitioner, facility, or center (such as a center of excellence) that has adequate expertise through appropriate training and experience (including, in the case of a child, an appropriate pediatric specialist) to provide high quality care in treating the condition.

''(3) CARE UNDER REFERRAL.—Care provided pursuant to such referral under paragraph (1) shall be—

''(A) pursuant to a treatment plan (if any) developed by the specialist and approved by the entity, in consultation with the designated primary care provider or specialist and the enrollee (or the enrollee's designee), and

''(B) in accordance with applicable quality assurance and utilization review standards of the entity.

Nothing in this subsection shall be construed as preventing such a treatment plan for an enrollee from requiring a specialist to provide the primary care provider with regular updates on the specialty care provided, as well as all necessary medical information.

''(4) REFERRALS TO PARTICIPATING PROVIDERS.—An entity is not required under paragraph (1) to provide for a referral to a specialist that—

''(A) is not a participating provider, unless the entity does not have an appropriate specialist that is available and accessible to treat the enrollee's condition, and

''(B) is a participating provider with respect to such treatment.

''(5) TREATMENT OF NONPARTICIPATING PROVIDERS.—If an entity refers an enrollee to a nonparticipating specialist, services provided pursuant to the approved treatment plan shall be provided at no additional cost to the enrollee beyond what the enrollee would otherwise pay for services received by such a specialist that is a participating provider.

''(c) TIMELY DELIVERY OF SERVICES.—Each managed care entity shall respond to requests from enrollees for the delivery of medical assistance in a manner which—

''(1) makes such assistance—

''(A) available and accessible to each such individual, within the area served by the entity, with reasonable promptness and in a manner which assures continuity; and

''(B) when medically necessary, available and accessible 24 hours a day and 7 days a week, and

''(2) with respect to assistance provided to such an individual other than through the entity, or without prior authorization, in the case of a primary care case manager, provides for reimbursement to the individual (if applicable under the contract between the State and the entity) if—

''(A) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and meet the requirements for access to emergency care under section 1943; and

''(B) it was not reasonable given the circumstances to obtain the services through the entity, or, in the case of a primary care case manager, with prior authorization.

''(d) INTERNAL GRIEVANCE PROCEDURE.—Each medicaid managed care organization shall establish an internal grievance procedure under which an enrollee who is eligible for medical assistance under the State plan under this title, or a provider on behalf of such an enrollee, may challenge the denial of coverage of or payment for such assistance.

''(e) INFORMATION ON BENEFIT CARVE OUTS.—Each managed care entity shall inform each enrollee, in a written and prominent manner, of any benefits to which the enrollee may be entitled to medical assistance under this title but which are not made available to the enrollee through the entity. Such information shall include information on where and how such enrollees may access benefits not made available to the enrollee through the entity.

''(f) DEMONSTRATION OF ADEQUATE CAPACITY AND SERVICES.—Each medicaid managed care organization shall provide the State and the Secretary with adequate assurances (as determined by the Secretary) that the organization, with respect to a service area—

''(1) has the capacity to serve the expected enrollment in such service area,

''(2) offers an appropriate range of services for the population expected to be enrolled in such service area, including transportation services and translation services consisting of the principal languages spoken in the service area,

''(3) maintains a sufficient number, mix, and geographic distribution of providers of services included in the contract with the State to ensure that services are available to individuals receiving medical assistance and enrolled in the organization to the same extent that such services are available to individuals enrolled in the organization who are not recipients of medical assistance under the State plan under this title,

''(4) maintains extended hours of operation with respect to primary care services that are beyond those maintained during a normal business day,

''(5) provides preventive and primary care services in locations that are readily accessible to members of the community,

''(6) provides information concerning educational, social, health, and nutritional services offered by other programs for which enrollees may be eligible, and

''(7) complies with such other requirements relating to access to care as the Secretary or the State may impose.

''(g) COMPLIANCE WITH CERTAIN MATERNITY AND MENTAL HEALTH REQUIREMENTS.—Each medicaid managed care organization shall comply with the requirements of subpart 2 of part A of title XXVII of the Public Health Service Act insofar as such requirements apply with respect to a health insurance issuer that offers group health insurance coverage.

''(h) TREATMENT OF CHILDREN WITH SPECIAL HEALTH CARE NEEDS.—

''(1) IN GENERAL.—In the case of an enrollee of a managed care entity who is a child described in section 1941(e)(1)—

''(A) if any medical assistance specified in the contract with the State is identified in a treatment plan prepared for the enrollee, the managed care entity shall provide (or arrange to be provided) such assistance in accordance with the treatment plan either—

''(i) by referring the enrollee to a pediatric health care provider who is trained and experienced in the provision of such assistance and who has a contract with the managed care entity to provide such assistance; or

''(ii) if appropriate services are not available through the managed care entity, permitting such enrollee to seek appropriate specialty services from pediatric health care providers outside of or apart from the managed care entity, and

''(B) the managed care entity shall require each health care provider with whom the managed care entity has entered into an agreement to provide medical assistance to enrollees to furnish the medical assistance specified in such enrollee's treatment plan to the extent the health care provider is able to carry out such treatment plan.

''(2) PRIOR AUTHORIZATION.—An enrollee referred for treatment under paragraph (1)(A)(i), or permitted to seek treatment outside of or apart from the managed care entity under paragraph (1)(A)(ii) shall be deemed to have obtained any prior authorization required by the entity.

**''SEC. 1943. REQUIREMENTS FOR ACCESS TO EMERGENCY CARE.**

''(a) IN GENERAL.—A managed care entity shall—

''(1) provide coverage for emergency services (as defined in subsection (c)) without regard to prior authorization or the emergency care provider's contractual relationship with the organization; and

''(2) comply with such guidelines as the Secretary shall prescribe relating to promoting efficient and timely coordination of appropriate maintenance and post-stabilization care of an enrollee after the enrollee has been determined to be stable in accordance with section 1867.

''(b) CONTENT OF GUIDELINES.—The guidelines prescribed under subsection (a) shall provide that—

''(1) a provider of emergency services shall make a documented good faith effort to contact the managed care entity in a timely fashion from the point at which the individual is stabilized to request approval for medically necessary post-stabilization care,

''(2) the entity shall respond in a timely fashion to the initial contact with the entity with a decision as to whether the services for which approval is requested will be authorized, and

''(3) if a denial of a request is communicated, the entity shall, upon request from the treating physician, arrange for a physician who is authorized by the entity to review the denial to communicate directly with the treating physician in a timely fashion.

''(c) DEFINITION OF EMERGENCY SERVICES.—In this section—

''(1) IN GENERAL.—The term 'emergency services' means, with respect to an individual enrolled with a managed care entity, covered inpatient and outpatient services that—

''(A) are furnished by a provider that is qualified to furnish such services under this title, and

''(B) are needed to evaluate or stabilize an emergency medical condition (as defined in subparagraph (B)).

''(2) EMERGENCY MEDICAL CONDITION BASED ON PRUDENT LAYPERSON.—The term 'emergency medical condition' means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in—

''(A) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.

**''SEC. 1944. OTHER BENEFICIARY PROTECTIONS.**

''(a) PROTECTING ENROLLEES AGAINST THE INSOLVENCY OF MANAGED CARE ENTITIES AND AGAINST THE FAILURE OF THE STATE TO PAY SUCH ENTITIES.—Each managed care entity shall provide that an individual eligible for medical assistance under the State plan under this title who is enrolled with the entity may not be held liable—

''(1) for the debts of the managed care entity, in the event of the entity's insolvency,

''(2) for services provided to the individual—

''(A) in the event of the entity failing to receive payment from the State for such services; or

''(B) in the event of a health care provider with a contractual or other arrangement with the entity failing to receive payment from the State or the managed care entity for such services, or

''(3) for the debts of any health care provider with a contractual or other arrangement with the entity to provide services to the individual, in the event of the insolvency of the health care provider.

''(b) PROTECTION OF BENEFICIARIES AGAINST BALANCE BILLING THROUGH SUBCONTRACTORS.—

''(1) IN GENERAL.—Any contract between a managed care entity that has an agreement with a State under this title and another entity under which the other entity (or any other entity pursuant to the contract) provides directly or indirectly for the provision of services to beneficiaries under the agreement with the State

*shall include such provisions as the Secretary may require in order to assure that the other entity complies with balance billing limitations and other requirements of this title (such as limitation on withholding of services) as they would apply to the managed care entity if such entity provided such services directly and not through a contract with another entity.*

*''(2) APPLICATION OF SANCTIONS FOR VIOLATIONS.—The provisions of section 1128A(b)(2)(B) and 1128B(d)(1) shall apply with respect to entities contracting directly or indirectly with a managed care entity (with a contract with a State under this title) for the provision of services to beneficiaries under such a contract in the same manner as such provisions would apply to the managed care entity if it provided such services directly and not through a contract with another entity.*

***''SEC. 1945. ASSURING QUALITY CARE.***

*''(a) EXTERNAL INDEPENDENT REVIEW OF MANAGED CARE ENTITY ACTIVITIES.—*

*''(1) REVIEW OF MEDICAID MANAGED CARE ORGANIZATION CONTRACT.—*

*''(A) IN GENERAL.—Except as provided in paragraph (2), each medicaid managed care organization shall be subject to an annual external independent review of the quality outcomes and timeliness of, and access to, the items and services specified in such organization's contract with the State under section 1941(a)(1)(B). Such review shall specifically evaluate the extent to which the medicaid managed care organization provides such services in a timely manner.*

*''(B) CONTENTS OF REVIEW.—An external independent review conducted under this subsection shall include—*

*''(i) a review of the entity's medical care, through sampling of medical records or other appropriate methods, for indications of quality of care and inappropriate utilization (including overutilization) and treatment,*

*''(ii) a review of enrollee inpatient and ambulatory data, through sampling of medical records or other appropriate methods, to determine trends in quality and appropriateness of care,*

*''(iii) notification of the entity and the State when the review under this paragraph indicates inappropriate care, treatment, or utilization of services (including overutilization), and*

*''(iv) other activities as prescribed by the Secretary or the State.*

*''(C) USE OF PROTOCOLS.—An external independent review conducted under this subsection on and after January 1, 1999, shall use protocols that have been developed, tested, and validated by the Secretary and that are at least as rigorous as those used by the National Committee on Quality Assurance as of the date of the enactment of this section.*

*''(D) AVAILABILITY OF RESULTS.—The results of each external independent review conducted under this paragraph shall be available to participating health care providers, enrollees, and potential enrollees of the medicaid managed care organization, except that the results may not be made available in a manner that discloses the identity of any individual patient.*

*''(2) DEEMED COMPLIANCE.—*

*''(A) MEDICARE ORGANIZATIONS.—The requirements of paragraph (1) shall not apply with respect to a medicaid managed care organization if the organization is an eligible organization with a contract in effect under section 1876 or under part C of title XVIII.*

*''(B) PRIVATE ACCREDITATION.—*

*''(i) IN GENERAL.—The requirements of paragraph (1) shall not apply with respect to a medicaid managed care organization if—*

*''(I) the organization is accredited by an organization meeting the requirements described in subparagraph (C)), and*

*''(II) the standards and process under which the organization is accredited meet such requirements as are established under clause (ii), without regard to whether or not the time requirement of such clause is satisfied.*

*''(ii) STANDARDS AND PROCESS.—Not later than 180 days after the date of the enactment of this section, the Secretary shall specify requirements for the standards and process under which a medicaid managed care organization is accredited by an organization meeting the requirements of subparagraph (B).*

*''(C) ACCREDITING ORGANIZATION.—An accrediting organization meets the requirements of this subparagraph if the organization—*

*''(i) is a private, nonprofit organization,*

*''(ii) exists for the primary purpose of accrediting managed care organizations or health care providers, and*

*''(iii) is independent of health care providers or associations of health care providers.*

*''(3) REVIEW OF PRIMARY CARE CASE MANAGER CONTRACT.—Each primary care case manager shall be subject to an annual external independent review of the quality and timeliness of, and access to, the items and services specified in the contract entered into between the State and the primary care case manager under section 1941(a)(1)(B).*

*''(4) USE OF VALIDATION SURVEYS.—The Secretary shall conduct surveys each year to validate external reviews of the number of managed care entities in the year. In conducting such surveys the Secretary shall use the same protocols as were used in preparing the external reviews. If an external review finds that an individual managed care entity meets applicable requirements, but the Secretary determines that the entity does not meet such requirements, the Secretary's determination as to the entity's noncompliance with such requirements is binding and supersedes that of the previous survey.*

*''(b) FEDERAL MONITORING RESPONSIBILITIES.—The Secretary shall review the external independent reviews conducted pursuant to subsection (a) and shall monitor the effectiveness of the State's monitoring of managed care entities and any followup activities required under this part. If the Secretary determines that a State's monitoring and followup activities are not adequate to ensure that the requirements of such section are met, the Secretary shall undertake appropriate followup activities to ensure that the State improves its monitoring and followup activities.*

*''(c) PROVIDING INFORMATION ON SERVICES.—*

*''(1) REQUIREMENTS FOR MEDICAID MANAGED CARE ORGANIZATIONS.—Each medicaid managed care organization shall provide to the State complete and timely information concerning the following:*

*''(A) The services that the organization provides to (or arranges to be provided to) individuals eligible for medical assistance under the State plan under this title.*

*''(B) The identity, locations, qualifications, and availability of participating health care providers.*

*''(C) The rights and responsibilities of enrollees.*

*''(D) The services provided by the organization which are subject to prior authorization by the organization as a condition of coverage (in accordance with subsection (d)).*

*''(E) The procedures available to an enrollee and a health care provider to appeal the failure of the organization to cover a service.*

*''(F) The performance of the organization in serving individuals eligible for medical assistance under the State plan under this title.*

*Such information shall be provided in a form consistent with the reporting of similar information by eligible organizations under section 1876 or under part C of title XVIII.*

*''(2) REQUIREMENTS FOR PRIMARY CARE CASE MANAGERS.—Each primary care case manager shall—*

*''(A) provide to the State (at least at such frequency as the Secretary may require), complete and timely information concerning the services that the primary care case manager provides to (or arranges to be provided to) individuals eligible for medical assistance under the State plan under this title,*

*''(B) make available to enrollees and potential enrollees information concerning services available to the enrollee for which prior authorization by the primary care case manager is required,*

*''(C) provide enrollees and potential enrollees information regarding all items and services that are available to enrollees under the contract between the State and the primary care case manager that are covered either directly or through a method of referral and prior authorization, and*

*''(D) provide assurances that such entities and their professional personnel are licensed as required by State law and qualified to provide case management services, through methods such as ongoing monitoring of compliance with applicable requirements and providing information and technical assistance.*

*''(3) REQUIREMENTS FOR BOTH MEDICAID MANAGED CARE ORGANIZATIONS AND PRIMARY CARE CASE MANAGERS.—Each managed care entity shall provide the State with aggregate encounter data for all items and services, including early and periodic screening, diagnostic, and treatment services under section 1905(r) furnished to individuals under 21 years of age. Any such data provided may be audited by the State.*

*''(d) CONDITIONS FOR PRIOR AUTHORIZATION.—Subject to section 1943, a managed care entity may require the approval of medical assistance for nonemergency services before the assistance is furnished to an enrollee only if the system providing for such approval provides that such decisions are made in a timely manner, depending upon the urgency of the situation.*

*''(e) PATIENT ENCOUNTER DATA.—Each medicaid managed care organization shall maintain sufficient patient encounter data to identify the health care provider who delivers services to patients and to otherwise enable the State plan to meet the requirements of section 1902(a)(27) and shall submit such data to the State or the Secretary upon request. The medicaid managed care organization shall incorporate such information in the maintenance of patient encounter data with respect to such health care provider.*

*''(f) INCENTIVES FOR HIGH QUALITY MANAGED CARE ENTITIES.—The Secretary and the State may establish a program to reward, through public recognition, incentive payments, or enrollment of additional individuals (or combinations of such rewards), managed care entities that provide the highest quality care to individuals eligible for medical assistance under the State plan under this title who are enrolled with such entities. For purposes of section 1903(a)(7), proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this title.*

*''(g) QUALITY ASSURANCE STANDARDS.—Any contract between a State and a managed care entity shall provide—*

*''(1) that the State agency will develop and implement a State specific quality assessment and improvement strategy, consistent with standards that the Secretary, in consultation with the States, shall establish and monitor (but that shall not preempt any State standards that are more stringent than the standards established under this paragraph), and that includes—*

*''(A) standards for access to care so that covered services are available within reasonable timeframes and in a manner that ensures continuity of care and adequate primary care and specialized services capacity; and*

*''(B) procedures for monitoring and evaluating the quality and appropriateness of care and services to beneficiaries that reflect the full spectrum of populations enrolled in the plan and that include—*

''(i) requirements for provision of quality assurance data to the State using the data and information set that the Secretary, in consultation with the States, shall specify with respect to entities contracting under section 1876 or under part C of title XVIII or alternative data requirements approved by the Secretary;

''(ii) if necessary, an annual examination of the scope and content of the quality improvement strategy; and

''(iii) other aspects of care and service directly related to the improvement of quality of care (including grievance procedures and marketing and information standards),

''(2) that entities entering into such agreements under which payment is made on a prepaid capitated or other risk basis shall be required—

''(A) to submit to the State agency information that demonstrates significant improvement in the care delivered to members;

''(B) to maintain an internal quality assurance program consistent with paragraph (1), and meeting standards that the Secretary, in consultation with the States, shall establish in regulations; and

''(C) to provide effective procedures for hearing and resolving grievances between the entity and members enrolled with the entity under this section, and

''(3) that provision is made, consistent with State law or with regulations under State law, with respect to the solvency of those entities, financial reporting by those entities, and avoidance of waste, fraud, and abuse.

''(h) ANNUAL REPORT ON NON-HEALTH EXPENDITURES.—Each medicaid managed care organization shall annually provide to enrollees a statement disclosing the proportion of the premiums and other revenues received by the organization that are expended for non-health care items and services.

**''SEC. 1946. PROTECTIONS FOR PROVIDERS.**

''(a) TIMELINESS OF PAYMENT.—A medicaid managed care organization shall make payment to health care providers for items and services which are subject to the contract under section 1941(a)(1)(B) and which are furnished to individuals eligible for medical assistance under the State plan under this title who are enrolled with the entity on a timely basis consistent with section 1943 and under the claims payment procedures described in section 1902(a)(37)(A), unless the health care provider and the managed care entity agree to an alternate payment schedule.

''(b) PHYSICIAN INCENTIVE PLANS.—Each medicaid managed care organization shall require that any physician incentive plan covering physicians who are participating in the medicaid managed care organization shall meet the requirements of section 1876(i)(8) and comparable requirements under part C of title XVIII.

''(c) WRITTEN PROVIDER PARTICIPATION AGREEMENTS FOR CERTAIN PROVIDERS.—

''(1) IN GENERAL.—Each medicaid managed care organization that enters into a written provider participation agreement with a provider described in paragraph (2) shall—

''(A) include terms and conditions that are no more restrictive than the terms and conditions that the medicaid managed care organization includes in its agreements with other participating providers with respect to—

''(i) the scope of covered services for which payment is made to the provider;

''(ii) the assignment of enrollees by the organization to the provider;

''(iii) the limitation on financial risk or availability of financial incentives to the provider;

''(iv) accessibility of care;

''(v) professional credentialing and recredentialing;

''(vi) licensure;

''(vii) quality and utilization management;

''(viii) confidentiality of patient records;

''(ix) grievance procedures; and

''(x) indemnification arrangements between the organizations and providers; and

''(B) provide for payment to the provider on a basis that is comparable to the basis on which other providers are paid.

''(2) PROVIDERS DESCRIBED.—The providers described in this paragraph are the following:

''(A) Rural health clinics, as defined in section 1905(l)(1).

''(B) Federally-qualified health centers, as defined in section 1905(l)(2)(B).

''(C) Clinics which are eligible to receive payment for services provided under title X of the Public Health Service Act.

''(d) PAYMENTS TO RURAL HEALTH CLINICS AND FEDERALLY-QUALIFIED HEALTH CENTERS.—Each medicaid managed care organization that has a contract under this title with respect to the provision of services of a rural health clinic or a Federally-qualified health center shall provide, at the election of such clinic or center, that the organization shall provide payments to such a clinic or center for services described in 1905(a)(2)(C) at the rates of payment specified in section 1902(a)(13)(E).

''(e) ANTIDISCRIMINATION.—A managed care entity shall not discriminate with respect to participation, reimbursement, or indemnification as to any provider who is acting within the scope of the provider's license or certification under applicable State law, solely on the basis of such license or certification. This subsection shall not be construed to prohibit a managed care entity from including providers only to the extent necessary to meet the needs of the entity's enrollees or from establishing any measure designed to maintain quality and control costs consistent with the responsibilities of the entity.

**''SEC. 1947. ASSURING ADEQUACY OF PAYMENTS TO MEDICAID MANAGED CARE ORGANIZATIONS AND ENTITIES.**

A State shall find, determine, and make assurances satisfactory to the Secretary that the rates it pays a managed care entity for individuals eligible under the State plan have been determined by an independent actuary that meets the standards for qualification and practice established by the Actuarial Standards Board, to be sufficient and not excessive with respect to the estimated costs of the services provided.

**''SEC. 1948. FRAUD AND ABUSE.**

''(a) PROVISIONS APPLICABLE TO MANAGED CARE ENTITIES.—

''(1) PROHIBITING AFFILIATIONS WITH INDIVIDUALS DEBARRED BY FEDERAL AGENCIES.—

''(A) IN GENERAL.—A managed care entity may not knowingly—

''(i) have a person described in subparagraph (C) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity's equity, or

''(ii) have an employment, consulting, or other agreement with a person described in such subparagraph for the provision of items and services that are significant and material to the entity's obligations under its contract with the State.

''(B) EFFECT OF NONCOMPLIANCE.—If a State finds that a managed care entity is not in compliance with clause (i) or (ii) of subparagraph (A), the State—

''(i) shall notify the Secretary of such noncompliance,

''(ii) may continue an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) directs otherwise, and

''(iii) may not renew or otherwise extend the duration of an existing agreement with the entity unless the Secretary (in consultation with the Inspector General of the Department of Health and Human Services) provides to the State and to the Congress a written statement describing compelling reasons that exist for renewing or extending the agreement.

''(C) PERSONS DESCRIBED.—A person is described in this subparagraph if such person—

''(i) is debarred, suspended, or otherwise excluded from participating in procurement activities under any Federal procurement or nonprocurement program or activity, as provided for in the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355; 108 Stat. 3243), or

''(ii) is an affiliate (as defined in such Act) of a person described in clause (i).

''(2) RESTRICTIONS ON MARKETING.—

''(A) DISTRIBUTION OF MATERIALS.—

''(i) IN GENERAL.—A managed care entity may not distribute directly or through any agent or independent contractor marketing materials within any State—

''(I) without the prior approval of the State, and

''(II) that contain false or materially misleading information.

''(ii) CONSULTATION IN REVIEW OF MARKET MATERIALS.—In the process of reviewing and approving such materials, the State shall provide for consultation with a medical care advisory committee.

''(iii) PROHIBITION.—The State may not enter into or renew a contract with a managed care entity for the provision of services to individuals enrolled under the State plan under this title if the State determines that the entity distributed directly or through any agent or independent contractor marketing materials in violation of clause (i).

''(B) SERVICE MARKET.—A managed care entity shall distribute marketing materials to the entire service area of such entity.

''(C) PROHIBITION OF TIE-INS.—A managed care entity, or any agency of such entity, may not seek to influence an individual's enrollment with the entity in conjunction with the sale of any other insurance.

''(D) PROHIBITING MARKETING FRAUD.—Each managed care entity shall comply with such procedures and conditions as the Secretary prescribes in order to ensure that, before an individual is enrolled with the entity, the individual is provided accurate oral and written and sufficient information to make an informed decision whether or not to enroll.

''(E) PROHIBITION OF COLD CALL MARKETING.—Each managed care entity shall not, directly or indirectly, conduct door-to-door, telephonic, or other 'cold call' marketing of enrollment under this title.

''(b) PROVISIONS APPLICABLE ONLY TO MEDICAID MANAGED CARE ORGANIZATIONS.—

''(1) STATE CONFLICT-OF-INTEREST SAFEGUARDS IN MEDICAID RISK CONTRACTING.—A medicaid managed care organization may not enter into a contract with any State under section 1941(a)(1)(B) unless the State has in effect conflict-of-interest safeguards with respect to officers and employees of the State with responsibilities relating to contracts with such organizations or to the default enrollment process described in section 1941(a)(1)(F) that are at least as effective as the Federal safeguards provided under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), against conflicts of interest that apply with respect to Federal procurement officials with comparable responsibilities with respect to such contracts.

''(2) REQUIRING DISCLOSURE OF FINANCIAL INFORMATION.—In addition to any requirements applicable under paragraph (27) or (35) of section 1902(a), a medicaid managed care organization shall—

''(A) report to the State such financial information as the State may require to demonstrate that—

''(i) the organization has the ability to bear the risk of potential financial losses and otherwise has a fiscally sound operation;

''(ii) the organization uses the funds paid to it by the State for activities consistent with the requirements of this title and the contract between the State and organization; and

''(iii) the organization does not place an individual physician, physician group, or other health care provider at substantial risk for services not provided by such physician, group, or health care provider, by providing adequate protection to limit the liability of such physician,

group, or health care provider, through measures such as stop loss insurance or appropriate risk corridors,

''(B) agree that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the organization (and of any subcontractor) relating to the information reported pursuant to subparagraph (A) and any information required to be furnished under section paragraphs (27) or (35) of section 1902(a),

''(C) make available to the Secretary and the State a description of each transaction described in subparagraphs (A) through (C) of section 1318(a)(3) of the Public Health Service Act between the organization and a party in interest (as defined in section 1318(b) of such Act),

''(D) agree to make available to its enrollees upon reasonable request—

''(i) the information reported pursuant to subparagraph (A); and

''(ii) the information required to be disclosed under sections 1124 and 1126,

''(E) comply with subsections (a) and (c) of section 1318 of the Public Health Service Act (relating to disclosure of certain financial information) and with the requirement of section 1301(c)(8) of such Act (relating to liability arrangements to protect members), and

''(F) notify the State of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties.

Each State is required to conduct audits on the books and records of at least 1 percent of the number of medicaid managed care organizations operating in the State.

''(3) ADEQUATE PROVISION AGAINST RISK OF INSOLVENCY.—

''(A) ESTABLISHMENT OF STANDARDS.—The Secretary shall establish standards, including appropriate equity standards, under which each medicaid managed care organization shall make adequate provision against the risk of insolvency.

''(B) CONSIDERATION OF OTHER STANDARDS.—In establishing the standards described in subparagraph (A), the Secretary shall consider solvency standards applicable to eligible organizations with a risk-sharing contract under section 1876 or under part C of title XVIII.

''(C) MODEL CONTRACT ON SOLVENCY.—At the earliest practicable time after the date of the enactment of this section, the Secretary shall issue guidelines concerning solvency standards for risk contracting entities and subcontractors of such risk contracting entities. Such guidelines shall take into account characteristics that may differ among risk contracting entities, including whether such an entity is at risk for inpatient hospital services.

''(4) REQUIRING REPORT ON NET EARNINGS AND ADDITIONAL BENEFITS.—Each medicaid managed care organization shall submit a report to the State not later than 12 months after the close of a contract year containing the most recent audited financial statement of the organization's net earnings and consistent with generally accepted accounting principles.

''(c) DISCLOSURE OF OWNERSHIP AND RELATED INFORMATION.—Each medicaid managed care organization shall provide for disclosure of information in accordance with section 1124.

''(d) DISCLOSURE OF TRANSACTION INFORMATION.—

''(1) IN GENERAL.—Each medicaid managed care organization which is not a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) shall report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General, a description of transactions between the organization and a party in interest (as defined in section 1318(b) of such Act), including the following transactions:

''(A) Any sale or exchange, or leasing of any property between the organization and such a party.

''(B) Any furnishing for consideration of goods, services (including management services), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

''(C) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

''(2) DISCLOSURE TO ENROLLEES.—Each such organization shall make the information reported pursuant to paragraph (1) available to its enrollees upon reasonable request.

''(e) CONTRACT OVERSIGHT.—

''(1) IN GENERAL.—The Secretary must provide prior review and approval for contracts under this part with a medicaid managed care organization providing for expenditures under this title in excess of $1,000,000.

''(2) INSPECTOR GENERAL REVIEW.—As part of such approval process, the Inspector General in the Department of Health and Human Services, effective October 1, 1997, shall make a determination (to the extent practicable) as to whether persons with an ownership interest (as defined in section 1124(a)(3)) or an officer, director, agent, or managing employee (as defined in section 1126(b)) of the organization are or have been described in subsection (a)(1)(C) based on a ground relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct or obstruction of an investigation.

''(f) LIMITATION ON AVAILABILITY OF FFP FOR USE OF ENROLLMENT BROKERS.—Amounts expended by a State for the use of an enrollment broker in marketing managed care entities to eligible individuals under this title shall be considered, for purposes of section 1903(a)(7), to be necessary for the proper and efficient administration of the State plan but only if the following conditions are met with respect to the broker:

''(1) The broker is independent of any such entity and of any health care providers (whether or not any such provider participates in the State plan under this title) that provide coverage of services in the same State in which the broker is conducting enrollment activities.

''(2) No person who is an owner, employee, consultant, or has a contract with the broker either has any direct or indirect financial interest with such an entity or health care provider or has been excluded from participation in the program under this title or title XVIII or debarred by any Federal agency, or subject to a civil money penalty under this Act.

''(g) USE OF UNIQUE PHYSICIAN IDENTIFIER FOR PARTICIPATING PHYSICIANS.—Each medicaid managed care organization shall require each physician providing services to enrollees eligible for medical assistance under the State plan under this title to have a unique identifier in accordance with the system established under section 1173(b).

''(h) SECRETARIAL RECOVERY OF FFP FOR CAPITATION PAYMENTS FOR INSOLVENT MANAGED CARE ENTITIES.—The Secretary shall provide for the recovery and offset against any amount owed a State under section 1903(a)(1) in an amount equal to the amounts paid to the State for medical assistance provided under such section, for expenditures for capitation payments to a managed care entity that becomes insolvent or for services contracted for with, but not provided by, such organization.

**''SEC. 1949. SANCTIONS FOR NONCOMPLIANCE BY MANAGED CARE ENTITIES.**

''(a) USE OF INTERMEDIATE SANCTIONS BY THE STATE TO ENFORCE REQUIREMENTS.—

''(1) IN GENERAL.—Each State shall establish intermediate sanctions, which may include any of the types described in subsection (b) other than the termination of a contract with a managed care entity, which the State may impose against a managed care entity with a contract under section 1941(a)(1)(B) if the entity—

''(A) fails substantially to provide medically necessary items and services that are required (under law or under such entity's contract with the State) to be provided to an enrollee covered under the contract,

''(B) imposes premiums or charges on enrollees in excess of the premiums or charges permitted under this title,

''(C) acts to discriminate among enrollees on the basis of their health status or requirements for health care services, including expulsion or refusal to reenroll an individual, except as permitted by this part, or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment with the entity by eligible individuals whose medical condition or history indicates a need for substantial future medical services,

''(D) misrepresents or falsifies information that is furnished—

''(i) to the Secretary or the State under this part; or

''(ii) to an enrollee, potential enrollee, or a health care provider under such sections, or

''(E) fails to comply with the requirements of section 1876(i)(8) (or comparable requirements under part C of title XVIII) or this part.

''(2) RULE OF CONSTRUCTION.—For purposes of paragraph (1)(A), the term 'medically necessary' shall not be construed as requiring an abortion be performed for any individual, except if necessary to save the life of the mother or if a pregnancy is the result of an act of rape or incest.

''(b) INTERMEDIATE SANCTIONS.—The sanctions described in this subsection are as follows:

''(1) Civil money penalties as follows:

''(A) Except as provided in subparagraph (B), (C), or (D), not more than $25,000 for each determination under subsection (a).

''(B) With respect to a determination under paragraph (3) or (4)(A) of subsection (a), not more than $100,000 for each such determination.

''(C) With respect to a determination under subsection (a)(2), double the excess amount charged in violation of such subsection (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned).

''(D) Subject to subparagraph (B), with respect to a determination under subsection (a)(3), $15,000 for each individual not enrolled as a result of a practice described in such subsection.

''(2) The appointment of temporary management—

''(A) to oversee the operation of the medicaid-only managed care entity upon a finding by the State that there is continued egregious behavior by the plan, or

''(B) to assure the health of the entity's enrollees, if there is a need for temporary management while—

''(i) there is an orderly termination or reorganization of the managed care entity; or

''(ii) improvements are made to remedy the violations found under subsection (a),

except that temporary management under this paragraph may not be terminated until the State has determined that the managed care entity has the capability to ensure that the violations shall not recur.

''(3) Permitting individuals enrolled with the managed care entity to terminate enrollment without cause, and notifying such individuals of such right to terminate enrollment.

''(4) Suspension or default of all enrollment of individuals under this title after the date the Secretary or the State notifies the entity of a determination of a violation of any requirement of this part.

''(5) Suspension of payment to the entity under this title for individuals enrolled after the

*date the Secretary or State notifies the entity of such a determination and until the Secretary or State is satisfied that the basis for such determination has been corrected and is not likely to recur.*

*''(c) TREATMENT OF CHRONIC SUBSTANDARD ENTITIES.—In the case of a managed care entity which has repeatedly failed to meet the requirements of sections 1942 through 1946, the State shall (regardless of what other sanctions are provided) impose the sanctions described in paragraphs (2) and (3) of subsection (b).*

*''(d) AUTHORITY TO TERMINATE CONTRACT.—In the case of a managed care entity which has failed to meet the requirements of this part, the State shall have the authority to terminate its contract with such entity under section 1941(a)(1)(B) and to enroll such entity's enrollees with other managed care entities (or to permit such enrollees to receive medical assistance under the State plan under this title other than through a managed care entity).*

*''(e) AVAILABILITY OF SANCTIONS TO THE SECRETARY.—*

*''(1) INTERMEDIATE SANCTIONS.—In addition to the sanctions described in paragraph (2) and any other sanctions available under law, the Secretary may provide for any of the sanctions described in subsection (b) if the Secretary determines that a managed care entity with a contract under section 1941(a)(1)(B) fails to meet any of the requirements of this part.*

*''(2) DENIAL OF PAYMENTS TO THE STATE.—The Secretary may deny payments to the State for medical assistance furnished under the contract under section 1941(a)(1)(B) for individuals enrolled after the date the Secretary notifies a managed care entity of a determination under subsection (a) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.*

*''(f) DUE PROCESS FOR MANAGED CARE ENTITIES.—*

*''(1) AVAILABILITY OF HEARING PRIOR TO TERMINATION OF CONTRACT.—A State may not terminate a contract with a managed care entity under section 1941(a)(1)(B) unless the entity is provided with a hearing prior to the termination.*

*''(2) NOTICE TO ENROLLEES OF TERMINATION HEARING.—A State shall notify all individuals enrolled with a managed care entity which is the subject of a hearing to terminate the entity's contract with the State of the hearing and that the enrollees may immediately disenroll with the entity without cause.*

*''(3) OTHER PROTECTIONS FOR MANAGED CARE ENTITIES AGAINST SANCTIONS IMPOSED BY STATE.—Before imposing any sanction against a managed care entity other than termination of the entity's contract, the State shall provide the entity with notice and such other due process protections as the State may provide, except that a State may not provide a managed care entity with a pre-termination hearing before imposing the sanction described in subsection (b)(2).*

*''(4) IMPOSITION OF CIVIL MONETARY PENALTIES BY SECRETARY.—The provisions of section 1128A (other than subsections (a) and (b)) shall apply with respect to a civil money penalty imposed by the Secretary under subsection (b)(1) in the same manner as such provisions apply to a penalty or proceeding under section 1128A.*

***''SEC. 1950. DEFINITIONS; MISCELLANEOUS PROVISIONS.***

*''(a) DEFINITIONS.—For purposes of this title:*

*''(1) MANAGED CARE ENTITY.—The term 'managed care entity' means—*

*''(A) a medicaid managed care organization; or*

*''(B) a primary care case manager.*

*''(2) MEDICAID MANAGED CARE ORGANIZATION.—The term 'medicaid managed care organization' means a health maintenance organization, an eligible organization with a contract under section 1876 or under part C of title XVIII, a provider sponsored network, or any other organization which is organized under the laws of a State, has made adequate provision (as determined under standards established for purposes of eligible organizations under section 1876 or under part C of title XVIII, and through its capitalization or otherwise) against the risk of insolvency, and provides or arranges for the provision of one or more items and services to individuals eligible for medical assistance under the State plan under this title in accordance with a contract with the State under section 1941(a)(1)(B).*

*''(3) PRIMARY CARE CASE MANAGER.—*

*''(A) IN GENERAL.—The term 'primary care case manager' has the meaning given such term in section 1905(t)(2).''.*

*(b) STUDIES AND REPORTS.—*

*(1) REPORT ON PUBLIC HEALTH SERVICES.—*

*(A) IN GENERAL.—Not later than January 1, 1998, the Secretary of Health and Human Services (in this subsection referred to as the ''Secretary'') shall report to the Committee on Finance of the Senate and the Committee on Commerce of the House of Representatives on the effect of managed care entities (as defined in section 1950(a)(1) of the Social Security Act) on the delivery of and payment for the services traditionally provided through providers described in section 1941(a)(2)(B)(i) of such Act.*

*(B) CONTENTS OF REPORT.—The report referred to in subparagraph (A) shall include—*

*(i) information on the extent to which enrollees with eligible managed care entities seek services at local health departments, public hospitals, and other facilities that provide care without regard to a patient's ability to pay;*

*(ii) information on the extent to which the facilities described in clause (i) provide services to enrollees with eligible managed care entities without receiving payment;*

*(iii) information on the effectiveness of systems implemented by facilities described in clause (i) for educating such enrollees on services that are available through eligible managed care entities with which such enrollees are enrolled;*

*(iv) to the extent possible, identification of the types of services most frequently sought by such enrollees at such facilities; and*

*(v) recommendations about how to ensure the timely delivery of the services traditionally provided through providers described in section 1941(a)(2)(B)(i) of the Social Security Act to enrollees of managed care entities and how to ensure that local health departments, public hospitals, and other facilities are adequately compensated for the provision of such services to such enrollees.*

*(2) REPORT ON PAYMENTS TO HOSPITALS.—*

*(A) IN GENERAL.—Not later than October 1 of each year, beginning with October 1, 1998, the Secretary and the Comptroller General shall analyze and submit a report to the Committee on Finance of the Senate and the Committee on Commerce of the House of Representatives on rates paid for hospital services under managed care entities under contracts under section 1941(a)(1)(B) of the Social Security Act.*

*(B) CONTENTS OF REPORT.—The information in the report described in subparagraph (A) shall—*

*(i) be organized by State, type of hospital, type of service; and*

*(ii) include a comparison of rates paid for hospital services under managed care entities with rates paid for hospital services furnished to individuals who are entitled to benefits under a State plan under title XIX of the Social Security Act and are not enrolled with such entities.*

*(3) REPORTS BY STATES.—Each State shall transmit to the Secretary, at such time and in such manner as the Secretary determines appropriate, the information on hospital rates submitted to such State under section 1947(b)(2) of the Social Security Act.*

*(4) INDEPENDENT STUDY AND REPORT ON QUALITY ASSURANCE AND ACCREDITATION STANDARDS.—The Institute of Medicine of the National Academy of Sciences shall conduct a study and analysis of the quality assurance programs and accreditation standards applicable to managed care entities operating in the private sector or to such entities that operate under contracts under the medicare program under title XVIII of the Social Security Act to determine if such programs and standards include consideration of the accessibility and quality of the health care items and services delivered under such contracts to low-income individuals.*

*(c) CONFORMING AMENDMENTS.—*

*(1) REPEAL OF CURRENT REQUIREMENTS.—*

*(A) IN GENERAL.—Except as provided in subparagraph (B), section 1903(m) (42 U.S.C. 1396b(m)) is repealed on the date of the enactment of this Act.*

*(B) EXISTING CONTRACTS.—In the case of any contract under section 1903(m) of such Act which is in effect on the day before the date of the enactment of this Act, the provisions of such section shall apply to such contract until the earlier of—*

*(i) the day after the date of the expiration of the contract; or*

*(ii) the date which is 1 year after the date of the enactment of this Act.*

*(2) FEDERAL FINANCIAL PARTICIPATION.—*

*(A) CLARIFICATION OF APPLICATION OF FFP DENIAL RULES TO PAYMENTS MADE PURSUANT TO MANAGED CARE ENTITIES.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended by adding at the end the following new sentence: ''Paragraphs (1)(A), (1)(B), (2), (5), and (12) shall apply with respect to items or services furnished and amounts expended by or through a managed care entity (as defined in section 1950(a)(1)) in the same manner as such paragraphs apply to items or services furnished and amounts expended directly by the State.''.*

*(B) FFP FOR EXTERNAL QUALITY REVIEW ORGANIZATIONS.—Section 1903(a)(3)(C) (42 U.S.C. 1396b(a)(3)(C)) is amended—*

*(i) by inserting ''(i)'' after ''(C)'', and*

*(ii) by adding at the end the following new clause:*

*''(ii) 75 percent of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of independent external reviews of managed care entities (as defined in section 1950(a)(1)) by external quality review organizations, but only if such organizations conduct such reviews under protocols approved by the Secretary and only in the case of such organizations that meet standards established by the Secretary relating to the independence of such organizations from agencies responsible for the administration of this title or eligible managed care entities; and''.*

*(3) EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN PROGRAM.—Section 1128(b)(6)(C) (42 U.S.C. 1320a–7(b)(6)(C)) is amended—*

*(A) in clause (i), by striking ''a health maintenance organization (as defined in section 1903(m))'' and inserting ''a managed care entity, as defined in section 1950(a)(1),''; and*

*(B) in clause (ii), by inserting ''section 1115 or'' after ''approved under''.*

*(4) STATE PLAN REQUIREMENTS.—Section 1902 (42 U.S.C. 1396a) is amended—*

*(A) in subsection (a)(30)(C), by striking ''section 1903(m)'' and inserting ''section 1941(a)(1)(B)''; and*

*(B) in subsection (a)(57), by striking ''health maintenance organization (as defined in section 1903(m)(1)(A))'' and inserting ''managed care entity, as defined in section 1950(a)(1)'';*

*(C) in subsection (e)(2)(A), by striking ''or with an entity described in paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1903(m) under a contract described in section 1903(m)(2)(A)'' and inserting ''or with a managed care entity, as defined in section 1950(a)(1);*

*(D) in subsection (p)(2)—*

(i) by striking ''a health maintenance organization (as defined in section 1903(m))'' and inserting ''a managed care entity, as defined in section 1950(a)(1),'';

(ii) by striking ''an organization'' and inserting ''an entity''; and

(iii) by striking ''any organization'' and inserting ''any entity''; and

(E) in subsection (w)(1), by striking ''sections 1903(m)(1)(A) and'' and inserting ''section''.

(5) PAYMENT TO STATES.—Section 1903(w)(7)(A)(viii) (42 U.S.C. 1396b(w)(7)(A)(viii)) is amended to read as follows:

''(viii) Services of a managed care entity with a contract under section 1941(a)(1)(B).''.

(6) USE OF ENROLLMENT FEES AND OTHER CHARGES.—Section 1916 (42 U.S.C. 1396o) is amended in subsections (a)(2)(D) and (b)(2)(D) by striking ''a health maintenance organization (as defined in section 1903(m))'' and inserting ''a managed care entity, as defined in section 1950(a)(1),'' each place it appears.

(7) EXTENSION OF ELIGIBILITY FOR MEDICAL ASSISTANCE.—Section 1925(b)(4)(D)(iv) (42 U.S.C. 1396r–6(b)(4)(D)(iv)) is amended to read as follows:

''(iv) ENROLLMENT WITH MANAGED CARE ENTITY.—Enrollment of the caretaker relative and dependent children with a managed care entity, as defined in section 1950(a)(1), less than 50 percent of the membership (enrolled on a prepaid basis) of which consists of individuals who are eligible to receive benefits under this title (other than because of the option offered under this clause). The option of enrollment under this clause is in addition to, and not in lieu of, any enrollment option that the State might offer under subparagraph (A)(i) with respect to receiving services through a managed care entity in accordance with part B.''.

(8) PAYMENT FOR COVERED OUTPATIENT DRUGS.—Section 1927(j)(1) (42 U.S.C. 1396r–8(j)(1)) is amended by striking ''***Health Maintenance Organizations, including those organizations that contract under section 1903(m),'' and inserting ''health maintenance organizations and medicaid managed care organizations, as defined in section 1950(a)(2),''.

(9) APPLICATION OF SANCTIONS FOR BALANCED BILLING THROUGH SUBCONTRACTORS.—(A) Section 1128A(b)(2)(B) (42 U.S.C. 1320a–7a(b)) is amended by inserting '', including section 1944(b)'' after ''title XIX''.

(B) Section 1128B(d)(1) (42 U.S.C. 1320a–7b(d)(1)) is amended by inserting ''or, in the case of an individual enrolled with a managed care entity under part B of title XIX, the applicable rates established by the entity under the agreement with the State agency under such part'' after ''established by the State''.

(10) REPEAL OF CERTAIN RESTRICTIONS ON OBSTETRICAL AND PEDIATRIC PROVIDERS.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended by striking paragraph (12).

(11) DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE FOR CERTAIN FAMILIES.—Section 4745(a)(5)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1396a note) is amended by striking ''(except section 1903(m)'' and inserting ''(except part B)''.

(12) CONFORMING AMENDMENT FOR DISCLOSURE REQUIREMENTS FOR MANAGED CARE ENTITIES.—Section 1124(a)(2)(A) (42 U.S.C. 1320a–3(a)(2)(A)) is amended by inserting ''managed care entity under title XIX,'' after ''renal dialysis facility,''.

(13) ELIMINATION OF REGULATORY PAYMENT CAP.—The Secretary of Health and Human Services may not, under the authority of section 1902(a)(30)(A) of the Social Security Act or any other provision of title XIX of such Act, impose a limit by regulation on the amount of the capitation payments that a State may make to qualified entities under such title, and section 447.361 of title 42, Code of Federal Regulations (relating to upper limits of payment: risk contracts), is hereby nullified.

(14) CONTINUATION OF ELIGIBILITY.—Section 1902(e)(2) (42 U.S.C. 1396a(e)(2)) is amended to read as follows:

''(2) For provision providing for extended liability in the case of certain beneficiaries enrolled with managed care entities, see section 1941(c).''.

(15) CONFORMING AMENDMENTS TO FREEDOM-OF-CHOICE PROVISIONS.—Section 1902(a)(23) (42 U.S.C. 1396a(a)(23)) is amended—

(A) in the matter preceding subparagraph (A), by striking ''subsection (g) and in section 1915'' and inserting ''subsection (g), section 1915, and section 1941,''; and

(B) in subparagraph (B), by striking ''a health maintenance organization, or a'' and inserting ''or with a managed care entity, as defined in section 1950(a)(1), or''.

(d) EFFECTIVE DATE; STATUS OF WAIVERS.—

(1) EFFECTIVE DATE.—Except as provided in paragraph (2), the amendments made by this section shall apply to medical assistance furnished—

(A) during quarters beginning on or after October 1, 1997; or

(B) in the case of assistance furnished under a contract described in subsection (c)(1)(B), during quarters beginning after the earlier of—

(i) the date of the expiration of the contract; or

(ii) the expiration of the 1-year period which begins on the date of the enactment of this Act.

(2) APPLICATION TO WAIVERS.—If any waiver granted to a State under section 1115 or 1915 of the Social Security Act (42 U.S.C. 1315, 1396n), or otherwise, which relates to the provision of medical assistance under a State plan under title XIX of the such Act (42 U.S.C. 1396 et seq.), is in effect or approved by the Secretary of Health and Human Services as of the applicable effective date described in paragraph (1), the amendments made by this section shall not apply with respect to the State before the expiration (determined without regard to any extensions) of the waiver to the extent such amendments are inconsistent with the terms of the waiver.

**SEC. 5702. PRIMARY CARE CASE MANAGEMENT SERVICES AS STATE OPTION WITHOUT NEED FOR WAIVER.**

(a) OPTIONAL COVERAGE AS PART OF MEDICAL ASSISTANCE.—

(1) IN GENERAL.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(A) by striking ''and'' at the end of paragraph (24);

(B) by redesignating paragraph (25) as paragraph (26); and

(C) by inserting after paragraph (24) the following new paragraph:

''(25) primary care case management services (as defined in subsection (t)); and''.

(2) CONFORMING AMENDMENTS.—

(A) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking ''through (24)'' and inserting ''through (25)''.

(B) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking ''through (25)'' and inserting ''through (26)''.

(b) PRIMARY CARE CASE MANAGEMENT SERVICES DEFINED.—Section 1905 (42 U.S.C. 1396d)) is amended by adding at the end the following new subsection:

''(t)(1) The term 'primary care case management services' means case-management related services (including coordination and monitoring of health care services) provided by a primary care case manager under a primary care case management contract.

''(2)(A) The term 'primary care case manager' means, with respect to a primary care case management contract, a provider described in subparagraph (B).

''(B) A provider described in this subparagraph is—

''(i) a physician, a physician group practice, or an entity employing or having other arrangements with physicians who provide case management services; or

''(ii) at State option—

''(I) a nurse practitioner (as described in section 1905(a)(21));

''(II) a certified nurse-midwife (as defined in section 1861(gg)(2)); or

''(III) a physician assistant (as defined in section 1861(aa)(5)).

''(3) The term 'primary care case management contract' means a contract with a State agency under which a primary care case manager undertakes to locate, coordinate, and monitor covered primary care, covered primary care (and such other covered services as may be specified under the contract) to all individuals enrolled with the primary care case manager, and that provides for—

''(A) reasonable and adequate hours of operation, including 24-hour availability of information, referral, and treatment with respect to medical emergencies;

''(B) restriction of enrollment to individuals residing sufficiently near a service delivery site of the entity to be able to reach that site within a reasonable time using available and affordable modes of transportation;

''(C) employment of, or contracts or other arrangements with, sufficient numbers of physicians and other appropriate health care professionals to ensure that services under the contract can be furnished to enrollees promptly and without compromise to quality of care;

''(D) a prohibition on discrimination on the basis of health status or requirements for health services in the enrollment or disenrollment of individuals eligible for medical assistance under this title; and

''(E) a right for an enrollee to terminate enrollment without cause during the first month of each enrollment period, which period shall not exceed 6 months in duration, and to terminate enrollment at any time for cause.

''(4) For purposes of this subsection, the term 'primary care' includes all health care services customarily provided in accordance with State licensure and certification laws and regulations, and all laboratory services customarily provided by or through, a general practitioner, family medicine physician, internal medicine physician, obstetrician/gynecologist, or pediatrician.''.

(c) CONFORMING AMENDMENT.—Section 1915(b)(1) (42 U.S.C. 1396n(b)(1)) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section apply to primary care case management services furnished on or after October 1, 1997.

**SEC. 5703. ADDITIONAL REFORMS TO EXPAND AND SIMPLIFY MANAGED CARE.**

(a) ELIMINATION OF 75:25 RESTRICTION ON RISK CONTRACTS.—

(1) 75 PERCENT LIMIT ON MEDICARE AND MEDICAID ENROLLMENT.—

(A) IN GENERAL.—Section 1903(m)(2)(A) (42 U.S.C. 1396b(m)(2)(A)) is amended by striking clause (ii).

(B) CONFORMING AMENDMENTS.—

(i) Section 1903(m)(2) (42 U.S.C. 1396b(m)(2)) is amended—

(I) by striking subparagraphs (C), (D), and (E); and

(II) in subparagraph (G), by striking ''clauses (i) and (ii)'' and inserting ''clause (i)''.

(ii) Section 1902(e)(2)(A) (42 U.S.C. 1396a(e)(2)(A)) is amended by striking ''(2)(E),''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply on and after June 20, 1997.

(b) ELIMINATION OF PROHIBITION ON COPAYMENTS FOR SERVICES FURNISHED BY HEALTH MAINTENANCE ORGANIZATIONS.—Section 1916 (42 U.S.C. 1396o) is amended—

(1) in subsection (a)(2)(D), by striking ''or services furnished'' and all that follows through ''enrolled,''; and

(2) in subsection (b)(2)(D), by striking ''or (at the option'' and all that follows through ''enrolled,''.

***Subchapter B—Management Flexibility Reforms***

***SEC. 5711. ELIMINATION OF BOREN AMENDMENT REQUIREMENTS FOR PROVIDER PAYMENT RATES.***

*(a) PLAN AMENDMENTS.—Section 1902(a)(13) is amended—*

*(1) by striking all that precedes subparagraph (D) and inserting the following:*

*''(13) provide—*

*''(A) for a public process for determination of rates of payment under the plan for hospital services (and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), nursing facility services, services provided in intermediate care facilities for the mentally retarded, and home and community-based services, under which—*

*''(i) proposed rates, the methodologies underlying the establishment of such rates, and a description of how such methodologies will affect access to services, quality of services, and safety of beneficiaries are published, and providers, beneficiaries and their representatives, and other concerned State residents are given a reasonable opportunity for review and comment on such proposed rates, methodologies, and description; and*

*''(ii) final rates, the methodologies underlying the establishment of such rates, and justifications for such rates (that may take into account public comments received by the State (if any) are published in 1 or more daily newspapers of general circulation in the State or in any publication used by the State to publish State statutes or rules); and'';*

*(2) by redesignating subparagraphs (D) and (E) as subparagraphs (B) and (C), respectively;*

*(3) in subparagraph (B), as so redesignated, by adding ''and'' at the end; and*

*(4) by striking subparagraph (F).*

*(b) STUDY AND REPORT.—*

*(1) STUDY.—The Secretary of Health and Human Services shall study the effect on access to services, the quality of services, and the safety of services provided to beneficiaries of the rate-setting methods used by States pursuant to section 1902(a)(13) of the Social Security Act (42 U.S.C. 1396a(a)(13), as amended by subsection (a).*

*(2) REPORT.—Not later than 4 years after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to the appropriate committees of Congress on the conclusions of the study conducted under paragraph (1), together with any recommendations for legislation as a result of such conclusions.*

*(c) CONFORMING AMENDMENTS.—*

*(1) Section 1903(m)(2)(A)(ix) (42 U.S.C. 1396b(m)(2)(A)(ix)) is amended by striking ''1902(a)(13)(E)'' each place it appears and inserting ''1902(a)(13)(C)''.*

*(2) Section 1905(o)(3) (42 U.S.C. 1396d(o)(3)) is amended by striking ''amount described in section 1902(a)(13)(D)'' and inserting ''amount determined in section 1902(a)(13)(B)''.*

*(3) Section 1913(b)(3) (42 U.S.C. 1396l(b)(3)) is amended by striking ''1902(a)(13)(A)'' and inserting ''1902(a)(13)''.*

*(4) Section 1923 (42 U.S.C. 1396r–4) is amended in subsections (a)(1) and (e)(1), by striking ''1902(a)(13)(A)'' each place it appears and inserting ''1902(a)(13)''.*

***SEC. 5712. MEDICAID PAYMENT RATES FOR QUALIFIED MEDICARE BENEFICIARIES.***

*(a) IN GENERAL.—Section 1902(n) (42 U.S.C. 1396a(n)) is amended—*

*(1) by inserting ''(1)'' after ''(n)'', and*

*(2) by adding at the end the following:*

*''(2) In carrying out paragraph (1), a State is not required to provide any payment for any expenses incurred relating to payment for a coinsurance or copayment for medicare cost-sharing if the amount of the payment under title XVIII for the service exceeds the payment amount that otherwise would be made under the State plan under this title for such service.*

*''(3) In the case in which a State's payment for medicare cost-sharing for a qualified medicare beneficiary with respect to an item or service is reduced or eliminated through the application of paragraph (1) or (2) of this subsection—*

*''(A) for purposes of applying any limitation under title XVIII on the amount that the beneficiary may be billed or charged for the service, the amount of payment made under title XVIII plus the amount of payment (if any) under the State plan shall be considered to be payment in full for the service,*

*''(B) the beneficiary shall not have any legal liability to make payment to a provider or managed care entity (as defined in section 1950(a)(1)) for the service, and*

*''(C) any lawful sanction that may be imposed upon a provider or managed care entity (as defined in section 1950(a)(1)) for excess charges under this title or title XVIII shall apply to the imposition of any charge on the individual in such case.*

*This paragraph shall not be construed as preventing payment of any medicare cost-sharing by a medicare supplemental policy or an employer retiree health plan on behalf of an individual.''.*

*(b) LIMITATION IN MEDICARE PROVIDER AGREEMENTS.—Section 1866(a)(1)(A) (42 U.S.C. 1395cc(a)(1)(A)) is amended—*

*(1) by inserting ''(i)'' after ''(A)'', and*

*(2) by inserting before the comma at the end the following: '', and (ii) not to impose any charge that may not be charged under section 1902(n)(3)''.*

*(c) LIMITATION ON NONPARTICIPATING PROVIDERS.—Section 1848(g)(3)(A) (42 U.S.C. 1395w–4(g)(3)(A)) is amended by inserting before the period at the end the following: ''and the provisions of section 1902(n)(3)(A) apply to further limit permissible charges under this section''.*

*(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payment for items and services furnished on or after the later of—*

*(1) October 1, 1997; or*

*(2) the termination date of a provider agreement under the medicare program under title XVIII or under a State plan under title XIX that is in effect on the date of the enactment of this Act.*

***Subchapter C—Reduction of Disproportionate Share Hospital (DSH) Payments***

***SEC. 5721. DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.***

*(a) REDUCTION OF PAYMENTS.—Section 1923(f) (42 U.S.C. 1396r–4(f)) is amended to read as follows:*

*''(f) LIMITATION ON FEDERAL FINANCIAL PARTICIPATION.—*

*''(1) IN GENERAL.—Beginning with fiscal year 1998, payment under section 1903(a) shall not be made to a State with respect to any payment adjustment made under this section for hospitals in a State for quarters in a fiscal year in excess of the disproportionate share hospital (in this subsection referred to as 'DSH') allotment for the State for the fiscal year, as specified in paragraphs (2), (3), (4), and (5).*

*''(2) DETERMINATION OF STATE DSH ALLOTMENTS FOR FISCAL YEAR 1998.—*

*''(A) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (4), the DSH allotment for a State for fiscal year 1998 is equal to the State 1995 DSH spending amount.*

*''(B) HIGH DSH STATES.—In the case of any State that is a high DSH State, the DSH allotment for that State for fiscal year 1998 is equal to the sum of—*

*''(i) the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for inpatient hospital services provided (based on reporting data specified by the State on HCFA Form 64 as inpatient DSH, and as approved by the Secretary); and*

*''(ii) 70 percent of the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).*

*''(3) DETERMINATION OF STATE DSH ALLOTMENTS FOR FISCAL YEARS 1999 THROUGH 2002.—*

*''(A) NON HIGH DSH STATES.—*

*''(i) IN GENERAL.—Except as provided in subparagraph (B) and paragraph (4), the DSH allotment for a State for each of fiscal years 1999 through 2002 is equal to the applicable percentage of the State 1995 DSH spending amount.*

*''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage with respect to a State described in that clause is—*

*''(I) for fiscal year 1999, 98 percent;*

*''(II) for fiscal year 2000, 95 percent;*

*''(III) for fiscal year 2001, 90 percent; and*

*''(IV) for fiscal year 2002, 85 percent.*

*''(B) HIGH DSH STATES.—*

*''(i) IN GENERAL.—In the case of any State that is a high DSH State, the DSH allotment for that State for each of fiscal years 1999 through 2002 is equal to the applicable reduction percentage of the high DSH State modified 1995 spending amount for that fiscal year.*

*''(ii) HIGH DSH STATE MODIFIED 1995 SPENDING AMOUNT.—*

*''(I) IN GENERAL.—For purposes of clause (i), the high DSH State modified 1995 spending amount means, with respect to a State and a fiscal year, the sum of—*

*''(aa) the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for inpatient hospital services provided (based on reporting data specified by the State on HCFA Form 64 as inpatient DSH, and as approved by the Secretary); and*

*''(bb) the applicable mental health percentage for such fiscal year of the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).*

*''(II) APPLICABLE MENTAL HEALTH PERCENTAGE.—For purposes of subclause (I)(bb), the applicable mental health percentage for such fiscal year is—*

*''(aa) for fiscal year 1999, 50 percent;*

*''(bb) for fiscal year 2000, 20 percent; and*

*''(cc) for fiscal years 2001 and 2002, 0 percent.*

*''(iii) APPLICABLE REDUCTION PERCENTAGE.—For purposes of clause (i), the applicable reduction percentage described in that clause is—*

*''(I) for fiscal year 1999, 92 percent;*

*''(II) for fiscal year 2000, 85 percent; and*

*''(III) for fiscal years 2001 and 2002, 80 percent.*

*''(4) EXCEPTIONS.—*

*''(A) CERTAIN STATES WITHOUT 1995 MENTAL HEALTH DSH SPENDING.—In the case of any State with a State 1995 DSH spending amount that exceeds 12 percent of the Federal medical assistance percentage of expenditures made under the State plan under this title for medical assistance during fiscal year 1995 and that, during such fiscal year, did not make any payment adjustments to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary), the DSH allotment for that State for each of fiscal years 1998 through 2002 is equal to the average of the State 1995 DSH spending amount and the State 1996 DSH spending amount.*

*''(B) STATES WITH LOW STATE 1995 DSH SPENDING AMOUNTS.—In the case of any State with a*

State 1995 DSH spending amount that is less than 3 percent of the Federal medical assistance percentage of expenditures made under the State plan under this title for medical assistance during fiscal year 1995, the DSH allotment for that State for each of fiscal years 1998 through 2002 is equal to the State 1995 DSH spending amount.

''(C) STATES WITH STATE 1995 DSH SPENDING AMOUNTS ABOVE 3 PERCENT.—In the case of any State with a State 1995 DSH spending amount that is more than 3 percent of the Federal medical assistance percentage of expenditures made under the State plan under this title for medical assistance during fiscal year 1995, the DSH allotment for that State for each of fiscal years 1999 through 2002 is equal to the greater of—

''(i) the amount otherwise determined for such State under paragraph (3); or

''(ii) 50 percent of the State 1995 DSH spending amount.

''(5) DETERMINATION OF STATE DSH ALLOTMENTS FOR FISCAL YEAR 2003 AND THEREAFTER.—The DSH allotment for any State for fiscal year 2003 and each fiscal year thereafter is equal to the DSH allotment for the State for the preceding fiscal year, increased by the estimated percentage change in the consumer price index for medical services (as determined by the Bureau of Labor Statistics).

''(6) DEFINITIONS.—

''(A) HIGH DSH STATE.—The term 'high DSH State' means a State that, with respect to fiscal year 1997, had a State base allotment under this section that exceeded 12 percent of the Federal medical assistance percentage of expenditures made under the State plan under this title for medical assistance during such fiscal year, as determined using the preliminary State DSH allotment for the State for fiscal year 1997, as published in the Federal Register on January 31, 1997.

''(B) STATE.—In this subsection, the term 'State' means the 50 States and the District of Columbia.''.

''(C) STATE 1995 DSH SPENDING AMOUNT.—The term 'State 1995 DSH spending amount' means, with respect to a State, the Federal medical assistance percentage of payment adjustments made under subsection (c) under the State plan that are attributable to the fiscal year 1995 DSH allotment, as reported by the State not later than January 1, 1997, on HCFA Form 64, and as approved by the Secretary.

''(D) STATE 1996 DSH SPENDING AMOUNT.—The term 'State 1996 DSH spending amount' means, with respect to a State, the Federal share of payment adjustments made under subsection (c) under the State plan during fiscal year 1996 as reported by the State not later than December 31, 1997, on HCFA Form 64, and as approved by the Secretary.''.

(b) LIMITATION ON PAYMENTS TO INSTITUTIONS FOR MENTAL DISEASES.—Section 1923 of the Social Security Act (42 U.S.C. 1396r–4) is amended by adding at the end the following:

''(h) LIMITATION ON CERTAIN STATE DSH EXPENDITURES.—

''(1) IN GENERAL.—Notwithstanding any other provision of this section, payment under section 1903(a) shall not be made to a State with respect to any payment adjustments made under this section for quarters in a fiscal year to institutions for mental diseases or other mental health facilities, in excess of—

''(A) the total State DSH expenditures that are attributable to fiscal year 1995 for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary); or

''(B) the amount of such payment adjustment which is equal to the applicable percentage of the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for payments to institutions for mental diseases and other mental health facilities (based on reporting data specified by the State on HCFA Form 64 as mental health DSH, and as approved by the Secretary).

''(2) APPLICABLE PERCENTAGE.—

''(A) IN GENERAL.—For purposes of paragraph (1), the applicable percentage with respect to a fiscal year is the lesser of the percentage determined under subparagraph (B) or—

''(i) for fiscal year 2001, 50 percent;

''(ii) for fiscal year 2002, 40 percent; and

''(iii) for fiscal year 2003 and thereafter, 33 percent.

''(B) 1995 PERCENTAGE.—The percentage determined under this subparagraph is the ratio (determined as a percentage) of the Federal share of payment adjustments made to hospitals in the State under subsection (c) that are attributable to the 1995 DSH allotment for payments to institutions for mental diseases and other mental health facilities, to the State 1995 DSH spending amount, as defined under subsection (f)(6)(C).''.

(c) TARGETING PAYMENTS.—Section 1923(a)(2) (42 U.S.C. 1396r–4(a)(2)) is amended by adding at the end the following:

''(D) A State plan under this title shall not be considered to meet the requirements of section 1902(a)(13)(A) (insofar as it requires payments to hospitals to take into account the situation of hospitals that serve a disproportionate number of low-income patients with special needs), as of October 1, 1998, unless the State has provided assurances to the Secretary that the State has developed a methodology for prioritizing payments to disproportionate share hospitals, including children's hospitals, on the basis of the proportion of low-income and medicaid patients served by such hospitals. In making such assurances, the State plan shall provide a definition of high-volume disproportionate share hospitals and a detailed description of the specific methodology to be used to provide disproportionate share payments to such hospitals. The State shall provide an annual report to the Secretary describing the disproportionate share payments to such high-volume disproportionate share hospitals.''.

(d) EFFECTIVE DATE.—The amendments made by this section apply on and after October 1, 1997.

## CHAPTER 2—EXPANSION OF MEDICAID ELIGIBILITY

### SEC. 5731. STATE OPTION TO PERMIT WORKERS WITH DISABILITIES TO BUY INTO MEDICAID.

Section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—

(1) in subclause (XI), by striking ''or'' at the end;

(2) in subclause (XII), by adding ''or'' at the end; and

(3) by adding at the end the following:

''(XIII) who are in families whose income is less than 250 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 involved, and who but for earnings in excess of the limit established under section 1619(b), would be considered to be receiving supplemental security income (subject, notwithstanding section 1916, to payment of premiums or other charges (set on a sliding scale based on income) that the State may determine);''.

### SEC. 5732. 12-MONTH CONTINUOUS ELIGIBILITY FOR CHILDREN.

(a) IN GENERAL.—Section 1902(e) (42 U.S.C. 1396a(e)) is amended by adding at the end the following:

''(12) At the option of the State, the State plan may provide that an individual who is under an age specified by the State (not to exceed 19 years of age) and who is determined to be eligible for benefits under a State plan approved under this title under subsection (a)(10)(A) shall remain eligible for those benefits until the earlier of—

''(A) the end of the 12-month period following the determination; or

''(B) the date that the individual exceeds that age.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to medical assistance for items and services furnished on or after October 1, 1997.

## CHAPTER 3—PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

### SEC. 5741. ESTABLISHMENT OF PACE PROGRAM AS MEDICAID STATE OPTION.

(a) IN GENERAL.—Title XIX is amended—

(1) in section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 5702(a)(1)—

(A) by striking ''and'' at the end of paragraph (25);

(B) by redesignating paragraph (26) as paragraph (27); and

(C) by inserting after paragraph (25) the following new paragraph:

''(26) services furnished under a PACE program under section 1932 to PACE program eligible individuals enrolled under the program under such section; and'';

(2) by redesignating section 1932 as section 1933; and

(3) by inserting after section 1931 the following new section:

''PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)

''SEC. 1932. (a) STATE OPTION.—

''(1) IN GENERAL.—A State may elect to provide medical assistance under this section with respect to PACE program services to PACE program eligible individuals who are eligible for medical assistance under the State plan and who are enrolled in a PACE program under a PACE program agreement. Such individuals need not be eligible for benefits under part A, or enrolled under part B, of title XVIII to be eligible to enroll under this section. In the case of an individual enrolled with a PACE program pursuant to such an election—

''(A) the individual shall receive benefits under the plan solely through such program, and

''(B) the PACE provider shall receive payment in accordance with the PACE program agreement for provision of such benefits.

''(2) PACE PROGRAM DEFINED.—For purposes of this section and section 1894, the term 'PACE program' means a program of all-inclusive care for the elderly that meets the following requirements:

''(A) OPERATION.—The entity operating the program is a PACE provider (as defined in paragraph (3)).

''(B) COMPREHENSIVE BENEFITS.—The program provides comprehensive health care services to PACE program eligible individuals in accordance with the PACE program agreement and regulations under this section.

''(C) TRANSITION.—In the case of an individual who is enrolled under the program under this section and whose enrollment ceases for any reason (including that the individual no longer qualifies as a PACE program eligible individual, the termination of a PACE program agreement, or otherwise), the program provides assistance to the individual in obtaining necessary transitional care through appropriate referrals and making the individual's medical records available to new providers.

''(3) PACE PROVIDER DEFINED.—

''(A) IN GENERAL.—For purposes of this section, the term 'PACE provider' means an entity that—

''(i) subject to subparagraph (B), is (or is a distinct part of) a public entity or a private, nonprofit entity organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code of 1986, and

''(ii) has entered into a PACE program agreement with respect to its operation of a PACE program.

''(B) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—Clause (i) of subparagraph (A) shall not apply—

''(i) to entities subject to a demonstration project waiver under subsection (h); and

''(ii) after the date the report under section 5743(b) of the Balanced Budget Act of 1997 is submitted, unless the Secretary determines that any of the findings described in subparagraph (A), (B), (C), or (D) of paragraph (2) of such section are true.

''(4) PACE PROGRAM AGREEMENT DEFINED.—For purposes of this section, the term 'PACE program agreement' means, with respect to a PACE provider, an agreement, consistent with this section, section 1894 (if applicable), and regulations promulgated to carry out such sections, among the PACE provider, the Secretary, and a State administering agency for the operation of a PACE program by the provider under such sections.

''(5) PACE PROGRAM ELIGIBLE INDIVIDUAL DEFINED.—For purposes of this section, the term 'PACE program eligible individual' means, with respect to a PACE program, an individual who—

''(A) is 55 years of age or older;

''(B) subject to subsection (c)(4), is determined under subsection (c) to require the level of care required under the State medicaid plan for coverage of nursing facility services;

''(C) resides in the service area of the PACE program; and

''(D) meets such other eligibility conditions as may be imposed under the PACE program agreement for the program under subsection (e)(2)(A)(ii).

''(6) PACE PROTOCOL.—For purposes of this section, the term 'PACE protocol' means the Protocol for the Program of All-inclusive Care for the Elderly (PACE), as published by On Lok, Inc., as of April 14, 1995, or any successor protocol that may be agreed upon between the Secretary and On Lok, Inc.

''(7) PACE DEMONSTRATION WAIVER PROGRAM DEFINED.—For purposes of this section, the term 'PACE demonstration waiver program' means a demonstration program under either of the following sections (as in effect before the date of their repeal):

''(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21), as extended by section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

''(B) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

''(8) STATE ADMINISTERING AGENCY DEFINED.—For purposes of this section, the term 'State administering agency' means, with respect to the operation of a PACE program in a State, the agency of that State (which may be the single agency responsible for administration of the State plan under this title in the State) responsible for administering PACE program agreements under this section and section 1894 in the State.

''(9) TRIAL PERIOD DEFINED.—

''(A) IN GENERAL.—For purposes of this section, the term 'trial period' means, with respect to a PACE program operated by a PACE provider under a PACE program agreement, the first 3 contract years under such agreement with respect to such program.

''(B) TREATMENT OF ENTITIES PREVIOUSLY OPERATING PACE DEMONSTRATION WAIVER PROGRAMS.—Each contract year (including a year occurring before the effective date of this section) during which an entity has operated a PACE demonstration waiver program shall be counted under subparagraph (A) as a contract year during which the entity operated a PACE program as a PACE provider under a PACE program agreement.

''(10) REGULATIONS.—For purposes of this section, the term 'regulations' refers to interim final or final regulations promulgated under subsection (f) to carry out this section and section 1894.

''(b) SCOPE OF BENEFITS; BENEFICIARY SAFEGUARDS.—

''(1) IN GENERAL.—Under a PACE program agreement, a PACE provider shall—

''(A) provide to PACE program eligible individuals, regardless of source of payment and directly or under contracts with other entities, at a minimum—

''(i) all items and services covered under title XVIII (for individuals enrolled under section 1894) and all items and services covered under this title, but without any limitation or condition as to amount, duration, or scope and without application of deductibles, copayments, coinsurance, or other cost-sharing that would otherwise apply under such title or this title, respectively; and

''(ii) all additional items and services specified in regulations, based upon those required under the PACE protocol;

''(B) provide such enrollees access to necessary covered items and services 24 hours per day, every day of the year;

''(C) provide services to such enrollees through a comprehensive, multidisciplinary health and social services delivery system which integrates acute and long-term care services pursuant to regulations; and

''(D) specify the covered items and services that will not be provided directly by the entity, and to arrange for delivery of those items and services through contracts meeting the requirements of regulations.

''(2) QUALITY ASSURANCE; PATIENT SAFEGUARDS.—The PACE program agreement shall require the PACE provider to have in effect at a minimum—

''(A) a written plan of quality assurance and improvement, and procedures implementing such plan, in accordance with regulations, and

''(B) written safeguards of the rights of enrolled participants (including a patient bill of rights and procedures for grievances and appeals) in accordance with regulations and with other requirements of this title and Federal and State law designed for the protection of patients.

''(c) ELIGIBILITY DETERMINATIONS.—

''(1) IN GENERAL.—The determination of—

''(A) whether an individual is a PACE program eligible individual shall be made under and in accordance with the PACE program agreement, and

''(B) who is entitled to medical assistance under this title shall be made (or who is not so entitled, may be made) by the State administering agency.

''(2) CONDITION.—An individual is not a PACE program eligible individual (with respect to payment under this section) unless the individual's health status has been determined by the Secretary or the State administering agency, in accordance with regulations, to be comparable to the health status of individuals who have participated in the PACE demonstration waiver programs. Such determination shall be based upon information on health status and related indicators (such as medical diagnoses and measures of activities of daily living, instrumental activities of daily living, and cognitive impairment) that are part of a uniform minimum data set collected by PACE providers on potential eligible individuals.

''(3) ANNUAL ELIGIBILITY RECERTIFICATIONS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the determination described in subsection (a)(5)(B) for an individual shall be reevaluated at least annually.

''(B) EXCEPTION.—The requirement of annual reevaluation under subparagraph (A) may be waived during a period in accordance with regulations in those cases in which the State administering agency determines that there is no reasonable expectation of improvement or significant change in an individual's condition during the period because of the advanced age, severity of the advanced age, severity of chronic condition, or degree of impairment of functional capacity of the individual involved.

''(4) CONTINUATION OF ELIGIBILITY.—An individual who is a PACE program eligible individual may be deemed to continue to be such an individual notwithstanding a determination that the individual no longer meets the requirement of subsection (a)(5)(B) if, in accordance with regulations, in the absence of continued coverage under a PACE program the individual reasonably would be expected to meet such requirement within the succeeding 6-month period.

''(5) ENROLLMENT; DISENROLLMENT.—The enrollment and disenrollment of PACE program eligible individuals in a PACE program shall be pursuant to regulations and the PACE program agreement and shall permit enrollees to voluntarily disenroll without cause at any time. Such regulations and agreement shall provide that the PACE program may not disenroll a PACE program eligible individual on the ground that the individual has engaged in noncompliant behavior if such behavior is related to a mental or physical condition of the individual. For purposes of the preceding sentence, the term 'noncompliant behavior' includes repeated noncompliance with medical advice and repeated failure to appear for appointments.

''(d) PAYMENTS TO PACE PROVIDERS ON A CAPITATED BASIS.—

''(1) IN GENERAL.—In the case of a PACE provider with a PACE program agreement under this section, except as provided in this subsection or by regulations, the State shall make prospective monthly payments of a capitation amount for each PACE program eligible individual enrolled under the agreement under this section.

''(2) CAPITATION AMOUNT.—The capitation amount to be applied under this subsection for a provider for a contract year shall be an amount specified in the PACE program agreement for the year. Such amount shall be an amount, specified under the PACE agreement, which is less than the amount that would otherwise have been made under the State plan if the individuals were not so enrolled and shall be adjusted to take into account the comparative frailty of PACE enrollees and such other factors as the Secretary determines to be appropriate. The payment under this section shall be in addition to any payment made under section 1894 for individuals who are enrolled in a PACE program under such section.

''(e) PACE PROGRAM AGREEMENT.—

''(1) REQUIREMENT.—

''(A) IN GENERAL.—The Secretary, in close cooperation with the State administering agency, shall establish procedures for entering into, extending, and terminating PACE program agreements for the operation of PACE programs by entities that meet the requirements for a PACE provider under this section, section 1894, and regulations.

''(B) NUMERICAL LIMITATION.—

''(i) IN GENERAL.—The Secretary shall not permit the number of PACE providers with which agreements are in effect under this section or under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 to exceed—

''(I) 40 as of the date of the enactment of this section, or

''(II) as of each succeeding anniversary of such date, the numerical limitation under this subparagraph for the preceding year plus 20.

Subclause (II) shall apply without regard to the actual number of agreements in effect as of a previous anniversary date.

''(ii) TREATMENT OF CERTAIN PRIVATE, FOR-PROFIT PROVIDERS.—The numerical limitation in clause (i) shall not apply to a PACE provider that—

''(I) is operating under a demonstration project waiver under subsection (h), or

''(II) was operating under such a waiver and subsequently qualifies for PACE provider status pursuant to subsection (a)(3)(B)(ii).

''(2) SERVICE AREA AND ELIGIBILITY.—

''(A) IN GENERAL.—A PACE program agreement for a PACE program—

''(i) shall designate the service area of the program;

''(ii) may provide additional requirements for individuals to qualify as PACE program eligible individuals with respect to the program;

''(iii) shall be effective for a contract year, but may be extended for additional contract years in the absence of a notice by a party to terminate, and is subject to termination by the Secretary and the State administering agency at any time for cause (as provided under the agreement);

''(iv) shall require a PACE provider to meet all applicable State and local laws and requirements; and

''(v) shall have such additional terms and conditions as the parties may agree to, provided that such terms and conditions are consistent with this section and regulations.

''(B) SERVICE AREA OVERLAP.—In designating a service area under a PACE program agreement under subparagraph (A)(i), the Secretary (in consultation with the State administering agency) may exclude from designation an area that is already covered under another PACE program agreement, in order to avoid unnecessary duplication of services and avoid impairing the financial and service viability of an existing program.

''(3) DATA COLLECTION; DEVELOPMENT OF OUTCOME MEASURES.—

''(A) DATA COLLECTION.—

''(i) IN GENERAL.—Under a PACE program agreement, the PACE provider shall—

''(I) collect data;

''(II) maintain, and afford the Secretary and the State administering agency access to, the records relating to the program, including pertinent financial, medical, and personnel records; and

''(III) submit to the Secretary and the State administering agency such reports as the Secretary finds (in consultation with State administering agencies) necessary to monitor the operation, cost, and effectiveness of the PACE program.

''(ii) REQUIREMENTS DURING TRIAL PERIOD.—During the first 3 years of operation of a PACE program (either under this section or under a PACE demonstration waiver program), the PACE provider shall provide such additional data as the Secretary specifies in regulations in order to perform the oversight required under paragraph (4)(A).

''(B) DEVELOPMENT OF OUTCOME MEASURES.—Under a PACE program agreement, the PACE provider, the Secretary, and the State administering agency shall jointly cooperate in the development and implementation of health status and quality of life outcome measures with respect to PACE program eligible individuals.

''(4) OVERSIGHT.—

''(A) ANNUAL, CLOSE OVERSIGHT DURING TRIAL PERIOD.—During the trial period (as defined in subsection (a)(9)) with respect to a PACE program operated by a PACE provider, the Secretary (in cooperation with the State administering agency) shall conduct a comprehensive annual review of the operation of the PACE program by the provider in order to assure compliance with the requirements of this section and regulations. Such a review shall include—

''(i) an onsite visit to the program site;

''(ii) comprehensive assessment of a provider's fiscal soundness;

''(iii) comprehensive assessment of the provider's capacity to provide all PACE services to all enrolled participants;

''(iv) detailed analysis of the entity's substantial compliance with all significant requirements of this section and regulations; and

''(v) any other elements the Secretary or the State administering agency considers necessary or appropriate.

''(B) CONTINUING OVERSIGHT.—After the trial period, the Secretary (in cooperation with the State administering agency) shall continue to conduct such review of the operation of PACE providers and PACE programs as may be appropriate, taking into account the performance level of a provider and compliance of a provider with all significant requirements of this section and regulations.

''(C) DISCLOSURE.—The results of reviews under this paragraph shall be reported promptly to the PACE provider, along with any recommendations for changes to the provider's program, and shall be made available to the public upon request.

''(5) TERMINATION OF PACE PROVIDER AGREEMENTS.—

''(A) IN GENERAL.—Under regulations—

''(i) the Secretary or a State administering agency may terminate a PACE program agreement for cause, and

''(ii) a PACE provider may terminate such an agreement after appropriate notice to the Secretary, the State administering agency, and enrollees.

''(B) CAUSES FOR TERMINATION.—In accordance with regulations establishing procedures for termination of PACE program agreements, the Secretary or a State administering agency may terminate a PACE program agreement with a PACE provider for, among other reasons, the fact that—

''(i) the Secretary or State administering agency determines that—

''(I) there are significant deficiencies in the quality of care provided to enrolled participants; or

''(II) the provider has failed to comply substantially with conditions for a program or provider under this section or section 1894; and

''(ii) the entity has failed to develop and successfully initiate, within 30 days of the date of the receipt of written notice of such a determination, a plan to correct the deficiencies, or has failed to continue implementation of such a plan.

''(C) TERMINATION AND TRANSITION PROCEDURES.—An entity whose PACE provider agreement is terminated under this paragraph shall implement the transition procedures required under subsection (a)(2)(C).

''(6) SECRETARY'S OVERSIGHT; ENFORCEMENT AUTHORITY.—

''(A) IN GENERAL.—Under regulations, if the Secretary determines (after consultation with the State administering agency) that a PACE provider is failing substantially to comply with the requirements of this section and regulations, the Secretary (and the State administering agency) may take any or all of the following actions:

''(i) Condition the continuation of the PACE program agreement upon timely execution of a corrective action plan.

''(ii) Withhold some or all further payments under the PACE program agreement under this section or section 1894 with respect to PACE program services furnished by such provider until the deficiencies have been corrected.

''(iii) Terminate such agreement.

''(B) APPLICATION OF INTERMEDIATE SANCTIONS.—Under regulations, the Secretary may provide for the application against a PACE provider of remedies described in section 1857(f)(2) (or, for periods before January 1, 1999, section 1876(i)(6)(B)) or 1903(m)(5)(B) in the case of violations by the provider of the type described in section 1857(f)(1) (or 1876(i)(6)(A) for such periods) or 1903(m)(5)(A), respectively (in relation to agreements, enrollees, and requirements under section 1894 or this section, respectively).

''(7) PROCEDURES FOR TERMINATION OR IMPOSITION OF SANCTIONS.—Under regulations, the provisions of section 1857(g) (or for periods before January 1, 1999, section 1876(i)(9)) shall apply to termination and sanctions respecting a PACE program agreement and PACE provider under this subsection in the same manner as they apply to a termination and sanctions with respect to a contract and a Medicare Choice organization under part C of title XVIII (or for such periods an eligible organization under section 1876).

''(8) TIMELY CONSIDERATION OF APPLICATIONS FOR PACE PROGRAM PROVIDER STATUS.—In considering an application for PACE provider program status, the application shall be deemed approved unless the Secretary, within 90 days after the date of the submission of the application to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information that is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

''(f) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall issue interim final or final regulations to carry out this section and section 1894.

''(2) USE OF PACE PROTOCOL.—

''(A) IN GENERAL.—In issuing such regulations, the Secretary shall, to the extent consistent with the provisions of this section, incorporate the requirements applied to PACE demonstration waiver programs under the PACE protocol.

''(B) FLEXIBILITY.—In order to provide for reasonable flexibility in adapting the PACE service delivery model to the needs of particular organizations (such as those in rural areas or those that may determine it appropriate to use nonstaff physicians according to State licensing law requirements) under this section and section 1894, the Secretary (in close consultation with State administering agencies) may modify or waive provisions of the PACE protocol so long as any such modification or waiver is not inconsistent with and would not impair the essential elements, objectives, and requirements of this section, but may not modify or waive any of the following provisions:

''(i) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

''(ii) The delivery of comprehensive, integrated acute and long-term care services.

''(iii) The interdisciplinary team approach to care management and service delivery.

''(iv) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

''(v) The assumption by the provider of full financial risk.

''(3) APPLICATION OF CERTAIN ADDITIONAL BENEFICIARY AND PROGRAM PROTECTIONS.—

''(A) IN GENERAL.—In issuing such regulations and subject to subparagraph (B), the Secretary may apply with respect to PACE programs, providers, and agreements such requirements of part C of title XVIII (or, for periods before January 1, 1999, section 1876) and section 1903(m) relating to protection of beneficiaries and program integrity as would apply to Medicare Choice organizations under such part C (or for such periods eligible organizations under risk-sharing contracts under section 1876) and to health maintenance organizations under prepaid capitation agreements under section 1903(m).

''(B) CONSIDERATIONS.—In issuing such regulations, the Secretary shall—

''(i) take into account the differences between populations served and benefits provided under this section and under part C of title XVIII (or, for periods before January 1, 1999, section 1876) and section 1903(m);

''(ii) not include any requirement that conflicts with carrying out PACE programs under this section; and

''(iii) not include any requirement restricting the proportion of enrollees who are eligible for benefits under this title or title XVIII.

''(g) WAIVERS OF REQUIREMENTS.—With respect to carrying out a PACE program under this section, the following requirements of this title (and regulations relating to such requirements) shall not apply:

''(1) Section 1902(a)(1), relating to any requirement that PACE programs or PACE program services be provided in all areas of a State.

''(2) Section 1902(a)(10), insofar as such section relates to comparability of services among different population groups.

''(3) Sections 1902(a)(23) and 1915(b)(4), relating to freedom of choice of providers under a PACE program.

''(4) Section 1903(m)(2)(A), insofar as it restricts a PACE provider from receiving prepaid capitation payments.

''(h) DEMONSTRATION PROJECT FOR FOR-PROFIT ENTITIES.—

''(1) IN GENERAL.—In order to demonstrate the operation of a PACE program by a private, for-profit entity, the Secretary (in close consultation with State administering agencies) shall grant waivers from the requirement under subsection (a)(3) that a PACE provider may not be a for-profit, private entity.

''(2) SIMILAR TERMS AND CONDITIONS.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), and paragraph (1), the terms and conditions for operation of a PACE program by a provider under this subsection shall be the same as those for PACE providers that are nonprofit, private organizations.

''(B) NUMERICAL LIMITATION.—The number of programs for which waivers are granted under this subsection shall not exceed 10. Programs with waivers granted under this subsection shall not be counted against the numerical limitation specified in subsection (e)(1)(B).

''(i) POST-ELIGIBILITY TREATMENT OF INCOME.—A State may provide for post-eligibility treatment of income for individuals enrolled in PACE programs under this section in the same manner as a State treats post-eligibility income for individuals receiving services under a waiver under section 1915(c).

''(j) MISCELLANEOUS PROVISIONS.—Nothing in this section or 1894 shall be construed as preventing a PACE provider from entering into contracts with other governmental or nongovernmental payers for the care of PACE program eligible individuals who are not eligible for benefits under part A, or enrolled under part B, of title XVIII or eligible for medical assistance under this title.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1902(j) (42 U.S.C. 1396a(j)), as amended by section 5702(a)(2)(B), is amended by striking ''(26)'' and inserting ''(27)''.

(2) Section 1924(a)(5) (42 U.S.C. 1396r–5(a)(5)) is amended—

(A) in the heading, by striking ''FROM ORGANIZATIONS RECEIVING CERTAIN WAIVERS'' and inserting ''UNDER PACE PROGRAMS''; and

(B) by striking ''from any organization'' and all that follows and inserting ''under a PACE demonstration waiver program (as defined in section 1932(a)(7)) or under a PACE program under section 1932 or 1894.''.

(3) Section 1903(f)(4)(C) (42 U.S.C. 1396b(f)(4)(C)) is amended by inserting ''or who is a PACE program eligible individual enrolled in a PACE program under section 1932,'' after ''section 1902(a)(10)(A),''.

**SEC. 5742. EFFECTIVE DATE; TRANSITION.**

(a) TIMELY ISSUANCE OF REGULATIONS; EFFECTIVE DATE.—The Secretary of Health and Human Services shall promulgate regulations to carry out this chapter in a timely manner. Such regulations shall be designed so that entities may establish and operate PACE programs under sections 1894 and 1932 of the Social Security Act (as added by sections 5011 and 5741 of this Act) for periods beginning not later than 1 year after the date of the enactment of this Act.

(b) EXPANSION AND TRANSITION FOR PACE DEMONSTRATION PROJECT WAIVERS.—

(1) EXPANSION IN CURRENT NUMBER AND EXTENSION OF DEMONSTRATION PROJECTS.—Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 4118(g) of the Omnibus Budget Reconciliation Act of 1987, is amended—

(A) in paragraph (1), by inserting before the period at the end the following: '', except that the Secretary shall grant waivers of such requirements to up to the applicable numerical limitation specified in section 1933(e)(1)(B) of the Social Security Act''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking '', including permitting the organization to assume progressively (over the initial 3-year period of the waiver) the full financial risk''; and

(ii) in subparagraph (C), by adding at the end the following: ''In granting further extensions, an organization shall not be required to provide for reporting of information which is only required because of the demonstration nature of the project.''.

(2) ELIMINATION OF REPLICATION REQUIREMENT.—Section 9412(b)(2)(B) of such Act, as so amended, shall not apply to waivers granted under such section after the date of the enactment of this Act.

(3) TIMELY CONSIDERATION OF APPLICATIONS.—In considering an application for waivers under such section before the effective date of the repeals under subsection (d), subject to the numerical limitation under the amendment made by paragraph (1), the application shall be deemed approved unless the Secretary of Health and Human Services, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the applicant in writing with respect to any additional information which is needed in order to make a final determination with respect to the application. After the date the Secretary receives such additional information, the application shall be deemed approved unless the Secretary, within 90 days of such date, denies such request.

(c) PRIORITY AND SPECIAL CONSIDERATION IN APPLICATION.—During the 3-year period beginning on the date of the enactment of this Act:

(1) PROVIDER STATUS.—The Secretary of Health and Human Services shall give priority in processing applications of entities to qualify as PACE programs under section 1894 or 1932 of the Social Security Act—

(A) first, to entities that are operating a PACE demonstration waiver program (as defined in section 1932(a)(7) of such Act), and

(B) then to entities that have applied to operate such a program as of May 1, 1997.

(2) NEW WAIVERS.—The Secretary shall give priority, in the awarding of additional waivers under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986—

(A) to any entities that have applied for such waivers under such section as of May 1, 1997; and

(B) to any entity that, as of May 1, 1997, has formally contracted with a State to provide services for which payment is made on a capitated basis with an understanding that the entity was seeking to become a PACE provider.

(3) SPECIAL CONSIDERATION.—The Secretary shall give special consideration, in the processing of applications described in paragraph (1) and the awarding of waivers described in paragraph (2), to an entity which as of May 1, 1997, through formal activities (such as entering into contracts for feasibility studies) has indicated a specific intent to become a PACE provider.

(d) REPEAL OF CURRENT PACE DEMONSTRATION PROJECT WAIVER AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the following provisions of law are repealed:

(A) Section 603(c) of the Social Security Amendments of 1983 (Public Law 98–21).

(B) Section 9220 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).

(C) Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509).

(2) DELAY IN APPLICATION.—

(A) IN GENERAL.—Subject to subparagraph (B), the repeals made by paragraph (1) shall not apply to waivers granted before the initial effective date of regulations described in subsection (a).

(B) APPLICATION TO APPROVED WAIVERS.—Such repeals shall apply to waivers granted before such date only after allowing such organizations a transition period (of up to 24 months) in order to permit sufficient time for an orderly transition from demonstration project authority to general authority provided under the amendments made by this chapter.

**SEC. 5743. STUDY AND REPORTS.**

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in close consultation with State administering agencies, as defined in section 1932(a)(8) of the Social Security Act) shall conduct a study of the quality and cost of providing PACE program services under the medicare and medicaid programs under the amendments made by this chapter.

(2) STUDY OF PRIVATE, FOR-PROFIT PROVIDERS.—Such study shall specifically compare the costs, quality, and access to services by entities that are private, for-profit entities operating under demonstration projects waivers granted under section 1932(h) of the Social Security Act with the costs, quality, and access to services of other PACE providers.

(b) REPORT.—

(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this Act, the Secretary shall provide for a report to Congress on the impact of such amendments on quality and cost of services. The Secretary shall include in such report such recommendations for changes in the operation of such amendments as the Secretary deems appropriate.

(2) TREATMENT OF PRIVATE, FOR-PROFIT PROVIDERS.—The report shall include specific findings on whether any of the following findings is true:

(A) The number of covered lives enrolled with entities operating under demonstration project waivers under section 1932(h) of the Social Security Act is fewer than 800 (or such lesser number as the Secretary may find statistically sufficient to make determinations respecting findings described in the succeeding subparagraphs).

(B) The population enrolled with such entities is less frail than the population enrolled with other PACE providers.

(C) Access to or quality of care for individuals enrolled with such entities is lower than such access or quality for individuals enrolled with other PACE providers.

(D) The application of such section has resulted in an increase in expenditures under the medicare or medicaid programs above the expenditures that would have been made if such section did not apply.

(c) INFORMATION INCLUDED IN ANNUAL RECOMMENDATIONS.—The Physician Payment Review Commission shall include in its annual recommendations under section 1845(b) of the Social Security Act (42 U.S.C. 1395w–1), and the Prospective Payment Review Commission shall include in its annual recommendations reported under section 1886(e)(3)(A) of such Act (42 U.S.C. 1395ww(e)(3)(A)), recommendations on the methodology and level of payments made to PACE providers under section 1894(d) of such Act and on the treatment of private, for-profit entities as PACE providers. References in the preceding sentence to the Physician Payment Review Commission and the Prospective Payment Review Commission shall be deemed to be references to the Medicare Payment Advisory Commission (MedPAC) established under section 5022(a) after the termination of the Physician Payment Review Commission and the Prospective Payment Review Commission provided for in section 5022(c)(2).

## CHAPTER 4—MEDICAID MANAGEMENT AND PROGRAM REFORMS

**SEC. 5751. ELIMINATION OF REQUIREMENT TO PAY FOR PRIVATE INSURANCE.**

(a) REPEAL OF STATE PLAN PROVISION.—Section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

(b) REPEAL OF ENROLLMENT REQUIREMENTS.—Section 1906 (42 U.S.C. 1396e) is repealed.

(c) REINSTATEMENT OF STATE OPTION.—Section 1905(a) (42 U.S.C. 1396a(a)) is amended, in the matter preceding clause (i), by inserting ''(including, at State option, through purchase or payment of enrollee costs of health insurance)'' after ''The term 'medical assistance' means payment''.

**SEC. 5752. ELIMINATION OF OBSTETRICAL AND PEDIATRIC PAYMENT RATE REQUIREMENTS.**

(a) IN GENERAL.—Section 1926 (42 U.S.C. 1396r–7) is repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to services furnished on or after October 1, 1997.

**SEC. 5753. PHYSICIAN QUALIFICATION REQUIREMENTS.**

(a) IN GENERAL.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended by striking paragraph (12).

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after the date of the enactment of this Act.

**SEC. 5754. EXPANDED COST-SHARING REQUIREMENTS.**

Section 1916 (42 U.S.C. 1396o) is amended by adding at the end the following:

''(g)(1) Notwithstanding any other provision of this title, the State plan may impose cost-sharing with respect to any medical assistance provided to an individual who is not described in section 1902(a)(10)(A)(i) in accordance with the provisions of this subsection, except that no cost-sharing may be imposed with respect to medical assistance provided to an individual who has not attained age 18 if such individual's family income does not exceed 150 percent of the poverty line applicable to a family of the size involved, and if, as of the date of enactment of the Balanced Budget Act of 1997, cost-sharing could not be imposed with respect to medical assistance provided to such individual.

''(2) Any cost-sharing imposed under this subsection shall be pursuant to a public schedule and shall reflect such economic factors, employment status, and family size with respect to each such individual as the State determines appropriate.

''(3) In the case of any family whose income is less than 150 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 involved, the total annual amount of cost-sharing that may be imposed for such family shall not exceed 3 percent of the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) for such period.

''(4) In the case of any family whose income exceeds 150 percent, but does not exceed 200 percent of, such poverty line, paragraph (3) shall be applied by substituting '5 percent' for '3 percent'.

''(5) Nothing in this subsection shall be construed as preventing a State from imposing cost-sharing with respect to individuals eligible for medical assistance under the State plan, or with respect to items or services provided as medical assistance under such plan, if the provisions of this title otherwise allow the State to do so or if the State has received a waiver that authorizes such cost-sharing.

''(6) Any cost-sharing imposed under this subsection may not be included in determining the amount of the State percentage required for reimbursement of expenditures under a State plan under this title.

''(7) In this subsection, the term 'cost-sharing' includes copayments, deductibles, coinsurance, enrollment fees, premiums, and other charges for the provision of health care services.''.

**SEC. 5755. PENALTY FOR FRAUDULENT ELIGIBILITY.**

Section 1128B(a) (42 U.S.C. 1320a–7b(a)), as amended by section 217 of the Health Insurance Portability and Accountability Act of 1996, is amended—

(1) by amending paragraph (6) to read as follows:

''(6) for a fee knowingly and willfully counsels or assists an individual to dispose of assets (including by any transfer in trust) in order for the individual to become eligible for medical assistance under a State plan under title XIX, if disposing of the assets results in the imposition of a period of ineligibility for such assistance under section 1917(c),''; and

(2) in clause (ii) of the matter following such paragraph, by striking ''failure, or conversion by any other person'' and inserting ''failure, conversion, or provision of counsel or assistance by any other person''.

**SEC. 5756. ELIMINATION OF WASTE, FRAUD, AND ABUSE.**

(a) BAN ON SPENDING FOR NONHEALTH RELATED ITEMS.—Section 1903(i) (42 U.S.C. 1396b(i)) is amended—

(1) in paragraphs (2) and (15), by striking the period at the end and inserting ''; or'';

(2) in paragraphs (10)(B), (11), and (13), by adding ''or'' at the end; and

(3) by inserting after paragraph (15), the following:

''(16) with respect to any amount expended for roads, bridges, stadiums, or any other item or service not covered under a State plan under this title.''.

(b) DISCLOSURE OF INFORMATION AND SURETY BOND REQUIREMENT FOR SUPPLIERS OF DURABLE MEDICAL EQUIPMENT.—

(1) REQUIREMENT.—Section 1902(a) (42 U.S.C. 1396a(a)), is amended—

(A) by striking ''and'' at the end of paragraph (62);

(B) by striking the period at the end of paragraph (63) and inserting ''; and''; and

(C) by inserting after paragraph (63) the following:

''(64) provide that the State shall not issue or renew a provider number for a supplier of medical assistance consisting of durable medical equipment, as defined in section 1861(n), for purposes of payment under this part for such assistance that is furnished by the supplier, unless the supplier provides the State agency on a continuing basis with—

''(A)(i) full and complete information as to the identity of each person with an ownership or control interest (as defined in section 1124(a)(3)) in the supplier or in any subcontractor (as defined by the Secretary in regulations) in which the supplier directly or indirectly has a 5 percent or more ownership interest; and

(ii) to the extent determined to be feasible under regulations of the Secretary, the name of any disclosing entity (as defined in section 1124(a)(2)) with respect to which a person with such an ownership or control interest in the supplier is a person with such an ownership or control interest in the disclosing entity; and

''(B) a surety bond in a form specified by the State and in an amount that is not less than $50,000.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to suppliers of medical assistance consisting of durable medical equipment furnished on or after January 1, 1998.

(c) SURETY BOND REQUIREMENT FOR HOME HEALTH AGENCIES.—

(1) IN GENERAL.—Section 1905(a)(7) (42 U.S.C. 1396d(a)(7) is amended by inserting '', provided that the agency or organization providing such services provides the State agency on a continuing basis with a surety bond in a form specified by the State and in an amount that is not less than $50,000'' after ''services''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to home health agencies with respect to services furnished on or after January 1, 1998.

(d) CONFLICT OF INTEREST SAFEGUARDS.—Section 1902(a)(4) (42 U.S.C. 1396a(a)(4)) is amended to read as follows:

''(4) provide—

''(A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

''(B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; and

''(C) that each State or local officer or employee, or independent contractor—

''(i) who is responsible for the expenditure of substantial amounts of funds under the State plan, or who is responsible for administering the State plan under this title, each individual who formerly was such an officer, employee, or independent contractor, and each partner of such an officer, employee, or independent contractor shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code; and

''(ii) who is responsible for selecting, awarding, or otherwise obtaining items and services under the State plan shall be subject to safeguards against conflicts of interest that are at least as stringent as the safeguards that apply under section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) to persons described in subsection (a)(2) of such section of that Act;''.

(e) AUTHORITY TO REFUSE TO ENTER INTO MEDICAID AGREEMENTS WITH INDIVIDUALS OR ENTITIES CONVICTED OF FELONIES.—Section 1902(a)(23) (42 U.S.C. 1396a(a)(23)) is amended to read as follows:

''(23) provide that—

''(A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services; and

''(B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1915(b)(1)), a health maintenance organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1905(a)(4)(C), except as provided in subsection (g) and in section 1915, except in the case of Puerto Rico, the Virgin Islands, and Guam, and except that nothing in this paragraph shall be construed as requiring a State to provide medical assistance for items or services furnished by a person or entity convicted of a felony under Federal or State law for an offense which the State agency determines is inconsistent with the best interest of beneficiaries under the State plan;''.

(f) MONITORING PAYMENTS FOR DUAL ELIGIBLES.—The Administrator of the Health Care Financing Administration shall—

*(1) develop mechanisms to better monitor and prevent inappropriate payments under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) in the case of individuals who are dually eligible for benefits under such program and under the medicare program under title XVIII of such Act (42 U.S.C. 1395 et seq.);*

*(2) study the use of case management or care coordination in order to improve the appropriateness of care, quality of care, and cost effectiveness of care for individuals who are dually eligible for benefits under such programs; and*

*(3) work with the States to ensure better care coordination for dual eligibles and make recommendations to Congress as to any statutory changes that would not compromise beneficiary protections and that would improve or facilitate such care.*

*(g) BENEFICIARY AND PROGRAM PROTECTION AGAINST WASTE, FRAUD, AND ABUSE.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by subsection (b)(1), is amended—*

*(1) by striking ''and'' at the end of paragraph (63);*

*(2) by striking the period at the end of paragraph (64) and inserting ''; and''; and*

*(3) by inserting after paragraph (64) the following:*

*''(65) provide programs—*

*''(A) to ensure program integrity, protect and advocate on behalf of individuals, and to report to the State data concerning beneficiary concerns and complaints and instances of beneficiary abuse or program waste or fraud by managed care plans operating in the State under contact with the State agency;*

*''(B) to provide assistance to beneficiaries, with particular emphasis on the families of special needs children and persons with disabilities to—*

*''(i) explain the differences between managed care and fee-for-service plans;*

*''(ii) clarify the coverage for such beneficiaries under any managed care plan offered under the State plan under this title;*

*''(iii) explain the implications of the choices between competing plans;*

*''(iv) assist such beneficiaries in understanding their rights under any managed care plan offered under the State plan, including their right to—*

*''(I) access and benefits;*

*''(II) nondiscrimination;*

*''(III) grievance and appeal mechanisms; and*

*''(IV) change plans, as designated in the State plan; and*

*''(v) exercise the rights described in clause (iv); and*

*''(C) to collect and report to the State data on the number of complaints or instances identified under subparagraph (A) and to report to the State annually on any systematic problems in the implementation of managed care entities contracting with the State under the State plan under this title.''.*

***SEC. 5757. STUDY ON EPSDT BENEFITS.***

*(a) STUDY.—The Secretary of Health and Human Services, in consultation with Governors, directors of State medicaid and State maternal and child programs, the Institute of Medicine, the American Academy of Pediatrics, and representatives of beneficiaries under the medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) shall conduct a study of the early and periodic screening, diagnostic, and treatment services provided under State plans under title XIX of the Social Security Act in accordance with section 1905(r) of such Act (42 U.S.C. 1396d(r)).*

*(b) REPORT.—Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to Congress on the results of the conducted study under subsection (a).*

***SEC. 5758. STUDY AND GUIDELINES REGARDING MANAGED CARE ORGANIZATIONS AND INDIVIDUALS WITH SPECIAL HEALTH CARE NEEDS.***

*(a) STUDY AND RECOMMENDATIONS.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary''), in consultation with States, managed care organizations, the National Academy of State Health Policy, representatives of beneficiaries with special health care needs, experts in specialized health care, and others, shall conduct a study and develop the guidelines described in subsection (b). Not later than 2 years after the date of enactment of this Act, the Secretary shall report such guidelines to Congress and make recommendations for implementing legislation.*

*(b) GUIDELINES DESCRIBED.—The guidelines to be developed by the Secretary shall relate to issues such as risk adjustment, solvency, medical necessity definitions, case management, quality controls, adequacy of provider networks, access to specialists (including pediatric specialists and the use of specialists as primary care providers), marketing, compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), speedy grievance and appeals procedures, data collection, and such other matters as the Secretary may determine, as these issues affect care provided to individuals with special health care needs and chronic conditions in capitated managed care or primary care case management plans. The Secretary shall distinguish which guidelines should apply to primary care case management arrangements, to capitated risk sharing arrangements, or to both. Such guidelines should be designed to be used in reviewing State proposals under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) (by waiver request or State plan amendment) to implement mandatory capitated managed care or primary care case management arrangements that enroll beneficiaries with chronic conditions or special health care needs.*

***CHAPTER 5—MISCELLANEOUS***

***SEC. 5761. INCREASED FMAPS.***

*Section 1905(b) (42 U.S.C. 1396d(b)(1)) is amended—*

*(1) by striking ''and (2)'' and inserting ''(2)''; and*

*(2) by striking the period and inserting '', and (3) during the period beginning on October 1, 1997, and ending on September 30, 2000, the Federal medical assistance percentage for the District of Columbia shall be 60 per centum, and the Federal medical assistance percentage for Alaska shall be 59.8 per centum (but only, in the case of such States, with respect to expenditures under a State plan under this title).''.*

***SEC. 5762. INCREASE IN PAYMENT CAPS FOR TERRITORIES.***

*Section 1108 (42 U.S.C. 1308) is amended—*

*(1) in subsection (f), by striking ''The'' and inserting ''Subject to subsection (g), the''; and*

*(2) by adding at the end the following:*

*''(g) MEDICAID PAYMENTS TO TERRITORIES FOR FISCAL YEAR 1998 AND THEREAFTER.—*

*''(1) FISCAL YEAR 1998.—With respect to fiscal year 1998, the amounts otherwise determined for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa under subsection (f) for such fiscal year shall be increased in the following manner:*

*''(A) For Puerto Rico, $30,000,000.*

*''(B) For the Virgin Islands, $750,000.*

*''(C) For Guam, $750,000.*

*''(D) For the Northern Mariana Islands, $500,000.*

*''(E) For American Samoa, $500,000.*

*''(2) FISCAL YEAR 1999 AND THEREAFTER.—Notwithstanding subsection (f), with respect to fiscal year 1999 and any fiscal year thereafter, the total amount certified by the Secretary under title XIX for payment to—*

*''(A) Puerto Rico shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;*

*''(B) the Virgin Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;*

*''(C) Guam shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000;*

*''(D) Northern Mariana Islands shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000; and*

*''(E) American Samoa shall not exceed the sum of the amount provided in this subsection for the preceding fiscal year increased by the percentage increase referred to in subparagraph (A), rounded to the nearest $10,000.''.*

***SEC. 5763. COMMUNITY-BASED MENTAL HEALTH SERVICES.***

*(a) IN GENERAL.—Section 1905(a) (42 U.S.C. 1396d(a)), as amended by section 5741(a)(1), is amended—*

*(1) by striking ''and'' at the end of paragraph (26);*

*(2) by redesignating paragraph (27) as paragraph (28); and*

*(3) by inserting after paragraph (26) the following new paragraph:*

*''(27) outpatient and intensive community-based mental health services, including psychiatric rehabilitation, day treatment, intensive in-home services for children, assertive community treatment, therapeutic out-of-home placements (excluding room and board), clinic services, partial hospitalization, and targeted case management; and''.*

*(b) CONFORMING AMENDMENTS.—*

*(1) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)), as amended by section 5702(a)(2)(A), is amended by inserting ''or (27)'' after ''(25)''.*

*(2) Section 1902(j) (42 U.S.C. 1396a(j)), as amended by section 5741(b)(1), is amended by striking ''(27)'' and inserting ''(28)''.*

***SEC. 5764. OPTIONAL MEDICAID COVERAGE OF CERTAIN CDC-SCREENED BREAST CANCER PATIENTS.***

*(a) COVERAGE AS OPTIONAL CATEGORICALLY NEEDY GROUP.—Section 1902(a)(10)(A)(ii) (42 U.S.C. 1396a(a)(10)(A)(ii)) is amended—*

*(1) in subclause (XI), by striking ''or'' at the end;*

*(2) in subclause (XII), by adding ''or'' at the end; and*

*(3) by adding at the end the following:*

*''(XIII) who are described in subsection (aa)(1)(relating to certain CDC-screened breast cancer patients);''.*

*(b) GROUP AND BENEFIT DESCRIBED.—Section 1902 (42 U.S.C. 1396a) is amended by adding at the end the following:*

*''(aa)(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i) who—*

*''(A) have not attained age 65;*

*''(B) have been diagnosed with breast cancer through participation in the program to screen women for breast and cervical cancer conducted by the Director of the Centers for Disease Control and Prevention under title 15 of the Public Health Service Act (42 U.S.C. 300k et seq.);*

*''(C) satisfy the income and resource eligibility criteria established by such Director for participation in such program; and*

*''(D) are not otherwise eligible for medical assistance under the State plan under this title.*

*''(2) For purposes of subsection (a)(10), the term ''breast cancer-related services'' means*

each of the following services relating to treatment of breast cancer:

''(A) Prescribed drugs.

''(B) Physicians' services and services described in section 1905(a)(2).

''(C) Laboratory and X-ray services (including services to confirm the presence of breast cancer).

''(D) Rural health clinic services and Federally-qualified health center services.

''(E) Case management services (as defined in section 1915(g)(2)).

''(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.''.

(c) LIMITATION ON BENEFITS.—Section 1902(a)(10) (42 U.S.C. 1396a(a)(10)) is amended in the matter following subparagraph (F)—

(1) by striking '', and (XIII)''; and

(2) by inserting before the semicolon at the end the following: '', and (XIV) the medical assistance made available to an individual described in subsection (aa)(1) who is eligible for medical assistance only because of subparagraph (A)(ii)(XIII) shall be limited to medical assistance for breast cancer-related services (described in subsection (aa)(2))''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(A) in clause (x), by striking ''or'' at the end;

(B) in clause (xi), by adding ''or'' at the end;

(C) by inserting after clause (xi) the following:

''(xii) individuals described in section 1902(aa)(1),''; and

(D) by striking paragraph (19) and inserting the following:

''(19) case management services (as defined in section 1915(g)(2)), TB-related services described in section 1902(z)(2)(F), and breast cancer-related services described in section 1902)(2)(F);''.

(2) Section 1915(g)(1) (42 U.S.C. 1396n(g)(1)) is amended by inserting ''or section 1902(aa)(1)'' after ''section 1902(z)(1)(A)''.

(e) EFFECTIVE DATE.—The amendments made by this section apply to medical assistance furnished on or after October 1, 1997, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

**SEC. 5765. TREATMENT OF STATE TAXES IMPOSED ON CERTAIN HOSPITALS THAT PROVIDE FREE CARE.**

(a) EXCEPTION FROM TAX DOES NOT DISQUALIFY AS BROAD-BASED TAX.—Section 1903(w)(3) (42 U.S.C. 1396b(w)(3)) is amended—

(1) in subparagraph (B), by striking ''and (E)'' and inserting ''(E), and (F)''; and

(2) by adding at the end the following:

''(F) In no case shall a tax not qualify as a broad-based health care related tax under this paragraph because it does not apply to a hospital that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code and that does not accept payment under the State plan under this title or under title XVIII.''.

(b) REDUCTION IN FEDERAL FINANCIAL PARTICIPATION IN CASE OF IMPOSITION OF TAX.—Section 1903(b) (42 U.S.C. 1396b(b)) is amended by adding at the end the following:

''(4) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State shall be decreased in a quarter by the amount of any health care related taxes (described in section 1902(w)(3)(A)) that are imposed on a hospital described in subsection (w)(3)(F) in that quarter.''.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to taxes imposed before, on, or after the date of the enactment of this Act and the amendment made by subsection (b) shall apply to taxes imposed on or after such date.

**SEC. 5766. TREATMENT OF VETERANS PENSIONS UNDER MEDICAID.**

(a) POST-ELIGIBILITY.—Section 1902(r)(1) of the Social Security Act (42 U.S.C. 1396a(r)(1)) is amended to read as follows:

''(r)(1) For purposes of sections 1902(a)(17) and 1924(d)(1)(D) and for purposes of a waiver under section 1915, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver—

''(A) there shall be disregarded reparation payments made by the Federal Republic of Germany;

''(B) there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

''(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

''(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this title, subject to reasonable limits the State may establish on the amount of these expenses; and

''(C) in the case of a resident in a State veterans home, there shall be taken into account, as income, any and all payments received under a Department of Veterans Affairs pension or compensation program, including payments attributable to the recipient's medical expenses or to the recipient's need for aid and attendance, but excluding that part of any augmented benefit attributable to a dependent.

For purposes of subparagraph (C), any Department of Veterans Affairs pension benefit that has been limited to $90 per month pursuant to section 5503(f) of title 38, United States Code, may be applied to meet the monthly personal needs allowance provided by the State plan under this title, but shall not otherwise be used to reduce the amount paid to a facility under the State plan.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to periods beginning on and after July 1, 1994.

**SEC. 5767. REMOVAL OF NAME FROM NURSE AIDE REGISTRY.**

(a) MEDICARE.—Section 1819(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C)) is amended—

(1) in the first sentence by striking ''The State'' and inserting ''(i) The State''; and

(2) by adding at the end the following:

''(ii)(I) In the case of a finding of neglect, the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

''(aa) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

''(bb) the neglect involved in the original finding was a singular occurrence.

''(II) In no case shall a determination on a petition submitted under clause (I) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under this subparagraph.''.

(b) MEDICAID.—Section 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1396r(g)(1)(C)) is amended—

(1) in the first sentence by striking ''The State'' and inserting ''(i) The State''; and

(2) by adding at the end the following:

''(ii)(I) In the case of a finding of neglect, the State shall establish a procedure to permit a nurse aide to petition the State to have his or her name removed from the registry upon a determination by the State that—

''(aa) the employment and personal history of the nurse aide does not reflect a pattern of abusive behavior or neglect; and

''(bb) the neglect involved in the original finding was a singular occurrence.

''(II) In no case shall a determination on a petition submitted under clause (I) be made prior to the expiration of the 1-year period beginning on the date on which the name of the petitioner was added to the registry under this subparagraph.''.

(c) RETROACTIVE REVIEW.—The procedures developed by a State under the amendments made by subsection (a) and (b) shall permit an individual to petition for a review of any finding made by a State under section 1819(g)(1)(C) or 1919(g)(1)(C) of the Social Security Act (42 U.S.C. 1395i-3(g)(1)(C) or 1396r(g)(1)(C)) after January 1, 1995.

(d) STUDY AND REPORT.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

(A) the use of nurse aide registries by States, including the number of nurse aides placed on the registries on a yearly basis and the circumstances that warranted their placement on the registries;

(B) the extent to which institutional environmental factors (such as a lack of adequate training or short staffing) contribute to cases of abuse and neglect at nursing facilities; and

(C) whether alternatives (such as a probational period accompanied by additional training or mentoring or sanctions on facilities that create an environment that encourages abuse or neglect) to the sanctions that are currently applied under the Social Security Act for abuse and neglect at nursing facilities might be more effective in minimizing future cases of abuse and neglect.

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to the appropriate committees of Congress, a report concerning the results of the study conducted under paragraph (1) and the recommendation of the Secretary for legislation based on such study.

**SEC. 5768. WAIVER OF CERTAIN PROVIDER TAX PROVISIONS.**

Notwithstanding any other provision of law, taxes, fees, or assessments, as defined in section 1903(w)(3)(A) of the Social Security Act (42 U.S.C. 1396b(w)(3)(A)), that were collected by the State of New York from a health care provider before June 1, 1997, and for which a waiver of the provisions of subparagraph (B) or (C) of section 1903(w)(3) of such Act has been applied for, or that would, but for this paragraph require that such a waiver be applied for, in accordance with subparagraph (E) of such section, and, (if so applied for) upon which action by the Secretary of Health and Human Services (including any judicial review of any such proceeding) has not been completed as of the date of enactment of this Act, are deemed to be permissible health care related taxes and in compliance with the requirements of subparagraphs (B) and (C) of sections 1903(w)(3) of such Act.

**SEC. 5769. CONTINUATION OF STATE-WIDE SECTION 1115 MEDICAID WAIVERS.**

(a) IN GENERAL.—Section 1115 of the Social Security Act (42 U.S.C. 1315) is amended by adding at the end the following:

''(d)(1) The provisions of this subsection shall apply to the extension of statewide comprehensive research and demonstration projects (in this subsection referred to as 'waiver project') for which waivers of compliance with the requirements of title XIX are granted under subsection (a). With respect to a waiver project that, but for the enactment of this subsection, would expire, the State at its option may not later than 1 year before the waiver under subsection (a) would expire (acting through the chief executive officer of the State who is operating the project), submit to the Secretary a written request for an extension of such waiver project for up to 2 years.

''(2) The requirements of this paragraph are that the waiver project—

''(A) has been successfully operated for 5 or more years; and

''(B) has been shown, through independent evaluations sponsored by the Health Care Financing Administration, to successfully contain costs and provide access to health care.

''(3)(A) In the case of waiver projects described in paragraph (1)(A), if the Secretary fails to respond to the request within 6 months after the date on which the request was submitted, the request is deemed to have been granted.

''(B) If the request is granted or deemed to have been granted, the deadline for submittal of a final report shall be 1 year after the date on which the waiver project would have expired but for the enactment of this subsection.

''(C) The Secretary shall release an evaluation of each such project not later than 1 year after the date of receipt of the final report.

''(D) Phase-down provisions which were applicable to waiver projects before an extension was provided under this subsection shall not apply.

''(4) The extension of a waiver project under this subsection shall be on the same terms and conditions (including applicable terms and conditions related to quality and access of services, budget neutrality as adjusted for inflation, data and reporting requirements and special population protections), except for any phase down provisions, and subject to the same set of waivers that applied to the project or were granted before the extension of the project under this subsection. The permanent continuation of a waiver project shall be on the same terms and conditions, including financing, and subject to the same set of waivers. No test of budget neutrality shall be applied in the case of projects described in paragraph (2) after that date on which the permanent extension was granted.

''(5) In the case of a waiver project described in paragraph (2), the Secretary, acting through the Health Care Financing Administration shall, deem any State's request to expand medicaid coverage in whole or in part to individuals who have an income at or below the Federal poverty level as budget neutral if independent evaluations sponsored by the Health Care Financing Administration have shown that the State's medicaid managed care program under such original waiver is more cost effective and efficient than the traditional fee-for-service medicaid program that, in the absence of any managed care waivers under this section, would have been provided in the State.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective on the date of enactment of this Act.

**SEC. 5770. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as otherwise specifically provided, the provisions of and amendments made by this subtitle shall apply with respect to State programs under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) on and after October 1, 1997.

(b) EXTENSION FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this subtitle, the State plan shall not be regarded as failing to comply with the requirements of this subtitle solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

### Subtitle J—Children's Health Insurance Initiatives

**SEC. 5801. ESTABLISHMENT OF CHILDREN'S HEALTH INSURANCE INITIATIVES.**

(a) IN GENERAL.—The Social Security Act is amended by adding at the end the following:

''TITLE XXI—CHILD HEALTH INSURANCE INITIATIVES

**''SEC. 2101. PURPOSE.**

''The purpose of this title is to provide funds to States to enable such States to expand the provision of health insurance coverage for low-income children. Funds provided under this title shall be used to achieve this purpose through outreach activities described in section 2106(a) and, at the option of the State through—

''(1) a grant program conducted in accordance with section 2107 and the other requirements of this title; or

''(2) expansion of coverage of such children under the State medicaid program who are not required to be provided medical assistance under section 1902(l) (taking into account the process of individuals aging into eligibility under subsection (l)(1)(D)).

**''SEC. 2102. DEFINITIONS.**

''In this title:

''(1) BASE-YEAR COVERED LOW-INCOME CHILD POPULATION.—The term 'base-year covered low-income child population' means the total number of low-income children with respect to whom, as of fiscal year 1996, an eligible State provides or pays the cost of health benefits either through a State funded program or through expanded eligibility under the State plan under title XIX (including under a waiver of such plan), as determined by the Secretary. Such term does not include any low-income child described in paragraph (3)(A) that a State must cover in order to be considered an eligible State under this title.

''(2) CHILD.—The term 'child' means an individual under 19 years of age.

''(3) ELIGIBLE STATE.—The term 'eligible State' means, with respect to a fiscal year, a State that—

''(A) provides, under section 1902(l)(1)(D) or under a waiver, for eligibility for medical assistance under a State plan under title XIX of individuals under 17 years of age in fiscal year 1998, and under 19 years of age in fiscal year 2000, regardless of date of birth;

''(B) has submitted to the Secretary under section 2104 a program outline that—

''(i) sets forth how the State intends to use the funds provided under this title to provide health insurance coverage for low-income children consistent with the provisions of this title; and

''(ii) is approved under section 2104; and

''(iii) otherwise satisfies the requirements of this title; and

''(C) satisfies the maintenance of effort requirement described in section 2105(c)(5).

''(4) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—The term 'Federal medical assistance percentage' means, with respect to a State, the meaning given that term under section 1905(b). Any cost-sharing imposed under this title may not be included in determining Federal medical assistance percentage for reimbursement of expenditures under a State program funded under this title.

''(5) FEHBP-EQUIVALENT CHILDREN'S HEALTH INSURANCE COVERAGE.—The term 'FEHBP-equivalent children's health insurance coverage' means, with respect to a State, any plan or arrangement that provides, or pays the cost of, health benefits that the Secretary has certified are equivalent to or better than the services covered for a child, including hearing and vision services, under the standard Blue Cross/Blue Shield preferred provider option service benefit plan offered under chapter 89 of title 5, United States Code.

''(6) INDIANS.—The term 'Indians' has the meaning given that term in section 4(c) of the Indian Health Care Improvement Act (25 U.S.C. 1601 et seq.).

''(7) LOW-INCOME CHILD.—The term 'low-income child' means a child in a family whose income is below 200 percent of the poverty line for a family of the size involved.

''(8) POVERTY LINE.—The term 'poverty line' has the meaning given that term in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by such section.

''(9) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(10) STATE.—The term 'State' means each of the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.

''(11) STATE CHILDREN'S HEALTH EXPENDITURES.—The term 'State children's health expenditures' means the State share of expenditures by the State for providing children with health care items and services under—

''(A) the State plan for medical assistance under title XIX;

''(B) the maternal and child health services block grant program under title V;

''(C) the preventive health services block grant program under part A of title XIX of the Public Health Services Act (42 U.S.C. 300w et seq.);

''(D) State-funded programs that are designed to provide health care items and services to children;

''(E) school-based health services programs;

''(F) State programs that provide uncompensated or indigent health care;

''(G) county-indigent care programs for which the State requires a matching share by a county government or for which there are intergovernmental transfers from a county to State government; and

''(H) any other program under which the Secretary determines the State incurs uncompensated expenditures for providing children with health care items and services.

''(12) STATE MEDICAID PROGRAM.—The term 'State medicaid program' means the program of medical assistance provided under title XIX.

**''SEC. 2103. APPROPRIATION.**

''(a) APPROPRIATION.—

''(1) IN GENERAL.—Subject to subsection (b), out of any money in the Treasury of the United States not otherwise appropriated, there is appropriated for the purpose of carrying out this title—

''(A) for fiscal year 1998, $2,500,000,000;

''(B) for each of fiscal years 1999 and 2000, $3,200,000,000;

''(C) for fiscal year 2001, $3,600,000,000;

''(D) for fiscal year 2002, $3,500,000,000;

''(E) for each of fiscal years 2003 through 2007, $4,580,000,000.

''(2) AVAILABILITY.—Funds appropriated under this section shall remain available without fiscal year limitation, as provided under section 2105(b)(4).

''(b) REDUCTION FOR INCREASED MEDICAID EXPENDITURES.—With respect to each of the fiscal years described in subsection (a)(1), the amount appropriated under subsection (a)(1) for each such fiscal year shall be reduced by an amount equal to the amount of the total Federal outlays under the medicaid program under title XIX resulting from—

''(1) the amendment made by section 5732 of the Balanced Budget Act of 1997 (regarding the State option to provide 12-month continuous eligibility for children);

''(2) increased enrollment under State plans approved under such program as a result of outreach activities under section 2106(a); and

''(3) the requirement under section 2102(3)A) to provide eligibility for medical assistance under the State plan under title XIX for all children under 19 years of age who have families with income that is at or below the poverty line.

''(c) STATE ENTITLEMENT.—This title constitutes budget authority in advance of appropriations Acts and represents the obligation of the Federal Government to provide for the payment to States of amounts provided in accordance with the provisions of this title.

''(d) EFFECTIVE DATE.—No State is eligible for payments under section 2105 for any calendar quarter beginning before October 1, 1997.

**"SEC. 2104. PROGRAM OUTLINE.**

"(a) GENERAL DESCRIPTION.—A State shall submit to the Secretary for approval a program outline, consistent with the requirements of this title, that—

"(1) identifies, on or after the date of enactment of the Balanced Budget Act of 1997, which of the 2 options described in section 2101 the State intends to use to provide low-income children in the State with health insurance coverage;

"(2) describes the manner in which such coverage shall be provided; and

"(3) provides such other information as the Secretary may require.

"(b) OTHER REQUIREMENTS.—The program outline submitted under this section shall include the following:

"(1) ELIGIBILITY STANDARDS AND METHODOLOGIES.—A summary of the standards and methodologies used to determine the eligibility of low-income children for health insurance coverage under a State program funded under this title.

"(2) ELIGIBILITY SCREENING; COORDINATION WITH OTHER HEALTH COVERAGE.—A description of the procedures to be used to ensure—

"(A) through both intake and followup screening, that only low-income children are furnished health insurance coverage through funds provided under this title; and

"(B) that any health insurance coverage provided for children through funds under this title does not reduce the number of children who are provided such coverage through any other publicly or privately funded health plan.

"(3) INDIANS.—A description of how the State will ensure that Indians are served through a State program funded under this title.

"(c) DEADLINE FOR SUBMISSION.—A State program outline shall be submitted to the Secretary by not later than March 31 of any fiscal year (October 1, 1997, in the case of fiscal year 1998).

**"SEC. 2105. DISTRIBUTION OF FUNDS.**

"(a) ESTABLISHMENT OF FUNDING POOLS.—

"(1) IN GENERAL.—From the amount appropriated under section 2103(a)(1) for each fiscal year, determined after the reduction required under section 2103(b), the Secretary shall, for purposes of fiscal year 1998, reserve 85 percent of such amount for distribution to eligible States through the basic allotment pool under subsection (b) and 15 percent of such amount for distribution through the new coverage incentive pool under subsection (c)(2)(B)(ii).

"(2) ANNUAL ADJUSTMENT OF RESERVE PERCENTAGES.—The Secretary shall annually adjust the amount of the percentages described in paragraph (1) in order to provide sufficient basic allotments and sufficient new coverage incentives to achieve the purpose of this title.

"(b) DISTRIBUTION OF FUNDS UNDER THE BASIC ALLOTMENT POOL.—

"(1) STATES.—

"(A) IN GENERAL.—From the total amount reserved under subsection (a) for a fiscal year for distribution through the basic allotment pool, the Secretary shall first set aside 0.25 percent for distribution under paragraph (2) and shall allot from the amount remaining to each eligible State not described in such paragraph the State's allotment percentage for such fiscal year.

"(B) STATE'S ALLOTMENT PERCENTAGE.—

"(i) IN GENERAL.—For purposes of subparagraph (A), the allotment percentage for a fiscal year for each State is the percentage equal to the ratio of the number of low-income children in the base period in the State to the total number of low-income children in the base period in all States not described in paragraph (2).

"(ii) NUMBER OF LOW-INCOME CHILDREN IN THE BASE PERIOD.—In clause (i), the number of low-income children in the base period for a fiscal year in a State is equal to the average of the number of low-income children in the State for the period beginning on October 1, 1992, and ending on September 30, 1995, as reported in the March 1994, March 1995, and March 1996 supplements to the Current Population Survey of the Bureau of the Census.

"(2) OTHER STATES.—

"(A) IN GENERAL.—From the amount set aside under paragraph (1)(A) for each fiscal year, the Secretary shall make allotments for such fiscal year in accordance with the percentages specified in subparagraph (B) to Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands, if such States are eligible States for such fiscal year.

"(B) PERCENTAGES SPECIFIED.—The percentages specified in this subparagraph are in the case of—

"(i) Puerto Rico, 91.6 percent;

"(ii) Guam, 3.5 percent;

"(iii) the Virgin Islands, 2.6 percent;

"(iv) American Samoa, 1.2 percent; and

"(v) the Northern Mariana Islands, 1.1 percent.

"(3) THREE-YEAR AVAILABILITY OF AMOUNTS ALLOTTED.—Amounts allotted to a State pursuant to this subsection for a fiscal year shall remain available for expenditure by the State through the end of the second succeeding fiscal year.

"(4) PROCEDURE FOR DISTRIBUTION OF UNUSED FUNDS.—The Secretary shall determine an appropriate procedure for distribution of funds to eligible States that remain unused under this subsection after the expiration of the availability of funds required under paragraph (3). Such procedure shall be developed and administered in a manner that is consistent with the purpose of this title.

"(c) PAYMENTS.—

"(1) IN GENERAL.—The Secretary shall—

"(A) before October 1 of any fiscal year, pay an eligible State an amount equal to 1 percent of the amount allotted to the State under subsection (b) for conducting the outreach activities required under section 2106(a); and

"(B) make quarterly fiscal year payments to an eligible State from the amount remaining of such allotment for such fiscal year in an amount equal to the Federal medical assistance percentage for the State (as defined under section 2102(4) and determined without regard to the amount of Federal funds received by the State under title XIX before the date of enactment of this title) of the Federal and State incurred cost of providing health insurance coverage for a low-income child in the State plus the applicable bonus amount.

"(2) APPLICABLE BONUS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the applicable bonus amount is—

"(i) 5 percent of the Federal and State incurred cost, with respect to a period, of providing health insurance coverage for children covered at State option among the base-year covered low-income child population (measured in full year equivalency) (including such children covered by the State through expanded eligibility under the medicaid program under title XIX before the date of enactment of this title, but excluding any low-income child described in section 2102(3)(A) that a State must cover in order to be considered an eligible State under this title); and

"(ii) 10 percent of the Federal and State incurred cost, with respect to a period, of providing health insurance coverage for children covered at State option among the number (as so measured) of low-income children that are in excess of such population.

"(B) SOURCE OF BONUSES.—

"(i) BASE-YEAR COVERED LOW-INCOME CHILD POPULATION.—A bonus described in subparagraph (A)(i) shall be paid out of an eligible State's allotment for a fiscal year.

"(ii) FOR OTHER LOW-INCOME CHILD POPULATIONS.—A bonus described in subparagraph (A)(ii) shall be paid out of the new coverage incentive pool reserved under subsection (a)(1).

"(3) DEFINITION OF COST OF PROVIDING HEALTH INSURANCE COVERAGE.—For purposes of this subsection the cost of providing health insurance coverage for a low-income child in the State means—

"(A) in the case of an eligible State that opts to use funds provided under this title through the medicaid program, the cost of providing such child with medical assistance under the State plan under title XIX; and

"(B) in the case of an eligible State that opts to use funds provided under this title under section 2107, the cost of providing such child with health insurance coverage under such section.

"(4) LIMITATION ON TOTAL PAYMENTS.—With respect to a fiscal year, the total amount paid to an eligible State under this title (including any bonus payments) shall not exceed 85 percent of the total cost of a State program conducted under this title for such fiscal year.

"(5) MAINTENANCE OF EFFORT.—

"(A) DEEMED COMPLIANCE.—A State shall be deemed to be in compliance with this provision if—

"(i) it does not adopt income and resource standards and methodologies that are more restrictive than those applied as of June 1, 1997, for purposes of determining a child's eligibility for medical assistance under the State plan under title XIX; and

"(ii) in the case of fiscal year 1998 and each fiscal year thereafter, the State children's health expenditures defined in section 2102(11) are not less than the amount of such expenditures for fiscal year 1996.

"(B) FAILURE TO MAINTAIN MEDICAID STANDARDS AND METHODOLOGIES.—A State that fails to meet the conditions described in subparagraph (A) shall not receive—

"(i) funds under this title for any child that would be determined eligible for medical assistance under the State plan under title XIX using the income and resource standards and methodologies applied under such plan as of June 1, 1997; and

"(ii) any bonus amounts described in paragraph (2)(A)(ii).

"(C) FAILURE TO MAINTAIN SPENDING ON CHILD HEALTH PROGRAMS.—A State that fails to meet the condition described in subparagraph (A)(ii) shall not receive funding under this title.

"(6) ADVANCE PAYMENT; RETROSPECTIVE ADJUSTMENT.—The Secretary may make payments under this subsection for each quarter on the basis of advance estimates of expenditures submitted by the State and such other investigation as the Secretary may find necessary, and shall reduce or increase the payments as necessary to adjust for any overpayment or underpayment for prior quarters.

**"SEC. 2106. USE OF FUNDS.**

"(a) SET-ASIDE FOR OUTREACH ACTIVITIES.—

"(1) IN GENERAL.—From the amount allotted to a State under section 2105(b) for a fiscal year, each State shall conduct outreach activities described in paragraph (2).

"(2) OUTREACH ACTIVITIES DESCRIBED.—The outreach activities described in this paragraph include activities to—

"(A) identify and enroll children who are eligible for medical assistance under the State plan under title XIX; and

"(B) conduct public awareness campaigns to encourage employers to provide health insurance coverage for children.

"(b) STATE OPTIONS FOR REMAINDER.—A State may use the amount remaining of the allotment to a State under section 2105(b) for a fiscal year, determined after the payment required under section 2105(c)(1)(A), in accordance with section 2107 or the State medicaid program (but not both). Nothing in the preceding sentence shall be construed as limiting a State's eligibility for receiving the 5 percent bonus described in section 2105(c)(2)(A)(i) for children covered by the State through expanded eligibility under the medicaid program under title XIX before the date of enactment of this title.

"(c) PROHIBITION ON USE OF FUNDS.—No funds provided under this title may be used to provide health insurance coverage for—

''(1) families of State public employees; or

''(2) children who are committed to a penal institution.

''(d) USE LIMITED TO STATE PROGRAM EXPENDITURES.—Funds provided to an eligible State under this title shall only be used to carry out the purpose of this title (as described in section 2101), and any health insurance coverage provided with such funds may include coverage of abortion only if necessary to save the life of the mother or if the pregnancy is the result of an act of rape or incest.

''(e) ADMINISTRATIVE EXPENDITURES.—

''(1) IN GENERAL.—Not more than the applicable percentage of the amount allotted to a State under section 2105(b) for a fiscal year, determined after the payment required under section 2105(c)(1)(A), shall be used for administrative expenditures for the program funded under this title.

''(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage with respect to a fiscal year is—

''(A) for the first 2 years of a State program funded under this title, 10 percent;

''(B) for the third year of a State program funded under this title, 7.5 percent; and

''(C) for the fourth year of a State program funded under this title and each year thereafter, 5 percent.

''(f) NONAPPLICATION OF FIVE-YEAR LIMITED ELIGIBILITY FOR MEANS-TESTED PUBLIC BENEFITS.—The provisions of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613) shall not apply with respect to a State program funded under this title.

''(g) AUDITS.—The provisions of section 506(b) shall apply to funds expended under this title to the same extent as they apply to title V.

''(h) REQUIREMENT TO FOLLOW STATE PROGRAM OUTLINE.—The State shall conduct the program in accordance with the program outline approved by the Secretary under section 2104.

**''SEC. 2107. STATE OPTION FOR THE PURCHASE OR PROVISION OF CHILDREN'S HEALTH INSURANCE.**

''(a) STATE OPTION.—

''(1) IN GENERAL.—An eligible State that opts to use funds provided under this title under this section shall use such funds to provide FEHBP-equivalent children's health insurance coverage for low-income children who reside in the State.

''(2) PRIORITY FOR LOW-INCOME CHILDREN.—A State that uses funds provided under this title under this section shall not cover low-income children with higher family income without covering such children with a lower family income.

''(3) DETERMINATION OF ELIGIBILITY AND FORM OF ASSISTANCE.—An eligible State may establish any additional eligibility criteria for the provision of health insurance coverage for a low-income child through funds provided under this title, so long as such criteria and assistance are consistent with the purpose and provisions of this title.

''(4) AFFORDABILITY.—An eligible State may impose any family premium obligations or cost-sharing requirements otherwise permitted under this title on low-income children with family incomes that exceed 150 percent of the poverty line. In the case of a low-income child whose family income is at or below 150 percent of the poverty line, limits on beneficiary costs generally applicable under title XIX apply to coverage provided such children under this section.

''(b) NONENTITLEMENT.—Nothing in this section shall be construed as providing an entitlement for an individual or person to any health insurance coverage, assistance, or service provided through a State program funded under this title. If, with respect to a fiscal year, an eligible State determines that the funds provided under this title are not sufficient to provide health insurance coverage for all the low-income children that the State proposes to cover in the State program outline submitted under section 2104 for such fiscal year, the State may adjust the applicable eligibility criteria for such children appropriately or adjust the State program in another manner specified by the Secretary, so long as any such adjustments are consistent with the purpose of this title.

**''SEC. 2108. PROGRAM INTEGRITY.**

''The following provisions of the Social Security Act shall apply to eligible States under this title in the same manner as such provisions apply to a State under title XIX:

''(1) Section 1116 (relating to administrative and judicial review).

''(2) Section 1124 (relating to disclosure of ownership and related information).

''(3) Section 1126 (relating to disclosure of information about certain convicted individuals).

''(4) Section 1128 (relating to exclusion from individuals and entities from participation in State health care plans).

''(5) Section 1128A (relating to civil monetary penalties).

''(6) Section 1128B (relating to criminal penalties).

''(7) Section 1132 (relating to periods within which claims must be filed).

''(8) Section 1902(a)(4)(C) (relating to conflict of interest standards).

''(9) Section 1903(i) (relating to limitations on payment).

''(10) Section 1903(m)(5) (as in effect on the day before the date of enactment of the Balanced Budget Act of 1997).

''(11) Section 1903(w) (relating to limitations on provider taxes and donations).

''(12) Section 1905(a)(B) (relating to the exclusion of care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases from the definition of medical assistance).

''(13) Section 1921 (relating to state licensure authorities).

''(14) Sections 1902(a)(25), 1912(a)(1)(A), and 1903(o) (insofar as such sections relate to third party liability).

''(15) Sections 1948 and 1949 (as added by section 5701(a)(2) of the Balanced Budget Act of 1997).

**''SEC. 2109. ANNUAL REPORTS.**

''(a) ANNUAL STATE ASSESSMENT OF PROGRESS.—An eligible State shall—

''(1) assess the operation of the State program funded under this title in each fiscal year, including the progress made in providing health insurance coverage for low-income children; and

''(2) report to the Secretary, by January 1 following the end of the fiscal year, on the result of the assessment.

''(b) REPORT OF THE SECRETARY.—The Secretary shall submit to the appropriate committees of Congress an annual report and evaluation of the State programs funded under this title based on the State assessments and reports submitted under subsection (a). Such report shall include any conclusions and recommendations that the Secretary considers appropriate.''.

(b) CONFORMING AMENDMENT.—Section 1128(h) (42 U.S.C. 1320a–7(h)) is amended by—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period and inserting '', or''; and

(3) by adding at the end the following:

''(4) a program funded under title XXI.''.

(c) EFFECTIVE DATE.—The amendments made by this section apply on and after October 1, 1997.

## DIVISION 3—INCOME SECURITY AND OTHER PROVISIONS

### Subtitle K—Income Security, Welfare-to-Work Grant Program, and Other Provisions

### CHAPTER 1—INCOME SECURITY

**SEC. 5811. SSI ELIGIBILITY FOR ALIENS RECEIVING SSI ON AUGUST 22, 1996.**

(a) IN GENERAL.—Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding after subparagraph (D) the following new subparagraph:

''(E) ALIENS RECEIVING SSI ON AUGUST 22, 1996.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who is lawfully residing in any State and who was receiving such benefits on August 22, 1996.''.

(b) STATUS OF CUBAN AND HAITIAN ENTRANTS.—For purposes of section 402(a)(2)(E) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(E)), an alien who is a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, shall be considered a qualified alien.

(c) CONFORMING AMENDMENTS.—Section 402(a)(2)(D) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(D)) is amended—

(1) by striking clause (i);

(2) in the subparagraph heading by striking ''BENEFITS'' and inserting ''FOOD STAMPS'';

(3) by striking ''(ii) FOOD STAMPS''; and

(4) by redesignating subclauses (I), (II), and (III) as clauses (i), (ii), and (iii).

**SEC. 5812. EXTENSION OF ELIGIBILITY PERIOD FOR REFUGEES AND CERTAIN OTHER QUALIFIED ALIENS FROM 5 TO 7 YEARS FOR SSI AND MEDICAID.**

(a) SSI.—Section 402(a)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A)) is amended to read as follows:

''(A) TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.—

''(i) SSI.—With respect to the specified Federal program described in paragraph (3)(A) paragraph 1 shall not apply to an alien until 7 years after the date—

''(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

''(II) an alien is granted asylum under section 208 of such Act; or

''(III) an alien's deportation is withheld under section 243(h) of such Act.

''(ii) FOOD STAMPS.—With respect to the specified Federal program described in paragraph (3)(B), paragraph 1 shall not apply to an alien until 5 years after the date—

''(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

''(II) an alien is granted asylum under section 208 of such Act; or

''(III) an alien's deportation is withheld under section 243(h) of such Act.''.

(b) MEDICAID.—Section 402(b)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)(A)) is amended to read as follows:

''(A) TIME-LIMITED EXCEPTION FOR REFUGEES AND ASYLEES.—

''(i) MEDICAID.—With respect to the designated Federal program described in paragraph (3)(C), paragraph 1 shall not apply to an alien until 7 years after the date—

''(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

''(II) an alien is granted asylum under section 208 of such Act; or

''(III) an alien's deportation is withheld under section 243(h) of such Act.

''(ii) OTHER DESIGNATED FEDERAL PROGRAMS.—With respect to the designated Federal programs under paragraph (3) (other than subparagraph (C)), paragraph 1 shall not apply to an alien until 5 years after the date—

''(I) an alien is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

''(II) an alien is granted asylum under section 208 of such Act; or

''(III) an alien's deportation is withheld under section 243(h) of such Act.''.

(c) STATUS OF CUBAN AND HAITIAN ENTRANTS.—For purposes of sections 402(a)(2)(A) and 402(b)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A), (b)(2)(A)), an alien who is a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980, shall be considered a refugee.

**SEC. 5813. EXCEPTIONS FOR CERTAIN INDIANS FROM LIMITATION ON ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME AND MEDICAID BENEFITS.**

(a) EXCEPTION FROM LIMITATION ON SSI ELIGIBILITY.—Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended—

(1) by redesignating subparagraph (D) and subparagraph (E); and

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

''(D) SSI EXCEPTION FOR CERTAIN INDIANS.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

''(i) who is an American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (8 U.S.C. 1358) apply; or

''(ii) who is a member of an Indian tribe (as defined in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).''.

(b) EXCEPTION FROM LIMITATION ON MEDICAID ELIGIBILITY.—Section 402(b)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)) is amended—

(1) by redesignating subparagraph (D) and subparagraph (E); and

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

''(D) MEDICAID EXCEPTION FOR CERTAIN INDIANS.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the medicaid program), paragraph (1) shall not apply to any individual described in subsection (a)(2)(D).''.

(c) SSI AND MEDICAID EXCEPTIONS FROM LIMITATION ON ELIGIBILITY OF NEW ENTRANTS.—Section 403(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(b)) is amended by adding at the end the following:

''(3) SSI AND MEDICAID EXCEPTION FOR CERTAIN INDIANS.—An individual described in section 402(a)(2)(D), but only with respect to the programs specified in subsections (a)(3)(A) and (b)(3)(C) of section 402.''.

(d) EFFECTIVE DATE.—

(1) SECTION 402.—The amendments made by subsections (a) and (b) shall take effect as though they had been included in the enactment of section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) SECTION 403.—The amendment made by subsection (c) shall take effect as though they had been included in the enactment of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**SEC. 5814. SSI ELIGIBILITY FOR DISABLED LEGAL ALIENS IN THE UNITED STATES ON AUGUST 22, 1996.**

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) (as amended by section 5813) is amended by adding at the end the following:

''(G) DISABLED ALIENS LAWFULLY RESIDING IN THE UNITED STATES ON AUGUST 22, 1996.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to an alien who—

''(i) is lawfully residing in any State on August 22, 1996; and

''(ii) is disabled, as defined in section 1614(a)(3) of the Social Security Act (42 U.S.C. 1382c(a)(3)).''.

**SEC. 5815. EXEMPTION FROM RESTRICTION ON SUPPLEMENTAL SECURITY INCOME PROGRAM PARTICIPATION BY CERTAIN RECIPIENTS ELIGIBLE ON THE BASIS OF VERY OLD APPLICATIONS.**

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) (as amended by section 5814) is amended by adding at the end the following:

''(H) SSI EXCEPTION FOR CERTAIN RECIPIENTS ON THE BASIS OF VERY OLD APPLICATIONS.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1) shall not apply to any individual—

''(i) who is receiving benefits under such program for months after July 1996 on the basis of an application filed before January 1, 1979; and

''(ii) with respect to whom the Commissioner of Social Security lacks clear and convincing evidence that such individual is an alien ineligible for such benefits as a result of the application of this section.''.

**SEC. 5816. REINSTATEMENT OF ELIGIBILITY FOR BENEFITS.**

(a) FOOD STAMPS.—The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended by adding after section 435 the following new section:

**''SEC. 436. DERIVATIVE ELIGIBILITY FOR BENEFITS.**

Notwithstanding any other provision of law, an alien who under the provisions of this title is ineligible for benefits under the food stamp program (as defined in section 402(a)(3)(A)) shall not be eligible for such benefits because the alien receives benefits under the supplemental security income program (as defined in section 402(a)(3)(B)).''.

(b) MEDICAID.—Section 402(b)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(b)(2)) is amended by adding at the end the following:

''(E) MEDICAID EXCEPTION FOR ALIENS RECEIVING SSI.—An alien who is receiving benefits under the program defined in subsection (a)(3)(A) (relating to the supplemental security income program) shall be eligible for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) under the same terms and conditions that apply to other recipients of benefits under the program defined in such subsection.''.

(c) CLERICAL AMENDMENT.—Section 2 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended by adding after the item related to section 435 the following:

''Sec. 436. Derivative eligibility for benefits.''.

**SEC. 5817. EXEMPTION FOR CHILDREN WHO ARE LEGAL ALIENS FROM 5-YEAR BAN ON MEDICAID ELIGIBILITY.**

Section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)) is amended by adding at the end the following:

''(e) MEDICAID ELIGIBILITY EXEMPTION FOR CHILDREN.—The limitation under subsection (a) shall not apply to any alien who has not attained age 19 and is lawfully residing in any State, but only with respect to such alien's eligibility for medical assistance under a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).''.

**SEC. 5818. TREATMENT OF CERTAIN AMERASIAN IMMIGRANTS AS REFUGEES.**

(a) AMENDMENTS TO EXCEPTIONS FOR REFUGEES/ASYLEES.—

(1) FOR PURPOSES OF SSI AND FOOD STAMPS.—Section 402(a)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A)) is amended—

(A) by striking ''; or'' at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting ''; or''; and

(C) by adding at the end the following:

''(iv) an alien who is admitted to the United States as an Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Public Law 100–461, as amended).''.

(2) FOR PURPOSES OF TANF, SSBG, AND MEDICAID.—Section 402(b)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A)) is amended—

(A) by striking ''; or'' at the end of clause (ii);

(B) by striking the period at the end of clause (iii) and inserting ''; or''; and

(C) by adding at the end the following:

''(iv) an alien described in subsection (a)(2)(A)(iv) until 5 years after the date of such alien's entry into the United States.''.

(3) FOR PURPOSES OF EXCEPTION FROM 5-YEAR LIMITED ELIGIBILITY OF QUALIFIED ALIENS.—Section 403(b)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(b)(1)) is amended by adding at the end the following:

''(D) An alien described in section 402(a)(2)(A)(iv).''.

(4) FOR PURPOSES OF CERTAIN STATE PROGRAMS.—Section 412(b)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1622(b)(1)) is amended by adding at the end the following new subparagraph:

''(D) An alien described in section 402(a)(2)(A)(iv).''.

(b) FUNDING.—

(1) LEVY OF FEE.—The Attorney General through the Immigration and Naturalization Service shall levy a $100 processing fee upon each alien that the Service determines—

(A) is unlawfully residing in the United States;

(B) has been arrested by a Federal law enforcement officer for the commission of a felony; and

(C) merits deportation after having been determined by a court of law to have committed a felony while residing illegally in the United States.

(2) COLLECTION AND USE.—In addition to any other penalty provided by law, a court shall impose the fee described in paragraph (1) upon an alien described in such paragraph upon the entry of a judgment of deportation by such court. Funds collected pursuant to this subsection shall be credited by the Secretary of the Treasury as offsetting increased Federal outlays resulting from the amendments made by section 5817A of the Balanced Budget Act of 1997.

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to the period beginning on or after October 1, 1997.

**SEC. 5819. SSI ELIGIBILITY FOR SEVERELY DISABLED ALIENS.**

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)), as amended by section 5815, is amended by adding at the end the following:

''(I) SSI EXCEPTION FOR SEVERELY DISABLED ALIENS.—With respect to eligibility for benefits for the program defined in paragraph (3)(A) (relating to the supplemental security income program), paragraph (1), and the September 30, 1997 application deadline under subparagraph (G), shall not apply to any alien who is lawfully present in the United States and who has been denied approval of an application for naturalization by the Attorney General solely on the ground that the alien is so severely disabled that the alien is otherwise unable to satisfy the requirements for naturalization.''.

***SEC. 5820. EFFECTIVE DATE.***

*The amendments made by this chapter shall take effect as if they were included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2260).*

***CHAPTER 2—WELFARE-TO-WORK GRANT PROGRAM***

***SEC. 5821. WELFARE-TO-WORK GRANTS.***

*(a) GRANTS TO STATES.—*

*(1) IN GENERAL.—Section 403(a) (42 U.S.C. 603(a)) is amended by adding at the end the following:*

*''(5) WELFARE-TO-WORK GRANTS.—*

*''(A) NONCOMPETITIVE GRANTS.—*

*''(i) ENTITLEMENT.—A State shall be entitled to receive from the Secretary a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the greater of—*

*''(I) the allotment of the State under clause (iii) of this subparagraph for the fiscal year; or*

*''(II) 0.5 percent of the amount specified in subparagraph (H) for each fiscal year minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year. The Secretary shall make pro rata reductions in the amounts otherwise payable to States under this paragraph as necessary so that grants under this paragraph do not exceed the available amount, as defined in clause (iv).*

*''(ii) WELFARE-TO-WORK STATE.—A State shall be considered a welfare-to-work State for a fiscal year for purposes of this subparagraph if the Secretary determines that the State meets the following requirements:*

*''(I) The State has submitted to the Secretary (in the form of an addendum to the State plan submitted under section 402) a plan which—*

*''(aa) describes how, consistent with this subparagraph, the State will use any funds provided under this subparagraph during the fiscal year;*

*''(bb) specifies the formula to be used pursuant to clause (vi) to distribute funds in the State, and describes the process by which the formula was developed;*

*''(cc) contains evidence that the plan was developed in consultation and coordination with sub-State areas; and*

*''(dd) is approved by the agency administering the State program funded under this part.*

*''(II) The State certifies to the Secretary that the State intends to expend during the fiscal year (excluding expenditures described in section 409(a)(7)(B)(iv)) for activities described in clauses (i) and (ii) of subparagraph (C) of this paragraph an amount equal to not less than 33 percent of the Federal funds provided under this paragraph.*

*''(III) The State has agreed to negotiate in good faith with the Secretary with respect to the substance of any evaluation under section 413(j), and to cooperate with the conduct of any such evaluation.*

*''(IV) The State is an eligible State for the fiscal year.*

*''(V) Qualified State expenditures (within the meaning of section 409(a)(7)) are the applicable percentage for the immediately preceding fiscal year, as defined by section 409(a)(7)(B)(ii).*

*''(iii) ALLOTMENTS TO WELFARE-TO-WORK STATES.—The allotment of a welfare-to-work State for a fiscal year shall be the available amount for the fiscal year multiplied by the State percentage for the fiscal year.*

*''(iv) AVAILABLE AMOUNT.—As used in this subparagraph, the term 'available amount' means, for a fiscal year, the sum of—*

*''(I) 75 percent of the sum of—*

*''(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and*

*''(bb) any amount reserved pursuant to subparagraph (F) for the immediately preceding fiscal year that has not been obligated; and*

*''(II) any available amount for the immediately preceding fiscal year that has not been obligated by a State or sub-State entity.*

*''(v) STATE PERCENTAGE.—As used in clause (iii), the term 'State percentage' means, with respect to a fiscal year, ⅓ of the sum of—*

*''(I) the percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the United States;*

*''(II) the percentage represented by the number of unemployed individuals in the State divided by the number of such individuals in the United States; and*

*''(III) the percentage represented by the number of individuals who are adult recipients of assistance under the State program funded under this part divided by the number of individuals in the United States who are adult recipients of assistance under any State program funded under this part.*

*''(vi) DISTRIBUTION OF FUNDS WITHIN STATES.—*

*''(I) IN GENERAL.—A State to which a grant is made under this subparagraph shall distribute not less than 85 percent of the grant funds among the political subdivisions in the State in which the percentage represented by the number of individuals in the State whose income is less than the poverty line divided by the number of such individuals in the State, and the percentage represented by the number of unemployed individuals in the State divided by the number of such individuals in the State are both above the average such percentages for the State, in accordance with a formula which—*

*''(aa) determines the amount to be distributed for the benefit of a political subdivision in proportion to the number (if any) of individuals residing in the political subdivision with an income that is less than the poverty line, relative to such number of individuals for the other political subdivisions in the State, and accords a weight of not less than 50 percent to this factor;*

*''(bb) may determine the amount to be distributed for the benefit of a political subdivision in proportion to the number of adults residing in the political subdivision who are recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act first applied to the State) for at least 30 months (whether or not consecutive) relative to the number of such adults residing in the other political subdivisions in the State; and*

*''(cc) may determine the amount to be distributed for the benefit of a political subdivision in proportion to the number of unemployed individuals residing in the political subdivision relative to the number of such individuals residing in the other political subdivisions in the State.*

*''(II) SPECIAL RULE.—Notwithstanding subclause (I), if the formula used pursuant to subclause (I) would result in the distribution of less than $100,000 during a fiscal year for the benefit of a political subdivision, then in lieu of distributing such sum in accordance with the formula, such sum shall be available for distribution under subclause (III) during the fiscal year.*

*''(III) PROJECTS TO HELP LONG-TERM RECIPIENTS OF ASSISTANCE INTO THE WORK FORCE.—The Governor of a State to which a grant is made under this subparagraph may distribute not more than 15 percent of the grant funds (plus any amount required to be distributed under this subclause by reason of subclause (II)) to projects that appear likely to help long-term recipients of assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act first applied to the State) enter the work force.*

*''(vii) ADMINISTRATION.—*

*''(I) IN GENERAL.—A grant made under this subparagraph to a State shall be administered by the State agency that is administering, or supervising the administration of, the State program funded under this part.*

*''(B) COMPETITIVE GRANTS.—*

*''(i) IN GENERAL.—The Secretary shall award grants in accordance with this subparagraph, in fiscal years 1998 and 2000, for projects proposed by eligible applicants, based on the following:*

*''(I) The effectiveness of the proposal in—*

*''(aa) expanding the base of knowledge about programs aimed at moving recipients of assistance under State programs funded under this part who are least job ready into the work force.*

*''(bb) moving recipients of assistance under State programs funded under this part who are least job ready into the work force; and*

*''(cc) moving recipients of assistance under State programs funded under this part who are least job ready into the work force, even in labor markets that have a shortage of low-skill jobs.*

*''(II) At the discretion of the Secretary, any of the following:*

*''(aa) The history of success of the applicant in moving individuals with multiple barriers into work.*

*''(bb) Evidence of the applicant's ability to leverage private, State, and local resources.*

*''(cc) Use by the applicant of State and local resources beyond those required by subparagraph (A).*

*''(dd) Plans of the applicant to coordinate with other organizations at the local and State level.*

*''(ee) Use by the applicant of current or former recipients of assistance under a State program funded under this part as mentors, case managers, or service providers.*

*''(III) Evidence that the proposal has the approval of the State agency administering the program under this part.*

*''(ii) ELIGIBLE APPLICANTS.—As used in clause (i), the term 'eligible applicant' means a political subdivision of a State or a community action agency, community development corporation or other non-profit organizations with demonstrated effectiveness in moving welfare recipients into the workforce that submits a proposal that is approved by the agency administering the State program funded under this part.*

*''(iii) DETERMINATION OF GRANT AMOUNT.—In determining the amount of a grant to be made under this subparagraph for a project proposed by an applicant, the Secretary shall provide the applicant with an amount sufficient to ensure that the project has a reasonable opportunity to be successful, taking into account the number of long-term recipients of assistance under a State program funded under this part, the level of unemployment, the job opportunities and job growth, the poverty rate, and such other factors as the Secretary deems appropriate, in the area to be served by the project.*

*''(iv) TARGETING OF FUNDS TO RURAL AREAS.—*

*''(I) IN GENERAL.—The Secretary shall use not less than 30 percent of the funds available for grants under this subparagraph for a fiscal year to award grants for expenditures in rural areas.*

*''(II) RURAL AREA DEFINED.—As used in subclause (I), the term 'rural area' means a city, town, or unincorporated area that has a population of 50,000 or fewer inhabitants and that is not an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population of more than 50,000 inhabitants.*

*''(v) FUNDING.—For grants under this subparagraph for each fiscal year specified in subparagraph (H), there shall be available to the Secretary an amount equal to the sum of—*

*''(I) 25 percent of the sum of—*

*''(aa) the amount specified in subparagraph (H) for the fiscal year, minus the total of the amounts reserved pursuant to subparagraphs (E), (F), and (G) for the fiscal year; and*

*''(bb) any amount reserved pursuant to subparagraph (F) for the immediately preceding fiscal year that has not been obligated; and*

*''(II) any amount available for grants under this subparagraph for the immediately preceding fiscal year that has not been obligated.*

''(C) LIMITATIONS ON USE OF FUNDS.—

''(i) ALLOWABLE ACTIVITIES.—An entity to which funds are provided under this paragraph may use the funds to move into the work force recipients of assistance under the program funded under this part of the State in which the entity is located and the noncustodial parent of any minor who is such a recipient, by means of any of the following:

''(I) Job creation through public or private sector employment wage subsidies.

''(II) On-the-job training.

''(III) Contracts with public or private providers of readiness, placement, and post-employment services.

''(IV) Job vouchers for placement, readiness, and post-employment services.

''(V) Job support services (excluding child care services) if such services are not otherwise available.

''(VI) Technical assistance and related services that lead to self-employment through the microloan demonstration program under section 7(m) of the Small Business Act (15 U.S.C. 636(m)).

Contracts or vouchers for job placement services supported by these funds must require that at least ½ of the payment occur after a eligible individual placed into the workforce has been in the workforce for 6 months.

''(ii) REQUIRED BENEFICIARIES.—An entity that operates a project with funds provided under this paragraph shall expend at least 90 percent of all funds provided to the project for the benefit of recipients of assistance under the program funded under this part of the State in which the entity is located who meet the requirements of either of the following subclauses:

''(I) At least 2 of the following apply to the recipient:

''(aa) The individual has not completed secondary school or obtained a certificate of general equivalency, and has low skills in reading and mathematics.

''(bb) The individual requires substance abuse treatment for employment.

''(cc) The individual has a poor work history. The Secretary shall prescribe such regulations as may be necessary to interpret this subclause.

''(II) The individual—

''(aa) has received assistance under the State program funded under this part (whether in effect before or after the amendments made by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 first apply to the State) for at least 30 months (whether or not consecutive); or

''(bb) within 12 months, will become ineligible for assistance under the State program funded under this part by reason of a durational limit on such assistance, without regard to any exemption provided pursuant to section 408(a)(7)(C) that may apply to the individual.

''(iii) LIMITATION ON APPLICABILITY OF SECTION 404.—The rules of section 404, other than subsections (b), (f), and (h) of section 404, shall not apply to a grant made under this paragraph.

''(iv) COOPERATION WITH TANF AGENCY.—On a determination by the Secretary an entity that operates a project with funds provided under this paragraph and the agency administering the State program funded under this part are not adhering to the agreement to implement any plan or project for which the funds are provided, the recipient of the funds shall remit the funds to the Secretary.

''(v) PROHIBITION AGAINST USE OF GRANT FUNDS FOR ANY OTHER FUND MATCHING REQUIREMENT.—An entity to which funds are provided under this paragraph shall not use any part of the funds to fulfill any obligation of any State, or political subdivision to contribute funds under other Federal law.

''(vi) DEADLINE FOR EXPENDITURE.—An entity to which funds are provided under this paragraph shall remit to the Secretary any part of the funds that are not expended within 3 years after the date the funds are so provided.

''(D) INDIVIDUALS WITH INCOME LESS THAN THE POVERTY LINE.—For purposes of this paragraph, the number of individuals with an income that is less than the poverty line shall be determined based on the methodology used by the Bureau of the Census to produce and publish intercensal poverty data for 1993 for States and counties.

''(E) SET-ASIDE FOR HIGH PERFORMANCE BONUS.—$100,000,000 of the amount specified in subparagraph (H) for fiscal year 1999 shall be reserved for use by the Secretary to make bonus grants (in the same manner as such grants are determined under paragraph (4)) for fiscal year 2003 to those States that receive funds under this paragraph and that are most successful in increasing the earnings of individuals described in subparagraph (C)(ii)(II).

''(F) SET-ASIDE FOR INDIAN TRIBES.—1 percent of the amount specified in subparagraph (H) for each fiscal year shall be reserved for grants to Indian tribes under section 412(a)(3).

''(G) SET-ASIDE FOR EVALUATIONS.—0.5 percent of the amount specified in subparagraph (H) for each fiscal year shall be reserved for use by the Secretary to carry out section 413(j).

''(H) FUNDING.—The amount specified in this subparagraph is—

''(i) $750,000,000 for fiscal year 1998;

''(ii) $1,250,000,000 for fiscal year 1999; and

''(iii) $1,000,000,000 for fiscal year 2000.

''(I) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to this paragraph shall remain available through fiscal year 2002.

''(J) BUDGET SCORING.—Notwithstanding section 457(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985, the baseline shall assume that no grant shall be awarded under this paragraph or under section 412(a)(3) after fiscal year 2000.

''(K) NONDISPLACEMENT IN WORK ACTIVITIES.—

''(i) PROHIBITIONS.—

''(I) GENERAL PROHIBITION.—A participant in a work activity pursuant to this paragraph shall not displace (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) any individual who, as of the date of the participation, is an employee.

''(II) PROHIBITION ON IMPAIRMENT OF CONTRACTS.—A work activity pursuant to this paragraph shall not impair an existing contract for services or collective bargaining agreement, and a work activity that would be inconsistent with the terms of a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

''(III) OTHER PROHIBITIONS.—A participant in a work activity shall not be employed in a job—

''(aa) when any other individual is on layoff from the same or any substantially equivalent job;

''(bb) when the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or

''(cc) which is created in a promotional line that will infringe in any way upon the promotional opportunities of employed individuals.

''(ii) HEALTH AND SAFETY.—Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in a work activity pursuant to this paragraph. To the extent that a State workers' compensation law applies, workers' compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

''(iii) GRIEVANCE PROCEDURE.—

''(I) IN GENERAL.—Each State to which a grant is made under this paragraph shall establish and maintain a procedure for grievances or complaints alleging violations of clauses (i) or (ii) from participants and other interested or affected parties. The procedure shall include an opportunity for a hearing and be completed within 60 days after the grievance or complaint is filed.

''(II) INVESTIGATION.—

''(aa) IN GENERAL.—The Secretary of Labor shall investigate an allegation of a violation of clause (i) or (ii) if a decision relating to the violation is not reached within 60 days after the date of the filing of the grievance or complaint, and either party appeals to the Secretary of Labor, or a decision relating to the violation is reached within the 60-day period, and the party to which the decision is adverse appeals the decision to the Secretary of Labor.

''(bb) ADDITIONAL REQUIREMENT.—The Secretary of Labor shall make a final determination relating to an appeal made under item (aa) not later than 120 days after receiving the appeal.

''(III) REMEDIES.—Remedies for violation of clause (i) or (ii) shall be limited to—

''(aa) suspension or termination of payments under this paragraph;

''(bb) prohibition of placement of a participant with an employer that has violated clause (i) or (ii);

''(cc) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

''(dd) where appropriate, other equitable relief.''.

(2) CONFORMING AMENDMENT.—Section 409(a)(7)(B)(iv) of such Act (42 U.S.C. 609(a)(7)(B)(iv)) is amended to read as follows:

''(iv) EXPENDITURES BY THE STATE.—The term 'expenditures by the State' does not include—

''(I) any expenditure from amounts made available by the Federal Government;

''(II) any State funds expended for the medicaid program under title XIX;

''(III) any State funds which are used to match Federal funds provided under section 403(a)(5); or

''(IV) any State funds which are expended as a condition of receiving Federal funds other than under this part.

Notwithstanding subclause (IV) of the preceding sentence, such term includes expenditures by a State for child care in a fiscal year to the extent that the total amount of the expenditures does not exceed the amount of State expenditures in fiscal year 1994 or 1995 (whichever is the greater) that equal the non-Federal share for the programs described in section 418(a)(1)(A).''.

(b) GRANTS TO OUTLYING AREAS.—Section 1108(a)(1) of such Act (42 U.S.C. 1308(a)(1)) is amended by inserting ''(except section 403(a)(5))'' after ''title IV''.

(c) GRANTS TO INDIAN TRIBES.—Section 412(a) of such Act (42 U.S.C. 612(a)) is amended by adding at the end the following:

''(3) WELFARE-TO-WORK GRANTS.—

''(A) IN GENERAL.—The Secretary shall award a grant in accordance with this paragraph to an Indian tribe for each fiscal year specified in section 403(a)(5)(H) for which the Indian tribe is a welfare-to-work tribe, in such amount as the Secretary deems appropriate, subject to subparagraph (B) of this paragraph.

''(B) WELFARE-TO-WORK TRIBE.—An Indian tribe shall be considered a welfare-to-work tribe for a fiscal year for purposes of this paragraph if the Indian tribe meets the following requirements:

''(i) The Indian tribe has submitted to the Secretary (in the form of an addendum to the tribal family assistance plan, if any, of the Indian tribe) a plan which describes how, consistent with section 403(a)(5), the Indian tribe will use any funds provided under this paragraph during the fiscal year.

''(ii) The Indian tribe has provided the Secretary with an estimate of the amount that the Indian tribe intends to expend during the fiscal year (excluding tribal expenditures described in section 409(a)(7)(B)(iv)) for activities described in section 403(a)(5)(C)(i).

''(iii) The Indian tribe has agreed to negotiate in good faith with the Secretary of Health and Human Services with respect to the substance of any evaluation under section 413(j), and to cooperate with the conduct of any such evaluation.

''(C) LIMITATIONS ON USE OF FUNDS.—Section 403(a)(5)(C) shall apply to funds provided to Indian tribes under this paragraph in the same manner in which such section applies to funds provided under section 403(a)(5).''.

(d) FUNDS RECEIVED FROM GRANTS TO BE DISREGARDED IN APPLYING DURATIONAL LIMIT ON ASSISTANCE.—Section 408(a)(7) of such Act (42 U.S.C. 608(a)(7)) is amended by adding at the end the following:

''(G) INAPPLICABILITY TO WELFARE-TO-WORK GRANTS AND ASSISTANCE.—For purposes of subparagraph (A) of this paragraph, a grant made under section 403(a)(5) shall not be considered a grant made under section 403, and assistance from funds provided under section 403(a)(5) shall not be considered assistance.''.

(e) EVALUATIONS.—Section 413 of such Act (42 U.S.C. 613) is amended by adding at the end the following:

''(j) EVALUATION OF WELFARE-TO-WORK PROGRAMS.—

''(1) EVALUATION.—The Secretary—

''(A) shall, in consultation with the Secretary of Labor, develop a plan to evaluate how grants made under sections 403(a)(5) and 412(a)(3) have been used;

''(B) may evaluate the use of such grants by such grantees as the Secretary deems appropriate, in accordance with an agreement entered into with the grantees after good-faith negotiations; and

''(C) shall include the following outcome measures in the plan developed under subparagraph (A):

''(i) Placements in the labor force and placements in the labor force that last for at least 6 months.

''(ii) Placements in the private and public sectors.

''(iii) Earnings of individuals who obtain employment.

''(iv) Average expenditures per placement.

''(2) REPORTS TO THE CONGRESS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), the Secretary, in consultation with the Secretary of Labor and the Secretary of Housing and Urban Development, shall submit to the Congress reports on the projects funded under sections 403(a)(5) and 412(a)(3) and on the evaluations of the projects.

''(B) INTERIM REPORT.—Not later than January 1, 1999, the Secretary shall submit an interim report on the matter described in subparagraph (A).

''(C) FINAL REPORT.—Not later than January 1, 2001 (or at a later date, if the Secretary informs the committees of the Congress with jurisdiction over the subject matter of the report) the Secretary shall submit a final report on the matter described in subparagraph (A).''.

**SEC. 5822. CLARIFICATION OF A STATE'S ABILITY TO SANCTION AN INDIVIDUAL RECEIVING ASSISTANCE UNDER TANF FOR NONCOMPLIANCE.**

(a) IN GENERAL.—Section 408 (42 U.S.C. 608) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b), the following:

''(c) NONAPPLICATION OF ANY MINIMUM WAGE REQUIREMENTS WITH RESPECT TO INDIVIDUAL SANCTIONS.—Notwithstanding any other provision of law, any requirement imposed by law, regulation, or otherwise that requires that an individual in a family that receives assistance under the State program funded under this part receive the applicable minimum wage under section 6 of the Fair Labor Standards Act (29 U.S.C. 206), shall not prohibit a State from imposing against a family that includes such an individual any penalty that may be imposed under the State program funded under this part for failure to comply with a requirement under such program.''.

(b) RETROACTIVITY.—The amendment made by subsection (a) shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112).

## CHAPTER 3—UNEMPLOYMENT COMPENSATION

**SEC. 5831. INCREASE IN FEDERAL UNEMPLOYMENT ACCOUNT CEILING.**

(a) IN GENERAL.—Section 902(a)(2) (42 U.S.C. 1102(a)(2)) is amended by striking ''0.25 percent'' and inserting ''0.5 percent''.

(b) EFFECTIVE DATE.—This section and the amendment made by this section—

(1) shall take effect on October 1, 2001, and

(2) shall apply to fiscal years beginning on or after that date.

**SEC. 5832. SPECIAL DISTRIBUTION TO STATES FROM UNEMPLOYMENT TRUST FUND.**

(a) IN GENERAL.—Section 903(a) (42 U.S.C. 1103(a)) is amended by adding at the end the following new paragraph:

''(3)(A) Notwithstanding any other provision of this section, for purposes of carrying out this subsection with respect to any excess amount (referred to in paragraph (1)) remaining in the employment security administration account as of the close of fiscal year 1999, 2000, or 2001, such amount shall—

''(i) to the extent of any amounts not in excess of $100,000,000, be subject to subparagraph (B), and

''(ii) to the extent of any amounts in excess of $100,000,000, be subject to subparagraph (C).

''(B) Paragraphs (1) and (2) shall apply with respect to any amounts described in subparagraph (A)(i), except that—

''(i) in carrying out the provisions of paragraph (2)(B) with respect to such amounts (to determine the portion of such amounts which is to be allocated to a State for a succeeding fiscal year), the ratio to be applied under such provisions shall be the same as the ratio that—

''(I) the amount of funds to be allocated to such State for such fiscal year pursuant to title III, bears to

''(II) the total amount of funds to be allocated to all States for such fiscal year pursuant to title III,

as determined by the Secretary of Labor, and

''(ii) the amounts allocated to a State pursuant to this subparagraph shall be available to such State, subject to the last sentence of subsection (c)(2).

Nothing in this paragraph shall preclude the application of subsection (b) with respect to any allocation determined under this subparagraph.

''(C) Any amounts described in clause (ii) of subparagraph (A) (remaining in the employment security administration account as of the close of any fiscal year specified in such subparagraph) shall, as of the beginning of the succeeding fiscal year, accrue to the Federal unemployment account, without regard to the limit provided in section 902(a).''.

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 903(c) of the Social Security Act is amended by adding at the end, as a flush left sentence, the following:

''Any amount allocated to a State under this section for fiscal year 2000, 2001, or 2002 may be used by such State only to pay expenses incurred by it for the administration of its unemployment compensation law, and may be so used by it without regard to any of the conditions prescribed in any of the preceding provisions of this paragraph.''.

**SEC. 5833. TREATMENT OF CERTAIN SERVICES PERFORMED BY INMATES.**

(a) IN GENERAL.—Subsection (c) of section 3306 of the Internal Revenue Code of 1986 (defining employment) is amended—

(1) by striking ''or'' at the end of paragraph (19),

(2) by striking the period at the end of paragraph (20) and inserting ''; or'', and

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

''(21) service performed by a person committed to a penal institution.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to service performed after March 26, 1996.

## DIVISION 4—EARNED INCOME CREDIT AND OTHER PROVISIONS

### Subtitle L—Earned Income Credit and Other Provisions

### CHAPTER 1—EARNED INCOME CREDIT

**SEC. 5851. RESTRICTIONS ON AVAILABILITY OF EARNED INCOME CREDIT FOR TAXPAYERS WHO IMPROPERLY CLAIMED CREDIT IN PRIOR YEAR.**

(a) IN GENERAL.—Section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) is amended by redesignating subsections (k) and (l) as subsections (l) and (m), respectively, and by inserting after subsection (j) the following new subsection:

''(k) RESTRICTIONS ON TAXPAYERS WHO IMPROPERLY CLAIMED CREDIT IN PRIOR YEAR.—

''(1) TAXPAYERS MAKING PRIOR FRAUDULENT OR RECKLESS CLAIMS.—

''(A) IN GENERAL.—No credit shall be allowed under this section for any taxable year in the disallowance period.

''(B) DISALLOWANCE PERIOD.—For purposes of paragraph (1), the disallowance period is—

''(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and

''(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

''(2) TAXPAYERS MAKING IMPROPER PRIOR CLAIMS.—In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.''.

(b) DUE DILIGENCE REQUIREMENT ON INCOME TAX RETURN PREPARERS.—Section 6695 of the Internal Revenue Code of 1986 (relating to other assessable penalties with respect to the preparation of income tax returns for other persons) is amended by adding at the end the following new subsection:

''(g) FAILURE TO BE DILIGENT IN DETERMINING ELIGIBILITY FOR EARNED INCOME CREDIT.—Any person who is an income tax preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 32 shall pay a penalty of $100 for each such failure.''.

(c) EXTENSION PROCEDURES APPLICABLE TO MATHEMATICAL OR CLERICAL ERRORS.—Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking ''and'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', and'', and by inserting after subparagraph (I) the following new subparagraph:

''(J) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

### CHAPTER 2—INCREASE IN PUBLIC DEBT LIMIT

**SEC. 5861. INCREASE IN PUBLIC DEBT LIMIT.**

Subsection (b) of section 3101 of title 31, United States Code, is amended by striking the dollar amount contained therein and inserting ''$5,950,000,000,000''.

### CHAPTER 3—MISCELLANEOUS

**SEC. 5871. SENSE OF THE SENATE REGARDING THE CORRECTION OF COST-OF-LIVING ADJUSTMENTS.**

(a) FINDINGS.—The Senate makes the following findings:

(1) The final report of the Senate Finance Committee's Advisory Commission to Study the Consumer Price Index, chaired by Professor Michael Boskin, has concluded that the Consumer Price Index overstates the cost of living in the United States by 1.1 percentage points.

(2) Dr. Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, has testified before the Senate Finance Committee that ''the best available evidence suggests that there is virtually no chance that the CPI as currently published understates'' the cost of living and that there is ''a very high probability that the upward bias ranges between ½ percentage point per year and 1½ percentage points per year''.

(3) The overstatement of the cost of living by the Consumer Price Index has been recognized by economists since at least 1961, when a report noting the existence of the overstatement was issued by a National Bureau of Economic Research Committee, chaired by Professor George J. Stigler.

(4) Congress and the President, through the indexing of Federal tax brackets, Social Security benefits, and other Federal program benefits, have undertaken to protect taxpayers and beneficiaries of such programs from the erosion of purchasing power due to inflation.

(5) Congress and the President intended the indexing of Federal tax brackets, Social Security benefits, and other Federal program benefits to accurately reflect changes in the cost of living.

(6) The overstatement of the cost of living increases the deficit and undermines the equitable administration of Federal benefits and tax policies.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that all cost-of-living adjustments required by statute should accurately reflect the best available estimate of changes in the cost of living.

## Subtitle M—Welfare Reform Technical Corrections

**SEC. 5900. SHORT TITLE OF SUBTITLE.**

This subtitle may be cited as the ''Welfare Reform Technical Corrections Act of 1997''.

### CHAPTER 1—BLOCK GRANTS FOR TEMPORARY ASSISTANCE TO NEEDY FAMILIES

**SEC. 5901. AMENDMENT OF THE SOCIAL SECURITY ACT.**

Except as otherwise expressly provided, wherever in this chapter 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, and if the section or other provision is of part A of title IV of such Act, the reference shall be considered to be made to the section or other provision as amended by section 103, and as in effect pursuant to section 116, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**SEC. 5902. ELIGIBLE STATES; STATE PLAN.**

(a) LATER DEADLINE FOR SUBMISSION OF STATE PLANS.—Section 402(a) (42 U.S.C. 602(a)) is amended by striking ''2-year period immediately preceding'' and inserting ''27-month period ending with the close of the 1st quarter of''.

(b) CLARIFICATION OF SCOPE OF WORK PROVISIONS.—Section 402(a)(1)(A)(ii) (42 U.S.C. 602(a)(1)(A)(ii)) is amended by inserting '', consistent with section 407(e)(2)'' before the period.

(c) CORRECTION OF CROSS-REFERENCE.—Section 402(a)(1)(A)(v) (42 U.S.C. 602(a)(1)(A)(v)) is amended by striking ''403(a)(2)(B)'' and inserting ''403(a)(2)(C)(iii)''.

(d) NOTIFICATION OF PLAN AMENDMENTS.—Section 402 (42 U.S.C. 602) is amended—

(1) by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

''(b) PLAN AMENDMENTS.—Within 30 days after a State amends a plan submitted pursuant to subsection (a), the State shall notify the Secretary of the amendment.''; and

(2) in subsection (c) (as so redesignated), by inserting ''or plan amendment'' after ''plan''.

**SEC. 5903. GRANTS TO STATES.**

(a) BONUS FOR DECREASE IN ILLEGITIMACY MODIFIED TO TAKE ACCOUNT OF CERTAIN TERRITORIES.—

(1) IN GENERAL.—Section 403(a)(2)(B) (42 U.S.C. 603(a)(2)(B)) is amended to read as follows:

''(B) AMOUNT OF GRANT.—

''(i) IN GENERAL.—If, for a bonus year, none of the eligible States is Guam, the Virgin Islands, or American Samoa, then the amount of the grant shall be—

''(I) $20,000,000 if there are 5 eligible States; or

''(II) $25,000,000 if there are fewer than 5 eligible States.

''(ii) AMOUNT IF CERTAIN TERRITORIES ARE ELIGIBLE.—If, for a bonus year, Guam, the Virgin Islands, or American Samoa is an eligible State, then the amount of the grant shall be—

''(I) in the case of such a territory, 25 percent of the mandatory ceiling amount (as defined in section 1108(c)(4)) with respect to the territory; and

''(II) in the case of a State that is not such a territory—

''(aa) if there are 5 eligible States other than such territories, $20,000,000, minus ⅕ of the total amount of the grants payable under this paragraph to such territories for the bonus year; or

''(bb) if there are fewer than 5 such eligible States, $25,000,000, or such lesser amount as may be necessary to ensure that the total amount of grants payable under this paragraph for the bonus year does not exceed $100,000,000.''.

(2) CERTAIN TERRITORIES TO BE IGNORED IN RANKING OTHER STATES.—Section 403(a)(2)(C)(i)(I)(aa) (42 U.S.C. 603(a)(2)(C)(i)(I)(aa)) is amended by adding at the end the following: ''In the case of a State that is not a territory specified in subparagraph (B), the comparative magnitude of the decrease for the State shall be determined without regard to the magnitude of the corresponding decrease for any such territory.''.

(b) COMPUTATION OF BONUS BASED ON RATIOS OF OUT-OF-WEDLOCK BIRTHS TO ALL BIRTHS INSTEAD OF NUMBERS OF OUT-OF-WEDLOCK BIRTHS.—Section 403(a)(2) (42 U.S.C. 603(a)(2)) is amended—

(1) in the paragraph heading, by inserting ''RATIO'' before the period;

(2) in subparagraph (A), by striking all that follows ''bonus year'' and inserting a period; and

(3) in subparagraph (C)—

(A) in clause (i)—

(i) in subclause (I)(aa)—

(I) by striking ''number of out-of-wedlock births that occurred in the State during'' and inserting ''illegitimacy ratio of the State for''; and

(II) by striking ''number of such births that occurred during'' and inserting ''illegitimacy ratio of the State for''; and

(ii) in subclause (II)(aa)—

(I) by striking ''number of out-of-wedlock births that occurred in'' each place such term appears and inserting ''illegitimacy ratio of''; and

(II) by striking ''calculate the number of out-of-wedlock births'' and inserting ''calculate the illegitimacy ratio''; and

(B) by adding at the end the following:

''(iii) ILLEGITIMACY RATIO.—The term 'illegitimacy ratio' means, with respect to a State and a period—

''(I) the number of out-of-wedlock births to mothers residing in the State that occurred during the period; divided by

''(II) the number of births to mothers residing in the State that occurred during the period.''.

(c) USE OF CALENDAR YEAR DATA INSTEAD OF FISCAL YEAR DATA IN CALCULATING BONUS FOR DECREASE IN ILLEGITIMACY RATIO.—Section 403(a)(2)(C) (42 U.S.C. 603(a)(2)(C)) is amended—

(1) in clause (i)—

(A) in subclause (I)(bb)—

(i) by striking ''the fiscal year'' and inserting ''the calendar year for which the most recent data are available''; and

(ii) by striking ''fiscal year 1995'' and inserting ''calendar year 1995'';

(B) in subclause (II), by striking ''fiscal'' each place such term appears and inserting ''calendar''; and

(2) in clause (ii), by striking ''fiscal years'' and inserting ''calendar years''.

(d) CORRECTION OF HEADING.—Section 403(a)(3)(C)(ii) (42 U.S.C. 603(a)(3)(C)(ii)) is amended in the heading by striking ''1997'' and inserting ''1998''.

(e) CLARIFICATION OF CONTINGENCY FUND PROVISION.—Section 403(b) (42 U.S.C. 603(b)) is amended—

(1) in paragraph (6), by striking ''(5)'' and inserting ''(4)'';

(2) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(3) by inserting after paragraph (5) the following:

''(6) ANNUAL RECONCILIATION.—

''(A) IN GENERAL.—Notwithstanding paragraph (3), if the Secretary makes a payment to a State under this subsection in a fiscal year, then the State shall remit to the Secretary, within 1 year after the end of the first subsequent period of 3 consecutive months for which the State is not a needy State, an amount equal to the amount (if any) by which—

''(i) the total amount paid to the State under paragraph (3) of this subsection in the fiscal year; exceeds

''(ii) the product of—

''(I) the Federal medical assistance percentage for the State (as defined in section 1905(b), as such section was in effect on September 30, 1995);

''(II) the State's reimbursable expenditures for the fiscal year; and

''(III) 1/12 times the number of months during the fiscal year for which the Secretary made a payment to the State under such paragraph (3).

''(B) DEFINITIONS.—As used in subparagraph (A):

''(i) REIMBURSABLE EXPENDITURES.—The term 'reimbursable expenditures' means, with respect to a State and a fiscal year, the amount (if any) by which—

''(I) countable State expenditures for the fiscal year; exceeds

''(II) historic State expenditures (as defined in section 409(a)(7)(B)(iii)), excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994.

''(ii) COUNTABLE STATE EXPENDITURES.—The term 'countable expenditures' means, with respect to a State and a fiscal year—

''(I) the qualified State expenditures (as defined in section 409(a)(7)(B)(i) (other than the expenditures described in subclause (I)(bb) of such section)) under the State program funded under this part for the fiscal year; plus

''(II) any amount paid to the State under paragraph (3) during the fiscal year that is expended by the State under the State program funded under this part.''.

(f) ADMINISTRATION OF CONTINGENCY FUND TRANSFERRED TO THE SECRETARY OF HHS.—Section 403(b)(7) (42 U.S.C. 603(b)(7)) is amended to read as follows:

''(7) STATE DEFINED.—As used in this subsection, the term 'State' means each of the 50 States and the District of Columbia.''.

**SEC. 5904. USE OF GRANTS.**

Section 404(a)(2) (42 U.S.C. 604(a)(2)) is amended by inserting '', or (at the option of the State) August 21, 1996'' before the period.

**SEC. 5905. MANDATORY WORK REQUIREMENTS.**

(a) FAMILY WITH A DISABLED PARENT NOT TREATED AS A 2-PARENT FAMILY.—Section 407(b)(2) (42 U.S.C. 607(b)(2)) is amended by adding at the end the following:

''(C) FAMILY WITH A DISABLED PARENT NOT TREATED AS A 2-PARENT FAMILY.—A family that includes a disabled parent shall not be considered a 2-parent family for purposes of subsections (a) and (b) of this section.''.

(b) CORRECTION OF HEADING.—Section 407(b)(3) (42 U.S.C. 607(b)(3)) is amended in the heading by inserting ''AND NOT RESULTING FROM CHANGES IN STATE ELIGIBILITY CRITERIA'' before the period.

(c) STATE OPTION TO INCLUDE INDIVIDUALS RECEIVING ASSISTANCE UNDER A TRIBAL WORK PROGRAM IN PARTICIPATION RATE CALCULATION.—Section 407(b)(4) (42 U.S.C. 607(b)(4)) is amended—

(1) in the heading, by inserting ''OR TRIBAL WORK PROGRAM'' before the period; and

(2) by inserting ''or under a tribal work program to which funds are provided under this part'' before the period.

(d) SHARING OF 35-HOUR WORK REQUIREMENT BETWEEN PARENTS IN 2-PARENT FAMILIES.—Section 407(c)(1)(B) (42 U.S.C. 607(c)(1)(B)) is amended—

(1) in clause (i)—

(A) by striking ''is'' and inserting ''and the other parent in the family are''; and

(B) by inserting ''a total of'' before ''at least''; and

(2) in clause (ii)—

(A) by striking ''individual's spouse is'' and inserting ''individual and the other parent in the family are'';

(B) by inserting ''for a total of at least 55 hours per week'' before ''during the month''; and

(C) by striking ''20'' and inserting ''50''.

(e) CLARIFICATION OF EFFORT REQUIRED IN WORK ACTIVITIES.—Section 407(c)(1)(B) (42 U.S.C. 607(c)(1)(B)) is amended by striking ''making progress'' each place such term appears and inserting ''participating''.

(f) ADDITIONAL CONDITION UNDER WHICH 12 WEEKS OF JOB SEARCH MAY COUNT AS WORK.—Section 407(c)(2)(A)(i) (42 U.S.C. 607(c)(2)(A)(i)) is amended by inserting ''or the State is a needy State (within the meaning of section 403(b)(6))'' after ''United States''.

(g) CARETAKER RELATIVE OF CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK REQUIREMENTS IF ENGAGED IN WORK FOR 20 HOURS PER WEEK.—Section 407(c)(2)(B) (42 U.S.C. 607(c)(2)(B)) is amended—

(1) in the heading, by inserting ''OR RELATIVE'' after ''PARENT'' each place such term appears; and

(2) by striking ''in a 1-parent family who is the parent'' and inserting ''who is the only parent or caretaker relative in the family''.

(h) EXTENSION TO MARRIED TEENS OF RULE THAT RECEIPT OF SUFFICIENT EDUCATION IS ENOUGH TO MEET WORK PARTICIPATION REQUIREMENTS.—Section 407(c)(2)(C) (42 U.S.C. 607(c)(2)(C)) is amended—

(1) in the heading, by striking ''TEEN HEAD OF HOUSEHOLD'' and inserting ''SINGLE TEEN HEAD OF HOUSEHOLD OR MARRIED TEEN''; and

(2) by striking ''a single'' and inserting ''married or a''.

(i) CLARIFICATION OF NUMBER OF HOURS OF PARTICIPATION IN EDUCATION DIRECTLY RELATED TO EMPLOYMENT THAT ARE REQUIRED IN ORDER FOR SINGLE TEEN HEAD OF HOUSEHOLD OR MARRIED TEEN TO BE DEEMED TO BE ENGAGED IN WORK.—Section 407(c)(2)(C)(ii) (42 U.S.C. 607(c)(2)(C)(ii)) is amended by striking ''at least'' and all that follows through ''subsection'' and inserting ''an average of at least 20 hours per week during the month''.

(j) CLARIFICATION OF REFUSAL TO WORK FOR PURPOSES OF WORK PENALTIES FOR INDIVIDUALS.—Section 407(e)(2) (42 U.S.C. 607(e)(2)) is amended by striking ''work'' and inserting ''engage in work required in accordance with this section''.

(k) CLARIFICATION OF REMOVAL OF TEEN PARENTS WITH RESPECT TO VOCATIONAL EDUCATION.—Section 407(c)(2) (42 U.S.C. 607(c)(2)) is amended—

(1) in subparagraph (C), by striking '', subject to subparagraph (D) of this paragraph,''; and

(2) by striking subparagraph (D) and inserting the following:

''(D) NUMBER OF PERSONS THAT MAY BE TREATED AS ENGAGED IN WORK BY VIRTUE OF PARTICIPATION IN VOCATIONAL EDUCATION ACTIVITIES.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 20 percent of individuals in all families and in 2-parent families (other than individuals in such families who are described in subparagraph (C)) may be determined to be engaged in work in the State for a month by reason of participation in vocational educational training.''.

**SEC. 5906. PROHIBITIONS; REQUIREMENTS.**

(a) ELIMINATION OF REDUNDANT LANGUAGE; CLARIFICATION OF HOME RESIDENCE REQUIREMENT.—Section 408(a)(1) (42 U.S.C. 608(a)(1)) is amended to read as follows:

''(1) NO ASSISTANCE FOR FAMILIES WITHOUT A MINOR CHILD.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family, unless the family includes a minor child who resides with the family (consistent with paragraph (10)) or a pregnant individual.''.

(b) CLARIFICATION OF TERMINOLOGY.—Section 408(a)(3) (42 U.S.C. 608(a)(3)) is amended—

(1) by striking ''leaves'' the 1st, 3rd, and 4th places such term appears and inserting ''ceases to receive assistance under''; and

(2) by striking ''the date the family leaves the program'' the 2nd place such term appears and inserting ''such date''.

(c) ELIMINATION OF SPACE.—Section 408(a)(5)(A)(ii) (42 U.S.C. 608(a)(5)(A)(ii)) is amended by striking ''DESCRIBED.— For'' and inserting ''DESCRIBED.—For''.

(d) CORRECTIONS TO 5-YEAR LIMIT ON ASSISTANCE.—

(1) CLARIFICATION OF LIMITATION ON HARDSHIP EXEMPTION.—Section 408(a)(7)(C)(ii) (42 U.S.C. 608(a)(7)(C)(ii)) is amended—

(A) by striking ''The number'' and inserting ''The average monthly number''; and

(B) by inserting ''during the fiscal year or the immediately preceding fiscal year (but not both), as the State may elect'' before the period.

(2) RESIDENCE EXCEPTION MADE MORE UNIFORM AND EASIER TO ADMINISTER.—Section 408(a)(7)(D) (42 U.S.C. 608(a)(7)(D)) is amended to read as follows:

''(D) DISREGARD OF MONTHS OF ASSISTANCE RECEIVED BY ADULT WHILE LIVING IN INDIAN COUNTRY OR AN ALASKAN NATIVE VILLAGE WITH 50 PERCENT UNEMPLOYMENT.—

''(i) IN GENERAL.—In determining the number of months for which an adult has received assistance under a State or tribal program funded under this part, the State or tribe shall disregard any month during which the adult lived in Indian country or an Alaskan Native village if the most reliable data available with respect to the month (or a period including the month) indicate that at least 50 percent of the adults living in Indian country or in the village were not employed.

''(ii) INDIAN COUNTRY DEFINED.—As used in clause (i), the term 'Indian country' has the meaning given such term in section 1151 of title 18, United States Code.''.

(e) REINSTATEMENT OF DEEMING AND OTHER RULES APPLICABLE TO ALIENS WHO ENTERED THE UNITED STATES UNDER AFFIDAVITS OF SUPPORT FORMERLY USED.—Section 408 (42 U.S.C. 608) is amended by striking subsection (d) and inserting the following:

''(d) SPECIAL RULES RELATING TO TREATMENT OF CERTAIN ALIENS.—For special rules relating to the treatment of certain aliens, see title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

''(e) SPECIAL RULES RELATING TO THE TREATMENT OF NON-213A ALIENS.—The following rules shall apply if a State elects to take the income or resources of any sponsor of a non-213A alien into account in determining whether the alien is eligible for assistance under the State program funded under this part, or in determining the amount or types of such assistance to be provided to the alien:

''(1) DEEMING OF SPONSOR'S INCOME AND RESOURCES.—For a period of 3 years after a non-213A alien enters the United States:

''(A) INCOME DEEMING RULE.—The income of any sponsor of the alien and of any spouse of the sponsor is deemed to be income of the alien, to the extent that the total amount of the income exceeds the sum of—

''(i) the lesser of—

''(I) 20 percent of the total of any amounts received by the sponsor or any such spouse in the month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by the sponsor and any such spouse in producing self-employment income in such month; or

''(II) $175;

''(ii) the cash needs standard established by the State for purposes of determining eligibility for assistance under the State program funded under this part for a family of the same size and composition as the sponsor and any other individuals living in the same household as the sponsor who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability but whose needs are not taken into account in determining whether the sponsor's family has met the cash needs standard;

''(iii) any amounts paid by the sponsor or any such spouse to individuals not living in the household who are claimed by the sponsor as dependents for purposes of determining the sponsor's Federal personal income tax liability; and

''(iv) any payments of alimony or child support with respect to individuals not living in the household.

''(B) RESOURCE DEEMING RULE.—The resources of a sponsor of the alien and of any spouse of the sponsor are deemed to be resources of the alien to the extent that the aggregate value of the resources exceeds $1,500.

''(C) SPONSORS OF MULTIPLE NON-213A ALIENS.—If a person is a sponsor of 2 or more non-213A aliens who are living in the same home, the income and resources of the sponsor and any spouse of the sponsor that would be deemed income and resources of any such alien under subparagraph (A) shall be divided into a number of equal shares equal to the number of such aliens, and the State shall deem the income and resources of each such alien to include 1 such share.

''(2) INELIGIBILITY OF NON-213A ALIENS SPONSORED BY AGENCIES; EXCEPTION.—A non-213A alien whose sponsor is or was a public or private agency shall be ineligible for assistance under a State program funded under this part, during a period of 3 years after the alien enters the United States, unless the State agency administering the program determines that the sponsor either no longer exists or has become unable to meet the alien's needs.

''(3) INFORMATION PROVISIONS.—

''(A) DUTIES OF NON-213A ALIENS.—A non-213A alien, as a condition of eligibility for assistance under a State program funded under this part

during the period of 3 years after the alien enters the United States, shall be required to provide to the State agency administering the program—

''(i) such information and documentation with respect to the alien's sponsor as may be necessary in order for the State agency to make any determination required under this subsection, and to obtain any cooperation from the sponsor necessary for any such determination; and

''(ii) such information and documentation as the State agency may request and which the alien or the alien's sponsor provided in support of the alien's immigration application.

''(B) DUTIES OF FEDERAL AGENCIES.—The Secretary shall enter into agreements with the Secretary of State and the Attorney General under which any information available to them and required in order to make any determination under this subsection will be provided by them to the Secretary (who may, in turn, make the information available, upon request, to a concerned State agency).

''(4) NON-213A ALIEN DEFINED.—An alien is a non-213A alien for purposes of this subsection if the affidavit of support or similar agreement with respect to the alien that was executed by the sponsor of the alien's entry into the United States was executed other than pursuant to section 213A of the Immigration and Nationality Act.

''(5) INAPPLICABILITY TO ALIEN MINOR SPONSORED BY A PARENT.—This subsection shall not apply to an alien who is a minor child if the sponsor of the alien or any spouse of the sponsor is a parent of the alien.

''(6) INAPPLICABILITY TO CERTAIN CATEGORIES OF ALIENS.—This subsection shall not apply to an alien who is—

''(A) admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act;

''(B) paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year; or

''(C) granted political asylum by the Attorney General under section 208 of such Act.''.

**SEC. 5907. PENALTIES.**

(a) STATES GIVEN MORE TIME TO FILE QUARTERLY REPORTS.—Section 409(a)(2)(A) (42 U.S.C. 609(a)(2)(A)) is amended by striking ''1 month'' and inserting ''45 days''.

(b) TREATMENT OF SUPPORT PAYMENTS PASSED THROUGH TO FAMILIES AS QUALIFIED STATE EXPENDITURES.—Section 409(a)(7)(B)(i)(I)(aa) (42 U.S.C. 609(a)(7)(B)(i)(I)(aa)) is amended by inserting '', including any amount collected by the State as support pursuant to a plan approved under part D, on behalf of a family receiving assistance under the State program funded under this part, that is distributed to the family under section 457(a)(1)(B) and disregarded in determining the eligibility of the family for, and the amount of, such assistance'' before the period.

(c) DISREGARD OF EXPENDITURES MADE TO REPLACE PENALTY GRANT REDUCTIONS.—Section 409(a)(7)(B)(i) (42 U.S.C. 609(a)(7)(B)(i)) is amended by redesignating subclause (III) as subclause (IV) and by inserting after subclause (II) the following:

''(III) EXCLUSION OF AMOUNTS EXPENDED TO REPLACE PENALTY GRANT REDUCTIONS.—Such term does not include any amount expended in order to comply with paragraph (12).''.

(d) TREATMENT OF FAMILIES OF CERTAIN ALIENS AS ELIGIBLE FAMILIES.—Section 409(a)(7)(B)(i)(IV) (42 U.S.C. 609(a)(7)(B)(i)(IV)), as so redesignated by subsection (c) of this section, is amended—

(1) by striking ''and families'' and inserting ''families''; and

(2) by striking ''Act or section 402'' and inserting ''Act, and families of aliens lawfully present in the United States that would be eligible for such assistance but for the application of title IV''.

(e) ELIMINATION OF MEANINGLESS LANGUAGE.—Section 409(a)(7)(B)(ii) (42 U.S.C. 609(a)(7)(B)(ii)) is amended by striking ''reduced (if appropriate) in accordance with subparagraph (C)(ii)''.

(f) CLARIFICATION OF SOURCE OF DATA TO BE USED IN DETERMINING HISTORIC STATE EXPENDITURES.—Section 409(a)(7)(B) (42 U.S.C. 609(a)(7)(B)) is amended by adding at the end the following:

''(v) SOURCE OF DATA.—In determining expenditures by a State for fiscal years 1994 and 1995, the Secretary shall use information which was reported by the State on ACF Form 231 or (in the case of expenditures under part F) ACF Form 331, available as of the dates specified in clauses (ii) and (iii) of section 403(a)(1)(D).''.

(g) CONFORMING TITLE IV–A PENALTIES TO TITLE IV–D PERFORMANCE-BASED STANDARDS.—Section 409(a)(8) (42 U.S.C. 609(a)(8)) is amended to read as follows:

''(8) NONCOMPLIANCE OF STATE CHILD SUPPORT ENFORCEMENT PROGRAM WITH REQUIREMENTS OF PART D.—

''(A) IN GENERAL.—If the Secretary finds, with respect to a State's program under part D, in a fiscal year beginning on or after October 1, 1997—

''(i)(I) on the basis of data submitted by a State pursuant to section 454(15)(B), or on the basis of the results of a review conducted under section 452(a)(4), that the State program failed to achieve the paternity establishment percentages (as defined in section 452(g)(2)), or to meet other performance measures that may be established by the Secretary;

''(II) on the basis of the results of an audit or audits conducted under section 452(a)(4)(C)(i) that the State data submitted pursuant to section 454(15)(B) is incomplete or unreliable; or

''(III) on the basis of the results of an audit or audits conducted under section 452(a)(4)(C) that a State failed to substantially comply with 1 or more of the requirements of part D; and

''(ii) that, with respect to the succeeding fiscal year—

''(I) the State failed to take sufficient corrective action to achieve the appropriate performance levels or compliance as described in subparagraph (A)(i); or

''(II) the data submitted by the State pursuant to section 454(15)(B) is incomplete or unreliable; the amounts otherwise payable to the State under this part for quarters following the end of such succeeding fiscal year, prior to quarters following the end of the first quarter throughout which the State program has achieved the paternity establishment percentages or other performance measures as described in subparagraph (A)(i)(I), or is in substantial compliance with 1 or more of the requirements of part D as described in subparagraph (A)(i)(III), as appropriate, shall be reduced by the percentage specified in subparagraph (B).

''(B) AMOUNT OF REDUCTIONS.—The reductions required under subparagraph (A) shall be—

''(i) not less than 1 nor more than 2 percent;

''(ii) not less than 2 nor more than 3 percent, if the finding is the 2nd consecutive finding made pursuant to subparagraph (A); or

''(iii) not less than 3 nor more than 5 percent, if the finding is the 3rd or a subsequent consecutive such finding.

''(C) DISREGARD OF NONCOMPLIANCE WHICH IS OF A TECHNICAL NATURE.—For purposes of this section and section 452(a)(4), a State determined as a result of an audit—

''(i) to have failed to have substantially complied with 1 or more of the requirements of part D shall be determined to have achieved substantial compliance only if the Secretary determines that the extent of the noncompliance is of a technical nature which does not adversely affect the performance of the State's program under part D; or

''(ii) to have submitted incomplete or unreliable data pursuant to section 454(15)(B) shall be determined to have submitted adequate data only if the Secretary determines that the extent of the incompleteness or unreliability of the data is of a technical nature which does not adversely affect the determination of the level of the State's paternity establishment percentages (as defined under section 452(g)(2)) or other performance measures that may be established by the Secretary.''.

(h) CORRECTION OF REFERENCE TO 5-YEAR LIMIT ON ASSISTANCE.—Section 409(a)(9) (42 U.S.C. 609(a)(9)) is amended by striking ''408(a)(1)(B)'' and inserting ''408(a)(7)''.

(i) CORRECTION OF ERRORS IN PENALTY FOR FAILURE TO MEET MAINTENANCE OF EFFORT REQUIREMENT APPLICABLE TO THE CONTINGENCY FUND.—Section 409(a)(10) (42 U.S.C. 609(a)(10)) is amended—

(1) by striking ''the expenditures under the State program funded under this part for the fiscal year (excluding any amounts made available by the Federal Government)'' and inserting ''the qualified State expenditures (as defined in paragraph (7)(B)(i) (other than the expenditures described in subclause (I)(bb) of that paragraph)) under the State program funded under this part for the fiscal year'';

(2) by inserting ''excluding any amount expended by the State for child care under subsection (g) or (i) of section 402 (as in effect during fiscal year 1994) for fiscal year 1994,'' after ''(as defined in paragraph (7)(B)(iii) of this subsection),''; and

(3) by inserting ''that the State has not remitted under section 403(b)(6)'' before the period.

(j) PENALTY FOR STATE FAILURE TO EXPEND ADDITIONAL STATE FUNDS TO REPLACE GRANT REDUCTIONS.—Section 409(a)(12) (42 U.S.C. 609(a)(12)) is amended—

(1) in the heading—

(A) by striking ''FAILURE'' and inserting ''REQUIREMENT''; and

(B) by striking ''REDUCTIONS'' and inserting ''REDUCTIONS; PENALTY FOR FAILURE TO DO SO''; and

(2) by inserting '', and if the State fails to do so, the Secretary may reduce the grant payable to the State under section 403(a)(1) for the fiscal year that follows such succeeding fiscal year by an amount equal to not more than 2 percent of the State family assistance grant'' before the period.

(k) ELIMINATION OF CERTAIN REASONABLE CAUSE EXCEPTIONS.—Section 409(b)(2) (42 U.S.C. 609(b)(2)) is amended by striking ''(7) or (8)'' and inserting ''(6), (7), (8), (10), or (12)''.

(l) CLARIFICATION OF WHAT IT MEANS TO CORRECT A VIOLATION.—Section 409(c) (42 U.S.C. 609(c)) is amended—

(1) in each of subparagraphs (A) and (B) of paragraph (1), by inserting ''or discontinue, as appropriate,'' after ''correct'';

(2) in paragraph (2)—

(A) in the heading, by inserting ''OR DISCONTINUING'' after ''CORRECTING''; and

(B) by inserting ''or discontinues, as appropriate'' after ''corrects''; and

(3) in paragraph (3)—

(A) in the heading, by inserting ''OR DISCONTINUE'' after ''CORRECT''; and

(B) by inserting ''or discontinue, as appropriate,'' before ''the violation''.

(m) CERTAIN PENALTIES NOT AVOIDABLE THROUGH CORRECTIVE COMPLIANCE PLANS.—Section 409(c)(4) (42 U.S.C. 609(c)(4)) is amended to read as follows:

''(4) INAPPLICABILITY TO CERTAIN PENALTIES.—This subsection shall not apply to the imposition of a penalty against a State under paragraph (6), (7), (8), (10), or (12) of subsection (a).''.

(n) FAILURE TO SATISFY MINIMUM PARTICIPATION RATES.—Section 409(a)(3) (42 U.S.C. 609(a)(3)) is amended—

(1) in subparagraph (A), by striking ''not more than''; and

(2) in subparagraph (C), by inserting before the period the following: ''or if the noncompliance is due to extraordinary circumstances such as a natural disaster or regional recession. The Secretary shall provide a written report to Congress to justify any waiver or penalty reduction due to such extraordinary circumstances''.

***SEC. 5908. DATA COLLECTION AND REPORTING.***

*Section 411(a) (42 U.S.C. 611(a)) is amended—*

*(1) in paragraph (1)—*

*(A) in subparagraph (A)—*

*(i) by striking clause (ii) and inserting the following:*

*''(ii) Whether a child receiving such assistance or an adult in the family is receiving—*

*''(I) Federal disability insurance benefits;*

*''(II) benefits based on Federal disability status;*

*''(III) aid under a State plan approved under title XIV (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972));*

*''(IV) aid or assistance under a State plan approved under title XVI (as in effect without regard to such amendment) by reason of being permanently and totally disabled; or*

*''(V) supplemental security income benefits under title XVI (as in effect pursuant to such amendment) by reason of disability.'';*

*(ii) in clause (iv), by striking ''youngest child in'' and inserting ''head of'';*

*(iii) in each of clauses (vii) and (viii), by striking ''status'' and inserting ''level''; and*

*(iv) by adding at the end the following:*

*''(xvii) With respect to each individual in the family who has not attained 20 years of age, whether the individual is a parent of a child in the family.''; and*

*(B) in subparagraph (B)—*

*(i) in the heading, by striking ''ESTIMATES'' and inserting ''SAMPLES''; and*

*(ii) in clause (i), by striking ''an estimate which is obtained'' and inserting ''disaggregated case record information on a sample of families selected''; and*

*(2) by redesignating paragraph (6) as paragraph (7) and inserting after paragraph (5) the following:*

*''(6) REPORT ON FAMILIES RECEIVING ASSISTANCE.—The report required by paragraph (1) for a fiscal quarter shall include for each month in the quarter the number of families and individuals receiving assistance under the State program funded under this part (including the number of 2-parent and 1-parent families), and the total dollar value of such assistance received by all families.''.*

***SEC. 5909. DIRECT FUNDING AND ADMINISTRATION BY INDIAN TRIBES.***

*(a) PRORATING OF TRIBAL FAMILY ASSISTANCE GRANTS.—Section 412(a)(1)(A) (42 U.S.C. 612(a)(1)(A)) is amended by inserting ''which shall be reduced for a fiscal year, on a pro rata basis for each quarter, in the case of a tribal family assistance plan approved during a fiscal year for which the plan is to be in effect,'' before ''and shall''.*

*(b) TRIBAL OPTION TO OPERATE WORK ACTIVITIES PROGRAM.—Section 412(a)(2)(A) (42 U.S.C. 612(a)(2)(A)) is amended by striking ''The Secretary'' and all that follows through ''2002'' and inserting ''For each of fiscal years 1997, 1998, 1999, 2000, 2001, and 2002, the Secretary shall pay to each eligible Indian tribe that proposes to operate a program described in subparagraph (C)''.*

*(c) DISCRETION OF TRIBES TO SELECT POPULATION TO BE SERVED BY TRIBAL WORK ACTIVITIES PROGRAM.—Section 412(a)(2)(C) (42 U.S.C. 612(a)(2)(C)) is amended by striking ''members of the Indian tribe'' and inserting ''such population and such service area or areas as the tribe specifies''.*

*(d) REDUCTION OF APPROPRIATION FOR TRIBAL WORK ACTIVITIES PROGRAMS.—Section 412(a)(2)(D) (42 U.S.C. 612(a)(2)(D)) is amended by striking ''$7,638,474'' and inserting ''$7,633,287''.*

*(e) AVAILABILITY OF CORRECTIVE COMPLIANCE PLANS TO INDIAN TRIBES.—Section 412(f)(1) (42 U.S.C. 612(f)(1)) is amended by striking ''and (b)'' and inserting ''(b), and (c)''.*

*(f) ELIGIBILITY OF TRIBES FOR FEDERAL LOANS FOR WELFARE PROGRAMS.—Section 412 (42 U.S.C. 612) is amended by redesignating subsections (f), (g), and (h) as subsections (g), (h), and (i), respectively, and by inserting after subsection (e) the following:*

*''(f) ELIGIBILITY FOR FEDERAL LOANS.—Section 406 shall apply to an Indian tribe with an approved tribal assistance plan in the same manner as such section applies to a State, except that section 406(c) shall be applied by substituting 'section 412(a)' for 'section 403(a)'.''.*

***SEC. 5910. RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.***

*(a) RESEARCH.—*

*(1) METHODS.—Section 413(a) (42 U.S.C. 613(a)) is amended by inserting '', directly or through grants, contracts, or interagency agreements,'' before ''shall conduct''.*

*(2) CORRECTION OF CROSS REFERENCE.—Section 413(a) (42 U.S.C. 613(a)) is amended by striking ''409'' and inserting ''407''.*

*(b) CORRECTION OF ERRONEOUSLY INDENTED PARAGRAPH.—Section 413(e)(1) (42 U.S.C. 613(e)(1)) is amended to read as follows:*

*''(1) IN GENERAL.—The Secretary shall annually rank States to which grants are made under section 403 based on the following ranking factors:*

*''(A) ABSOLUTE OUT-OF-WEDLOCK RATIOS.—The ratio represented by—*

*''(i) the total number of out-of-wedlock births in families receiving assistance under the State program under this part in the State for the most recent year for which information is available; over*

*''(ii) the total number of births in families receiving assistance under the State program under this part in the State for the year.*

*''(B) NET CHANGES IN THE OUT-OF-WEDLOCK RATIO.—The difference between the ratio described in subparagraph (A) with respect to a State for the most recent year for which such information is available and the ratio with respect to the State for the immediately preceding year.''.*

*(c) FUNDING OF PRIOR AUTHORIZED DEMONSTRATIONS.—Section 413(h)(1)(D) (42 U.S.C. 613(h)(1)(D)) is amended by striking ''September 30, 1995'' and inserting ''August 22, 1996''.*

*(d) CHILD POVERTY REPORTS.—*

*(1) DELAYED DUE DATE FOR INITIAL REPORT.—Section 413(i)(1) (42 U.S.C. 613(i)(1)) is amended by striking ''90 days after the date of the enactment of this part'' and inserting ''November 30, 1997''.*

*(2) MODIFICATION OF FACTORS TO BE USED IN ESTABLISHING METHODOLOGY FOR USE IN DETERMINING CHILD POVERTY RATES.—Section 413(i)(5) (42 U.S.C. 613(i)(5)) is amended by striking ''the county-by-county'' and inserting '', to the extent available, county-by-county''.*

***SEC. 5911. REPORT ON DATA PROCESSING.***

*Section 106(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2164) is amended by striking ''(whether in effect before or after October 1, 1995)''.*

***SEC. 5912. STUDY ON ALTERNATIVE OUTCOMES MEASURES.***

*Section 107(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2164) is amended by striking ''409(a)(7)(C)'' and inserting ''408(a)(7)(C)''.*

***SEC. 5913. LIMITATION ON PAYMENTS TO THE TERRITORIES.***

*(a) CERTAIN PAYMENTS TO BE DISREGARDED IN DETERMINING LIMITATION.—Section 1108(a) (42 U.S.C. 1308) is amended to read as follows:*

*''(a) LIMITATION ON TOTAL PAYMENTS TO EACH TERRITORY.—*

*''(1) IN GENERAL.—Notwithstanding any other provision of this Act (except for paragraph (2) of this subsection), the total amount certified by the Secretary of Health and Human Services under titles I, X, XIV, and XVI, under parts A and E of title IV, and under subsection (b) of this section, for payment to any territory for a fiscal year shall not exceed the ceiling amount for the territory for the fiscal year.*

*''(2) CERTAIN PAYMENTS DISREGARDED.—Paragraph (1) of this subsection shall be applied without regard to any payment made under section 403(a)(2), 403(a)(4), 406, or 413(f).''.*

*(b) CERTAIN CHILD CARE AND SOCIAL SERVICES EXPENDITURES BY TERRITORIES TREATED AS IV–A EXPENDITURES FOR PURPOSES OF MATCHING GRANT.—Section 1108(b)(1)(A) (42 U.S.C. 1308(b)(1)(A)) is amended by inserting '', including any amount paid to the State under part A of title IV that is transferred in accordance with section 404(d) and expended under the program to which transferred'' before the semicolon.*

*(c) ELIMINATION OF DUPLICATIVE MAINTENANCE OF EFFORT REQUIREMENT.—Section 1108 (42 U.S.C. 1308) is amended by striking subsection (e).*

***SEC. 5914. CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT.***

*(a) AMENDMENTS TO PART D OF TITLE IV.—*

*(1) CORRECTIONS TO DETERMINATION OF PATERNITY ESTABLISHMENT PERCENTAGES.—Section 452 (42 U.S.C. 652) is amended—*

*(A) in subsection (d)(3)(A), by striking all that follows ''for purposes of'' and inserting ''section 409(a)(8), to achieve the paternity establishment percentages (as defined under section 452(g)(2)) and other performance measures that may be established by the Secretary, and to submit data under section 454(15)(B) that is complete and reliable, and to substantially comply with the requirements of this part; and''; and*

*(B) in subsection (g)(1), by striking ''section 403(h)'' and inserting ''section 409(a)(8)''.*

*(2) ELIMINATION OF OBSOLETE LANGUAGE.—Section 108(c)(8)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2165) is amended by inserting ''and all that follows through 'the best interests of such child to do so''' before ''and inserting''.*

*(3) INSERTION OF LANGUAGE INADVERTENTLY OMITTED.—Section 108(c)(13) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2166) is amended by inserting ''and inserting 'pursuant to section 408(a)(3)''' before the period.*

*(4) ELIMINATION OF OBSOLETE CROSS REFERENCE.—Section 464(a)(1) (42 U.S.C. 664(a)(1)) is amended by striking ''section 402(a)(26)'' and inserting ''section 408(a)(3)''.*

*(b) AMENDMENTS TO PART E OF TITLE IV.—Each of the following is amended by striking ''June 1, 1995'' each place such term appears and inserting ''July 16, 1996'':*

*(1) Section 472(a) (42 U.S.C. 672(a)).*

*(2) Section 472(h) (42 U.S.C. 672(h)).*

*(3) Section 473(a)(2) (42 U.S.C. 673(a)(2)).*

*(4) Section 473(b) (42 U.S.C. 673(b)).*

***SEC. 5915. OTHER CONFORMING AMENDMENTS.***

*(a) ELIMINATION OF AMENDMENTS INCLUDED INADVERTENTLY.—Section 110(l) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2173) is amended—*

*(1) by striking paragraphs (1), (4), (5), and (7);*

*(2) by redesignating paragraphs (2), (3), (6), and (8) as paragraphs (1), (2), (3), and (4), respectively; and*

*(3) by adding ''and'' at the end of paragraph (3), as so redesignated.*

*(b) CORRECTION OF CITATION.—Section 109(f) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2177) is amended by striking ''93–186'' and inserting ''93–86''.*

*(c) CORRECTION OF INTERNAL CROSS REFERENCE.—Section 103(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112) is amended by striking ''603(b)(2)'' and inserting ''603(b)''.*

*(d) CORRECTION OF REFERENCES.—Section 416 (42 U.S.C. 616) is amended by striking ''amendment made by section 2103 of the Personal Responsibility and Work Opportunity'' and inserting ''amendments made by section 103 of the*

Personal Responsibility and Work Opportunity Reconciliation''.

**SEC. 5916. MODIFICATIONS TO THE JOB OPPORTUNITIES FOR CERTAIN LOW-INCOME INDIVIDUALS PROGRAM.**

Section 112(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2177) is amended in each of subparagraphs (A) and (B) by inserting ''under'' after ''funded''.

**SEC. 5917. DENIAL OF ASSISTANCE AND BENEFITS FOR DRUG-RELATED CONVICTIONS.**

(a) EXTENSION OF CERTAIN REQUIREMENTS COORDINATED WITH DELAYED EFFECTIVE DATE FOR SUCCESSOR PROVISIONS.—Section 115(d)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2181) is amended by striking ''convictions'' and inserting ''a conviction if the conviction is for conduct''.

(b) IMMEDIATE EFFECTIVENESS OF PROVISIONS RELATING TO RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.—Section 116(a) of such Act (Public Law 104–193; 110 Stat. 2181) is amended by adding at the end the following:

''(6) RESEARCH, EVALUATIONS, AND NATIONAL STUDIES.—Section 413 of the Social Security Act, as added by the amendment made by section 103(a) of this Act, shall take effect on the date of the enactment of this Act.''.

**SEC. 5918. TRANSITION RULE.**

Section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2181) is amended—

(1) in subsection (a)(2), by inserting ''(but subject to subsection (b)(1)(A)(ii))'' after ''this section''; and

(2) in subsection (b)(1)(A)(ii), by striking ''June 30, 1997'' and inserting ''the later of June 30, 1997, or the day before the date described in subsection (a)(2)(B) of this section''.

**SEC. 5919. PROTECTING VICTIMS OF FAMILY VIOLENCE.**

(a) FINDINGS.—Congress finds that—

(1) the intent of Congress in amending part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat 2112) was to allow States to take into account the effects of the epidemic of domestic violence in establishing their welfare programs, by giving States the flexibility to grant individual, temporary waivers for good cause to victims of domestic violence who meet the criteria set forth in section 402(a)(7)(B) of the Social Security Act (42 U.S.C. 602(a)(7)(B));

(2) the allowance of waivers under such sections was not intended to be limited by other, separate, and independent provisions of part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

(3) under section 402(a)(7)(A)(iii) of such Act (42 U.S.C. 602(a)(7)(A)(iii)), requirements under the temporary assistance for needy families program under part A of title IV of such Act may, for good cause, be waived for so long as necessary; and

(4) good cause waivers granted pursuant to section 402(a)(7)(A)(iii) of such Act (42 U.S.C. 602(a)(7)(A)(iii)) are intended to be temporary and directed only at particular program requirements when needed on an individual case-by-case basis, and are intended to facilitate the ability of victims of domestic violence to move forward and meet program requirements when safe and feasible without interference by domestic violence.

(b) CLARIFICATION OF WAIVER PROVISIONS.—

(1) IN GENERAL.—Section 402(a)(7) (42 U.S.C. 602(a)(7)) is amended by adding at the end the following:

''(C) NO NUMERICAL LIMITS.—In implementing this paragraph, a State shall not be subject to any numerical limitation in the granting of good cause waivers under subparagraph (A)(iii).

''(D) WAIVERED INDIVIDUALS NOT INCLUDED FOR PURPOSES OF CERTAIN OTHER PROVISIONS OF THIS PART.—Any individual to whom a good cause waiver of compliance with this Act has been granted in accordance with subparagraph (A)(iii) shall not be included for purposes of determining a State's compliance with the participation rate requirements set forth in section 407, for purposes of applying the limitation described in section 408(a)(7)(C)(ii), or for purposes of determining whether to impose a penalty under paragraph (3), (5), or (9) of section 409(a).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect as if it had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112).

(c) FEDERAL PARENT LOCATOR SERVICE.—

(1) IN GENERAL.—Section 453 (42 U.S.C. 653), as amended by section 5938, is further amended—

(A) in subsection (b)(2)—

(i) in the matter preceding subparagraph (A), by inserting ''or that the health, safety, or liberty or a parent or child would by unreasonably put at risk by the disclosure of such information,'' before ''provided that'';

(ii) in subparagraph (A), by inserting '', that the health, safety, or liberty or a parent or child would by unreasonably put at risk by the disclosure of such information,'' before ''and that information''; and

(iii) in subparagraph (B)(i), by striking ''be harmful to the parent or the child'' and inserting ''place the health, safety, or liberty of a parent or child unreasonably at risk''; and

(B) in subsection (c)(2), by inserting '', or to serve as the initiating court in an action to seek and order,'' before ''against a noncustodial''.

(2) STATE PLAN.—Section 454(26) (42 U.S.C. 654), as amended by section 5956, is further amended—

(A) in subparagraph (C), by striking ''result in physical or emotional harm to the party or the child'' and inserting ''place the health, safety, or liberty of a parent or child unreasonably at risk'';

(B) in subparagraph (D), by striking ''of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child'' and inserting ''that the health, safety, or liberty of a parent or child would be unreasonably put at risk by the disclosure of such information''; and

(C) in subparagraph (E), by striking ''of domestic violence'' and all that follows through the semicolon and inserting ''that the health, safety, or liberty of a parent or child would be unreasonably put at risk by the disclosure of such information pursuant to section 453(b)(2), the court shall determine whether disclosure to any other person or persons of information received from the Secretary could place the health, safety, or liberty or a parent or child unreasonably at risk (if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure);''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect 1 day after the effective date described in section 5961(a).

**SEC. 5920. EFFECTIVE DATES.**

(a) AMENDMENTS TO PART A OF TITLE IV OF THE SOCIAL SECURITY ACT.—The amendments made by this chapter to a provision of part A of title IV of the Social Security Act shall take effect as if the amendments had been included in section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 at the time such section became law.

(b) AMENDMENTS TO PARTS D AND E OF TITLE IV OF THE SOCIAL SECURITY ACT.—The amendments made by section 5914 of this Act shall take effect as if the amendments had been included in section 108 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 at the time such section 108 became law.

(c) AMENDMENTS TO OTHER AMENDATORY PROVISIONS.—The amendments made by section 5915(a) of this Act shall take effect as if the amendments had been included in section 110 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 at the time such section 110 became law.

(d) AMENDMENTS TO FREESTANDING PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.—The amendments made by this chapter to a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 that, as of July 1, 1997, will not have become part of another statute shall take effect as if the amendments had been included in the provision at the time the provision became law.

## CHAPTER 2—SUPPLEMENTAL SECURITY INCOME

**SEC. 5921. CONFORMING AND TECHNICAL AMENDMENTS RELATING TO ELIGIBILITY RESTRICTIONS.**

(a) DENIAL OF SSI BENEFITS FOR FUGITIVE FELONS AND PROBATION AND PAROLE VIOLATORS.—Section 1611(e)(6) (42 U.S.C. 1382(e)(6)) is amended by inserting ''and section 1106(c) of this Act'' after ''of 1986''.

(b) TREATMENT OF PRISONERS.—Section 1611(e)(1)(I)(i)(II) (42 U.S.C. 1382(e)(1)(I)(i)(II)) is amended by striking ''inmate of the institution'' and all that follows through ''this subparagraph'' and inserting ''individual who receives in the month preceding the first month throughout which such individual is an inmate of the jail, prison, penal institution, or correctional facility that furnishes information respecting such individual pursuant to subclause (I), or is confined in the institution (that so furnishes such information) as described in section 202(x)(1)(A)(ii), a benefit under this title for such preceding month, and who is determined by the Commissioner to be ineligible for benefits under this title by reason of confinement based on the information provided by such institution''.

(c) CORRECTION OF REFERENCE.—Section 1611(e)(1)(I)(i)(I) (42 U.S.C. 1382(e)(1)(I)(i)(I)) is amended by striking ''paragraph (1)'' and inserting ''this paragraph''.

**SEC. 5922. CONFORMING AND TECHNICAL AMENDMENTS RELATING TO BENEFITS FOR DISABLED CHILDREN.**

(a) ELIGIBILITY REDETERMINATIONS FOR CURRENT RECIPIENTS.—Section 211(d)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. 1382c note) is amended by striking ''1 year'' and inserting ''18 months''.

(b) ELIGIBILITY REDETERMINATIONS AND CONTINUING DISABILITY REVIEWS.—

(1) DISABILITY ELIGIBILITY REDETERMINATIONS REQUIRED FOR SSI RECIPIENTS WHO ATTAIN 18 YEARS OF AGE.—Section 1614(a)(3)(H)(iii) (42 U.S.C. 1382c(a)(3)(H)(iii)) is amended by striking subclauses (I) and (II) and all that follows and inserting the following:

''(I) by applying the criteria used in determining initial eligibility for individuals who are age 18 or older; and

''(II) either during the 1-year period beginning on the individual's 18th birthday or, in lieu of a continuing disability review, whenever the Commissioner determines that an individual's case is subject to a redetermination under this clause.

With respect to any redetermination under this clause, paragraph (4) shall not apply.''.

(2) CONTINUING DISABILITY REVIEW REQUIRED FOR LOW BIRTH WEIGHT BABIES.—Section 1614(a)(3)(H)(iv) (42 U.S.C. 1382c(a)(3)(H)(iv)) is amended—

(A) in subclause (I), by striking ''Not'' and inserting ''Except as provided in subclause (VI), not''; and

(B) by adding at the end the following:

''(VI) Subclause (I) shall not apply in the case of an individual described in that subclause who, at the time of the individual's initial disability determination, the Commissioner determines has an impairment that is not expected to improve within 12 months after the birth of that individual, and who the Commissioner schedules for a continuing disability review at a date that is after the individual attains 1 year of age.''.

(c) ADDITIONAL ACCOUNTABILITY REQUIREMENTS.—Section 1631(a)(2)(F) (42 U.S.C. 1383(a)(2)(F)) is amended—

(1) in clause (ii)(III)(bb), by striking ''the total amount'' and all that follows through ''1613(c)'' and inserting ''in any case in which the individual knowingly misapplies benefits from such an account, the Commissioner shall reduce future benefits payable to such individual (or to such individual and his spouse) by an amount equal to the total amount of such benefits so misapplied''; and

(2) by striking clause (iii) and inserting the following:

''(iii) The representative payee may deposit into the account established under clause (i) any other funds representing past due benefits under this title to the eligible individual, provided that the amount of such past due benefits is equal to or exceeds the maximum monthly benefit payable under this title to an eligible individual (including State supplementary payments made by the Commissioner pursuant to an agreement under section 1616 or section 212(b) of Public Law 93–66).''.

(d) REDUCTION IN CASH BENEFITS PAYABLE TO INSTITUTIONALIZED INDIVIDUALS WHOSE MEDICAL COSTS ARE COVERED BY PRIVATE INSURANCE.—Section 1611(e) (42 U.S.C. 1382(e)) is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by striking ''hospital, extended care facility, nursing home, or intermediate care facility'' and inserting ''medical treatment facility'';

(B) in clause (ii)—

(i) in the matter preceding subclause (I), by striking ''hospital, home or''; and

(ii) in subclause (I), by striking ''hospital, home, or'';

(C) in clause (iii), by striking ''hospital, home, or''; and

(D) in the matter following clause (iii), by striking ''hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1917(c)'' and inserting ''medical treatment facility that provides services described in section 1917(c)(1)(C)'';

(2) in paragraph (1)(E)—

(A) in clause (i)(II), by striking ''hospital, extended care facility, nursing home, or intermediate care facility'' and inserting ''medical treatment facility''; and

(B) in clause (iii), by striking ''hospital, extended care facility, nursing home, or intermediate care facility'' and inserting ''medical treatment facility'';

(3) in paragraph (1)(G), in the matter preceding clause (i)—

(A) by striking ''or which is a hospital, extended care facility, nursing home, or intermediate care'' and inserting ''or is in a medical treatment''; and

(B) by inserting ''or, in the case of an individual who is a child under the age of 18, under any health insurance policy issued by a private provider of such insurance'' after ''title XIX''; and

(4) in paragraph (3)—

(A) by striking ''same hospital, home, or facility'' and inserting ''same medical treatment facility''; and

(B) by striking ''same such hospital, home, or facility'' and inserting ''same such facility''.

(e) CORRECTION OF U.S.C. CITATION.—Section 211(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2189) is amended by striking ''1382(a)(4)'' and inserting ''1382c(a)(4)''.

**SEC. 5923. ADDITIONAL TECHNICAL AMENDMENTS TO TITLE XVI.**

Section 1615(d) (42 U.S.C. 1382d(d)) is amended—

(1) in the first sentence, by inserting a comma after ''subsection (a)(1)''; and

(2) in the last sentence, by striking ''him'' and inserting ''the Commissioner''.

**SEC. 5924. ADDITIONAL TECHNICAL AMENDMENTS RELATING TO TITLE XVI.**

Section 1110(a)(3) (42 U.S.C. 1310(a)(3)) is amended—

(1) by inserting ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning title XVI)'' after ''Secretary'' the first place it appears; and

(2) by inserting ''(or the Commissioner, as applicable)'' after ''Secretary'' the second place it appears.

**SEC. 5925. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this part shall take effect as if included in the enactment of title II of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2185).

(b) EXCEPTION.—The amendments made by section 5925 shall take effect as if included in the enactment of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103–296; 108 Stat. 1464).

## CHAPTER 3—CHILD SUPPORT

**SEC. 5935. STATE OBLIGATION TO PROVIDE CHILD SUPPORT ENFORCEMENT SERVICES.**

(a) INDIVIDUALS SUBJECT TO FEE FOR CHILD SUPPORT ENFORCEMENT SERVICES.—Section 454(6)(B) (42 U.S.C. 654(6)(B)) is amended by striking ''individuals not receiving assistance under any State program funded under part A, which'' and inserting ''an individual, other than an individual receiving assistance under a State program funded under part A or E, or under a State plan approved under title XIX, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (l) or (m) of section 6 of the Food Stamp Act of 1977, and''.

(b) CORRECTION OF REFERENCE.—Section 464(a)(2)(A) (42 U.S.C. 654(a)(2)(A)) is amended in the first sentence by striking ''section 454(6)'' and inserting ''section 454(4)(A)(ii)''.

**SEC. 5936. DISTRIBUTION OF COLLECTED SUPPORT.**

(a) CONTINUATION OF ASSIGNMENTS.—Section 457(b) (42 U.S.C. 657(b)) is amended—

(1) by striking ''which were assigned'' and inserting ''assigned''; and

(2) by striking ''and which were in effect'' and all that follows and inserting ''and in effect on September 30, 1997 (or such earlier date, on or after August 22, 1996, as the State may choose), shall remain assigned after such date.''.

(b) STATE OPTION FOR APPLICABILITY.—

(1) IN GENERAL.—Section 457(a) (42 U.S.C. 657(a)) is amended by adding at the end the following:

''(6) STATE OPTION FOR APPLICABILITY.—Notwithstanding any other provision of this subsection, a State may elect to apply the rules described in clauses (i)(II), (ii)(II), and (v) of paragraph (2)(B) to support arrearages collected on and after October 1, 1998, and, if the State makes such an election, shall apply the provisions of this section, as in effect and applied on the day before the date of enactment of section 302 of the Personal Responsibility and Work Opportunity Act of 1996 (Public Law 104–193, 110 Stat. 2200), other than subsection (b)(1) (as so in effect), to amounts collected before October 1, 1998.''.

(2) CONFORMING AMENDMENTS.—Section 408(a)(3)(A) (42 U.S.C. 608(a)(3)(A)) is amended—

(A) in clause (i), by inserting ''(I)'' after ''(i)'';

(B) in clause (ii)—

(i) by striking ''(ii)'' and inserting ''(II)''; and

(ii) by striking the period and inserting ''; or''; and

(C) by adding at the end, the following:

''(ii) if the State elects to distribute collections under section 457(a)(6), the date the family ceases to receive assistance under the program, if the assignment is executed on or after October 1, 1998.''.

(c) DISTRIBUTION OF COLLECTIONS WITH RESPECT TO FAMILIES RECEIVING ASSISTANCE.—Section 457(a)(1) (42 U.S.C. 657(a)(1)) is amended by adding at the end the following flush language: ''In no event shall the total of the amounts paid to the Federal Government and retained by the State exceed the total of the amounts that have been paid to the family as assistance by the State.''.

(d) FAMILIES UNDER CERTAIN AGREEMENTS.—Section 457(a)(4) (42 U.S.C. 657(a)(4)) is amended to read as follows:

''(4) FAMILIES UNDER CERTAIN AGREEMENTS.—In the case of an amount collected for a family in accordance with a cooperative agreement under section 454(33), distribute the amount so collected pursuant to the terms of the agreement.''.

(e) STUDY AND REPORT.—Section 457(a)(5) (42 U.S.C. 657(a)(5)) is amended by striking ''1998'' and inserting ''1999''.

(f) CORRECTIONS OF REFERENCES.—Section 457(a)(2)(B) (42 U.S.C. 657(a)(2)(B)) is amended—

(1) in clauses (i)(I) and (ii)(I)—

(A) by striking ''(other than subsection (b)(1))'' each place it appears; and

(B) by inserting ''(other than subsection (b)(1) (as so in effect))'' after ''1996'' each place it appears; and

(2) in clause (ii)(II), by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

(g) CORRECTION OF TERRITORIAL MATCH.—Section 457(c)(3)(A) (42 U.S.C. 657(c)(3)(A)) is amended by striking ''the Federal medical assistance percentage (as defined in section 1118)'' and inserting ''75 percent''.

(h) DEFINITIONS.—

(1) FEDERAL SHARE.—Section 457(c)(2) (42 U.S.C. 657(c)(2)) is amended by striking ''collected'' the second place it appears and inserting ''distributed''.

(2) FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Section 457(c)(3)(B) (42 U.S.C. 657(c)(3)(B)) is amended by striking ''as in effect on September 30, 1996'' and inserting ''as such section was in effect on September 30, 1995''.

(i) CONFORMING AMENDMENTS.—

(1) Section 464(a)(2)(A) (42 U.S.C. 664(a)(2)(A)) is amended, in the penultimate sentence, by inserting ''in accordance with section 457'' after ''owed''.

(2) Section 466(a)(3)(B) (42 U.S.C. 666(a)(3)(B)) is amended by striking ''457(b)(4) or (d)(3)'' and inserting ''457''.

**SEC. 5937. CIVIL PENALTIES RELATING TO STATE DIRECTORY OF NEW HIRES.**

Section 453A (42 U.S.C. 653a) is amended—

(1) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''shall be less than'' and inserting ''shall not exceed''; and

(B) in paragraph (1), by striking ''$25'' and inserting ''$25 per failure to meet the requirements of this section with respect to a newly hired employee''; and

(2) in subsection (g)(2)(B), by striking ''extracts'' and all that follows through ''Labor'' and inserting ''information''.

**SEC. 5938. FEDERAL PARENT LOCATOR SERVICE.**

(a) IN GENERAL.—Section 453 (42 U.S.C. 653) is amended—

(1) in subsection (a)—

(A) by inserting ''(1)'' after ''(a)''; and

(B) by striking ''to obtain'' and all that follows through the period and inserting ''for the purposes specified in paragraphs (2) and (3).

''(2) For the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, the

*Federal Parent Locator Service shall obtain and transmit to any authorized person specified in subsection (c)—*

*''(A) information on, or facilitating the discovery of, the location of any individual—*

*''(i) who is under an obligation to pay child support;*

*''(ii) against whom such an obligation is sought; or*

*''(iii) to whom such an obligation is owed,*

*including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer;*

*''(B) information on the individual's wages (or other income) from, and benefits of, employment (including rights to or enrollment in group health care coverage); and*

*''(C) information on the type, status, location, and amount of any assets of, or debts owed by or to, any such individual.*

*''(3) For the purpose of enforcing any Federal or State law with respect to the unlawful taking or restraint of a child, or making or enforcing a child custody or visitation determination, as defined in section 463(d)(1), the Federal Parent Locator Service shall be used to obtain and transmit the information specified in section 463(c) to the authorized persons specified in section 463(d)(2).'';*

*(2) by striking subsection (b) and inserting the following:*

*''(b)(1) Upon request, filed in accordance with subsection (d), of any authorized person, as defined in subsection (c) for the information described in subsection (a)(2), or of any authorized person, as defined in section 463(d)(2) for the information described in section 463(c), the Secretary shall, notwithstanding any other provision of law, provide through the Federal Parent Locator Service such information to such person, if such information—*

*''(A) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or*

*''(B) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality of the United States or of any State,*

*and is not prohibited from disclosure under paragraph (2).*

*''(2) No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1). No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent, provided that—*

*''(A) in response to a request from an authorized person (as defined in subsection (c) and section 463(d)(2)), the Secretary shall advise the authorized person that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse and that information can only be disclosed to a court or an agent of a court pursuant to subparagraph (B); and*

*''(B) information may be disclosed to a court or an agent of a court described in subsection (c)(2) or section 463(d)(2)(B), if—*

*''(i) upon receipt of information from the Secretary, the court determines whether disclosure to any other person of that information could be harmful to the parent or the child; and*

*''(ii) if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make any such disclosure.*

*''(3) Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 454(26).''; and*

*(3) in subsection (c)—*

*(A) in paragraph (1), by striking ''or to seek to enforce orders providing child custody or visitation rights''; and*

*(B) in paragraph (2)—*

*(i) by inserting ''or to serve as the initiating court in an action to seek an order'' after ''issue an order''; and*

*(ii) by striking ''or to issue an order against a resident parent for child custody or visitation rights''.*

*(b) USE OF THE FEDERAL PARENT LOCATOR SERVICE.—Section 463 (42 U.S.C. 663) is amended—*

*(1) in subsection (a)—*

*(A) in the matter preceding paragraph (1)—*

*(i) by striking ''any State which is able and willing to do so,'' and inserting ''every State''; and*

*(ii) by striking ''such State'' and inserting ''each State''; and*

*(B) in paragraph (2), by inserting ''or visitation'' after ''custody'';*

*(2) in subsection (b)(2), by inserting ''or visitation'' after ''custody'';*

*(3) in subsection (d)—*

*(A) in paragraph (1), by inserting ''or visitation'' after ''custody''; and*

*(B) in subparagraphs (A) and (B) of paragraph (2), by inserting ''or visitation'' after ''custody'' each place it appears;*

*(4) in subsection (f)(2), by inserting ''or visitation'' after ''custody''; and*

*(5) by striking ''noncustodial'' each place it appears.*

***SEC. 5939. ACCESS TO REGISTRY DATA FOR RESEARCH PURPOSES.***

*(a) IN GENERAL.—Section 453(j)(5) (42 U.S.C. 653(j)(5)) is amended by inserting ''data in each component of the Federal Parent Locator Service maintained under this section and to'' before ''information''.*

*(b) CONFORMING AMENDMENTS.—Section 453 (42 U.S.C. 653) is amended—*

*(1) in subsection (j)(3)(B), by striking ''registries'' and inserting ''components''; and*

*(2) in subsection (k)(2), by striking ''subsection (j)(3)'' and inserting ''section 453A(g)(2)''.*

***SEC. 5940. COLLECTION AND USE OF SOCIAL SECURITY NUMBERS FOR USE IN CHILD SUPPORT ENFORCEMENT.***

*Section 466(a)(13) (42 U.S.C. 666(a)(13)) is amended—*

*(1) in subparagraph (A)—*

*(A) by striking ''commercial''; and*

*(B) by inserting ''recreational license,'' after ''occupational license,''; and*

*(2) in the matter following subparagraph (C), by inserting ''to be used on the face of the document while the social security number is kept on file at the agency'' after ''other than the social security number''.*

***SEC. 5941. ADOPTION OF UNIFORM STATE LAWS.***

*Section 466(f) (42 U.S.C. 666(f)) is amended by striking ''together'' and all that follows and inserting ''and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.''.*

***SEC. 5942. STATE LAWS PROVIDING EXPEDITED PROCEDURES.***

*Section 466(c) (42 U.S.C. 666(c)) is amended—*

*(1) in paragraph (1)—*

*(A) in subparagraph (E), by inserting '', part E,'' after ''part A''; and*

*(B) in subparagraph (G), by inserting ''any current support obligation and'' after ''to satisfy''; and*

*(2) in paragraph (2)(A)—*

*(A) in clause (i), by striking ''the tribunal and''; and*

*(B) in clause (ii)—*

*(i) by striking ''tribunal may'' and inserting ''court or administrative agency of competent jurisdiction shall''; and*

*(ii) by striking ''filed with the tribunal'' and inserting ''filed with the State case registry''.*

***SEC. 5943. VOLUNTARY PATERNITY ACKNOWLEDGEMENT.***

*Section 466(a)(5)(C)(i) (42 U.S.C. 666(a)(5)(C)(i)) is amended by inserting '', or through the use of video or audio equipment,'' after ''orally''.*

***SEC. 5944. CALCULATION OF PATERNITY ESTABLISHMENT PERCENTAGE.***

*Section 452(g)(2) (42 U.S.C. 652(g)(2)) is amended, in the matter following subparagraph (C), by striking ''subparagraph (A)'' and inserting ''subparagraphs (A) and (B)''.*

***SEC. 5945. MEANS AVAILABLE FOR PROVISION OF TECHNICAL ASSISTANCE AND OPERATION OF FEDERAL PARENT LOCATOR SERVICE.***

*(a) TECHNICAL ASSISTANCE.—Section 452(j) (42 U.S.C. 652(j)), is amended, in the matter preceding paragraph (1), by striking ''to cover costs incurred by the Secretary'' and inserting ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,''.*

*(b) OPERATION OF FEDERAL PARENT LOCATOR SERVICE.—*

*(1) MEANS AVAILABLE.—Section 453(o) (42 U.S.C. 653(o)) is amended—*

*(A) in the heading, by striking ''RECOVERY OF COSTS'' and inserting ''USE OF SET-ASIDE FUNDS''; and*

*(B) by striking ''to cover costs incurred by the Secretary'' and inserting ''which shall be available for use by the Secretary, either directly or through grants, contracts, or interagency agreements,''.*

*(2) AVAILABILITY OF FUNDS.—Section 453(o) (42 U.S.C. 653(o)) is amended by adding at the end the following: ''Amounts appropriated under this subsection for each of fiscal years 1997 through 2001 shall remain available until expended.''.*

***SEC. 5946. AUTHORITY TO COLLECT SUPPORT FROM FEDERAL EMPLOYEES.***

*(a) RESPONSE TO NOTICE OR PROCESS.—Section 459(c)(2)(C) (42 U.S.C. 659(c)(2)(C)) is amended by striking ''respond to the order, process, or interrogatory'' and inserting ''withhold available sums in response to the order or process, or answer the interrogatory''.*

*(b) MONEYS SUBJECT TO PROCESS.—Section 459(h)(1) (42 U.S.C. 659(h)(1)) is amended—*

*(1) in the matter preceding subparagraph (A) and in subparagraph (A)(i), by striking ''paid or'' each place it appears;*

*(2) in subparagraph (A)—*

*(A) in clause (ii)(V), by striking ''and'' at the end;*

*(B) in clause (iii)—*

*(i) by inserting ''or payable'' after ''paid''; and*

*(ii) by striking ''but'' and inserting ''; and''; and*

*(C) by inserting after clause (iii), the following:*

*''(iv) benefits paid or payable under the Railroad Retirement System, but''; and*

*(3) in subparagraph (B)—*

*(A) in clause (i), by striking ''or'' at the end;*

*(B) in clause (ii), by striking the period and inserting ''; or''; and*

*(C) by adding at the end the following:*

*''(iii) of periodic benefits under title 38, United States Code, except as provided in subparagraph (A)(ii)(V).''.*

*(c) CONFORMING AMENDMENT.—Section 454(19)(B)(ii) (42 U.S.C. 654(19)(B)(ii)) is amended by striking ''section 462(e)'' and inserting ''section 459(i)(5)''.*

***SEC. 5947. DEFINITION OF SUPPORT ORDER.***

*Section 453(p) (42 U.S.C. 653(p)), is amended by striking ''a child and'' and inserting ''of''.*

***SEC. 5948. STATE LAW AUTHORIZING SUSPENSION OF LICENSES.***

*Section 466(a)(16) (42 U.S.C. 666(a)(16)) is amended by inserting ''and sporting'' after ''recreational''.*

***SEC. 5949. INTERNATIONAL SUPPORT ENFORCEMENT.***

*Section 454(32)(A) (42 U.S.C. 654(32)(A)) is amended by striking ''section 459A(d)(2)'' and inserting ''section 459A(d)''.*

***SEC. 5950. CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES.***

*(a) COOPERATIVE AGREEMENTS BY INDIAN TRIBES AND STATES FOR CHILD SUPPORT ENFORCEMENT.—Section 454(33) (42 U.S.C. 654(33)) is amended—*

*(1) by striking ''and enforce support orders, and'' and inserting ''or enforce support orders, or'';*

*(2) by striking ''guidelines established by such tribe or organization'' and inserting ''guidelines established or adopted by such tribe or organization'';*

*(3) by striking ''funding collected'' and inserting ''collections''; and*

*(4) by striking ''such funding'' and inserting ''such collections''.*

*(b) CORRECTION OF SUBSECTION DESIGNATION.—Section 455 (42 U.S.C. 655), is amended by redesignating subsection (b), as added by section 375(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, 110 Stat. 2256), as subsection (f).*

*(c) DIRECT GRANTS TO TRIBES.—Section 455(f) (42 U.S.C. 655(f)), as redesignated by subsection (b), is amended to read as follows:*

*''(f) The Secretary may make direct payments under this part to an Indian tribe or tribal organization that demonstrates to the satisfaction of the Secretary that it has the capacity to operate a child support enforcement program meeting the objectives of this part, including establishment of paternity, establishment, modification, and enforcement of support orders, and location of absent parents. The Secretary shall promulgate regulations establishing the requirements which must be met by an Indian tribe or tribal organization to be eligible for a grant under this subsection.''.*

***SEC. 5951. CONTINUATION OF RULES FOR DISTRIBUTION OF SUPPORT IN THE CASE OF A TITLE IV–E CHILD.***

*Section 457 (42 U.S.C. 657) is amended—*

*(1) in subsection (a), in the matter preceding paragraph (1), by striking ''subsection (e)'' and inserting ''subsections (e) and (f)''; and*

*(2) by adding at the end, the following:*

*''(f) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—*

*''(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);*

*''(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and*

*''(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of assistance under the State program funded under part A) which were made with respect to the child (and with respect to which past collections have not previously been retained);*

*and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).''.*

***SEC. 5952. GOOD CAUSE IN FOSTER CARE AND FOOD STAMP CASES.***

*(a) STATE PLAN.—Section 454(4)(A)(i) (42 U.S.C. 654(4)(A)(i)) is amended—*

*(1) by striking ''or'' before ''(III)''; and*

*(2) by inserting ''or (IV) cooperation is required pursuant to section 6(l)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(1)),'' after ''title XIX,''.*

*(b) CONFORMING AMENDMENTS.—Section 454(29) (42 U.S.C. 654(29)) is amended—*

*(1) in subparagraph (A)—*

*(A) in the matter preceding clause (i), by striking ''part A of this title or the State program under title XIX'' and inserting ''part A, the State program under part E, the State program under title XIX, or the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)),''; and*

*(B) by striking clauses (i) and (ii) and all that follows through the semicolon and inserting the following:*

*''(i) in the case of the State program funded under part A, the State program under part E, or the State program under title XIX shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and*

*''(ii) in the case of the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), shall be defined and applied in each case under that program in accordance with section 6(l)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(2));'';*

*(2) in subparagraph (D), by striking ''or the State program under title XIX'' and inserting ''the State program under part E, the State program under title XIX, or the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h))''; and*

*(3) in subparagraph (E), by striking ''individual,'' and all that follows through ''XIX,'' and inserting ''individual and the State agency administering the State program funded under part A, the State agency administering the State program under part E, the State agency administering the State program under title XIX, or the State agency administering the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)),''.*

***SEC. 5953. DATE OF COLLECTION OF SUPPORT.***

*Section 454B(c)(1) (42 U.S.C. 654B(c)(1)) is amended by adding at the end the following: ''The date of collection for amounts collected and distributed under this part is the date of receipt by the State disbursement unit, except that if current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month when due, the date of withholding may be deemed to be the date of collection.''.*

***SEC. 5954. ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.***

*(a) PROCEDURES.—Section 466(a)(14) (42 U.S.C. 666(a)(14)) is amended to read as follows:*

*''(14) HIGH-VOLUME, AUTOMATED ADMINISTRATIVE ENFORCEMENT IN INTERSTATE CASES.—*

*''(A) IN GENERAL.—Procedures under which—*

*''(i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;*

*''(ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request—*

*''(I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and*

*''(II) shall constitute a certification by the requesting State—*

*''(aa) of the amount of support under an order the payment of which is in arrears; and*

*''(bb) that the requesting State has complied with all procedural due process requirements applicable to each case;*

*''(iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State; and*

*''(iv) the State shall maintain records of—*

*''(I) the number of such requests for assistance received by the State;*

*''(II) the number of cases for which the State collected support in response to such a request; and*

*''(III) the amount of such collected support.*

*''(B) HIGH-VOLUME AUTOMATED ADMINISTRATIVE ENFORCEMENT.—In this part, the term 'high-volume automated administrative enforcement' means the use of automatic data processing to search various State data bases, including license records, employment service data, and State new hire registries, to determine whether information is available regarding a parent who owes a child support obligation.''.*

*(b) INCENTIVE PAYMENTS.—Section 458(d) (42 U.S.C. 658(d)) is amended by inserting '', including amounts collected under section 466(a)(14),'' after ''another State''.*

***SEC. 5955. WORK ORDERS FOR ARREARAGES.***

*Section 466(a)(15) (42 U.S.C. 666(a)(15)) is amended to read as follows:*

*''(15) PROCEDURES TO ENSURE THAT PERSONS OWING OVERDUE SUPPORT WORK OR HAVE A PLAN FOR PAYMENT OF SUCH SUPPORT.—Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State program funded under part A, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to—*

*''(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or*

*''(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 407(d)) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.''.*

***SEC. 5956. ADDITIONAL TECHNICAL STATE PLAN AMENDMENTS.***

*Section 454 (42 U.S.C. 654) is amended—*

*(1) in paragraph (8)—*

*(A) in the matter preceding subparagraph (A)—*

*(i) by striking ''noncustodial''; and*

*(ii) by inserting '', for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 463(d)(1)'' after ''provide that'';*

*(B) in subparagraph (A), by striking the comma and inserting a semicolon;*

*(C) in subparagraph (B), by striking the semicolon and inserting a comma; and*

*(D) by inserting after subparagraph (B), the following flush language:*

*''and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 453 and 463 to the authorized persons specified in such sections for the purposes specified in such sections;'';*

(2) in paragraph (17)—

(A) by striking ''in the case of a State which has'' and inserting ''provide that the State will have''; and

(B) by inserting ''and'' after ''section 453,''; and

(3) in paragraph (26)—

(A) in the matter preceding subparagraph (A), by striking ''will'';

(B) in subparagraph (A)—

(i) by inserting '', modify,'' after ''establish'', the second place it appears; and

(ii) by inserting '', or to make or enforce a child custody determination'' after ''support'';

(C) in subparagraph (B)—

(i) by inserting ''or the child'' after ''1 party'';

(ii) by inserting ''or the child'' after ''former party''; and

(iii) by striking ''and'' at the end;

(D) in subparagraph (C)—

(i) by inserting ''or the child'' after ''1 party'';

(ii) by striking ''another party'' and inserting ''another person'';

(iii) by inserting ''to that person'' after ''release of the information''; and

(iv) by striking ''former party'' and inserting ''party or the child''; and

(E) by adding at the end the following:

''(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 453(b)(2), that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

''(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 453(c)(2) or 463(d)(2)(B), and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 453(b)(2), the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;''.

**SEC. 5957. FEDERAL CASE REGISTRY OF CHILD SUPPORT ORDERS.**

Section 453(h) (42 U.S.C. 653(h)) is amended—

(1) in paragraph (1), by inserting ''and order'' after ''with respect to each case''; and

(2) in paragraph (2)—

(A) in the heading, by inserting ''AND ORDER'' after ''CASE'';

(B) by inserting ''or an order'' after ''with respect to a case'' and

(C) by inserting ''or order'' after ''and the State or States which have the case''.

**SEC. 5958. FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.**

Section 1738B(f) of title 28, United States Code, is amended—

(1) in paragraph (4), by striking ''a court may'' and all that follows and inserting ''a court having jurisdiction over the parties shall issue a child support order, which must be recognized.''; and

(2) in paragraph (5), by inserting ''under subsection (d)'' after ''jurisdiction''.

**SEC. 5959. DEVELOPMENT COSTS OF AUTOMATED SYSTEMS.**

(a) DEFINITION OF STATE.—Section 455(a)(3)(B) (42 U.S.C. 655(a)(3)(B)) is amended—

(1) in clause (i)—

(A) by inserting ''or system described in clause (iii)'' after ''each State''; and

(B) by inserting ''or system'' after ''the State''; and

(2) by adding at the end the following:

''(iii) For purposes of clause (i), a system described in this clause is a system that has been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 454(16) (as in effect on and after September 30, 1995) and 454A, including systems that have received funding for such purpose pursuant to a waiver under section 1115(a).''.

(b) TEMPORARY LIMITATION ON PAYMENTS.—Section 344(b)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. 655 note) is amended—

(1) in subparagraph (B)—

(A) by inserting ''or a system described in subparagraph (C)'' after ''to a State''; and

(B) by inserting ''or system'' after ''for the State''; and

(2) in subparagraph (C), by striking ''Act,'' and all that follows and inserting ''Act, and among systems that have been approved by the Secretary to receive enhanced funding pursuant to the Family Support Act of 1988 (Public Law 100–485; 102 Stat. 2343) for the purpose of developing a system that meets the requirements of sections 454(16) (as in effect on and after September 30, 1995) and 454A, including systems that have received funding for such purpose pursuant to a waiver under section 1115(a), which shall take into account—

''(i) the relative size of such State and system caseloads under part D of title IV of the Social Security Act; and

''(ii) the level of automation needed to meet the automated data processing requirements of such part.''.

**SEC. 5960. ADDITIONAL TECHNICAL AMENDMENTS.**

(a) ELIMINATION OF SURPLUSAGE.—Section 466(c)(1)(F) (42 U.S.C. 666(c)(1)(F)) is amended by striking ''of section 466''.

(b) CORRECTION OF AMBIGUOUS AMENDMENT.—Section 344(a)(1)(F) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2234) is amended by inserting ''the first place such term appears'' before ''and all that follows''.

(c) CORRECTION OF ERRONEOUSLY DRAFTED PROVISION.—Section 215 of the Department of Health and Human Services Appropriations Act, 1997, (as contained in section 101(e) of the Omnibus Consolidated Appropriations Act, 1997) is amended to read as follows:

''SEC. 215. Sections 452(j) and 453(o) of the Social Security Act (42 U.S.C. 652(j) and 653(o)), as amended by section 345 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2237) are each amended by striking 'section 457(a)' and inserting 'a plan approved under this part'. Amounts available under such sections 452(j) and 453(o) shall be calculated as though the amendments made by this section were effective October 1, 1995.''.

(d) ELIMINATION OF SURPLUSAGE.—Section 456(a)(2)(B) (42 U.S.C. 656(a)(2)(B)) is amended by striking '', and'' and inserting a period.

(e) CORRECTION OF DATE.—Section 466(a)(1)(B) (42 U.S.C. 666(a)(1)(B)) is amended by striking ''October 1, 1996'' and inserting ''January 1, 1994''.

**SEC. 5961. EFFECTIVE DATE.**

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this chapter shall take effect as if included in the enactment of title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2105).

(b) EXCEPTION.—The amendments made by section 5936(b)(2) shall take effect as if the amendments had been included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2112).

## CHAPTER 4—RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS

### Subchapter A—Eligibility for Federal Benefits

**SEC. 5965. ALIEN ELIGIBILITY FOR FEDERAL BENEFITS: LIMITED APPLICATION TO MEDICARE AND BENEFITS UNDER THE RAILROAD RETIREMENT ACT.**

(a) LIMITED APPLICATION TO MEDICARE.—Section 401(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)) is amended by adding at the end the following:

''(3) Subsection (a) shall not apply to any benefit payable under title XVIII of the Social Security Act (relating to the medicare program) to an alien who is lawfully present in the United States as determined by the Attorney General and, with respect to benefits payable under part A of such title, who was authorized to be employed with respect to any wages attributable to employment which are counted for purposes of eligibility for such benefits.''.

(b) LIMITED APPLICATION TO BENEFITS UNDER THE RAILROAD RETIREMENT ACT.—Section 401(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(b)) (as amended by subsection (a)) is amended by inserting at the end the following:

''(4) Subsection (a) shall not apply to any benefit payable under the Railroad Retirement Act of 1974 or the Railroad Unemployment Insurance Act to an alien who is lawfully present in the United States as determined by the Attorney General or to an alien residing outside the United States.''.

**SEC. 5966. EXCEPTIONS TO BENEFIT LIMITATIONS: CORRECTIONS TO REFERENCE CONCERNING ALIENS WHOSE DEPORTATION IS WITHHELD.**

Sections 402(a)(2)(A)(i)(III), 402(a)(2)(A)(ii)(III), 402(b)(2)(A)(iii), 403(b)(1)(C), 412(b)(1)(C), and 431(b)(5) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(A)(iii), 1612(b)(2)(A)(iii), 1613(b)(1)(C), 1622(b)(1)(C), and 1641(b)(5)) are each amended by striking ''section 243(h) of such Act'' each place it appears and inserting ''section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104–208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104–208)''.

**SEC. 5967. VETERANS EXCEPTION: APPLICATION OF MINIMUM ACTIVE DUTY SERVICE REQUIREMENT; EXTENSION TO UNREMARRIED SURVIVING SPOUSE; EXPANDED DEFINITION OF VETERAN.**

(a) APPLICATION OF MINIMUM ACTIVE DUTY SERVICE REQUIREMENT.—Sections 402(a)(2)(C)(i), 402(b)(2)(C)(i), 403(b)(2)(A), and 412(b)(3)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(i), 1612(b)(2)(C)(i), 1613(b)(2)(A), and 1622(b)(3)(A)) are each amended by inserting ''and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38, United States Code'' after ''alienage''.

(b) EXCEPTION APPLICABLE TO UNREMARRIED SURVIVING SPOUSE.—Section 402(a)(2)(C)(iii), 402(b)(2)(C)(iii), 403(b)(2)(C), and 412(b)(3)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(iii), 1612(b)(2)(C)(iii), 1613(b)(2)(C), and 1622(b)(3)(C)) are each amended by inserting before the period ''or the unremarried surviving spouse of an individual described in clause (i) or (ii) who is deceased if the marriage fulfills the requirements of section 1304 of title 38, United States Code''.

(c) EXPANDED DEFINITION OF VETERAN.—Sections 402(a)(2)(C)(i), 402(b)(2)(C)(i), 403(b)(2)(A), and 412(b)(3)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)(C)(i), 1612(b)(2)(C)(i), 1613(b)(2)(A), and 1622(b)(3)(A)) are each

amended by inserting ''', 1101, or 1301, or as described in section 107'' after ''section 101''.

**SEC. 5968. CORRECTION OF REFERENCE CONCERNING CUBAN AND HAITIAN ENTRANTS.**

Section 403(d) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(d)) is amended—

(1) by striking ''section 501 of the Refugee'' and insert ''section 501(a) of the Refugee''; and

(2) by striking ''section 501(e)(2)'' and inserting ''section 501(e)''.

**SEC. 5969. NOTIFICATION CONCERNING ALIENS NOT LAWFULLY PRESENT: CORRECTION OF TERMINOLOGY.**

Section 1631(e)(9) of the Social Security Act (42 U.S.C. 1383(e)(9)) and section 27 of the United States Housing Act of 1937, as added by section 404 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, are each amended by striking ''unlawfully in the United States'' each place it appears and inserting ''not lawfully present in the United States''.

**SEC. 5970. FREELY ASSOCIATED STATES: CONTRACTS AND LICENSES.**

Sections 401(c)(2)(A) and 411(c)(2)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c)(2)(A) and 1621(c)(2)(A)) are each amended by inserting before the semicolon at the end '', or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99–239 or 99–658 (or a successor provision) is in effect''.

**SEC. 5971. CONGRESSIONAL STATEMENT REGARDING BENEFITS FOR HMONG AND OTHER HIGHLAND LAO VETERANS.**

(a) FINDINGS.—The Congress makes the following findings:

(1) Hmong and other Highland Lao tribal peoples were recruited, armed, trained, and funded for military operations by the United States Department of Defense, Central Intelligence Agency, Department of State, and Agency for International Development to further United States national security interests during the Vietnam conflict.

(2) Hmong and other Highland Lao tribal forces sacrificed their own lives and saved the lives of American military personnel by rescuing downed American pilots and aircrews and by engaging and successfully fighting North Vietnamese troops.

(3) Thousands of Hmong and other Highland Lao veterans who fought in special guerilla units on behalf of the United States during the Vietnam conflict, along with their families, have been lawfully admitted to the United States in recent years.

(4) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193), the new national welfare reform law, restricts certain welfare benefits for noncitizens of the United States and the exceptions for noncitizen veterans of the Armed Forces of the United States do not extend to Hmong veterans of the Vietnam conflict era, making Hmong veterans and their families receiving certain welfare benefits subject to restrictions despite their military service on behalf of the United States.

(b) CONGRESSIONAL STATEMENT.—It is the sense of the Congress that Hmong and other Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and have lawfully been admitted to the United States for permanent residence should be considered veterans for purposes of continuing certain welfare benefits consistent with the exceptions provided other noncitizen veterans under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

***Subchapter B—General Provisions***

**SEC. 5972. DETERMINATION OF TREATMENT OF BATTERED ALIENS AS QUALIFIED ALIENS; INCLUSION OF ALIEN CHILD OF BATTERED PARENT AS QUALIFIED ALIEN.**

(a) DETERMINATION OF STATUS BY AGENCY PROVIDING BENEFITS.—Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641) is amended in subsections (c)(1)(A) and (c)(2)(A) by striking ''Attorney General, which opinion is not subject to review by any court)'' each place it appears and inserting ''agency providing such benefits)''.

(b) GUIDANCE ISSUED BY ATTORNEY GENERAL.—Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)) is amended by adding at the end the following new undesignated paragraph:

''After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 421(f), concerning the meaning of the terms 'battery' and 'extreme cruelty', and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program.''.

(c) INCLUSION OF ALIEN CHILD OF BATTERED PARENT AS QUALIFIED ALIEN.—Section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)) is amended—

(1) at the end of paragraph (1)(B)(iv) by striking ''or'';

(2) at the end of paragraph (2)(B) by striking the period and inserting ''; or''; and

(3) by inserting after paragraph (2)(B) and before the last sentence of such subsection the following new paragraph:

''(3) an alien child who—

''(A) resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

''(B) who meets the requirement of subparagraph (B) of paragraph (1).''.

(d) INCLUSION OF ALIEN CHILD OF BATTERED PARENT UNDER SPECIAL RULE FOR ATTRIBUTION OF INCOME.—Section 421(f)(1)(A) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1631(f)(1)(A)) is amended—

(1) at the end of clause (i) by striking ''or''; and

(2) by striking ''and the battery or cruelty described in clause (i) or (ii)'' and inserting ''or (iii) the alien is a child whose parent (who resides in the same household as the alien child) has been battered or subjected to extreme cruelty in the United States by that parent's spouse, or by a member of the spouse's family residing in the same household as the parent and the spouse consented to, or acquiesced in, such battery or cruelty, and the battery or cruelty described in clause (i), (ii), or (iii)''.

**SEC. 5973. VERIFICATION OF ELIGIBILITY FOR BENEFITS.**

(a) REGULATIONS AND GUIDANCE.—Section 432(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1642(a)) is amended—

(1) by inserting at the end of paragraph (1) the following: ''Not later than 90 days after the date of the enactment of the Welfare Reform Technical Corrections Act of 1997, the Attorney General of the United States, after consultation with the Secretary of Health and Human Services, shall issue interim verification guidance.''; and

(2) by adding after paragraph (2) the following new paragraph:

''(3) Not later than 90 days after the date of the enactment of the Welfare Reform Technical Corrections Act of 1997, the Attorney General shall promulgate regulations which set forth the procedures by which a State or local government can verify whether an alien applying for a State or local public benefit is a qualified alien, a nonimmigrant under the Immigration and Nationality Act, or an alien paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act for less than 1 year, for purposes of determining whether the alien is ineligible for benefits under section 411 of this Act.''.

(b) DISCLOSURE OF INFORMATION FOR VERIFICATION.—Section 384(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208) is amended by adding after paragraph (4) the following new paragraph:

''(5) The Attorney General is authorized to disclose information, to Federal, State, and local public and private agencies providing benefits, to be used solely in making determinations of eligibility for benefits pursuant to section 431(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.''.

**SEC. 5974. QUALIFYING QUARTERS: DISCLOSURE OF QUARTERS OF COVERAGE INFORMATION; CORRECTION TO ASSURE THAT CREDITING APPLIES TO ALL QUARTERS EARNED BY PARENTS BEFORE CHILD IS 18.**

(a) DISCLOSURE OF QUARTERS OF COVERAGE INFORMATION.—Section 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1645) is amended by adding at the end the following: ''Notwithstanding section 6103 of the Internal Revenue Code of 1986, the Commissioner of Social Security is authorized to disclose quarters of coverage information concerning an alien and an alien's spouse or parents to a government agency for the purposes of this title.''.

(b) CORRECTION TO ASSURE THAT CREDITING APPLIES TO ALL QUARTERS EARNED BY PARENTS BEFORE CHILD IS 18.—Section 435(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1645(1)) is amended by striking ''while the alien was under age 18,'' and inserting ''before the date on which the alien attains age 18,''.

**SEC. 5975. STATUTORY CONSTRUCTION: BENEFIT ELIGIBILITY LIMITATIONS APPLICABLE ONLY WITH RESPECT TO ALIENS PRESENT IN THE UNITED STATES.**

Section 433 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1643) is amended—

(1) by redesignated subsections (b) and (c) as subsections (c) and (d); and

(2) by adding after subsection (a) the following new subsection:

''(b) BENEFIT ELIGIBILITY LIMITATIONS APPLICABLE ONLY WITH RESPECT TO ALIENS PRESENT IN THE UNITED STATES.—Notwithstanding any other provision of this title, the limitations on eligibility for benefits under this title shall not apply to eligibility for benefits of aliens who are not residing, or present, in the United States with respect to—

''(1) wages, pensions, annuities, and other earned payments to which an alien is entitled resulting from employment by, or on behalf of, a Federal, State, or local government agency which was not prohibited during the period of such employment or service under section 274A or other applicable provision of the Immigration and Nationality Act; or

''(2) benefits under laws administered by the Secretary of Veterans Affairs.''.

**Subchapter C—Miscellaneous Clerical and Technical Amendments; Effective Date**

**SEC. 5976. CORRECTING MISCELLANEOUS CLERICAL AND TECHNICAL ERRORS.**

(a) INFORMATION REPORTING UNDER TITLE IV OF THE SOCIAL SECURITY ACT.—Effective July 1, 1997, section 408 of the Social Security Act (42 U.S.C. 608), as amended by section 5903, and as in effect pursuant to section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and as amended by section 5906(e) of this Act, is amended by adding at the end the following new subsection:

''(f) STATE REQUIRED TO PROVIDE CERTAIN INFORMATION.—Each State to which a grant is made under section 403 shall, at least 4 times annually and upon request of the Immigration and Naturalization Service, furnish the Immigration and Naturalization Service with the name and address of, and other identifying information on, any individual who the State knows is not lawfully present in the United States.''.

(b) MISCELLANEOUS CLERICAL AND TECHNICAL CORRECTIONS.—

(1) Section 411(c)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621(c)(3)) is amended by striking ''4001(c)'' and inserting ''401(c)''.

(2) Section 422(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1632(a)) is amended by striking ''benefits (as defined in section 412(c)),'' and inserting ''benefits,''.

(3) Section 412(b)(1)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1622(b)(1)(C)) is amended by striking ''with-holding'' and inserting ''withholding''.

(4) The subtitle heading for subtitle D of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended to read as follows:

**''Subtitle D—General Provisions''.**

(5) The subtitle heading for subtitle F of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended to read as follows:

**''Subtitle F—Earned Income Credit Denied to Unauthorized Employees''.**

(6) Section 431(c)(2)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(2)(B)) is amended by striking ''clause (ii) of subparagraph (A)'' and inserting ''subparagraph (B) of paragraph (1)''.

(7) Section 431(c)(1)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(c)(1)(B)) is amended—

(A) in clause (iii) by striking '', or'' and inserting ''(as in effect prior to April 1, 1997),''; and

(B) by adding after clause (iv) the following new clause:

''(v) cancellation of removal pursuant to section 240A(b)(2) of such Act;''.

**SEC. 5977. EFFECTIVE DATE.**

Except as otherwise provided, the amendments made by this chapter shall be effective as if included in the enactment of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**CHAPTER 5—CHILD PROTECTION**

**SEC. 5981. CONFORMING AND TECHNICAL AMENDMENTS RELATING TO CHILD PROTECTION.**

(a) METHODS PERMITTED FOR CONDUCT OF STUDY OF CHILD WELFARE.—Section 429A(a) (42 U.S.C. 628b(a)) is amended by inserting ''(directly, or by grant, contract, or interagency agreement)'' after ''conduct''.

(b) REDESIGNATION OF PARAGRAPH.—Section 471(a) (42 U.S.C. 671(a)) is amended—

(1) by striking ''and'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) (as added by section 1808(a) of the Small Business Job Protection Act of 1996 (Public Law 104–188; 110 Stat. 1903)) and inserting ''; and''; and

(3) by redesignating paragraph (18) (as added by section 505(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278)) as paragraph (19).

**SEC. 5982. ADDITIONAL TECHNICAL AMENDMENTS RELATING TO CHILD PROTECTION.**

(a) PART B AMENDMENTS.—

(1) IN GENERAL.—Part B of title IV (42 U.S.C. 620–635) is amended—

(A) in section 422(b)—

(i) by striking the period at the end of the paragraph (9) (as added by section 554(3) of the Improving America's Schools Act of 1994 (Public Law 103–382; 108 Stat. 4057)) and inserting a semicolon;

(ii) by redesignating paragraph (10) as paragraph (11); and

(iii) by redesignating paragraph (9), as added by section 202(a)(3) of the Social Security Act Amendments of 1994 (Public Law 103–432, 108 Stat. 4453), as paragraph (10);

(B) in sections 424(b) and 425(a), by striking ''422(b)(9)'' each place it appears and inserting ''422(b)(10)''; and

(C) by transferring section 429A (as added by section 503 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2277)) to the end of subpart 1.

(2) CLARIFICATION OF CONFLICTING AMENDMENTS.—Section 204(a)(2) of the Social Security Act Amendments of 1994 (Public Law 103–432; 108 Stat. 4456) is amended by inserting ''(as added by such section 202(a))'' before ''and inserting''.

(b) PART E AMENDMENTS.—Section 472(d) (42 U.S.C. 672(d)) is amended by striking ''422(b)(9)'' and inserting ''422(b)(10)''.

**SEC. 5983. EFFECTIVE DATE.**

The amendments made by this chapter shall take effect as if included in the enactment of title V of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2277).

**CHAPTER 6—CHILD CARE**

**SEC. 5985. CONFORMING AND TECHNICAL AMENDMENTS RELATING TO CHILD CARE.**

(a) FUNDING.—Section 418(a) (42 U.S.C. 618(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by inserting ''the greater of'' after ''equal to'';

(B) in subparagraph (A)—

(i) by striking ''the sum of'';

(ii) by striking ''amounts expended'' and inserting ''expenditures''; and

(iii) by striking ''section—'' and all that follows and inserting ''subsections (g) and (i) of section 402 (as in effect before October 1, 1995); or'';

(C) in subparagraph (B)—

(i) by striking ''sections'' and inserting ''subsections''; and

(ii) by striking the semicolon at the end and inserting a period; and

(D) in the matter following subparagraph (B), by striking ''whichever is greater.''; and

(2) in paragraph (2)—

(A) by striking subparagraph (B) and inserting the following:

''(B) ALLOTMENTS TO STATES.—The total amount available for payments to States under this paragraph, as determined under subparagraph (A), shall be allotted among the States based on the formula used for determining the amount of Federal payments to each State under section 403(n) (as in effect before October 1, 1995).'';

(B) by striking subparagraph (C) and inserting the following:

''(C) FEDERAL MATCHING OF STATE EXPENDITURES EXCEEDING HISTORICAL EXPENDITURES.—The Secretary shall pay to each eligible State for a fiscal year an amount equal to the lesser of the State's allotment under subparagraph (B) or the Federal medical assistance percentage for the State for the fiscal year (as defined in section 1905(b), as such section was in effect on September 30, 1995) of so much of the State's expenditures for child care in that fiscal year as exceed the total amount of expenditures by the State (including expenditures from amounts made available from Federal funds) in fiscal year 1994 or 1995 (whichever is greater) for the programs described in paragraph (1)(A).''; and

(C) in subparagraph (D)(i)—

(i) by striking ''amounts under any grant awarded'' and inserting ''any amounts allotted''; and

(ii) by striking ''the grant is made'' and inserting ''such amounts are allotted''.

(b) DATA USED TO DETERMINE HISTORIC STATE EXPENDITURES.—Section 418(a) (42 U.S.C. 618(a)), is amended by adding at the end the following:

''(5) DATA USED TO DETERMINE STATE AND FEDERAL SHARES OF EXPENDITURES.—In making the determinations concerning expenditures required under paragraphs (1) and (2)(C), the Secretary shall use information that was reported by the State on ACF Form 231 and available as of the applicable dates specified in clauses (i)(I), (ii), and (iii)(III) of section 403(a)(1)(D).''.

(c) DEFINITION OF STATE.—Section 418(d) (42 U.S.C. 618(d)) is amended by striking ''or'' and inserting ''and''.

**SEC. 5986. ADDITIONAL CONFORMING AND TECHNICAL AMENDMENTS.**

The Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) is amended—

(1) in section 658E(c)(2)(E)(ii), by striking ''tribal organization'' and inserting ''tribal organizations'';

(2) in section 658K(a)—

(A) in paragraph (1)—

(i) in subparagraph (B)—

(I) by striking clause (iv) and inserting the following:

''(iv) whether the head of the family unit is a single parent;'';

(II) in clause (v)—

(aa) in the matter preceding subclause (I), by striking ''including the amount obtained from (and separately identified)—'' and inserting ''including—''; and

(bb) by striking subclause (II) and inserting the following:

''(II) cash or other assistance under—

''(aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

''(bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));''; and

(III) in clause (x), by striking ''week'' and inserting ''month''; and

(ii) by striking subparagraph (D) and inserting the following:

''(D) USE OF SAMPLES.—

''(i) AUTHORITY.—A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

''(ii) SAMPLING AND OTHER METHODS.—The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may develop and implement procedures for verifying the quality of data submitted by the States.''; and

(B) in paragraph (2)—

(i) in the heading, by striking ''BIANNUAL'' and inserting ''ANNUAL''; and

(ii) by striking ''6'' and inserting ''12'';

(3) in section 658L, by striking ''1997'' and inserting ''1998'';

(4) in section 658O(c)(6)(C), by striking ''(A)'' and inserting ''(B)''; and

(5) in section 658P(13), by striking ''or'' and inserting ''and''.

**SEC. 5987. EFFECTIVE DATES.**

(a) IN GENERAL.—Except as provided in subsection (b), this chapter and the amendments made by this chapter shall take effect as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2278).

(b) EXCEPTIONS.—The amendment made by section 5985(a)(2)(B) and the repeal made by section 5987(d) shall each take effect on October 1, 1997.

## CHAPTER 7—ERISA AMENDMENTS RELATING TO MEDICAL CHILD SUPPORT ORDERS

**SEC. 5991. AMENDMENTS RELATING TO SECTION 303 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.**

(a) PRIVACY SAFEGUARDS FOR MEDICAL CHILD SUPPORT ORDERS.—Section 609(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(3)(A)) is amended by adding at the end the following: ''except that, to the extent provided in the order, the name and mailing address of an official of a State or a political subdivision thereof may be substituted for the mailing address of any such alternate recipient,''.

(b) PAYMENT TO STATE OFFICIAL TREATED AS SATISFACTION OF PLAN'S OBLIGATION.—Section 609(a) of such Act (29 U.S.C. 1169(a)) is amended by adding at the end the following new paragraph:

''(9) PAYMENT TO STATE OFFICIAL TREATED AS SATISFACTION OF PLAN'S OBLIGATION TO MAKE PAYMENT TO ALTERNATE RECIPIENT.—Payment of benefits by a group health plan to an official of a State or a political subdivision thereof who is named in a qualified medical child support order in lieu of the alternate recipient, pursuant to paragraph (3)(A), shall be treated, for purposes of this title, as payment of benefits to the alternate recipient.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall be apply with respect to medical child support orders issued on or after the date of the enactment of this Act.

**SEC. 5992. AMENDMENT RELATING TO SECTION 381 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.**

(a) CLARIFICATION OF EFFECT OF ADMINISTRATIVE NOTICES.—Section 609(a)(2)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(2)(B)) is amended by adding at the end the following new sentence: ''For purposes of this subparagraph, an administrative notice which is issued pursuant to an administrative process referred to in subclause (II) of the preceding sentence and which has the effect of an order described in clause (i) or (ii) of the preceding sentence shall be treated as such an order.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as if included in the enactment of section 381 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193; 110 Stat. 2257).

**SEC. 5993. AMENDMENTS RELATING TO SECTION 382 OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.**

(a) ELIMINATION OF REQUIREMENT THAT ORDERS SPECIFY AFFECTED PLANS.—Section 609(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1169(a)(3)) is amended—

(1) in subparagraph (C), by striking '', and'' and inserting a period; and

(2) by striking subparagraph (D).

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to medical child support orders issued on or after the date of the enactment of this Act.

## TITLE VI—COMMITTEE ON GOVERNMENTAL AFFAIRS

### Subtitle A—Civil Service and Postal Provisions

**SEC. 6001. INCREASED CONTRIBUTIONS TO FEDERAL CIVILIAN RETIREMENT SYSTEMS.**

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 8334(a)(1) of title 5, United States Code—

(A) during the period beginning on October 1, 1997, through September 30, 2001, each employing agency (other than the United States Postal Service, the Metropolitan Washington Airports Authority, or the government of the District of Columbia) shall contribute—

(i) 8.51 percent of the basic pay of an employee;

(ii) 9.01 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol police, or a firefighter; and

(iii) 9.51 percent of the basic pay of a Member of Congress, a Claims Court judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge; and

(B) during the period beginning on October 1, 2001, through September 30, 2002, each employing agency (other than the United States Postal Service, the Metropolitan Washington Airports Authority, or the government of the District of Columbia) shall contribute—

(i) 8.6 percent of the basic pay of an employee;

(ii) 9.1 percent of the basic pay of a congressional employee, a law enforcement officer, a member of the Capitol police, or a firefighter; and

(iii) 9.6 percent of the basic pay of a Member of Congress, a Claims Court judge, a United States magistrate, a judge of the United States Court of Appeals for the Armed Forces, or a bankruptcy judge;

in lieu of the agency contributions otherwise required under section 8334(a)(1) of title 5, United States Code.

(2) NO REDUCTION IN AGENCY CONTRIBUTIONS BY THE POSTAL SERVICE.—Agency contributions by the United States Postal Service under section 8348(h) of title 5, United States Code—

(A) shall not be reduced as a result of the amendments made under paragraph (3) of this subsection; and

(B) shall be computed as though such amendments had not been enacted.

(3) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—The table under section 8334(c) of title 5, United States Code, is amended—

(A) in the matter relating to an employee by striking:

| | |
|---|---|
| ''7 ..... | After December 31, 1969.''; |

and inserting the following:

| | |
|---|---|
| ''7 ..... | January 1, 1970, to December 31, 1998. |
| 7.25 ..... | January 1, 1999, to December 31, 1999. |
| 7.4 ..... | January 1, 2000, to December 31, 2000. |
| 7.5 ..... | January 1, 2001, to December 31, 2002. |
| 7 ..... | After December 31, 2002.''; |

(B) in the matter relating to a Member or employee for congressional employee service by striking:

| | |
|---|---|
| ''7½ ..... | After December 31, 1969.''; |

and inserting the following:

| | |
|---|---|
| ''7.5 ..... | January 1, 1970, to December 31, 1998. |
| 7.75 ..... | January 1, 1999, to December 31, 1999. |
| 7.9 ..... | January 1, 2000, to December 31, 2000. |
| 8 ..... | January 1, 2001, to December 31, 2002. |
| 7.5 ..... | After December 31, 2002.''; |

(C) in the matter relating to a Member for Member service by striking:

| | |
|---|---|
| ''8 ..... | After December 31, 1969.''; |

and inserting the following:

| | |
|---|---|
| ''8 ..... | January 1, 1970, to December 31, 1998. |
| 8.25 ..... | January 1, 1999, to December 31, 1999. |
| 8.4 ..... | January 1, 2000, to December 31, 2000. |
| 8.5 ..... | January 1, 2001, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(D) in the matter relating to a law enforcement officer for law enforcement service and firefighter for firefighter service by striking:

| | |
|---|---|
| ''7½ ..... | After December 31, 1974.''; |

and inserting the following:

| | |
|---|---|
| ''7.5 ..... | January 1, 1975, to December 31, 1998. |
| 7.75 ..... | January 1, 1999, to December 31, 1999. |
| 7.9 ..... | January 1, 2000, to December 31, 2000. |
| 8 ..... | January 1, 2001, to December 31, 2002. |
| 7.5 ..... | After December 31, 2002.''; |

(E) in the matter relating to a bankruptcy judge by striking:

| | |
|---|---|
| ''8 ..... | After December 31, 1983.''; |

and inserting the following:

| | |
|---|---|
| ''8 ..... | January 1, 1984, to December 31, 1998. |
| 8.25 ..... | January 1, 1999, to December 31, 1999. |
| 8.4 ..... | January 1, 2000, to December 31, 2000. |
| 8.5 ..... | January 1, 2001, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(F) in the matter relating to a judge of the United States Court of Appeals for the Armed Forces for service as a judge of that court by striking:

| | |
|---|---|
| ''8 ..... | On and after the date of enactment of the Department of Defense Authorization Act, 1984.''; |

and inserting the following:

| | |
|---|---|
| ''8 ..... | The date of enactment of the Department of Defense Authorization Act, 1984, to December 31, 1998. |
| 8.25 ..... | January 1, 1999, to December 31, 1999. |
| 8.4 ..... | January 1, 2000, to December 31, 2000. |
| 8.5 ..... | January 1, 2001, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(G) in the matter relating to a United States magistrate by striking:

| | |
|---|---|
| ''8 ..... | After September 30, 1987.''; |

and inserting the following:

| | |
|---|---|
| ''8 ..... | October 1, 1987, to December 31, 1998. |
| 8.25 ..... | January 1, 1999, to December 31, 1999. |
| 8.4 ..... | January 1, 2000, to December 31, 2000. |
| 8.5 ..... | January 1, 2001, to December 31, 2002. |
| 8 ..... | After December 31, 2002.''; |

(H) in the matter relating to a Claims Court judge by striking:

| | |
|---|---|
| ''8 ..... | After September 30, 1988.''; |

*and insert the following:*

| | | |
|---|---|---|
| | ''8 | October 1, 1988, to December 31, 1998. |
| | 8.25 | January 1, 1999, to December 31, 1999. |
| | 8.4 | January 1, 2000, to December 31, 2000. |
| | 8.5 | January 1, 2001, to December 31, 2002. |
| | 8 | After December 31, 2002.''; |

*and*

*(I) by inserting after the matter relating to a Claims Court judge the following:*

| | | |
|---|---|---|
| ''Member of the Capitol Police. | 2.5 | August 1, 1920, to June 30, 1926. |
| | 3.5 | July 1, 1926, to June 30, 1942. |
| | 5 | July 1, 1942, to June 30, 1948. |
| | 6 | July 1, 1948, to October 31, 1956. |
| | 6.5 | November 1, 1956, to December 31, 1969. |
| | 7.5 | January 1, 1970, to December 31, 1998. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 8 | January 1, 2001, to December 31, 2002. |
| | 7.5 | After December 31, 2002.''. |

*(4) OTHER SERVICE.—*

*(A) MILITARY SERVICE.—Section 8334(j) of title 5, United States Code, is amended—*

*(i) in paragraph (1)(A) by inserting ''and subject to paragraph (5),'' after ''Except as provided in subparagraph (B),''; and*

*(ii) by adding at the end the following new paragraph:*

*''(5) Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for that same period for service as an employee, subject to paragraph (1)(B).''.*

*(B) VOLUNTEER SERVICE.—Section 8334(l) of title 5, United States Code, is amended—*

*(i) in paragraph (1) by adding at the end the following: ''This paragraph shall be subject to paragraph (4).''; and*

*(ii) by adding at the end the following new paragraph:*

*''(4) Effective with respect to any period of service after December 31, 1998, the percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for the same period for service as an employee.''.*

*(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—*

*(1) INDIVIDUAL DEDUCTIONS AND WITHHOLDINGS.—*

*(A) IN GENERAL.—Section 8422(a) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:*

*''(2) The percentage to be deducted and withheld from basic pay for any pay period shall be equal to—*

*''(A) the applicable percentage under paragraph (3), minus*

*''(B) the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (relating to rate of tax for old-age, survivors, and disability insurance).*

*''(3) The applicable percentage under this paragraph for civilian service shall be as follows:*

| | | |
|---|---|---|
| ''Employee .. | 7 | Before January 1, 1999. |
| | 7.25 | January 1, 1999, to December 31, 1999. |
| | 7.4 | January 1, 2000, to December 31, 2000. |
| | 7.5 | January 1, 2001, to December 31, 2002. |
| | 7 | After December 31, 2002. |
| Congressional employee. | 7.5 | Before January 1, 1999. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 8 | January 1, 2001, to December 31, 2002. |
| | 7.5 | After December 31, 2002. |
| Member | 7.5 | Before January 1, 1999. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 8 | January 1, 2001, to December 31, 2002. |
| | 7.5 | After December 31, 2002. |
| Law enforcement officer, firefighter, member of the Capitol Police, or air traffic controller. | 7.5 | Before January 1, 1999. |
| | 7.75 | January 1, 1999, to December 31, 1999. |
| | 7.9 | January 1, 2000, to December 31, 2000. |
| | 8 | January 1, 2001, to December 31, 2002. |
| | 7.5 | After December 31, 2002.''. |

*(B) MILITARY SERVICE.—Section 8422(e) of title 5, United States Code, is amended—*

*(i) in paragraph (1)(A) by inserting ''and subject to paragraph (6),'' after ''Except as provided in subparagraph (B),''; and*

*(ii) by adding at the end the following:*

*''(6) The percentage of basic pay under section 204 of title 37 payable under paragraph (1), with respect to any period of military service performed during—*

*''(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent;*

*''(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent; and*

*''(C) January 1, 2001, through December 31, 2002, shall be 3.5 percent.''.*

*(C) VOLUNTEER SERVICE.—Section 8422(f) of title 5, United States Code, is amended—*

*(i) in paragraph (1) by adding at the end the following: ''This paragraph shall be subject to paragraph (4).''; and*

*(ii) by adding at the end the following:*

*''(4) The percentage of the readjustment allowance or stipend (as the case may be) payable under paragraph (1), with respect to any period of volunteer service performed during—*

*''(A) January 1, 1999, through December 31, 1999, shall be 3.25 percent;*

*''(B) January 1, 2000, through December 31, 2000, shall be 3.4 percent; and*

*''(C) January 1, 2001, through December 31, 2002, shall be 3.5 percent.''.*

*(2) NO REDUCTION IN AGENCY CONTRIBUTIONS.—Agency contributions under section 8423 (a) and (b) of title 5, United States Code, shall not be reduced as a result of the amendments made under paragraph (1) of this subsection.*

*(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM.—*

*(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 211(a)(2) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(2))—*

*(A) during the period beginning on October 1, 1997, through September 30, 2001, the Central Intelligence Agency shall contribute 8.51 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System; and*

*(B) during the period beginning on October 1, 2001, through September 30, 2002, the Central Intelligence Agency shall contribute 8.6 percent of the basic pay of an employee participating in the Central Intelligence Agency Retirement and Disability System.*

*(2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—Notwithstanding section 211(a)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2021(a)(1)) beginning on January 1, 1999, through December 31, 2002, the amount withheld and deducted from the basic pay of an employee participating in Central Intelligence Agency Retirement and Disability System shall be as follows:*

| | |
|---|---|
| ''7.25 | January 1, 1999, to December 31, 1999. |
| 7.4 | January 1, 2000, to December 31, 2000. |
| 7.5 | January 1, 2001, to December 31, 2002. |
| 7 | After December 31, 2002.''. |

*(3) MILITARY SERVICE.—Section 252(h)(1) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2082(h)(1)), is amended to read as follows:*

*''(h)(1)(A) Each participant who has performed military service before the date of separation on which entitlement to an annuity under this title is based may pay to the Agency an amount equal to 7 percent of the amount of basic pay paid under section 204 of title 37, United States Code, to the participant for each period of military service after December 1956; except, the amount to be paid for military service performed beginning on January 1, 1999, through December 31, 2002, shall be as follows:*

| | |
|---|---|
| ''7.25 percent of basic pay. | January 1, 1999, to December 31, 1999. |
| 7.4 percent of basic pay. | January 1, 2000, to December 31, 2000. |
| 7.5 percent of basic pay. | January 1, 2001, to December 31, 2002. |
| 7 percent of basic pay. | After December 31, 2002. |

*''(B) The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or, if the Director determines sufficient evidence has not been provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Director under paragraph (4).''.*

*(d) FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.—*

*(1) AGENCY CONTRIBUTIONS.—Notwithstanding section 805(a) (1) and (2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a) (1) and (2))—*

*(A) during the period beginning on October 1, 1997, through September 30, 2001, each agency employing a participant in the Foreign Service Retirement and Disability System shall contribute to the Foreign Service Retirement and Disability Fund—*

*(i) 8.51 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and*

*(ii) 9.01 percent of the basic pay of each participant covered under section 805(a)(2) of such Act participating in the Foreign Service Retirement and Disability System; and*

*(B) during the period beginning on October 1, 2001, through September 30, 2002, each agency employing a participant in the Foreign Service Retirement and Disability System shall contribute to the Foreign Service Retirement and Disability Fund—*

*(i) 8.6 percent of the basic pay of each participant covered under section 805(a)(1) of such Act participating in the Foreign Service Retirement and Disability System; and*

*(ii) 9.1 percent of the basic pay of each participant covered under section 805(a)(2) of such Act participating in the Foreign Service Retirement and Disability System.*

*(2) INDIVIDUAL DEDUCTIONS, WITHHOLDINGS, AND DEPOSITS.—*

*(A) IN GENERAL.—Notwithstanding section 805(a)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(1)), beginning on January 1, 1999, through December 31, 2002, the amount withheld and deducted from the basic pay of a participant in the Foreign Service Retirement and Disability System shall be as follows:*

| | |
|---|---|
| ''7.25 | January 1, 1999, to December 31, 1999. |
| 7.4 | January 1, 2000, to December 31, 2000. |
| 7.5 | January 1, 2001, to December 31, 2002. |
| 7 | After December 31, 2002.''. |

(B) FOREIGN SERVICE CRIMINAL INVESTIGATORS/INSPECTORS OF THE OFFICE OF THE INSPECTOR GENERAL, AGENCY FOR INTERNATIONAL DEVELOPMENT.—Notwithstanding section 805(a)(2) of the Foreign Service Act of 1980 (22 U.S.C. 4045(a)(2)), beginning on January 1, 1999, through December 31, 2002, the amount withheld and deducted from the basic pay of an eligible Foreign Service criminal investigator/inspector of the Office of the Inspector General, Agency for International Development participating in the Foreign Service Retirement and Disability System shall be as follows:

| | |
|---|---|
| ''7.75 ..... | January 1, 1999, to December 31, 1999. |
| 7.9 ..... | January 1, 2000, to December 31, 2000. |
| 8 ..... | January 1, 2001, to December 31, 2002. |
| 7.5 ..... | After December 31, 2002.''. |

(C) MILITARY SERVICE.—Section 805(e) of the Foreign Service Act of 1980 (22 U.S.C. 4045(e)) is amended—

(i) in subsection (e)(1) by striking ''Each'' and inserting ''Subject to paragraph (5), each''; and

(ii) by adding after paragraph (4) the following new paragraph:

''(5) Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37, United States Code, payable under paragraph (1) shall be equal to the same percentage as would be applicable under section 8334(c) of title 5, United States Code, for that same period for service as an employee.''.

(e) FOREIGN SERVICE PENSION SYSTEM.—

(1) INDIVIDUAL DEDUCTIONS AND WITHHOLDINGS FROM PAY.—

(A) IN GENERAL.—Section 856(a) of the Foreign Service Act of 1980 (22 U.S.C. 4071e(a)) is amended to read as follows:

''(a)(1) The employing agency shall deduct and withhold from the basic pay of each participant the applicable percentage of basic pay specified in paragraph (2) of this subsection minus the percentage then in effect under section 3101(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3101(a)) (relating to the rate of tax for old age, survivors, and disability insurance).

''(2) The applicable percentage under this subsection shall be as follows:

| | |
|---|---|
| ''7.5 ..... | Before January 1, 1999. |
| 7.75 ..... | January 1, 1999, to December 31, 1999. |
| 7.9 ..... | January 1, 2000, to December 31, 2000. |
| 8 ..... | January 1, 2001, to December 31, 2002. |
| 7.5 ..... | After December 31, 2002.''. |

(B) VOLUNTEER SERVICE.—Subsection 854(c) of the Foreign Service Act of 1980 (22 U.S.C. 4071c(c)) is amended to read as follows:

''(c)(1) Credit shall be given under this System to a participant for a period of prior satisfactory service as—

''(A) a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2501 et seq.),

''(B) a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or

''(C) a full-time volunteer for a period of service of at least 1 year's duration under part A, B, or C of title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.),

if the participant makes a payment to the Fund equal to 3 percent of pay received for the volunteer service; except, the amount to be paid for volunteer service beginning on January 1, 1999, through December 31, 2002, shall be as follows:

| | |
|---|---|
| ''3.25 ..... | January 1, 1999, to December 31, 1999. |
| 3.4 ..... | January 1, 2000, to December 31, 2000. |
| 3.5 ..... | January 1, 2001, to December 31, 2002. |

''(2) The amount of such payments shall be determined in accordance with regulations of the Secretary of State consistent with regulations for making corresponding determinations under chapter 83, title 5, United States Code, together with interest determined under regulations issued by the Secretary of State.''.

(2) NO REDUCTION IN AGENCY CONTRIBUTIONS.—Agency contributions under section 857 of the Foreign Service Act of 1980 (22 U.S.C. 4071f) shall not be reduced as a result of the amendments made under paragraph (1) of this subsection.

(f) EFFECTIVE DATE.—Except as otherwise provided, the amendments made by this section shall take effect on the first day of the first applicable pay period beginning on or after January 1, 1999.

**SEC. 6002. GOVERNMENT CONTRIBUTIONS UNDER THE FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM.**

(a) IN GENERAL.—Section 8906 of title 5, United States Code, is amended by striking subsection (a) and all that follows through the end of paragraph (1) of subsection (b) and inserting the following:

''(a)(1) Not later than October 1 of each year, the Office of Personnel Management shall determine the weighted average of the subscription charges that will be in effect during the following contract year with respect to—

''(A) enrollments under this chapter for self alone; and

''(B) enrollments under this chapter for self and family.

''(2) In determining each weighted average under paragraph (1), the weight to be given to a particular subscription charge shall, with respect to each plan (and option) to which it is to apply, be commensurate with the number of enrollees enrolled in such plan (and option) as of March 31 of the year in which the determination is being made.

''(3) For purposes of paragraph (2), the term 'enrollee' means any individual who, during the contract year for which the weighted average is to be used under this section, will be eligible for a Government contribution for health benefits.

''(b)(1) Except as provided in paragraphs (2) and (3), the biweekly Government contribution for health benefits for an employee or annuitant enrolled in a health benefits plan under this chapter is adjusted to an amount equal to 72 percent of the weighted average under subsection (a)(1) (A) or (B), as applicable. For an employee, the adjustment begins on the first day of the employee's first pay period of each year. For an annuitant, the adjustment begins on the first day of the first period of each year for which an annuity payment is made.''.

(b) EFFECTIVE DATE.—This section shall take effect on the first day of the contract year that begins in 1999. Nothing in this subsection shall prevent the Office of Personnel Management from taking any action, before such first day, which it considers necessary in order to ensure the timely implementation of this section.

**SEC. 6003. REPEAL OF AUTHORIZATION OF TRANSITIONAL APPROPRIATIONS FOR THE UNITED STATES POSTAL SERVICE.**

(a) REPEAL.—

(1) IN GENERAL.—Section 2004 of title 39, United States Code, is repealed.

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The table of sections for chapter 20 of such title is amended by repealing the item relating to section 2004.

(B) Section 2003(e)(2) of such title is amended by striking ''sections 2401 and 2004'' each place it appears and inserting ''section 2401''.

(b) CLARIFICATION THAT LIABILITIES FORMERLY PAID PURSUANT TO SECTION 2004 REMAIN LIABILITIES PAYABLE BY THE POSTAL SERVICE.—Section 2003 of title 39, United States Code, is amended by adding at the end the following:

''(h) Liabilities of the former Post Office Department to the Employees' Compensation Fund (appropriations for which were authorized by former section 2004, as in effect before the effective date of this subsection) shall be liabilities of the Postal Service payable out of the Fund.''.

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall be effective as of October 1, 1997.

**SEC. 6004. MEDICARE MEANS TESTING STANDARD APPLICABLE TO SENATORS' HEALTH COVERAGE UNDER THE FEHBP.**

(a) PURPOSE.—The purpose of this section is to apply the medicare means testing requirements for part B premiums to individuals with adjusted gross incomes in excess of $100,000 as enacted under section 5542 of this Act, to United States Senators with respect to their employee contributions and Government contributions under the Federal Employees Health Benefits Program.

(b) IN GENERAL.—Section 8906 of title 5, United States Code, is amended by adding at the end the following:

''(j) Notwithstanding any other provision of this section, each employee who is a Senator and is paid at an annual rate of pay exceeding $100,000 shall pay the employee contribution and the full amount of the Government contribution which applies under this section. The Secretary of the Senate shall deduct and withhold the contributions required under this section and deposit such contributions in the Employees Health Benefits Fund.''.

(c) EFFECTIVE DATE.—This section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

***Subtitle B—GSA Property Sales***

**SEC. 6011. SALE OF GOVERNORS ISLAND, NEW YORK.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall, no earlier than fiscal year 2002, dispose of by sale at fair market value all rights, title, and interests of the United States in and to the land of, and improvements to, Governors Island, New York.

(b) RIGHT OF FIRST OFFER.—Before a sale is made under subsection (a) to any other parties, the State of New York and the city of New York shall be given the right of first offer to purchase all or part of Governors Island at fair market value as determined by the Administrator of General Services. Not later than 90 days after notification by the Administrator of General Services, such right may be exercised by either the State of New York or the city of New York or by both parties acting jointly.

(c) PROCEEDS.—Proceeds from the disposal of Governors Island under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

**SEC. 6012. SALE OF AIR RIGHTS.**

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator of General Services shall sell, at fair market value and in a manner to be determined by the Administrator, the air rights adjacent to Washington Union Station described in subsection (b), including air rights conveyed to the Administrator under subsection (d). The Administrator shall complete the sale by such date as is necessary to ensure that the proceeds from the sale will be deposited in accordance with subsection (c).

(b) DESCRIPTION.—The air rights referred to in subsection (a) total approximately 16.5 acres and are depicted on the plat map of the District of Columbia as follows:

(1) Part of lot 172, square 720.

(2) Part of lots 172 and 823, square 720.

(3) Part of lot 811, square 717.

(c) PROCEEDS.—Before September 30, 2002, proceeds from the sale of air rights under subsection (a) shall be deposited in the general fund of the Treasury and credited as miscellaneous receipts.

(d) CONVEYANCE OF AMTRAK AIR RIGHTS.—

(1) GENERAL RULE.—As a condition of future Federal financial assistance, Amtrak shall convey to the Administrator of General Services on

or before December 31, 1997, at no charge, all of the air rights of Amtrak described in subsection (b).

(2) FAILURE TO COMPLY.—If Amtrak does not meet the condition established by paragraph (1), Amtrak shall be prohibited from obligating Federal funds after March 1, 1998.

## TITLE VII—COMMITTEE ON LABOR AND HUMAN RESOURCES

### SEC. 7001. MANAGEMENT AND RECOVERY OF RESERVES.

(a) AMENDMENT.—Section 422 of the Higher Education Act of 1965 (20 U.S.C. 1072) is amended by adding after subsection (g) the following new subsection:

''(h) RECALL OF RESERVES; LIMITATIONS ON USE OF RESERVE FUNDS AND ASSETS.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall, except as otherwise provided in this subsection, recall $1,028,000,000 from the reserve funds held by guaranty agencies under this part (which for purposes of this subsection shall include any reserve funds held by, or under the control of, any other entity) on September 1, 2002.

''(2) DEPOSIT.—Funds recalled by the Secretary under this subsection shall be deposited in the Treasury.

''(3) EQUITABLE SHARE.—The Secretary shall require each guaranty agency to return reserve funds under paragraph (1) based on such agency's equitable share of excess reserve funds held by guaranty agencies as of September 30, 1996. For purposes of this paragraph, a guaranty agency's equitable share of excess reserve funds shall be determined as follows:

''(A) The Secretary shall compute each agency's reserve ratio by dividing (i) the amount held in such agency's reserve (including funds held by, or under the control of, any other entity) as of September 30, 1996, by (ii) the original principal amount of all loans for which such agency has an outstanding insurance obligation.

''(B) If the reserve ratio of any agency as computed under subparagraph (A) exceeds 1.12 percent, the agency's equitable share shall include so much of the amounts held in such agency's reserve fund as exceed a reserve ratio of 1.12 percent.

''(C) If any additional amount is required to be recalled under paragraph (1) (after deducting the total of the equitable shares calculated under subparagraph (B)), the agencies' equitable shares shall include additional amounts—

''(i) determined by imposing on each such agency an equal percentage reduction in the amount of each agency's reserve fund remaining after deduction of the amount recalled under subparagraph (B); and

''(ii) the total of which equals the additional amount that is required to be recalled under paragraph (1) (after deducting the total of the equitable shares calculated under subparagraph (B)).

''(4) RESTRICTED ACCOUNTS.—Within 90 days after the beginning of each of fiscal years 1998 through 2002, each guaranty agency shall transfer a portion of each agency's equitable share determined under paragraph (3) to a restricted account established by the guaranty agency that is of a type selected by the guaranty agency with the approval of the Secretary. Funds transferred to such restricted accounts shall be invested in obligations issued or guaranteed by the United States or in other similarly low-risk securities. A guaranty agency shall not use the funds in such a restricted account for any purpose without the express written permission of the Secretary, except that a guaranty agency may use the earnings from such restricted account for activities to reduce student loan defaults under this part. The portion required to be transferred shall be determined as follows:

''(A) In fiscal year 1998—

''(i) all agencies combined shall transfer to a restricted account an amount equal to one-fifth of the total amount recalled under paragraph (1);

''(ii) each agency with a reserve ratio (as computed under paragraph (3)(A)) that exceeds 2 percent shall transfer to a restricted account so much of the amounts held in such agency's reserve fund as exceed a reserve ratio of 2 percent; and

''(iii) each agency shall transfer any additional amount required under clause (i) (after deducting the amount transferred under clause (ii)) by transferring an amount that represents an equal percentage of each agency's equitable share to a restricted account.

''(B) In fiscal years 1999 through 2002, each agency shall transfer an amount equal to one-fourth of the total amount remaining of the agency's equitable share (after deduction of the amount transferred under subparagraph (A)).

''(5) SHORTAGE.—If, on September 1, 2002, the total amount in the restricted accounts described in paragraph (4) is less than the amount the Secretary is required to recall under paragraph (1), the Secretary may require the return of the amount of the shortage from other reserve funds held by guaranty agencies under procedures established by the Secretary.

''(6) PROHIBITION.—The Secretary shall not have any authority to direct a guaranty agency to return reserve funds under subsection (g)(1)(A) during the period from the date of enactment of this subsection through September 30, 2002, and any reserve funds otherwise returned under subsection (g)(1) during such period shall be treated as amounts recalled under this subsection and shall not be available under subsection (g)(4).

''(7) DEFINITION.—For purposes of this subsection the term 'reserve funds' when used with respect to a guaranty agency—

''(A) includes any reserve funds held by, or under the control of, any other entity; and

''(B) does not include buildings, equipment, or other nonliquid assets.''.

(b) CONFORMING AMENDMENT.—Section 428(c)(9)(A) of the Higher Education Act of 1965 (20 U.S.C. 1078(c)(9)(A)) is amended—

(1) in the first sentence, by striking ''for the fiscal year of the agency that begins in 1993''; and

(2) by striking the third sentence.

### SEC. 7002. REPEAL OF DIRECT LOAN ORIGINATION FEES TO INSTITUTIONS OF HIGHER EDUCATION.

Section 452 of the Higher Education Act of 1965 (20 U.S.C. 1087b) is amended—

(1) by striking subsection (b); and

(2) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

### SEC. 7003. FUNDS FOR ADMINISTRATIVE EXPENSES.

Subsection (a) of section 458 of the Higher Education Act of 1965 (20 U.S.C. 1087h(a)) is amended to read as follows:

''(a) ADMINISTRATIVE EXPENSES.—

''(1) IN GENERAL.—Each fiscal year, there shall be available to the Secretary from funds not otherwise appropriated, funds to be obligated for—

''(A) administrative costs under this part, including the costs of the direct student loan programs under this part, and

''(B) administrative cost allowances payable to guaranty agencies under part B and calculated in accordance with paragraph (2),

not to exceed (from such funds not otherwise appropriated) $532,000,000 in fiscal year 1998, $610,000,000 in fiscal year 1999, $705,000,000 in fiscal year 2000, $750,000,000 in fiscal year 2001, and $750,000,000 in fiscal year 2002. Administrative cost allowances under subparagraph (B) of this paragraph shall be paid quarterly and used in accordance with section 428(f). The Secretary may carry over funds available under this section to a subsequent fiscal year.

''(2) CALCULATION BASIS.—Administrative cost allowances payable to guaranty agencies under paragraph (1)(B) shall be calculated on the basis of 0.85 percent of the total principal amount of loans upon which insurance is issued on or after the date of enactment of the Balanced Budget Act of 1997, except that such allowances shall not exceed—

''(A) $170,000,000 for each of the fiscal years 1998 and 1999; or

''(B) $150,000,000 for each of the fiscal years 2000, 2001, and 2002.''.

### SEC. 7004. EXTENSION OF STUDENT AID PROGRAMS.

Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) is amended—

(1) in section 424(a), by striking ''1998.'' and ''2002.'' and inserting ''2002.'' and ''2006.'', respectively;

(2) in section 428(a)(5), by striking ''1998,'' and ''2002.'' and inserting ''2002,'' and ''2006.'', respectively; and

(3) in section 428C(e), by striking ''1998.'' and inserting ''2002.''.

## TITLE VIII—COMMITTEE ON VETERANS' AFFAIRS

### SEC. 8001. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the ''Veterans Reconciliation Act of 1997''.

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



## Subtitle A—Extension of Temporary Authorities

### SEC. 8011. ENHANCED LOAN ASSET SALE AUTHORITY.

Section 3720(h)(2) of title 38, United States Code, is amended by striking out ''December 31, 1997'' and inserting in lieu thereof ''December 31, 2002''.

### SEC. 8012. HOME LOAN FEES.

Section 3729(a) of title 38, United States Code, is amended—

(1) in paragraph (4), by striking out ''October 1, 1998'' and inserting in lieu thereof ''October 1, 2002''; and

(2) in paragraph (5)(C), by striking out ''October 1, 1998'' and inserting in lieu thereof ''October 1, 2002''.

### SEC. 8013. PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

Section 3732(c)(11) of title 38, United States Code, is amended by striking out ''October 1,

*1998'' and inserting in lieu thereof ''October 1, 2002''.*

***SEC. 8014. INCOME VERIFICATION AUTHORITY.***

*Section 5317(g) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.*

***SEC. 8015. LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE.***

*Section 5503(f)(7) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.*

***Subtitle B—Copayments and Medical Care Cost Recovery***

***SEC. 8021. AUTHORITY TO REQUIRE THAT CERTAIN VETERANS MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH CARE BENEFITS.***

*(a) HOSPITAL AND MEDICAL CARE.—Section 8013(e) of the Omnibus Budget Reconciliation Act of 1990 (38 U.S.C. 1710 note) is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.*

*(b) OUTPATIENT MEDICATIONS.—Section 1722A(c) of title 38, United States Code, is amended by striking out ''September 30, 1998'' and inserting in lieu thereof ''September 30, 2002''.*

***SEC. 8022. MEDICAL CARE COST RECOVERY AUTHORITY.***

*Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out ''October 1, 1998'' and inserting in lieu thereof ''October 1, 2002''.*

***SEC. 8023. DEPARTMENT OF VETERANS AFFAIRS MEDICAL-CARE RECEIPTS.***

*(a) ALLOCATION OF RECEIPTS.—(1) Chapter 17 of title 38, United States Code, is amended by inserting after section 1729 the following new section:*

***''§ 1729A. Department of Veterans Affairs Medical Care Collections Fund***

*''(a) There is in the Treasury a fund to be known as the Department of Veterans Affairs Medical Care Collections Fund.*

*''(b) Amounts recovered or collected after June 30, 1997, under any of the following provisions of law shall be deposited in the fund:*

*''(1) Section 1710(f) of this title.*

*''(2) Section 1710(g) of this title.*

*''(3) Section 1711 of this title.*

*''(4) Section 1722A of this title.*

*''(5) Section 1729 of this title.*

*''(6) Public Law 87–693, popularly known as the 'Federal Medical Care Recovery Act' (42 U.S.C. 2651 et seq.), to the extent that a recovery or collection under that law is based on medical care and services furnished under this chapter.*

*''(c)(1) Subject to the provisions of appropriations Acts, amounts in the fund shall be available to the Secretary for the following purposes:*

*''(A) Furnishing medical care and services under this chapter, to be available during any fiscal year for the same purposes and subject to the same limitations as apply to amounts appropriated for that fiscal year for medical care.*

*''(B) Expenses of the Department for the identification, billing, auditing, and collection of amounts owed the United States by reason of medical care and services furnished under this chapter.*

*''(2) Amounts available under paragraph (1) shall be available only for the purposes set forth in that paragraph.*

*''(d) The Secretary shall ensure that the amount made available to a Veterans Integrated Service Network in a fiscal year from amounts in the fund is an amount equal to the amount recovered or collected by the Veterans Integrated Service Network under a provision of law referred to in subsection (b) during the fiscal year.''.*

*(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1729 the following new item:*

*''1729A. Department of Veterans Affairs Medical Care Collections Fund.''.*

*(b) CONFORMING AMENDMENTS.—Chapter 17 of such title is amended as follows:*

*(1) Section 1710(f) is amended by striking out paragraph (4) and redesignating paragraph (5) as paragraph (4).*

*(2) Section 1710(g) is amended by striking out paragraph (4).*

*(3) Section 1722A(b) is amended by striking out ''Department of Veterans Affairs Medical-Care Cost Recovery Fund'' and inserting in lieu thereof ''Department of Veterans Affairs Medical Care Collections Fund''.*

*(4) Section 1729 is amended by striking out subsection (g).*

*(c) DISPOSITION OF FUNDS IN MEDICAL-CARE COST RECOVERY FUND.—The amount of the unobligated balance remaining in the Department of Veterans Affairs Medical-Care Cost Recovery Fund (established pursuant to section 1729(g)(1) of title 38, United States Code) at the close of June 30, 1997, shall be deposited, not later than December 31, 1997, in the Department of Veterans Affairs Medical Care Collections Fund established by section 1729A(a) of title 38, United States Code, as added by subsection (a).*

***Subtitle C—Other Matters***

***SEC. 8031. ROUNDING DOWN OF COST-OF-LIVING ADJUSTMENTS IN COMPENSATION AND DIC RATES IN FISCAL YEARS 1998 THROUGH 2002.***

*(a) COMPENSATION COLAS.—(1) Chapter 11 of title 38, United States Code, is amended by inserting after section 1102 the following new section:*

***''§ 1103. Cost-of-living adjustments***

*''(a) In the computation of cost-of-living adjustments for fiscal years 1998 through 2002 in the rates of, and dollar limitations applicable to, compensation payable under this chapter, such adjustments shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates and limitations (other than increased rates or limitations equal to a whole dollar amount) rounded down to the next lower whole dollar amount.*

*''(b) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).''.*

*(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1102 the following new item:*

*''1103. Cost-of-living adjustments.''.*

*(b) DIC COLAS.—(1) Chapter 13 of title 38, United States Code, is amended by inserting after section 1302 the following new section:*

***''§ 1303. Cost-of-living adjustments***

*''(a) In the computation of cost-of-living adjustments for fiscal years 1998 through 2002 in the rates of dependency and indemnity compensation payable under this chapter, such adjustments (except as provided in subsection (b)) shall be made by a uniform percentage that is no more than the percentage equal to the social security increase for that fiscal year, with all increased monthly rates (other than increased rates equal to a whole dollar amount) rounded down to the next lower whole dollar amount.*

*''(b)(1) Cost-of-living adjustments for each of fiscal years 1998 through 2002 in old-law DIC rates shall be in a whole dollar amount that is no greater than the amount by which the new-law DIC rate is increased for that fiscal year as determined under subsection (a).*

*''(2) For purposes of paragraph (1):*

*''(A) The term 'old-law DIC rates' means the dollar amounts in effect under section 1311(a)(3) of this title.*

*''(B) The term 'new-law DIC rate' means the dollar amount in effect under section 1311(a)(1) of this title.*

*''(c) For purposes of this section, the term 'social security increase' means the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased for any fiscal year as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)).''.*

*(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 1302 the following new item:*

*''1303. Cost-of-living adjustments.''.*

***SEC. 8032. INCREASE IN AMOUNT OF HOME LOAN FEES FOR THE PURCHASE OF REPOSSESSED HOMES FROM THE DEPARTMENT OF VETERANS AFFAIRS.***

*Section 3729(a) of title 38, United States Code, is amended—*

*(1) in paragraph (2)—*

*(A) in subparagraph (A), by striking out ''or 3733(a)'';*

*(B) in subparagraph (D), by striking out ''and'' at the end;*

*(C) in subparagraph (E), by striking out the period at the end and inserting in lieu thereof ''; and''; and*

*(D) by adding at the end the following:*

*''(F) in the case of a loan made under section 3733(a) of this title, the amount of such fee shall be 2.25 percent of the total loan amount.''; and*

*(2) in paragraph (4), as amended by section 8012(1) of this Act, by striking out ''or (E)'' and inserting in lieu thereof ''(E), or (F)''.*

***SEC. 8033. WITHHOLDING OF PAYMENTS AND BENEFITS.***

*(a) NOTICE REQUIRED IN LIEU OF CONSENT OR COURT ORDER.—Section 3726 of title 38, United States Code, is amended—*

*(1) by inserting ''(a)'' before ''No officer''; and*

*(2) by striking out ''unless'' and all that follows and inserting in lieu thereof the following: ''unless the Secretary provides such veteran or surviving spouse with notice by certified mail with return receipt requested of the authority of the Secretary to waive the payment of indebtedness under section 5302(b) of this title.*

*''(b) If the Secretary does not waive the entire amount of the liability, the Secretary shall then determine whether the veteran or surviving spouse should be released from liability under section 3713(b) of this title.*

*''(c) If the Secretary determines that the veteran or surviving spouse should not be released from liability, the Secretary shall notify the veteran or surviving spouse of that determination and provide a notice of the procedure for appealing that determination, unless the Secretary has previously made such determination and notified the veteran or surviving spouse of the procedure for appealing the determination.''.*

*(b) CONFORMING AMENDMENT.—Section 5302(b) of such title is amended by inserting ''with return receipt requested'' after ''certified mail''.*

*(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to any indebtedness to the United States arising pursuant to chapter 37 of title 38, United States Code, before, on, or after the date of enactment of this Act.*

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 105–9

Mr. CHAFEE. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on June 26, 1997, by the President of the United States.

Tax Convention with South Africa (Treaty Document No. 105–9).

I further ask unanimous consent that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

*To the Senate of the United States:*

I transmit herewith for Senate advice and consent to ratification the Convention Between the United States of America and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, signed at Cape Town February 17, 1997. Also transmitted is the report of the Department of State concerning the Convention.

This Convention, which generally follows the U.S. model tax treaty, provides maximum rates of tax to be applied to various types of income and protection from double taxation of income. The Convention also provides for the exchange of information to prevent fiscal evasion and sets forth standard rules to limit the benefits of the Convention so that they are available only to residents that are not engaged in treaty shopping.

I recommend that the Senate give early and favorable consideration to this Convention and give its advice and consent to ratification.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *June 26, 1997*.

## ORDER TO PRINT SENATE AMENDMENT TO H.R. 2015

Mr. CHAFEE. Mr. President, I ask unanimous consent that the Senate amendment to H.R. 2015 be printed as passed.

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

## ORDERS FOR FRIDAY, JUNE 27, 1997

Mr. CHAFEE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9 a.m. on Friday, June 27. I further ask unanimous consent that on Friday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate immediately resume consideration of S. 949, the Tax Fairness Relief Act, and under the previous order the Senate will begin a series of votes on or in relation to the pending amendments. I further ask unanimous consent that there be 2 minutes of debate equally divided in the usual form prior to each vote, and, lastly, with regard to any amendment offered, following the reporting of the amendment the reading of the amendment be waived.

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

## PROGRAM

Mr. CHAFEE. Mr. President, for the information of all Senators, tomorrow at 9 a.m. the Senate will resume consideration of S. 949, the Tax Relief Act of 1997 and begin another lengthy series of rollcall votes. Following the disposition of the pending amendments, additional amendments may be offered. However, it is hoped that Members will refrain from offering amendments so that the Senate may complete action on this bill at a reasonable time on Friday.

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

## ADJOURNMENT UNTIL 9 A.M. TOMORROW

Mr. CHAFEE. Mr. President, if there be no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 11:22 p.m., adjourned until Friday, June 27, 1997, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate June 26, 1997:

### THE JUDICIARY

JEROME B. FRIEDMAN, OF VIRGINIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF VIRGINIA VICE ROBERT G. DOUMAR, RETIRED.

RONNIE L. WHITE, OF MISSOURI, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI VICE GEORGE F. GUNN, JR., RETIRED.

### DEPARTMENT OF THE INTERIOR

ROBERT G. STANTON, OF VIRGINIA, TO BE DIRECTOR OF THE NATIONAL PARK SERVICE. (NEW POSITION)

### DEPARTMENT OF COMMERCE

W. SCOTT GOULD, OF THE DISTRICT OF COLUMBIA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF COMMERCE, VICE THOMAS R. BLOOM.

W. SCOTT GOULD, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE THOMAS R. BLOOM.

### DEPARTMENT OF AGRICULTURE

CATHERINE E. WOTEKI, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF AGRICULTURE FOR FOOD SAFETY. (NEW POSITION)

### U.S. ENRICHMENT CORPORATION

KNEELAND C. YOUNGBLOOD, OF TEXAS, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE U.S. ENRICHMENT CORPORATION FOR A TERM EXPIRING FEBRUARY 24, 2002. (REAPPOINTMENT)

### DEPARTMENT OF STATE

WENDY RUTH SHERMAN, OF MARYLAND, TO BE COUNSELOR OF THE DEPARTMENT OF STATE, AND TO HAVE THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE.

GORDON D. GIFFIN, OF GEORGIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO CANADA.

MAURA HARTY, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PARAGUAY.

CURTIS WARREN KAMMAN, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COLOMBIA.

JAMES F. MACK, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE CO-OPERATIVE REPUBLIC OF GUYANA

ANNE MARIE SIGMUND, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE KYRGYZ REPUBLIC.

KEITH C. SMITH, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF LITHUANIA.

DANIEL V. SPECKHARD, OF WISCONSIN, A CAREER MEMBER OF THE SENIOR EXECUTIVE SERVICE, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF BELARUS.

### DEPARTMENT OF TRANSPORTATION

GEORGE DONOHUE, OF MARYLAND, TO BE DEPUTY ADMINISTRATOR OF THE FEDERAL AVIATION ADMINISTRATION, VICE LINDA HALL DASCHLE.

### DEPARTMENT OF THE TREASURY

GARY GENSLER, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE DARCY E. BRADBURY.

NANCY KILLEFER, OF FLORIDA, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE GEORGE MUNOZ.

NANCY KILLEFER, OF FLORIDA, TO BE CHIEF FINANCIAL OFFICER, DEPARTMENT OF THE TREASURY, VICE GEORGE MUNOZ.

### U.S. INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

GEOREGE MUNOZ, OF ILLINOIS, TO BE PRESIDENT OF THE OVERSEAS PRIVATE INVESTMENT CORPORATION, VICE RUTH R. HARKIN, RESIGNED.