SENATE—*Wednesday, August 4, 1993*

(Legislative day of Wednesday, June 30, 1993)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Lo, children are an heritage of the Lord * * *.—Psalm 127:3.

Gracious Father in Heaven, we pray for our children. The statistics are alarming. One CEO writes: "The evidence is mounting that our youth are in crisis. We are losing a generation of potential: Every 8 seconds of the school day, a child drops out. Every 6 seconds, a child runs away from home. Every 47 seconds a child is abused or neglected. Every 67 seconds a teenager has a baby. Every 7 minutes a child is arrested for a drug offense. Every day, 135,000 children bring their guns to school." (Doug Holladay, CEO, "One To One")

Pondering these conditions Father, we realize there is little, if anything, legislation can do to change the picture. How desperately we need the intervention of Almighty God on our situation. Loving God, work in us, in our Nation, in our society, that we may see a spiritual and moral awakening.

We pray in the name of Jesus Who said, "Suffer the little children to come unto me, and forbid them not * * *."—Mark 10:14.

Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, August 4, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BEN NIGHTHORSE CAMPBELL, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. CAMPBELL thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 2667, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2667) making emergency supplemental appropriations for the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Harkin-Bond amendment No. 756, to provide full payments to producers for crop losses resulting from damaging weather or related conditions in 1993.

Mr. INOUYE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Hawaii is recognized.

Mr. INOUYE. Mr. President, I ask unanimous consent that I be recognized to introduce a measure and that the time not be charged against the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The ACTING PRESIDENT pro tempore. The Senator is recognized.

Mr. INOUYE. I thank the Chair.

(The remarks of Mr. INOUYE, pertaining to the introduction of S. 1350, are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. INOUYE. I thank the Chair, and I thank the manager of the bill.

AMENDMENT NO. 756

The ACTING PRESIDENT pro tempore. There will now be 1 hour for debate on the Harkin amendment to H.R. 2667, to be equally divided and controlled in the usual form.

Who yields time?

Mr. HARKIN addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Iowa [Mr. HARKIN] is recognized.

Mr. HARKIN. Mr. President, I yield myself such time as I may need.

Mr. President, let us recap where we are. For the benefit of Senators who were otherwise tied up yesterday in important committee meetings and other matters, the Senate now has before it the disaster assistance bill that was passed by the House and sent to the Senate.

We took it up yesterday afternoon. The amendment now before the Senate is an amendment that I offered on behalf of myself and Senator BOND and a number of Senators on both sides of the aisle. It is a bipartisan amendment.

I think it is important at this point to describe again for Senators both what the amendment does not do and what it does do.

Again, let us go back in time a little bit. Back in the 1980's, we had some disasters that hit this country, basically a big drought. At that time, the Congress responded with disaster assistance to farmers in the drought-stricken areas.

Then, in 1990, the Congress drafted the 5-year farm bill. In that farm bill, both the Senate and the House agreed to put in disaster provisions that were like what we did in the 1980's to help drought-stricken farmers. So that became part of the 1990 farm bill.

Now, those benefits are not 100 cents on the dollar. They never were before, they are not in the farm bill, and we do not intend to do that here. We in no way intend to reimburse everything a farmer has lost.

What the 1990 farm bill says is simply this: that if you are a farmer, you have a disaster, if you have crop insurance, the first 35 percent, you eat. You have to take care of your own first 35 percent. Then, everything above 35 percent of loss, we will give you disaster payments at 65 percent—not 100 percent, but at 65 percent—of the established price for those crops. In figuring losses, the USDA uses the program yields—which have been frozen since 1985—not the higher yield the farmer normally would produce.

So the farmer gets 65 percent of 65 percent, so to speak. Well, that is what is in the 1990 farm bill.

Based on that, a farmer, who acted in good faith and who had crop insurance and did everything right, suffering a natural disaster, like this flood or a drought, would basically get a disaster payment somewhere in the neighborhood of about 40 to 42 cents on the dollar for a total loss. Not enough to make up for everything, but enough to try to give that farmer something to pay the bills.

Because, as the distinguished occupant of the chair knows himself, farmers, in the spring, borrow money to buy

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

the fertilizer, to buy the seed, to buy the fuel to put the crop in the ground. They harvest the crops in the fall, pay their bills, and, hopefully, they have enough left over to take care of the family a little bit, and they get ready for the next year.

So what this disaster payment of about 40 to 42 cents on the dollar means to a farmer is not that they can pay everything, but that it can get them through the year and perhaps get them started the next year and, hopefully, get a crop in the ground next year. So that is what is in the law.

In 1990, 1991, and 1992, we had some disasters that struck, notably Hurricane Andrew. The administration at that time, the administration of President Bush, allowed for only a certain amount of money to meet these disasters and to meet the agricultural needs of those disasters.

There was not enough money there. The President opposed providing enough money to meet the real needs out there to fulfill the mandate of the law; in other words, to fulfill that 65-percent payment.

So, rather than coming back to Congress and asking for more money to fulfill the provisions of the law, the President—the administration—simply said we are just going to pay out what we have, and we will figure out how much each farmer gets of that amount, pro rata. What that turned out to be was 50.04 percent of each eligible disaster claim calculated under the 1990 farm bill. That is 50.04 percent of what, of 100? No; 50.04 percent of the 65 percent of 65-percent formula.

In other words, as I said earlier, under the law a farmer basically got 65 percent of the established price for production losses below 65 percent. After eating the first 35 percent of his loss, the farmer got 65 percent of the established price on losses above that 35 percent.

The previous administration said OK, figure that up, figure out what that would be, figure out what the 65 percent times losses above 35 percent would come out to in dollars and cents terms and then pay only 50.04 percent. They did that. Congress did not do anything about it. We did not have the votes to provide the money to do anything about it. So what has happened now is that we have the 50.04-percent factor because we were unable to get adequate funding from the past administration.

So now we are faced with the tremendous damage we have had this year in the upper Midwest. OMB, in submitting the disaster bill to the House, put into the bill that same 50.04-percent factor that was used by the Bush administration. The House did manage to move that up to 90 percent, but only for losses above 75 percent.

At that time the administration's position—this administration, the Clinton administration's position—was they supported that. I suppose Members of the House felt they could not eliminate the 50.04 factor. So the bill came from the House and lands in our laps here with that 50.04 percent factor still in there.

In other words, you say to a farmer who has suffered the loss of almost everything, as they have in my State, we are going to figure up what you are entitled to under the law, under the 1990 farm bill. We will figure up what you are entitled to and then we will whack off 50 percent on the largest portion of your loss.

What that means is a farmer in Iowa who operated in good faith, who bought crop insurance, who did everything right, is faced with getting back somewhere in the neighborhood of about 20 some cents of disaster payments on the dollar of loss.

That is not enough to pay his fuel bills, fertilizer bills, seed bills, pay his rent if he is renting any land, and then get a crop in the ground next year. It is a simple fact. It just will not do it.

So, what this amendment I have offered—along with Senator BOND and a number of other Senators on both sides of the aisle—seeks to do is simply to strike out that portion of the bill before us that has that 50.04-percent factor and 90-percent factor in there. What that means is, we will go back to the basic 1990 farm bill which says that you, farmer, you take the first 35 percent of loss, you suffer that. Then we will reimburse you at a rate of 65 percent of that established price, which will be about 40 cents to 42 cents on the dollar on total losses.

That is all we are asking for. We are not asking for 100 cents on the dollar. I want to be clear to my colleagues what this amendment does and what it does not do. Last evening when I talked to Senators there was still some confusion that what we are trying to do is give farmers 100 cents on the dollar of every dollar they have lost. We are not trying to do that. No one is attempting to do that. The farm bill did not do that. We are just attempting to get back to about 40 cents on the dollar, 40 to 42 cents on the dollar. That is all we are seeking to do.

I spoke at length with the President about this issue. I have spoken at length with a lot of people about this issue, as a matter of fact. I have been informed by the people representing the President that rather than taking a hard and firm position one way or the other on this amendment, the administration's position is now that they neither support it nor do they oppose it. They will accept whatever the will of this body is.

That is why this amendment becomes so important, so important to farmers in Iowa, Missouri—in all the affected areas. I might also add the farmers in the drought-stricken areas of North Carolina down to Georgia. Because without this amendment succeeding, if we have to live with that 50 percent factor, I can tell you—and this is not hyperbole—in my State of Iowa, hundreds, if not thousands of farmers will not be able to make it next year.

I could not stand before you with a straight face and tell you that if this were just one tornado that came through and knocked out a few farms, or if one river had overflowed its banks and wiped out a half a dozen farmers or a dozen farmers, or if a big storm, a hailstorm had come through and wiped out one county, I could not stand here with a straight face and tell you if we did not pass this amendment the farmers of Iowa and our economy would suffer dire consequences. But, I can stand here with a straight face and with an honest mind and tell my colleagues if we do not pass this amendment it will be dire consequences for Iowa, because this has not been just one river out of its banks; it has not been one tornado; it has not been one hailstorm.

Again, I point to this chart to illustrate what happened to my State. I used it yesterday and want to use it again to bring it back to the attention of Senators. This is a satellite photo taken by NOAA, the National Oceanic and Atmospheric Administration. You use this bar graph here at the bottom of this chart. If it is in green it is moisture, if it gets yellow it is more moisture, if it is red it is more moisture, if it is blue it is wetter, and as it gets to the darker end of the spectrum that means the wetter the ground is.

If you look at this map of the central and eastern part of the United States you will see the darkest blue is the Great Lakes, obviously. That is the Great Lakes. You see Lake Superior, Lake Michigan, Lake Huron.

Then you come over here and see that same dark blue area right over Iowa and southern Minnesota and a little part of South Dakota and Nebraska. It is as big as Lake Erie—in fact bigger than Lake Erie. It is as if Lake Erie were situated right in my State.

You cannot deny this. This cannot be denied. This is not hyperbole, this is factual evidence taken by a satellite photograph. All of that water came rushing through the State of Iowa. It is not just one river out of its banks, not just one hailstorm or one tornado. This is a disaster of epic proportions.

So I can stand here with a straight face and tell you this amendment is needed for our economy, the economy of Iowa. I might say that is true also of Minnesota. I see the distinguished Senator from Minnesota here, and the Senator from Missouri. Those Senators can speak for their own States. But the same is true for their States, too. That is why this amendment was so needed and that is why I have taken this time again to lay out for Senators what this amendment does and what it does not do.

Mr. COCHRAN. Will the distinguished Senator yield 1 minute at this time?

Mr. HARKIN. I have had my say, what I wanted to lay out. I will be glad to yield however many minutes the Senator wishes. I yield 1 minute to the distinguished Senator from Mississippi and I thank him for his help and support in modifying this amendment. I am sure he wants to speak about that.

The ACTING PRESIDENT pro tempore. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Iowa for yielding time to me. I want to express to the principal sponsors of this amendment, the Senators from Iowa and Missouri, Mr. HARKIN and Mr. BOND, my appreciation for including language which gives the Secretary of Agriculture the discretion to make adjustments in previous disaster benefit payments that were made under the 1990 farm bill that creates this disaster assistance program.

The purpose of this amendment, as Senators now know, is to try to make sure the administration makes available the full benefits that are authorized under the disaster program of the 1990 farm bill. There were earlier disasters, particularly in the southern part of the United States, and drought in other parts of the country, under which disaster benefits were made available in crop years 1990, and 1991 and 1992 that were limited under the same——

The ACTING PRESIDENT pro tempore. The Senator's 1 minute has expired.

Mr. HARKIN. I yield to the distinguished Senator an additional minute of time.

Mr. COCHRAN. Under the same modification the Office of Management and Budget is urging the Congress approve in this disaster situation. It seems fair to this Senator and to the sponsors of this amendment that if that change is made by law here, it ought to apply as well to previous disasters under the 1990 farm bill disaster program. That is the purpose of the language that was included in the amendment.

I thank the Senators for including that discretionary authority in this amendment.

Mr. HARKIN. Mr. President, I thank the distinguished Senator from Mississippi for drafting the amendment, for alerting us to the need to do this.

The Senator is absolutely right. We did not mandate it, but we left it in discretionary, because as I said yesterday, the administration may want to go back and give that 65 percent on losses above 35 percent—again not 100 percent—but that level of disaster assistance in the farm bill to farmers who suffered under Hurricane Andrew and other disasters of those earlier years.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 14 minutes 47 seconds.

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

Mr. BURNS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Montana, Mr. BURNS, is recognized.

Mr. BURNS. Mr. President, I want to thank the Senator from Iowa and the Senator from Missouri for bringing this to our attention.

The ACTING PRESIDENT pro tempore. The Chair reminds the Senator that he needs time yielded to him.

Mr. HARKIN. How much time does the Senator want?

Mr. BURNS. Five minutes or less.

Mr. HARKIN. I yield 4 minutes to the distinguished Senator from Montana.

The ACTING PRESIDENT pro tempore. The Senator may proceed.

Mr. BURNS. Mr. President, I want to remind my good friend from Iowa that if it comes to a vote, I will support this amendment. I think what the chairman and what we are trying to do is remind our colleagues that we have to put one foot in front of the other first. I think once the waters recede in the Midwest—and I was raised in northwest Missouri. You can probably look on that map that the Senator from Iowa has, and I can show you my hometown where I was raised. I am accustomed to those people and how they make a living because I was raised on one of those little farms of 160 acres of two rocks and one dirt. We made a living.

I think we are kind of underestimating the people in that area—their resilience and willingness to bounce back—because they are not going to sit there waiting for the Government to help them. They are going to start doing things on their own, putting their lives back together.

What I am concerned with, though, is that there are things in this bill I would like to change. I would like to shift some money around, but I think if this amendment has a chance of holding up the money to build the building blocks with which we can put the Midwest back together again—and I am talking here about infrastructure—I will support this amendment, if it comes to a vote, and I think it is going to come to a vote. But I want to remind my colleagues that our main thrust is to put together transportation, communications, power, roads, rails in order to provide the service and rebuild the Midwest.

I just want my colleagues to understand that there has to be a commonsense approach to this so that we can rebuild the Midwest. We know what floods are all about, and I know what Iowa is all about. America's compassion should be for this part of the country because this is where America eats. This is the breadbasket of America and the impact will be tremendous upon our ability to feed and clothe ourselves in years to come.

So I will support this amendment, but let us not overlook first things first in order to rebuild the Midwest, to deliver those services and a premise with which to do it. I appreciate the work that the Senator from Iowa, Senator HARKIN, and Senator BOND have done on this because we have been through similar disasters in my home State of Montana. We were not in this flood. We are upstream from everybody. So our hearts and our prayers go out to those people who have been impacted because I understand where they are coming from, but I think we ought to have a commonsense look at it on the infrastructure first and then rebuild, in order to deliver those services to the people we are trying to help rebuild and serve.

I thank the Senator from Iowa for bringing this up. I yield the floor, and I yield the remainder of my time.

Mr. WELLSTONE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota needs time yielded to him.

Mr. HARKIN. How much time do I have left?

The ACTING PRESIDENT pro tempore. Eleven minutes six seconds.

Mr. WELLSTONE. I probably will not need more than 3 minutes.

Mr. HARKIN. I yield 3 minutes to the Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I do not need to take more than 3 minutes because I had a chance to speak last night.

First of all, I will just simply build on the comments of the Senator from Montana. We know that we are talking about tremendous devastation and much is needed. I know that everybody out here on the floor, including the distinguished chairman of the Appropriations Committee, is committed to helping people. There is no question about that. We appreciate the response of the administration.

Last night, I talked about James Lee Witt from FEMA. He has done just a magnificent job. The reason this Harkin-Bond amendment is so important is that if we do not make a change in the formula, this will be the problem: We will be providing assistance to people that really will not give them enough assistance so they will be able to get back on their feet. That is really what this amendment is all about.

We just simply make a plea to every one of our colleagues—Democrats and Republicans alike—people in our region are really hurting. When we go back to our States, farmers literally reach out and they say, "Senators, will you help us so that we can get back on our feet and rebuild our lives?" And we know that 20 cents on the dollar loss will not do the job.

If this amendment is not adopted, we will not have really provided that helping hand to farmers and it will not

have made the difference. We are here to do well for people. What we say to our colleagues is that this is not just an academic debate about formula, this is not just a question of trying to get more money into a particular region. I think really without exaggeration it is a life-or-death question as to whether or not people who have been absolutely devastated in the agriculture sector of the economy are going to have a chance, especially some of the younger farmers, some of the beginning farmers.

So that is why this amendment is so important. That is why we ask our colleagues for their full support.

I yield back the remainder of my time. I really had a chance to speak last night. I do not know how to add any more than what has just been said.

Mr. HARKIN. I want to thank the Senator from Minnesota for all his help in drafting the amendment and working with the bipartisan group of Senators to help fashion not only this amendment but our whole approach to this flood in the Midwest. Senator WELLSTONE has been great for agriculture not only in his State but the entire upper Midwest. I personally want to thank him for all of his help and support.

Mr. President, I reserve the remainder of my time at this point.

Mr. BYRD addressed the Chair.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BYRD. I yield myself such time as I may require.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I want Senators to be very clear about what this amendment would do. The consequences of the amendment will be to add at least $1 billion to the cost of this legislation. That is OMB's estimate of what the amendment would add to the cost of providing disaster payments to farmers who have suffered losses as a result of the Midwest floods alone.

The additional expense of compensating those whose emergency has passed, whose disaster is over at the same rate as those in the Midwest will add up to $2.4 billion in spending, according to the OMB. Therefore, this one amendment would add $3.4 billion to this emergency spending bill for only one account in the agricultural area.

The policy contained in the President's request may be a right policy or it may be a wrong policy. It did not begin with this administration. It should not be ended here on the Senate floor today. This is a matter for the administration and the authorizing committees to work out.

What we are about here today is to get that which is justifiable to people inundated by the floods as quickly as possible. The floods have been and continue to be of such proportions that this will not be the last time that we address this disaster.

There will be regular appropriation bills for FEMA, HUD, Transportation, and the Corps of Engineers which will be acted upon in September, and, of course, the President may request further aid specifically for these communities. We will have ample opportunity to address these matters further.

We should be careful that we are not shooting ourselves in the foot by adopting this amendment. As I read the amendment by the Senator from Iowa, it may actually provide less assistance to the farmers in need than the bill as reported by the committee.

Under the bill as reported, the President may use additional funds from the Commodity Credit Corporation to pay up to 50.04 percent of eligible claims. Under the pending amendment, if the President wants to make additional payments over and above the amount we are appropriating here, he must pay 100 percent of the eligible claims.

The President and his Office of Management and Budget are already concerned about the total cost of this disaster assistance. It is clear that it will take a much greater amount of money under this amendment, and the President will be faced with a much more arduous decision about whether to make the additional funds available.

Time after time, I have heard on this Senate floor cries of "cut spending." I have heard President Clinton attacked for failing to cut spending first. Over the years, this Appropriations Committee has repeatedly been attacked for spending on Members' projects or for spending on programs that have not been authorized, yet here we are with a disaster bill before us bearing an emergency designation from the Oval Office and Members are out here trying to increase the cost of the bill.

I hear Members come to the floor and say that we ought to pay for our spending, yet we are trying to hold down the cost of this emergency bill by sticking to the President's estimates of what is absolutely needed to address this disaster, while in this Chamber we are seeing attempts to go back in time and spend more money on past disasters as well as on this current one.

Formula changes ought to be discussed in the authorizing committees, not on an appropriations bill. Members ought to get a grip on themselves and contemplate that we have a reconciliation bill up ahead that attempts to do some real and serious deficit reduction.

Let us not exploit this disaster legislation because it is the last available train leaving the station before the August break. Let us try to look at this from the perspective of the American people who must be watching and scratching their heads at our actions. We must not add needless and inappropriate spending to this emergency bill. If we sincerely want to cut spending in this body, which I hear over and over and over again, especially from the other side of the aisle, we can begin right now by doing only what is necessary to address this disaster adequately and appropriately. Disasters are not spending opportunities and must not become such.

Unmentioned thus far in the debate is the existence of the Federal Crop Insurance Program. Since 1938, we have had a wholly owned Government corporation, the Federal Crop Insurance Corporation. The Corporation offers insurance to agricultural producers to provide protection from losses caused by natural hazards—drought, flood, wind, and other weather conditions.

Based on data in the past three budget submissions, insured acreage under the program has fallen from 101,632,000 acres for crop year 1990, to 895,245,000 acres for crop year 1991, to 84,416,000 acres for crop year 1992, to an estimated 80,875,000 acres for crop year 1993.

Could it be that insured acreage has fallen because we have been so generous in our disaster payments that farmers no longer bother to get Federal insurance? Why pay insurance premiums if the Government is going to indemnify farmers for losses anyway?

The amendment by the Senator from Iowa, as modified by the provision offered by the distinguished Senator from Kentucky, provides authority to go back—back—3 years and make additional payments on claims that have already been paid. Are we today saying that a 1990 crop loss is an emergency today? Is that what we are saying 3 years later?

Here we are, Wednesday morning, trying to pass emergency legislation to help people deal with a major disaster before we leave for a month-long recess and we simply do not have the luxury to debate at length on whether we should provide retroactive payments or whether we should change the disaster formula for farmers. If the Senators representing those farmers in the disaster today are concerned about getting aid to those farmers who are currently deluged by this disaster, we need to move forward now. To provide additional payments for something that happened 3 years ago does not constitute an emergency today.

There are 3 days remaining for us to get some relief for these flood-torn communities. Why are we discussing and debating something that happened 3 years ago? It does not make sense.

Mr. President, I hope that Senators will not support this amendment. I commend those Senators who represent the areas that have been hit by this terrible disaster. My heart goes out to them and to the people who live in the areas, and I have always, as chairman

of the Appropriations Committee, supported legislation such as this, to provide help for areas that are stricken by disaster.

It is not a matter of heart, Mr. President. It is a matter of acting responsibly. The administration is in the best position to determine what the estimates should be. The administration continues to send up requests to be added to this bill. This indicates to me that the administration is very sensitive to the needs of the stricken areas, and there will be ample time to come in with additional supplemental bills—September, October, the beginning of next year.

It seems to me that we ought to depend upon the administration, which is in a far better position than any Senator on this floor or group of Senators, to determine what the estimate of the damages is.

So, Mr. President, I do not like to be in this position of opposing this amendment. The easy thing to do would be to vote for it. That would be the easy thing. The difficult thing to do but the responsible thing to do is to vote for the bill that the Appropriations Committee has reported out and which represents and will represent shortly everything that the President has requested because I intend to offer an amendment a little later to add something over $100 million which has come in at the request of the administration by way of a letter.

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

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. MCCONNELL addressed the Chair.

Mr. HARKIN. Mr. President, I have some requests for time. Senator MCCONNELL, 1 minute.

I yield to Senator MCCONNELL 1 minute. I only have 11 minutes remaining.

Mr. MCCONNELL. I thank my friend from Iowa.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky is recognized.

Mr. MCCONNELL. Mr. President, let me say that if the Federal Government exists for any purpose, it seems to this Senator it is for national defense and natural disasters. And we are certainly concerned about the spending of the Federal Government, on the other hand.

Mr. DOLE. Mr. President, as I understand, leaders' time has been reserved, and if I could yield 10 minutes of that.

The ACTING PRESIDENT pro tempore. The Republican leader is correct.

Mr. DOLE. Two minutes.

Mr. MCCONNELL. Two minutes.

Mr. DOLE. Three minutes or four minutes.

Mr. MCCONNELL. I thank the Republican leader. That would give the Senator 3 minutes.

Mr. DOLE. And 3 additional minutes to the Senator from Kansas, Senator KASSEBAUM.

Mr. BYRD. Mr. President, would the Republican leader object to our having some additional time on this side?

Mr. DOLE. No. The same amount.

Mr. BYRD. Will the Republican leader make that request.

Mr. DOLE. I ask unanimous consent that 10 minutes more be allotted to the distinguished Senator from West Virginia.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, I thank the Republican leader for the additional time.

As I was saying, if the Federal Government exists for any purpose, it seems to this Senator it is for national defense and natural disasters.

I wish at the outset to express my appreciation to Senator BOND and to Senator HARKIN for their leadership on this issue.

Kentucky has not escaped the effects of the devastating floods in the Midwest. While most of my State suffers from almost drought conditions, four counties in Kentucky along the 60-mile border of the Mississippi River will lose 40,000 to 50,000 acres. To make matters worse, the land affected there will be under water for a long period of time. As a result, thousands of acres in Kentucky and millions of acres across the Mississippi Valley will be totally destroyed.

Farmers have spent millions of dollars in fertilizer, seed, chemicals, fuel, and labor expenses. Also, mortgage payments are still due. Daily family living expenses are still needed, and now there are added expenses to rebuild and restore damaged property.

Because the flooding occurred so late in the year, there is no opportunity for farmers to replant a crop with the hope of getting some return on their investment this year.

Mr. President, our losses in Kentucky are not comparable to some in the Midwest. We estimate about $20 million as a result of the flooding in Carlisle, Ballard, Fulton, and Hickman Counties. I have been there, Mr. President. I have been over to Roy Dillard's farm in Hickman County, where two-thirds of his corn and soybean crops were under water. His land is still under water, and will probably stay flooded for several more weeks. He invited several neighbors over to his farm. And I heard stories from people who will lose everything.

Connie Keene made a point which really struck home. Without crop assistance from the Federal Government, some farmers in western Kentucky could lose their homes to bankruptcy. And there is very little difference in losing your home to flooding or a hurricane than losing your home because you lost your farm income and therefore cannot make your mortgage payments.

Paul Lee Williams of Fulton County has lost 1,000 of his 1,300 acres. His neighbor, Walt Goodman, has lost over half of his crop to flooding and the rest is burning up with drought conditions on the same farm. Cornfields which yielded 200 bushels per acre last year will yield zero if flooded, and about 100 bushels per acre if it survives the drought.

I met with a dozen farmers in Tony Gill's toolshed in Carlisle County. Wayne Earl Bean of Carlisle County told me farming is a 50–50 proposition right now. This is the way he put it. He said 50 percent of it is burned up, and the other 50 percent is under water. His son, Philip, pointed out how ridiculously complicated crop insurance and the disaster formula are for calculating losses and estimating assistance. He is right.

While this is not the time nor the place to make major changes in our disaster assistance programs, the amendment being offered by the Senator from Iowa and the Senator from Missouri is certainly necessary until we are able to make bigger changes. Millions of people, as we all know, have been directly affected by the floods.

Families have been displaced, businesses ruined, communities devastated, and lives changed forever. Farmers have lost millions of acres of crops and years of good stewardship have been washed away.

Mr. President, I hope the amendment will be adopted and that the Senate will forthwith provide maximum assistance to those who have been the victims of this natural disaster. This disaster will linger well after the television cameras have gone and the dollars in assistance are spent. All too often Government intrudes in the daily lives of Americans, but Government has a role and must respond promptly to this devastation.

Mr. DOLE. Mr. President, I understand I have been yielded 2 minutes by the Senator from Iowa.

Then I have, I think, a couple of minutes left on leader time. But I may not need that. I will go ahead and use leader time first. I am sure the Senator from Iowa has other requests.

Mr. President, how much time do I have left on leader time; 4 minutes?

The ACTING PRESIDENT pro tempore. The Senator is correct.

PRORATION AMENDMENT

Mr. DOLE. Mr. President, I just wanted to emphasize how important this amendment is and how important it is to many of us—no, not us; we are back here high and dry. I am talking about the people who live in this area. They are Republicans and Democrats, and they are people who have lost their homes and lost their farms.

If you watched, the piece the other day on Iowa, it had this young farmer

sitting in a Red Cross shelter, he and his wife. They had lost everything they had. It was their first year on the farm, and they lost everything. It almost made tears come to your eyes when they interviewed this young man who thought he had a great future on the farm, and everything was wiped out with the flood.

That in itself may not be adequate, but that happened thousands and thousands and thousands of times in 10 different States hit by floods. Then we have the drought in several Southern States.

I was in North Carolina last Saturday. The first thing they asked me was: "What about the drought aid? We have been dry." I know the same is true in Georgia and other areas of the South.

So I wanted to underscore what Senators BOND, HARKIN, GRASSLEY, and others have said here today. This is an important amendment. I know as far as the managers are concerned, they would like more help. If only the administration would say one way or the other, for or against, instead of waiting: Well, whatever happens is all right with us. But at least there is not a negative from the administration. So I will construe it as a positive. It would indicate to me that it seems they are not against this; they must be for it. That is how I interpret it.

I know the managers may have another interpretation. But flood waters do not choose party lines. I think this amendment should be supported. We had quite extensive damage in my State of Kansas. I have been there. I have flown over the State. I talked to people by telephone. We have taken all of the staff out of my office here who were not absolutely needed and sent them all to Kansas to visit with the people who have been hit by the flood. They came back with some pretty bad stories.

So it just seems to me there are a lot of reasons that we ought to support this. I want to make it clear that this is not going to make the farmer whole, whether they get 21 cents on the dollar or 42 cents, this is not going to make anybody whole.

When President Clinton toured there he talked about 50 cents on the dollar. I think probably he had in mind a formula which I just say does not give you 50 cents.

We lost 25 percent of our wheat crop in Kansas, about 100 million bushels. Just add that up to the market price. That is a lot of money taken out of the economy, away from the farmers, who will not be able to start up again this year.

I know we can say there will be another supplemental, and we can come back later. But when the cameras leave, aid for the area will also dry up.

I think this ought to be the important time to raise this issue. I do not know of any time when we have not stood up for others who have had disasters. It has never been partisan. It has always been nonpartisan on both sides of the aisle.

So what do you tell your bankers, the implement dealers, people whom you buy the fuel from and the seed from? You say: Give me one more chance. You go out and try to borrow more. They will say no. You cannot do it for 20 cents.

So I just hope we can pass this amendment. There is not a quarrel with the ranking member or the chairman. There is, I think, agreement by those of us who represent the 10 States in the flood. We reflect the views of our constituents. We are putting the money in there where it is most needed.

Now, I understand the concerns of those regarding cost. I would just point out that as market prices go up, because of disaster, there will be a decrease in the form of deficiency payments to the farmer. USDA has indicated this savings could range between $850 million and $1 billion, which goes a long way in paying for this increase.

I want to congratulate my colleagues on both sides of this debate. I hope when the time comes, we will have broad bipartisan support for this amendment.

Mr. President, we have heard from several Senators on both sides of the aisle, supporting the amendment to remove the 50.04 percent pro rate. I commend my colleagues for the bipartisan support they have shown in this debate. Obviously, the flood waters do not choose party lines.

There have been many reasons given on why this amendment should be supported. Like many that have spoken on the amendment, I have heard from the people back home as to what those reasons are. Some have called this a disaster. But once you see it, you know it is more than that, it is a catastrophe.

In Kansas over 25 percent of the crop has been destroyed by some type of disaster. High straight winds, tornadoes, hail, and floods have equated to more than a $437 million shortfall in the pockets of Kansas farmers. Over 53,000 of the States 67,000 farmers have been affected. And when the farmer is affected, main street is affected.

We have spent a lot of time talking about how the amendment will help farmers—and it will. Lets not forget about their creditors—the bank, the implement dealer, the fertilizer and chemical dealer, the grocery store. Money in the farmer's pocket is money in their pockets. America's small businessman has suffered in this disaster as well. While the Small Business Administration has loan programs to help, passing this amendment is one more way to provide our assistance.

The President has promised his support for the flood victims. The Congress has promised their support. Now is the time to show what our support means. By eliminating the 50.04 percent pro rate, we are putting money into the heartland where it is needed most.

Mr. BYRD. Mr. President, I think I should put a letter in the RECORD at this point. I will read it. It has been sent to me this morning dated August 4.

A similar letter was sent to the distinguished ranking member, Mr. HATFIELD. It reads as follows:

DEAR MR. CHAIRMAN: It is my understanding that when the Senate returns to H.R. 2667 this morning, the pending business will be an amendment which would eliminate the 50 percent pro rate for agriculture disaster payments. The Administration did not take a position on the amendment as originally offered since it was limited to 1993 crop losses. It is my further understanding that the amendment now has been modified to permit the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990–1992 in order to receive payments up to 100 percent of their eligible claims.

The Administration estimates that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion. While the Administration did not take a position on the underlying amendment to strike the 50 percent pro rate, we must oppose the amendment as modified.

There simply is no basis for using the emergency authority to make retroactive payments for crop losses that occurred as far back as 1990. Were the emergency designation not used, enactment of this amendment would, under the Budget Enforcement Act, necessitate a reduction of FY 1994 discretionary spending of several billion dollars.

Sincerely,

LEON E. PANETTA,
Director.

Mr. President, while it is true that the administration took no position on the amendment that was originally offered by Mr. HARKIN—and he has stated that a number of times and he is correct in that—the administration is clearly on record as being opposed to the Harkin amendment as now modified by the language added by Mr. COCHRAN. I hope that Senators will be mindful of this when they come to vote on this matter.

Mr. President, I yield to the distinguished Senator from Oregon [Mr. HATFIELD].

Mr. HATFIELD. Mr. President, I just want to be very brief and reiterate two points. No. 1, as the chairman has indicated the position of the administration, let me translate that into the hard figures that we are dealing with. The committee came out with $4.7 billion, which was precisely the administration's proposal. Since that time, the administration asked for an additional $123 million. That would mean we are then dealing with, if we adopted the administration's second request, $4.8 billion. The Harkin amendment, now as modified, would add $3.4 billion in addition, making it an $8.2 billion package.

My point is simply that it might mean that we will ultimately have to spend more than $8 billion, but we have other vehicles that we can address as the information becomes available.

The second point is, I urge all Members to look at the Calendar of Business and find that we have listed 40 amendments to this bill. I am not saying that they are all going to be raised, but we have 40 listed amendments. This is Wednesday, August 4. The administration has made very high priority, as it should, on getting the resolution on our budget and fiscal matters accomplished before the recess begins. They say we will take up the reconciliation.

All I am saying, simply, is that time is running out, and if we further add to this bill, we have longer potential conferences with the House and a good possibility of not achieving any bill—any bill—until after the recess. I just think we have to face that reality.

Are the Members of this Congress who represent the States that are so inundated and devastated willing to take that risk? It will strictly be on your shoulders. I do not believe that it is an unreasonable speculation to make within the current timeframe—$4.7 billion or $4.8 billion—if we adopt the additional request of the administration, as against the possibility of nothing until after the recess.

This is not a vague or speculative warning. This is simply a statement of fact. This is Wednesday, August 4, and every Member here knows the processes that are required to conference with the House in the middle of the reconciliation resolution to be adopted before the Friday recess.

Need I also remind Members of that tremendous steamroller mentality that gains momentum as the date of recess nears, not for a weekend, but for the month of August. That is going to be very difficult to resist in order to complete this bill if we get into that kind of possible legislative morass. Think of the House's action and their difficulties and the statements on legislation on appropriations and all of the other things that have fouled up or delayed resolutions in the past, and you see the ingredients, the components in this bill taking shape to reach into that same kind of experience. We have repeated and repeated and repeated that. There is nobody on this floor who has more desire to help the people in the Midwest, but we cannot risk this idea by measuring compassion by the dollars involved in the bill because, if that were so, then this is a paltry few dollars to meet the needs of those people.

So I just offer that, not in opposition to the objective of this bill, but as the reality we face as members of the Appropriations Committee, to try to complete this bill before that deadline.

Mrs. KASSEBAUM addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Kansas is recognized.

The Senator has 3 minutes.

Mrs. KASSEBAUM. Mr. President, I support the amendment offered by the Senator from Iowa [Mr. HARKIN] and the Senator from Missouri [Mr. BOND]. While I share the concern that this amendment adds to our deficit, I believe it is a necessary step to address the devastating floods of the past several weeks across the Midwest.

In my State, current estimates are that about 75 percent of all Kansas farmers have been hit by flooding and other natural disasters this spring and summer. About 4 million acres, roughly 25 percent of Kansas cropland, have been affected. Tentative estimates for total crop losses exceed $500 million in the State of Kansas alone. These losses have devastated farmers across the State.

Current provisions of the proposed disaster relief bill would allow farmers to recover about 20 cents for every dollar of crop loss. This amounts to only half of the amount that was afforded to farmers in the 1990 farm bill. I do not believe that this amount will provide sufficient assistance to the thousands of farmers whose operations have been crippled by severe flooding. In my opinion, Congress must make a stronger commitment to ensure that farmers are provided with the assistance they need to get back on their feet.

For this reason, I support efforts to restore disaster payments to levels established in the 1990 law. The amendment offered by Senators HARKIN and BOND accomplishes this goal and provides farmers with a reasonable amount of assistance.

Some argue that this provision is too costly. I agree that Congress must be cautious in adopting any measure that increases spending. However, the increased costs of this amendment would likely be offset by lower deficiency payments to farmers for Government Farm Program crops.

Largely due to flooding, the cash price for wheat has risen from $2.82 per bushel in July to about $3.08 per bushel this week. This will help farmers who have wheat to sell, and it should reduce deficiency payments made by the Government.

But the only help available to many farmers whose crops have been washed away will come from this bill. That help could well decide whether many of these farmers can recover.

Mr. President, our budget deficit is a serious problem and requires serious action. But I would point out that that problem existed long before these natural disasters. If we want to address the deficit, it must be done by addressing ongoing, day-to-day Federal spending. Natural disasters have not caused our deficit and the deficit should not be used as a reason to withhold assistance from cities, towns, and hundreds of thousands of families devastated by these floods.

Mr. President, there is no one whose dedication and compassion I admire more than the Senator from Oregon and also the Senator from West Virginia. The Senator from Oregon is the ranking member on Appropriations and has dealt for many years with the reality, as he says, of what we face here.

Mr. President, I do not think there is a Senator on this floor who has any concept, nor do I, of the day-to-day weariness, the day-to-day frustration, and the tragedy felt in the Midwest. For weeks, we have watched the sandbagging and wondered if levees were going to break. Now we must consider either the cleanup and devastation to the farms that have been lost or the months and months it will take to recoup some of the damages that have occurred in this major tragedy. It is not only the floods, but it is the droughts as well.

As the Senator from Kentucky pointed out, I think rightly so, the Federal Government does have a responsibility in dealing with natural disasters. These are not, we hope, going to be annual recurrences. We hope that this is the time to address what is before us this year once and for all. We have heard many figures explained about each State's problems, and I will not go into that.

The only help available to many farmers whose crops have been washed away, whose homes have been destroyed, will come from this bill. This help could well decide whether many of these farmers and small businesses can recover. I think we simply have to address this in the scope of what assistance we can give at this time to those who are suffering in ways that we really cannot fully imagine here.

Mr. HARKIN. How much time do I have remaining, Mr. President?

The ACTING PRESIDENT pro tempore. The Senator has 7 minutes 30 seconds.

Mr. HARKIN. I yield 2 minutes to the distinguished Senator from Missouri.

Mr. DANFORTH. Mr. President, last week the chairman of the Council of Economic Advisers said that this disaster was not a disaster for the entire country; that, as a matter of fact, it would be an economic plus for the rest of the country. It affected just a ribbon going through the middle of the country.

For those of us who live there, it is some ribbon. To fly over this land, you get the best view of it, because as you look down on the farmland adjacent to the rivers, especially the Mississippi River and the Missouri River, with the levees broken, you see total loss—total loss.

The whole farm is gone. The whole farm is under water. All the land is under water. The buildings are bobbing

up above the water. Everything is gone. It is a total loss for those who have been devastated by this flood.

The issue before us is very simple. The issue is whether the Congress of the United States means what it said in 1990 when we passed the farm legislation and when we promised 42 percent reimbursement for agricultural disasters. That was the promise of the act of Congress that was signed into law by President Bush. That is the law.

It has been artificially and administratively cut in half. Senator DOLE said it quite well, this is not going to be a windfall for anybody. Are we going to provide disaster assistance equal to 42 percent of the loss as provided by law, or are we going to welsh on that law and provide only half that amount, 21 percent?

The PRESIDING OFFICER (Mr. MATHEWS). Who yields time?

Mr. HARKIN. Mr. President, how much time remains on both sides?

The PRESIDING OFFICER. The Senator from Iowa controls 5 minutes and 36 seconds; the Senator from West Virginia controls 21 minutes and 40 seconds.

Mr. HARKIN. I yield 1 minute to my colleague from Iowa, Senator GRASSLEY. S0634

The PRESIDING OFFICER. The Senator from Iowa [Senator GRASSLEY] is recognized.

Mr. GRASSLEY. Mr. President, Senator HATFIELD put the question to us: Do we want to take the risk? Yes, we do want to take the risk. We want to take the risk, we take the risk because all we are asking for is equity with other disaster programs that are being funded by the Federal Government. We are funding FEMA, we are funding SBA, we are funding Farmers Home Administration, we are funding HUD, we are funding all these people who are going to benefit at the authorized levels.

We are cutting in half, under present policy, the authorized levels for disaster relief for farmers. We think that is unfair.

All we are asking for is that farmers be funded at the authorized level, not at some arbitrary 50 percent of that authorized level. We want equity for farmers on the same basis as small business, residential, and others.

I yield the floor.

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

Who yields time?

Mr. HARKIN. Mr. President, I yield 4 minutes to the cosponsor of the amendment, someone who has worked very hard on this amendment as he has on all flood disaster provisions, Senator BOND. I yield 4 minutes.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I thank my colleague from Iowa, who has worked long, hard and diligently on trying to assist our citizens who are victims of a 500-year flood. I hope my colleagues will keep this in mind, this is the kind of flood that comes once every 500 years. It might have been the time of Columbus since this has happened.

This is historically devastating to our country. The fire chief of St. Louis, on Sunday, told me that he had never heard of, or seen a disaster in his lifetime of this magnitude.

When we have a national disaster the responsibility of this body and the Federal Government is to respond. You do not keep score. You try to find ways to help.

One country song goes, "There ain't no future in the past." Do not look back and say, well, maybe in 1991 and 1992 we did not give enough.

We have discretion in this bill, if the Secretary wants to give aid to the people who have suffered disasters and been compensated in the past. Director Panetta has said we do not want to spend this additional $2 billion to $3 billion.

The whole point of this amendment is they do not have to. They are given discretion if they find there is equity in doing so. It is up to their discretion. We are not forcing them to do anything.

I think it is very important to realize that unfortunately the Federal Government is going to make a savings out of this disaster because of the loss of crop, 33 percent or more of many of the major crops in Missouri, and I am sure similar or greater losses in other States. There may be less supply, so there will be higher prices. And when prices on program crops go up, then the thing called deficiency payments. The difference we pay between the target price and the market price will go down, so there will be savings in the deficiency payments.

We are saying today to our colleagues in this body that the people of Missouri, Iowa, Illinois, and the other affected States are not complaining. They are sandbagging. They are rebuilding. They are fighting on. And they need our help. This is not a time to nickel and dime them and say we can make some savings and cut in half what was provided by the statute for agriculture disasters. We are saying give them a chance to get the full authorized level. It is only up to 42 cents on the dollar that they have lost.

Many of these farmers are going to be prevented, because of the disaster that this flood has visited on their land, from getting a crop, not only this year, but next year, and perhaps the year after. This is a lifeline that we will be throwing to farmers in the Midwest. They are hanging on by their fingernails.

It is 42 cents on the dollar to last them 1, 2, or 3 years. Is that too much to ask, Mr. President? I do not think so.

When I talked to the President on July 15 and told him that the OMB had recommended cutting the disaster assistance in half, he said he was not aware of it. I understand they have no position now on whether we should give them 50 cents on the dollar or the whole dollar.

I hope this body will say we meant it when we said in the 1990 farm bill that we will provide assistance under a formula for the farmers, and I urge my colleagues to support the amendment.

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

Who yields time?

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Thirty-five seconds.

Mr. HARKIN. I reserve that 35 seconds, if I could.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, we are not debating as to whether or not we have a responsibility here to act, and we are not debating as to whether or not we are going to provide assistance.

To listen to our friends, one would feel that this Senate is not going to provide assistance. That is what we are debating, as they say. There is no question but that we are going to provide assistance. There is no question but that we have a responsibility to do so.

Mr. President, what we are debating is whether or not we are going to quadruple the amount for the Commodity Credit Corporation for crop assistance. It is $1.4 billion in the bill for that purpose.

And what the amendment by Mr. HARKIN would do, as modified by the amendment by Mr. COCHRAN, would be to increase that to $4.8 billion.

Mr. HARKIN. Mr. President, could I ask the chairman to yield on that for a question?

Mr. BYRD. Yes, I yield for a question.

Mr. HARKIN. Yes. The Harkin amendment if adopted is totally discretionary on behalf of the Secretary of Agriculture, is that not so?

Mr. BYRD. It is discretionary.

Mr. HARKIN. It is discretionary. Therefore, if the Secretary of Agriculture, the administration, decides not to go back in 1991 and 1992—it does not cover 1990; it covers 1991 and 1992—if they decide not to go back to make any payments in those past 2 years, which is totally discretionary on the part, then will this cost the $3.4 billion.

Mr. BYRD. If he decides not to go back. But that is a big if, Mr. President. If he decides to go back, what does it do to the budget deficit?

Here are all these Senators over here—I have been hearing screaming all these many months cut spending, cut spending, cut spending, cut spending. Now when it comes to their States, we want to help them, and I have never

failed yet to vote for and to support any bill that provides for disaster relief, and I move those bills quickly. And as to compassion, I do not take a back seat to anyone.

I have had these floods in West Virginia. I have gone into the coal miners' homes at the base of the hollows after those sudden storms have swept over those mountains and filled the houses with mud, black dirt. I have seen those coal miners have to move their furniture out of the houses. I have seen them have to hose the houses out to get the black coal dust that has been converted into a black mud out of their houses.

We have had floods that have cost the lives of miners and others and have cost people who are in business. So I am compassionate with those who seek to get help here today.

But it amazes me that these are the same Senators who constantly talk about "cut spending," "cut spending first." They deride our President and say, "Well, we should cut spending first." That is their cry on this reconciliation bill that is going to be coming along.

I feel sorry for them that this disaster has hit their States. But we also have to consider what this does to the deficit.

Now, the $3.4 billion that would be added by the Harkin amendment, as modified by the Cochran amendment, would be added to the deficit. And this whole bill, which is $4.7 billion, as reported out of the committee, and which would become $8.1 billion if the amendment is agreed to, all of it is going to be added to the deficit.

Those of you who are constantly screaming about cutting spending, adding to the deficit, what about this? You are going to be adding $8.1 billion to the deficit.

I know it sounds hardhearted to talk about deficits and dollars when people need help. But what I am saying is, we do not need to deny those people help.

It seems to me that the administration, which has shown its great sensitivity to the disaster and to the suffering of people by constantly sending up requests for more money, has indicated that it is not insensitive to this problem. And the Senate will be back in September and the President can send up another supplemental.

Besides, there are various regular appropriations bills that will be coming along in September that will appropriate moneys for FEMA and for transportation and HUD and so on. So there are ample opportunities, may I say to my friends, ample opportunities to add to moneys that are in this bill at a time when we are in a better position to know more about what the damages and the costs thereof are.

And also, the administration, it seems to me, is in a far better position, with its various agencies and departments—the Corps of Engineers, FEMA, and so on—to determine more accurately as to what the damages are, far more so than any Senator or group of Senators.

So it is not for a lack of compassion, Mr. President. My heart says vote for this amendment. But that is not the responsible thing to do here today. The responsible thing is to vote for the bill that has been reported out, which is based on the administration's latest estimate right up to the moment, and then consider future recommendations by the administration. I am sure there are going to be further recommendations. We have not reached the end of the losses. We do not know what those losses are going to amount to. We will not know months from now. But we can continue to add as we see the new estimates come in.

Mr. President, I compliment Mr. COCHRAN and those who are supporting this amendment. But, I have a responsibility also. The bill fully funds the administration's request, to date. We had a request yesterday, I believe, making additional requests and it would be my intention to offer that amendment before the bill is passed by the Senate today.

The administration is better able to estimate the disaster costs and, as I say, can request further supplementals in September, October, February, March.

Third, the Harkin amendment, as modified by the Cochran amendment, increases the bill's cost from $4.7 billion to $8.1 billion. And that all goes on the deficit.

So those who continue to say "cut spending" should take note that they are recommending that we add spending today, when we can do it later and based on more accurate and more timely estimates.

It adds $3.4 billion to the deficit. It abuses the emergency designation. Now who is there to say that those persons who suffered losses and disasters of 1990, that we should go back now and apply an emergency designation to those losses and double up what the Government paid them at that time? They are no longer emergencies. Those people who suffered from those disasters in 1990, they are past those emergencies. The crisis is over. But we are going to say, let us go back. We are saying that they are eligible, if the Secretary so wishes to make them eligible, to receive what would amount to a doubling of the payment.

Not only does it go back, Mr. President, and add to the deficit, but it sets a precedent that we are going to have to live with in the future. I say that this is something that the authorizing committees and the administration should work out. It should not be dealt with on the floor today. Because this is going to set a precedent. And it seems to me that the authorizing committees and the President, the administration, should sit down and carefully consider this situation and decide what is best under all the circumstances.

Finally, Mr. President, this constitutes legislation on an appropriations bill.

I shall make that point of order and, of course, germaneness will be raised. And when Senators vote on a question of germaneness, they are not voting on a point of order. The Chair will decide that this constitutes legislation on an appropriations bill. It clearly does. But Senators will not be voting on that. They will be voting on a different question, the question of germaneness. So we never get to the point of order.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 9 minutes and 8 seconds remaining.

Mr. BYRD. Mr. President, does the Senator want some of my time?

Mr. HARKIN. I just want to respond for about a minute, if I could.

Mr. BYRD. I yield 2 minutes to the Senator.

Mr. HARKIN. I appreciate the chairman's kindness for these few minutes to respond.

First of all, Mr. President, let us keep in mind that, because of the increased crop prices, because we have lost so many crops, that we will save between $1 billion and $2 billion, if not more this year on deficiency payments.

That is coming out of farmers' pockets. We are saying at least let us help them with the disaster.

Second, on the issue whether or not this is legislation on an appropriation, the very fact this factor of 50.04 is in there is legislation on an appropriation. The House has already included legislation on an appropriation. So they have already opened that door.

Third, on whether or not we ought to leave the authorizing committees to do this, the authorizing committees have already spoken. We spoke in 1990 on the farm bill, the 50.04 factor was originally imposed because of appropriations action, not authorizing action. So the authorizing committees have already spoken on this issue.

Next, let us keep in mind the Cochran addition to my amendment is fully discretionary. The distinguished chairman has said we were going back to 1990 on some of these disasters that are not an emergency, but there may be some farmers who suffered damage because of Hurricane Andrew last fall—not even quite a year ago—that were not assessed until this year. Those farmers may be on the brink of going out of business. This may be immediate right now for a few. That is why, last, Mr. President, I want to point out the letter Senators will receive from Mr. Panetta at OMB is wrong. It is disingenuous at best. The first paragraph is right. But the second paragraph is

disingenuous when it says "* * * that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion."

If he put in the word "could" it would be right, but not "would." This is fully discretionary upon the Secretary of Agriculture.

So, frankly again, Mr. President, this amendment as drafted is necessary. We need it. It does not fund farmers at 100 percent but only gets us back to the farm bill level of 1990.

The PRESIDING OFFICER. The Senator has consumed 3 minutes.

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, the Senator says the letter is disingenuous. I think that is a bit unfair. The pressures are going to be there. The Senator knows that. He says there may be a case or there may be another case—there may be—to which this should apply.

Let the authorizing committees and the administration sit down and work that out. There is plenty of time to do that. Let us not open up a door here in this appropriations bill which will certainly be entered. The Senator would not want to stand up here and tell this Senate that if this legislation that is incorporated in the current amendment is agreed to, that Senators will not apply all the pressure they can apply downtown to get the Secretary to do just what this amendment allows him to do. The Senator knows that there will be all kinds of pressure on him.

Mr. President, prior to the 1990 farm bill, Public Law 101–624 disaster assistance was provided, not by direct appropriation, but rather through direct use of Commodity Credit Corporation funds. The authorizing committee in the 1990 farm bill authorized disaster assistance for 1990 crop losses only—only. We keep hearing the cry, "Well, we ought to stand by the law. All we are asking for is to live by the law that is presently on the books. That is all we are wanting."

Well, the authorizing committee in 1990 authorized disaster assistance for 1990 crop losses only, and made the assistance subject to appropriation. No disaster assistance has been authorized for crop losses for 1991, 1992, or 1993, at least not by any authorizing committees. Rather, we have authorized disaster payments right in appropriations bills. And I am the Senator who has brought those bills through the committee, brought them to the floor, supported them, and moved them in conference along with other Senators. I have chaired the Senate conferees. No disaster assistance has been authorized, may I say again, for crop losses for 1991, 1992, or 1993, at least not by the authorizing committees. It has been done by this committee, the Appropriations Committee.

We have authorized disaster payments right in appropriations bills beginning with Public Law 102–229, which was enacted on December 12, 1991. In that appropriations act, we authorized assistance for 1991 and 1992 crops. And since then we have authorized disaster assistance for 1993 crops again by means of appropriations bills. That is the way we are doing it today.

So, Mr. President, we are being asked to make further authorizing changes now. We are being asked to monkey with a formula, if you will. I recognize the proponents of the amendment are saying we just want full payments for the formerly authorized program, but that program was only for 1990 crop losses. Perhaps the authorizing committee should go back and revisit the formula in light of its being a different year—1993 is not 1990. Perhaps there are good reasons, excellent reasons, compelling reasons to change the formula or to apply the formula in a different manner. But this bill is not the vehicle for addressing those issues.

How much time do I have left?

The PRESIDING OFFICER. The Senator has 2 minutes remaining.

Mr. BYRD. Mr. President, in my closing 2 minutes let me read again the letter that has been addressed to me, and a similar letter to Senator HATFIELD under today's date.

DEAR MR. CHAIRMAN: It is my understanding that when the Senate returns to H.R. 2667 this morning, the pending business will be an amendment which would eliminate the 50 percent pro rate for agriculture disaster payments. The Administration did not take a position on the amendment as originally offered since it was limited to 1993 crop losses. It is my further understanding that the amendment now has been modified to permit the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990–1992 in order to receive payments up to 100 percent of their eligible claims.

The Administration estimates that this amendment, as modified, would increase the cost of the Federal crop disaster assistance program from $1.4 billion to $4.8 billion. While the Administration did not take a position on the underlying amendment to strike the 50 percent pro rate, we must oppose the amendment as modified.

There simply is no basis for using the emergency authority to make retroactive payments for crop losses that occurred as far back as 1990. Were the emergency designation not used, enactment of this amendment would, under the Budget Enforcement Act, necessitate a reduction of FY 1994 discretionary spending of several billion dollars.

Sincerely,

LEON E. PANETTA,
Director.

Mr. President, I close by saying again that I have great compassion for the people who have suffered in the various States that we have been reading about and seeing on our evening news programs. I also have great compassion and understanding for and sympathy for those Senators who are attempting to get the appropriations increased. But I say in closing that I will be the first to stand up and support any additional supplementals that the administration sends up to the Congress to consider. And there will be time for that. And I have no doubt but that the administration will be sending up additional requests.

Mr. President, I raise the point of order under rule XVI that the amendment constitutes legislation on an appropriations bill.

Mr. HARKIN. I will assert the defense of germaneness.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Mr. President, I move to table the question.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion to table the question of germaneness on the amendment of the Senator from Iowa.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

The result was announced, yeas 50, nays 50, as follows:

[Rollcall Vote No. 237 Leg.]

YEAS—50

Bingaman	Gregg	Murray
Boren	Hatfield	Nickles
Bradley	Helms	Nunn
Brown	Hollings	Packwood
Bryan	Jeffords	Reid
Byrd	Kennedy	Riegle
Campbell	Kerry	Robb
Chafee	Lautenberg	Roth
Coats	Levin	Sarbanes
Cohen	Lieberman	Simpson
DeConcini	Lugar	Smith
Dodd	Mathews	Specter
Domenici	McCain	Stevens
Feinstein	Metzenbaum	Wallop
Glenn	Mikulski	Warner
Gorton	Mitchell	Wofford
Graham	Moynihan	

NAYS—50

Akaka	Dorgan	Kohl
Baucus	Durenberger	Leahy
Bennett	Exon	Lott
Biden	Faircloth	Mack
Bond	Feingold	McConnell
Boxer	Ford	Moseley-Braun
Breaux	Gramm	Murkowski
Bumpers	Grassley	Pell
Burns	Harkin	Pressler
Cochran	Hatch	Pryor
Conrad	Heflin	Rockefeller
Coverdell	Hutchison	Sasser
Craig	Inouye	Shelby
D'Amato	Johnston	Simon
Danforth	Kassebaum	Thurmond
Daschle	Kempthorne	Wellstone
Dole	Kerrey	

So the motion was rejected.

The PRESIDING OFFICER. Therefore, pursuant to rule XVI, the Chair

submits the question, Is the amendment offered by the Senator from Iowa, Mr. HARKIN, germane to any legislative language already in the House-passed bill? On this question, the yeas and nays have been ordered, and the clerk will call the roll.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I ask unanimous consent that each side have 3 minutes.

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

Who yields time?

Mr. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. The Senate will be in order. Conversations will cease.

The Senator from West Virginia has the floor.

Mr. BYRD. Mr. President, Members of the Senate, I thank all Senators for their patience. This has been a very difficult vote, I know.

Mr. President, I have always supported appropriations for emergencies of this kind. I shall continue to do so.

The bill, as reported by the committee, fully funds the administration's request. The administration is better able to estimate disaster costs and can request further supplementals in September and subsequently.

My Appropriations Committee certainly considers those compassionately and supports those requests, as far as I am concerned.

The amendment, as modified by Mr. HARKIN—let there be no mistake about it now—increases the bill from $4.7 to $8.1 billion. It adds $3.4 billion to the deficit.

We are going to be asked later this week to vote for a reconciliation bill to reduce the deficit. That bill is going to be hard to vote for. Nobody is going to like it. You are not going to be pleased, anybody. But we are going to be asked to vote for that bill to cut the deficit. It will be a hard vote. Right here, today, we are voting to add $3.4 billion to the deficit.

So the gasoline tax that I believe is 4.3 cents on the gallon will just about be wiped out for the first year by this vote today by adding $3.4 billion to the deficit.

It abuses the emergency designation. We went to the summit in 1990 and we came out with a policy that provides for designating certain items as emergencies if joined in by the President and the Congress, and they would consequently then not be charged against the category caps.

This would abuse that designation by going back to 1990, 1991, and 1992 and saying, you folks who had disasters back then, you have gotten past them now, but we are going to designate this as an emergency for you. That is what is going to add to the deficit.

Not only that, but it is going to be a precedent for the future. It will be a precedent for the future. I say that the President and the administration and the authorizing committees of the Congress should decide this matter. Let us not do it on an appropriations bill. Are we saying that a 1990 crop loss is an emergency today, or 3 years later? It constitutes a costly precedent for the future.

Mr. President, I hear this cry: Cut spending, cut spending, cut spending. Now when it comes to one's own State, you want to add spending. Let us add spending at such time as the administration comes before the Congress and says, on the basis of up-to-date, new estimates, we ask for additional money.

The PRESIDING OFFICER. The Chair reminds the Senator that he has spoken for 3 minutes.

Mr. BYRD. I thank the Chair. I thank all Senators. I hope, Mr. President, that on this question, which is a question of germaneness, I hope Senators will vote "no."

Mr. HARKIN. Mr. President, I yield 1 minute to the Senator from Missouri.

The PRESIDING OFFICER (Mr. SHELBY). The Senator from Missouri is recognized.

Mr. BOND. Mr. President, this is not a question of whether there are going to be further appropriations. There will have to be further appropriations, because we do not know the full extent of the damage.

The question is whether it is germane to take out of the bill submitted by the administration a provision which changes the underlying authorization. This has language in it saying we are going to cut in half the assistance going to farmers. If there is anything more germane than taking that out, I do not know what it is.

I urge my colleagues to support the position of Senator HARKIN and myself. The chairman has objected to the permission of the Secretary to look back, and the Director of the OMB opposes it. I can assure you that if the OMB opposes providing assistance for 1990, 1991, and 1992, it will not happen.

Mr. GRASSLEY. Mr. President, I rise up in strong support for the Harkin-Bond amendment and am happy to cosponsor. This was debated and agreed to in the 1990 farm bill—and I believe that it is fitting and proper that we move to reverse the inequity of providing only a fraction of the relief that the Congress of the United States approved back in 1990.

The 50.04 percent factor is a bureaucratic quirk which took on a life all its own. Finite amounts of money were thrown after infinite losses—and the magic number 50.04 turned up. Now it seems it is written in stone somewhere that farmers will only get half of what this body had earlier decreed that they should receive. It is high time that this be changed.

As I stated yesterday, of all the Federal disaster assistance programs, from FEMA to SBA to other Federal grants, only agriculture disasters are prorated.

What is particularly galling is that they are pro rated by half; while every other Federal program gets full funding as per legislative fiat, farmers will get only half of what this body had earlier decided what they should get.

Some might argue that equity demands that all disasters be treated the same, that it would be unfair to give farmers in the Midwest a better deal than that given earlier recipients of disaster funds. But parallels to disasters past do not tell the whole story.

While hurricanes may cut a considerable swath through affected States, they do not decimate wholesale sections of these States; they do not cripple the major engine of those States' economies; they do not knock out the livelihood of a vast majority from these States for up to 2 or 3 years.

The rains and floods In the Midwest, on the other hand, have crippled the dominant industry in a nine-State region.

We do not have the tourism of some States, the gambling or high-tech corridors of others. Life, as Iowa and the rest of the Midwest knows it, has stopped completely in some places—maybe for a year for some people, possibly forever for others.

As I stated earlier this summer, I had hoped that we could avoid pitting commodity against commodity, or region against region, as we debate the aid package. Disasters are times when we must come together.

Farming is the bread and butter for the areas hit by rain—and I fear that a region of the country so decimated by rains will take many years to recover.

Parallels are being drawn to the farm credit crisis of the 1980's where, in my view, a whole generation of farmers, were lost. Farmers were just starting to dig out when the droughts hit. Another setback—another layer of farmers just barely hanging on were wiped out.

And now, we are confronted with what is called the greatest natural disaster in the history of this country—and we meet hesitation as scores of farmers, and their families, totter on the brink.

I am pleased to join my friends Senator HARKIN and Senator BOND on this much-needed amendment, and I urge my colleagues to vote with us on this important measure.

Mr. HARKIN. Mr. President, again I want to refer to the letter from Mr. Panetta. I still repeat that I believe it is somewhat disingenuous. The addition of the Cochran amendment only gives the Secretary discretion; it does not mandate that he do anything. So when they say it is going to increase it by $3.4 billion, that is if they went to every single little disaster, no matter where, when, or how it happened, clear back to 1990.

But there may be some farmers who got hit by Hurricane Andrew just 1 year ago who were not assessed as to their damages until maybe this spring and may be in dire straits and may need this disaster assistance. There may be a handful of those in Florida or in Louisiana. These are the ones we want to respond to, but not everybody back to 1990.

To say this is going to add $3.4 billion is disingenuous, not right. Other Senators say, well, the Secretary will not be able to say no. It is my view that this administration is very good at saying no when it comes to spending; they want to cut the deficit. I think that is going to be true in the future also.

There is one last thing that I hope my colleagues will keep in mind: Because of the tremendous losses in the crops this year in the Midwest and in the Southeast because of the drought, we will save the taxpayers up to $2 billion in deficiency payments that the Government will not have to spend out. All we are asking is to let us use some of that money to help pay for these farmers who are in dire straits because of this flooding and because of the drought, so we are not asking for billions of dollars to add to the deficit. We are already saving up to $2 billion. I submit that it is probably even more than $2 billion, because we will not be spending it out in deficiency payments.

Again, all we are seeking to do is to use the authorized level that we put in the 1990 farm bill to give farmers not 100 percent, but only 65 percent of their losses.

The PRESIDING OFFICER. Pursuant to rule XVI, the chair submits the question: Is the amendment offered by the Senator from Iowa [Mr. HARKIN] germane to any legislative language already in the House-passed bill?

The yeas and nays have been ordered.

The clerk will call the roll.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 46, nays 54, as follows:

[Rollcall Vote No. 238 Leg.]

YEAS—46

Akaka	Dole	Kohl
Baucus	Dorgan	Leahy
Bennett	Durenberger	Lott
Biden	Exon	McConnell
Bond	Faircloth	Moseley-Braun
Boxer	Feingold	Pell
Breaux	Ford	Pressler
Bumpers	Gramm	Pryor
Burns	Grassley	Rockefeller
Cochran	Harkin	Sasser
Conrad	Hatch	Shelby
Coverdell	Heflin	Simon
Craig	Hutchison	Thurmond
D'Amato	Inouye	Wellstone
Danforth	Kassebaum	
Daschle	Kempthorne	

NAYS—54

Bingaman	Campbell	Domenici
Boren	Chafee	Feinstein
Bradley	Coats	Glenn
Brown	Cohen	Gorton
Bryan	DeConcini	Graham
Byrd	Dodd	Gregg
Hatfield	Mack	Reid
Helms	Mathews	Riegle
Hollings	McCain	Robb
Jeffords	Metzenbaum	Roth
Johnston	Mikulski	Sarbanes
Kennedy	Mitchell	Simpson
Kerrey	Moynihan	Smith
Kerry	Murkowski	Specter
Lautenberg	Murray	Stevens
Levin	Nickles	Wallop
Lieberman	Nunn	Warner
Lugar	Packwood	Wofford

The PRESIDING OFFICER. On this vote, there are 46 yeas, 54 nays. The amendment is voted nongermane and falls for that reason.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 758

(Purpose: To provide full payments to producers for crop losses resulting from damaging weather or relation condition in 1993)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself and Mr. BOND, propose an amendment numbered 758.

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

Mr. BYRD. Mr. President, I ask that the amendment be read.

Mr. HARKIN. I withdraw the request.

The PRESIDING OFFICER. The clerk will continue reading the amendment.

The legislative clerk continued reading the amendment, as follows:

On page 2, line 13, at the end of the sentence insert the following: notwithstanding any other provision of this Act, the following shall be the law with respect to the Commodity Credit Corporation:

COMMODITY CREDIT CORPORATION

COMMODITY CREDIT CORPORATION FUND

For an additional amount for the "Commodity Credit Corporation Fund" to cover 1993 crop losses resulting from damaging weather or related floods associated with the conditions as defined in section 2251 of Public Law 101–624, in 1993, $1,050,000,000, and in addition $300,000,000, which shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress, the total to remain available until June 30, 1994: *Provided*, That from funds previously made available Public Law 102–368 by Presidential declaration, $100,000,000 to remain available until June 30, 1994, shall be for 1993 crop losses only: *Provided further*, That if prior to April 1, 1994, the President determines that extraordinary circumstances exist that warrant further assistance, the Secretary of Agriculture shall use such funds of the Commodity Credit Corporation as are necessary to make payments in an amount equal to 100 percent of each eligible claim as determined under title XXII of Public Law 101–624: *Provided further*, That Congress hereby designates the entire amount provided here in as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That notwithstanding any provision of Public Law 103–50, funds provided by such Act shall not be expended for 1993 crop losses resulting from 1993 natural disasters, and claims for assistance from funds provided by that by Act producers with 1990, 1991 and 1992 crop losses shall be paid only to the extent such claims are filed by September 17, 1993.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

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

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

VIETNAM WOMEN'S MEMORIAL

Mr. WARNER. Mr. President, I ask unanimous consent that I may speak for not to exceed a minute and a half.

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

Mr. WARNER. Mr. President, I rise today to share with my colleagues a truly historical event which took place last week here in the Nation's Capital: the groundbreaking ceremony for the Vietnam Women's Memorial on the grounds of the Vietnam Veterans Memorial.

As Gen. Colin Powell, Chairman of the Joint Chiefs of Staff, pointed out in his heartfelt remarks at that dedication, this memorial has been "9 years in the making, and over 20 years in the needing."

The ceremony was the culmination of over 9 years of dedicated work by Ms. Diane Carlson Evans. Ms. Carlson Evans experienced firsthand the cruelty of war while serving as a nurse in the Vietnam conflict. With her experience came the painful burden of remembering those victims who became the casualties of war, as well as the awareness that she was not alone. So many women served and sacrificed in Vietnam, yet their contributions were overlooked.

As Americans, we have sought to heal the wounds inflicted on those who served in Vietnam, as well as those they loved who suffered here at home. The Vietnam Wall, envisioned by my dear friend Jan Scruggs, and the Vietnam Memorial have taken extraordinary steps toward achieving this difficult but necessary healing. However, our focus has been concentrated on the men who served our country during this tragic time. We have not truly

honored the women who stood by them and cared for them and suffered with them. For these women, there was no glory to be found in warfare. Their role was to bear witness to the brutal testament of war, and reexperience the horrors of battle with each casualty brought back from the front.

Diane Carlson Evans, through the Vietnam Women's Memorial, is reaching out to those who shared her pain; she is also ensuring that we complete the healing process which was begun with the Wall. I witnessed firsthand the incredible power of this memorial, created by an extraordinary sculptress from Santa Fe, NM, Glenna Goodacre. The ceremony was indeed a moving event. Gen. Colin Powell, one of the honored speakers, gave remarks which captured from a wounded soldier's experience the sacrifices made by these extraordinary women. His comments touched the hearts of all present. I would like to have these remarks entered into the RECORD so all my colleagues can gain a true understanding of the contributions made by these women.

I have always maintained that the effectiveness of a memorial lies in its ability to offer solace to each person who visits it, offering comfort to the private, individual grief we each experience. I left that ceremony with a warm and positive feeling that this memorial will have that perhaps mystical ability. I found hope in the reassurance that so many people's lives will be touched, helped, and, hopefully, healed by this monument.

After experiencing the ground breaking ceremony, now, more than ever, I am compelled to encourage my colleagues to participate in honoring those women who served our country in the Vietnam era. Accordingly, I strongly urge all of my colleagues who have not already done so, to show support for these brave women by cosponsoring S. 469, the Vietnam Women's Memorial Coin Act of 1994, which I introduced with my colleague from Maryland, Senator BARBARA MIKULSKI on March 2, 1993. This legislation would authorize the Secretary of the Treasury to mint coins in commemoration of the Vietnam Women's Memorial project. The proceeds from this coin will go toward establishing an endowment which would serve as a permanent source of support for this well-deserved memorial.

The sacrifices made by all women in this painful chapter in our Nation's history must never be forgotten.

I ask unanimous consent that the remarks of Gen. Colin Powell be printed in the RECORD.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

Thank you very much, Diane, for your kind introduction. Distinguished platform guests, ladies and gentlemen, my fellow veterans.

I am very, very honored and so enormously proud to be here with you this morning to take part in this ceremony. In a few minutes the first few shovels of earth will be turned for a monument that has been nine years in the making and over twenty years in the needing.

I want to thank all of the people who worked so very, very hard to make this day possible: first of course, Diane Carlson Evans, who has given so much of herself to this project for the past decade; of course Doris Lippman, who served in Japan during that conflict treating burn victims and who has been with this project since 1986; Evangaline Jamison, a veteran of World War II, Korea, and Vietnam; Jane Carson, a 27-year veteran of the Army nursing program; Mrs. Shirley Crowe, our distinguished former First Lady of the Armed Forces of the United States and so many, many others who have worked so hard for this day.

In fighting for this day you've all performed a tremendous service, not just for the women who served with you during the Vietnam years, but for all Americans. And I congratulate you for this achievement.

When this monument is finished, it will be for all time a testament to a group of American women who made an extraordinary sacrifice at an extraordinary time in our nation's history: the women who went to war in Vietnam.

Over 265,000 women served in uniform during that time, and this monument of course honors all of them. But it honors most especially the 11,500 who actually served in-country and many of you here today were among that group of 11,500.

You went. You served. You suffered. The names of eight of your sisters are etched on the "Wall" for having made the supreme sacrifice.

And yet your service and your sacrifice have been mostly invisible for all these intervening years.

When you finished what you had to do, you came quietly home. You stepped back into the background from which you had modestly come.

You melted away into a society which, for too long now, has ignored the vital and endless work that falls to women and is not appreciated as it should be.

I knew you there in Vietnam. I knew you as clerks. I knew you as map makers. I knew you as intelligence specialists. I knew you as photographers and air traffic controllers and Red Cross and USO and other kinds of volunteers.

And above all I knew you as nurses when you cared for those who were wounded and when you cared also, as one of them, for me.

And yet now, almost 25 years after my return, I've begun to realize that I didn't really, really know you well enough.

I didn't know what you have been going through all these many years. I didn't know in my heart truly what memories and nightmares you had brought home with you.

Only in the past few days have I come to know and to understand what you have been carrying inside. Only in the past few days have I truly come to understand why this monument is so very important to you and so very important to the nation.

Because, you see, over the weekend as I thought about coming here today, I sat down and began to read a little bit. And on Saturday I picked up a book of poems, poems that you wrote. The book is called "Visions of War, Dreams of Peace," edited by Lynda Van Devanter and Joan Furey.

I started just to skim the book to get a few ideas, but what I found myself doing instead was reading the entire book cover to cover, every poem, in one sitting and some poems I have read over and over the last several days.

I was overcome. I was transported back over 20 years. I was sharing a time with fellow veterans, women veterans, comrades in arms whose experience I had never fully understood before.

Through your poems, finally, I was listening to you.

I realized for the first time that for male soldiers, the war came in intermittent flashes of terror, occasional death, moments of pain; but for the women who were there, for the women who helped before the battle, and for the nurses in particular, the terror, the death, and the pain were unrelenting, a constant terrible weight that had to be stoically carried.

It was a pain that had to be stowed away in a corner of your mind and put in an isolated piece of your heart or you wouldn't be able to continue your work.

The nurses saw the bleakest, most terrifying face of war: the mangled men, the endless sobs of wounded kids . . . not just now and then, but day after day, night after hellish night.

I read other books this weekend. I read interviews you have given. I saw photographs you brought home. To see your strained faces and grim surroundings in 25-year-old snapshots was to marvel again and anew at the strength you displayed.

It's to wonder at the strength you had to press on, the courage you had to fight to save yet another life, the fortitude to risk your feelings and compassion on yet another wounded soul that might spurn you by dying.

It's to feel the invisible wound that you received every time that happened.

How much of your heart did you leave there? How often were you the mother for a kid asking for Mom in the last few seconds of his life? How many 19-year-old sons did you lose?

I didn't realize, although I should have, what a burden you carried. I didn't realize how much your sacrifice equaled and even exceeded that of the men.

I didn't realize how much we owed to you then, and how much we should have thanked you and recognized you and comforted you since then.

And yet I see that yours is not a story only of loss and tragedy. It is, as well, a story of inspiration. It's a story of the triumph of the human spirit.

I look into your eyes today; and I see there old pain, yes, but also great wisdom, tempered courage, deep wells of character.

I find there the ability to clear the highest hurdles that life can put before any human being, the ability to take on the most terrible truths, and to prevail.

No words of mine can match your own words, and so let me borrow from you by reading a poem written by Lynda. It's called "Making Friends."

Twenty years since my life was changed
Twenty years making a friend of death
Knowing it
Respecting it
Wishing for it at times
Fighting with it as friends sometimes do.
But the nightmares of war have faded as I've healed
My dreams are now of peace
Peace of mind
Peace of heart
Hoping for Peace on earth
It's time I made a friend of Life.

My prayer today is that all of you who were forced at such a young age to make a

friend of death have now been able to make a friend of life.

The bronze statue that will stand on this spot this Fall will celebrate the hope and the strength, the tenderness and the power, the kindness and the passion that our Vietnam women brought to the struggle for life.

The statue will show three women and a wounded GI, touching each other, giving strength to one another, struggling with mortality, with human emotions, with the pain and exhaustion of both their lives and their spirits.

As part of this Vietnam "circle of healing" which will now be complete, the statute will for all time witness the truth about what you did.

There are many scarred but living veterans who will never forget you nurses for helping to bring them back from the brink of eternity.

There are many others who are here only in spirit on the sacred Wall who will never forget you, for trying so hard in those last desperate hours.

This monument will ensure that all of America will never forget that all of you were there, that you served, and that even in the depths of horror and cruelty there will always beat the heart of human love . . . and therefore our hope for humanity.

My fellow veterans—you and your sacrifice will never be forgotten. God Bless you all and thank you very much.

The PRESIDING OFFICER. The Senator from Vermont.

FOREIGN OPERATIONS APPROPRIATIONS BILL

Mr. LEAHY. Mr. President, I will be very brief, especially with the distinguished chairman of the Senate Appropriations Committee waiting here. I want to inform my colleagues who have been asking me that I regret it will not be possible to move the fiscal 1994 foreign operations appropriations bill to the Senate floor before the August recess. Despite enormous efforts by all involved, both Senators and administration, it has not been possible to find the money necessary to honor the President's commitment to a special assistance package of $1.8 billion for Russia and the other Republics of the former Soviet Union.

I want to note while the chairman of the Appropriations Committee, the distinguished senior Senator from West Virginia, is here on the floor, that the chairman made a special effort to help us move this bill. He spent a great deal of time last week, in meeting after meeting, to help make it possible and was fully prepared, had we been able to put the funding package together, to provide time for us to go from the subcommittee to the full committee. I want to thank the distinguished chairman for the effort he made. We would not have gotten as far as we did without that effort.

In order to make room for the administration's request for Russia—which was not part of the original budget request, nor was it contemplated in the budget resolution—it is going to be necessary to make extraordinary cuts in other foreign assistance programs. Even then, with massive reductions, we have not been able to come up with the necessary money for Russia. Even with deep cuts we do not have the necessary money.

To give the Members some idea of the size of the cuts I am talking about, I would note that the foreign operations appropriation bill passed by the House is a cut of over $1.4 billion from the President's request, and an absolute cut of $1.1 billion from last year's enacted level.

The bill I expect to report to the Senate in September will contain cuts several hundred million dollars deeper than those of the House. Because of the need to squeeze the special Russia aid package into our funding allocation, virtually every program in the foreign aid budget will be reduced, some very deeply. Programs that I have fought for years to protect will have to be cut. Help for international disaster relief will have to be cut. We will not be able to fund assistance for refugee relief at anything like the real needs. And the list goes on and on.

Work on finding ways to fund the President's Russia aid request will continue over the August break. We must either devise a solution to the shortfall during the recess, or consider reducing the overall assistance program for Russia and the other successor states. I strongly support the President's program for the new Independent States of the former Soviet Union. This is an historic opportunity to help build democracy and free enterprise in our former adversaries. It is a goal worth fighting for, and I will fight hard for it.

But, let me say now that as far as this Senator is concerned, there can be no more cuts in ongoing foreign aid programs to find the shortfall in aid to Russia. Nearly $2 billion in cuts is already creating havoc in our regular foreign aid program. That confronts us all, the administration and supporters of the Russia aid package, with a stark choice: Either, in cooperation with all involved parties, we find other funds to meet the administration's Russia program, or the Russia program will have to be reduced from the President's request.

Mr. President, let me also call attention to one simple fact. There will be no time for further prolonged discussions after the Senate reconvenes on September 7. This bill must be signed into law by September 30, or the portion of the special Russia aid package that is contained in a fiscal 1993 supplemental as title VI of the foreign operations appropriation—$1.6 billion in the House bill—will be null and void.

I make these points, Mr. President, to signal to all parties that the foreign operations bill must begin to move through the markup and floor action process promptly after the Senate reconvenes. In the crowded Senate agenda in the scant 3 weeks between September 7 and September 30, there will be no time for further delay in moving the foreign operations bill through the laborious process of getting it to the President's desk, and signed into law prior to midnight.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Mr. President, we have just had a series of votes on the question of disaster relief. I just wanted to point out the amendment the Senator from Iowa has now offered is a significant change. There would be no reachback to 1990, 1991, and 1992 under the amendment that is now before the Senate. I think it is very important our colleagues understand what we will be voting on next.

The 1990, 1991, and 1992 reachback is gone. The question that will be before the body when we get back on the amendment that has been offered by the Senator from Iowa is simply a question of whether we will offer the same level of aid to stricken farmers in 1993 that we provided in 1988 and 1989 when we suffered massive drought losses.

I say to colleagues who are perhaps listening in, in 1988 and 1989 we had the 50-year drought. Now we have the 100-year flood. The question before this body will be simply: Do we provide the same level of assistance in 1993 that we provided in 1988 and 1989? Or do we provide one-half as much? That is going to be the question.

I submit to my colleagues that we ought to do what we did in 1988 and 1989. We ought to do what the authorizing committee called for, the formula that was written into the 1990 farm bill. We ought to do what the law provides.

There is in law a specific formula that was developed in the disasters of 1988 and 1989. We ought to follow that formula now. Because if we do not, we will provide one-half of the assistance that we gave in 1988 and 1989.

What is that level of assistance? If we provide half as much, we will reimburse farmers, through the disaster assistance, 20 cents on the dollar of loss. That is the loss compared to what they would reach in income in a normal year. This was not going to be a normal year. This was going to be an extraordinary year. So we are not covering 20 cents on the dollar of the losses that they are experiencing this year. We are replacing less than 20 cents on the dollar if we stay with the formula that is before us now.

If, instead, we provide the level of assistance that we did in 1988 and 1989, that would be 40 cents on the dollar. That is a very long way from making farmers whole, nowhere close to making farmers whole. But at least it would allow many farmers across the heartland of America to survive to fight another day.

I inquire if the Senator from West Virginia seeks recognition. I will be happy to yield the floor—or the Senator from Iowa. I was just taking this time with the understanding there were consultations going on.

Mr. BYRD. I thank the distinguished Senator. I do wish to offer an amendment, which the distinguished Senator from Iowa is in accord with.

Mr. HARKIN. I would be pleased to yield the floor.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, yesterday the administration sent a letter to the chairman of the Appropriations Committee and a similar letter to the ranking member in which the administration made additional requests for funds. I shall read the letter into the RECORD. The letter is dated August 3, 1993:

DEAR MR. CHAIRMAN: The Administration commends the Senate Appropriations Committee for acting expeditiously to approve requested legislation that will provide urgently needed assistance to the flood-stricken areas of the Midwest. The Administration is committed to working with the Congress to ensure mutual agreement on funding needs.

The Administration supports passage of H.R. 2667, as reported by the Senate Appropriations Committee. In order to expedite action on the bill, the Administration urges the Senate to keep the bill free of amendments that are not related to providing relief to victims of the flood.

The Administration continues to review the cost estimates for disaster assistance programs. Based on this review, we urge the Senate to approve funding beyond the levels requested and approved by the Committee for the following accounts:

$11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers. This additional funding would be available for the Secretary of Labor to finance temporary jobs to repair damage caused by the flooding in the Midwest, clean up affected areas, and provide public safety and health services. This amount is in addition to the $43.5 million already approved by the Committee;

$2 million in contingent appropriations for the Commission on National and Community Service. The Commission helps to finance State-level Youth Corps and Conservation Corps programs to assist in disaster clean-up activities. The $2 million, which is in addition to the $2 million approved by the Committee, would fund the participation of young people in youth corps services over the next year to help with disaster relief services;

$100 million in contingent appropriations for the Department of Commerce, Economic Development Administration. These funds, which are in addition to the $100 million approved by the Committee, would be used to promote the long term recovery efforts in the region affected by the floods; and

$10 million in contingent appropriations for the Small Business Administration Disaster Loan program account. These resources, which are in addition to funds approved by the Committee, would provide additional loan authority of $49 million. Language is requested that would increase from $500,000 to $750,000 the current law limitation on business disaster loans. This increase in the limitation would be available to victims of the flood.

Each of these requests would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

I understand that an amendment may be offered by Senator Stevens to provide economic assistance related to the destruction of chum salmon in the Arctic-Yukon-Kuskokwim River region. While we are sympathetic to the hardships endured by the residents of this region, we believe their needs can be met with existing resources. We will work with the Bureau of Indian Affairs, the Economic Development Administration, the Department of Housing and Urban Development and USDA to identify steps that can be taken administratively to respond to this problem.

We look forward to working with the House and Senate Appropriations Committees as the bill moves through the Congress.

Sincerely,

LEON E. PANETTA,
Director.

Identical letters have been sent to the Honorable WILLIAM H. NATCHER, the Honorable JOSEPH M. MCDADE, and the Honorable MARK O. HATFIELD.

Mr. President, my distinguished colleague, Mr. HATFIELD, may wish to speak to this amendment. When he completes his statement, I have an amendment which I shall offer on behalf of Mr. HATFIELD, myself, Mr. HARKIN, and any others who wish to join, which will carry out the requests that have been submitted by the administration in the letter which I have just read.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I join the chairman of the committee in offering these amendments on behalf of the administration. I want to make two points about these amendments because, first of all, there is a very strong and, I think, clear signal to our colleagues from the Midwestern States that since the committee acted upon the administration's request of $4.7 billion precisely as they requested it, allocated as they requested, with a few minor modifications that we made that were not significant, I want the Senate to understand that now the administration, since that action of the full committee, has said,

"As we continue to evaluate the needs wrought upon these people in the Midwest by these floods, we want to ask the committee to amend the committee's original bill, as reported, to include another $123 million allocated by accounts."

The symbol and the signal is that we, as the committee chairman and ranking member, are most anxious to meet, as the administration has evaluated those needs, any additional money.

The second point I will make is that this is going to be the pattern, I am persuaded, that is going to face us when we come back from the recess, that we are going to have additional requests, we are going to have additional evaluations by the administration and the various agencies, and that we, therefore, are not closing the issue with this one particular supplemental.

One may argue or discuss, as it has happened already, allocations within the package or the failure of certain legislative rules and regulations to meet those needs as perceived, and perhaps I would venture that none of us would disagree on that matter of need in these farmers' situations. But I still feel, as the chairman has indicated, that the executive branch of Government, with all of its multiple agencies and expertise, ought to be effective not only in evaluating the need but in administering those moneys, reaching the people targeted with those evaluations. It has to be an Executive Office function. As a multimember body of the Senate or the House, we are not staffed, we are not constituted to do that type of evaluation, assessment, information gathering necessary to say these are the dollars that we can appropriately, efficiently spend.

So to me, again, these amendments represent the attitude of the administration, the attitude of the leadership of our committee, and the willingness to work together to meet the needs of the people.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I will just take a minute and then I will yield the floor.

AMENDMENT NO. 759

(Purpose: To provide additional disaster assistance requested by the administration)

Mr. BYRD. Mr. President, I ask unanimous consent that I may temporarily set the pending amendment aside and send to the desk, on behalf of myself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE, an amendment which complies with the request contained in the letter which I just read into the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD], for himself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE, proposes an amendment numbered 759.

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

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

The amendment is as follows:

Before the period at the end of the first excepted Committee amendment, insert the following: ": *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000 of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $70,000,000, of which $10,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $750,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of title III of the Job Training Partnership Act shall be $54,600,000, of which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended"

Mr. BYRD. Mr. President, this amendment incorporates four supplemental revisions received on yesterday, August 3, from the Director of the Office of Management and Budget.

First, the amendment provides an additional $11.1 million as a contingent appropriation for title III of the Job Training Partnership Act.

Second, the amendment provides an additional $2 million as a contingent appropriation for the Commission on National Community Service.

Third, the amendment provides an additional $100 million for the contingent appropriation for Economic Development Administration programs.

Finally, the amendment provides an additional $10 million for the Small Business Administration disaster program as a contingent subsidy appropriation and provides an increase of $250,000 in the current law limitation on business disaster loans. The increase in the limitation will be available to victims of the flood.

Mr. President, I ask that action on the amendment be momentarily delayed. I yield the floor in the meantime.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I came in when I heard about these amendments. I wanted to take a look at them. We have not seen the justification for them. But as one who has had to deal with disasters, I can certainly appreciate the position that the chairman and the ranking member of the Appropriations Committee have taken; that where there is a natural disaster, particularly one of the magnitude which confronts us in the Midwest, we do need to give discretion and we need to give resources to the administration.

Were it my call, I would, obviously, have some different ideas, and I am currently working with the administration to try to obtain some additional resources in areas which we perceive have very great needs, things that have either developed since the initial legislation was set up or in some cases I believe represent oversights in the budget that they presented.

This is not a time, as I said in my arguments on previous administrations, to be nickeling and diming the administration where they perceive there is a real emergency. I would only ask that my colleagues view with an open mind additional disaster assistance that we will be seeking, and we hope we will get the concurrence of the administration. When we have a disaster of this magnitude, there are tremendous resources that will be needed. They will in most instances not fully compensate or repair the damage or even come close to it, but I think it is vitally important that we move forward.

Some of my colleagues said we ought to be paying for these things. I say that when you have a disaster, it is the highest priority for domestic spending. I will work with my colleagues to cut spending elsewhere with lower priorities.

I will also urge that this body in the future appropriate a disaster contingency fund of sufficient magnitude to meet the disaster needs which we cannot specify in advance. Nobody knew that an earthquake was going to hit San Francisco, or Hurricane Andrew, or the floods of 1993, but we do know that almost every year a disaster occurs. We ought to set aside money in the budget for it.

While I may not agree with the particular priorities in the additional requests submitted, I will not object to them because I assume there are needs which may not be evident in my State that may be evident in other States. I do seek to work with the administration and with the chairman and the ranking member of our Appropriations Committee as we seek to provide needed resources to deal with the devastation visited upon our States.

Mr. DODD addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Mr. President, I ask unanimous consent to speak for 10 minutes as if in morning business so as not to interrupt the flow of the debate in the RECORD.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

BUDGET RECONCILIATION

Mr. DODD. Mr. President, I rise this afternoon to address the issue of the budget reconciliation package which we will face a decision on in the next several days, and to express my views on that package.

Mr. President, the current debate on the budget reconciliation package reminds me of Winston Churchill's famous statement before Parliament in 1947. As my colleagues will remember, he said then that "Democracy is the worst form of Government except for all those other forms that have been tried from time to time."

I presume most of my colleagues are familiar with that quotation. I would argue, Mr. President, the same may be said of the deficit reduction package that we will be considering later this week. It may seem like the worst form of deficit reduction, except for every other proposal that has been put on the table during the past number of months. Unfortunately, the point of Winston Churchill's statement is lost, in my opinion, on many critics of the current plan: If we measure our efforts against the yardstick of perfection, nothing will measure up and we will get nothing.

Legislating in real life is not about creating political ideals. It is about choosing the best alternatives—in this case, in the context of our political process—from among many options, none of which are perfect.

This is not unlike the decisions families make every day. All of us would like to have ideal situations with every available resource to us so we would not have to be confounded by difficult

choices. But we all know that option does not exist; that each and every day all of us are asked to make decisions and choices dealing with the realities that are before us.

This budget reconciliation package that we in this body will have to grapple with is just like that. It is not perfect. It has its warts. It has its bruises. It has its imperfections. But I have to say for my part, Mr. President, having looked around, it is the best alternative I have seen so far.

I do not like it, frankly. I do not like standing here and talking about raising taxes for my constituents in Connecticut. They have been hard pressed in the last several years. We have watched a new income tax go into effect in my State. We have witnessed the highest State unemployment rates in memory. You have to go back to the economic depression to talk about the economic hardship which parallels that in the State of Connecticut over the last number of years.

So even a 4.3 cent gasoline tax is not something I take any joy in supporting. Nor is talking about major cuts in Medicare, with my elderly and seniors who are out there hurting and suffering. I do not like that one bit. So there is no joy whatsoever in this particular effort.

But I also went through an election last year, and day after day, week after week, month after month, my constituency said, I wish you guys in Washington could get out of each other's way and think about the country for once; I wish you would start doing what has to be done to get the Nation's economy moving so that we would have a chance in the future, with decent job opportunities and the like.

Everyone believes that is not going to happen unless there is deficit reduction. We will never have long-term economic growth unless there is a serious effort in this regard.

We just went through a debate on a matter not unrelated to the particular problem of deficit reduction. We all want to help in certain areas, but there are limitations to our resources.

So, Mr. President, I stand here this afternoon with the full knowledge and awareness that this is not a perfect plan. I do not take any joy or pleasure in talking about raising taxes and imposing additional burdens on the constituents of my State or other States in this country. But I also know just as assuredly that the people of my State and the people of this country want this Nation to be strong. They want our economy to be vital. And they want a better future for their children and their grandchildren.

This effort, this measure which will be laid before us, I think help us get there—again, not perfectly, but helps move that process along.

So I believe this is a test we have to use this week if we truly want to make progress on this deficit. There is no future in waiting for the perfect deficit reduction package to mysteriously appear before us. That is not going to happen. Perfect packages in the form of painless solutions do not exist. If they did, Mr. President, this issue would have been solved light years ago. But they do not exist. There is no easy solution to this problem. And the sooner we come to the realization of that as mature adults in the Congress, the better off this institution and our country will be.

Our job is to select the best alternative from among several flawed proposals.

Now, what is really in this plan? What is included in it? Again, there has been much reporting of information about it. I do not want to take a lot of time on this. But let me just point out briefly that the package includes $496 billion in deficit reduction over the next 5 years. The President said several months ago he wanted $500 billion. There were many here who said if he had less than $500 billion, they would never vote for a package. So it has to be meaningful.

We think we have done that with $496 billion over the next 5 years. That is not going to solve the deficit problem. But it does make the problem a bit more manageable than it would be without this bill.

Mr. President, the bill contains more in spending cuts than revenue increases—$255 billion in spending cuts versus some $241 billion in tax increases. That is a major issue for many people: Are there more spending cuts here than tax increases? And I am satisfied, having listened to the chairman of the Finance Committee and others, that in fact there are.

On tax increases, the lion's share falls on those who can afford to shoulder more of the burden. Fully 75 percent of all new taxes fall on those making more than $200,000 per year.

Let me put it more categorically. If you and your family are making less than $180,000—I do not know how many out there are, but if you are, then the only tax that you probably have to worry about in this package is the gasoline tax.

So if you are a family making in excess of $180,000, yes, this is a tax increase. But make less than that, and you and your family do not fall into that situation at all. I think we have to drive that point home.

So while the gasoline tax bothers people, you ought to know that if you are in that upper income category, the top 1.2 percent of income earners, this bill really does not affect you significantly unless you have a mother or a father on Medicare—the other programs. You may get affected by the spending cuts and fall into that category but on taxes you are not affected. That point has not been made as clearly as it should in my view.

Let us also consider what is not in the package, contrary to some of the claims of the critics. The package does not sock it to the middle class at all. The President in his February State of the Union Address estimated his plan's impact on the middle class would be about $17 a person per month. That is what he said in January. But, Mr. President, we have improved on the initial design. For most middle-class Americans, the only new taxes to be paid under this week's package will, as I said a moment ago, be the 4.3-cent gasoline tax increase. That works out, if you want to know how it effects you in direct dollars and cents, to an average of less than $3 a month for most Americans. That is about $36 a year. I do not like it. I wish we did not have to do it. But the fact of the matter is that is the impact. That is the reality.

I will get to some more points here.

How does the package affect small business? Mr. President, according to the claims and the critics, the package sticks it to small business. But consider the reality of this package. It increases annual equipment expensing for small business from the current $10,000 to $17,500. That is not sticking it to small business. That is a real help. My small businesses in Connecticut said that is something we can really use. And this package provides that additional help to smaller businesses by almost doubling the annual equipment expense for small business.

With regard to small business, the package would establish a targeted capital gains cut for long-term investments in small business. The senior Senator from Arkansas, DALE BUMPERS, has fought for years on this issue—Members of the House have as well. My colleague, Senator LIEBERMAN, has as well, and I am a cosponsor of the legislation. This is a real help to small business. It not only does not stick it to small businesses, it recognizes the importance of getting capital in the hands of small business.

With regard to small business, only partnerships, proprietorships, and subchapter S corporations that are going to pay more taxes are those with incomes of more than $180,000 for married couples, and $140,000 for individuals. If you are a small business out there, taxed at the personal rate, and you make more than those levels, yes, you could pay some more. But only 4 percent of small businesses fall into those categories. Most small businesses, the overwhelming majority, actually fall short of those kinds of numbers.

So, again, people screaming about what happens to small business in this package should consider the expensing provisions, and the targeted capital gains provisions.

Mr. President, as I noted before, this is not to say the President's plan is perfect. I strongly dislike the retroactive application of increased income

tax rates, for example. I am not a member of the Finance Committee. I can only tell you what I heard happened there. Others around the committee maybe can speak categorically and specifically as to what happened.

But what I gathered happened was this: If you want to reach deficit reduction of around $500 billion, then you have to have a gasoline tax or a Btu tax. No one wanted a Btu tax apparently. So we got rid of that, and put in place the gasoline tax. If the gas tax had gone to 7 cents a gallon, we could have made the changes in rates effective at the time of passage or on the date of enactment. But if you wanted to keep the gas tax at 4.3 cents per gallon, and still reduce the deficit by $500 billion, you had to make the changes take effect retroactively.

I would have argued for a few more cents per gallon in gasoline taxes, in order to eliminate the retroactivity, but I think I would be in the minority on that point of view. It is one of these situations in which there are no easy solutions. If it were easy, we would not be sitting here debating it and spending as much time as we have on it. So I do not like that.

I also do not like the idea that we are not providing more empowerment zone components here. These are smaller cities that could use the help; there is not enough in this legislation in this regard.

But, Mr. President, if I sat here and said, "Because you did not do more in the empowerment zones and because this is a retroactive application, that's it, I am taking a walk, I am against it," if every Senator did it, we would never get anything done around here. Being involved in the process and being concerned about a major implication is fine. But to tear it apart because it does not satisfy every Senator on every point and every section, that is the height of irresponsibility in my view. It is the height of irresponsibility at a time when the American public is asking us to do better. We will have a chance in the next couple of days to do better without ripping this program apart point by point, detail by detail.

Listen to the plans of the critics. You would think the President's plan suffers in comparison to the alternatives. Let me tell you about the alternatives. People ought to be aware of what the alternatives were that were proposed to us.

In the Senate, the so-called Republican alternative would have reduced the deficit over 5 years by $359 billion—$359 billion. That is substantially less than what we are asking, $137 billion less—big deficit reduction. Despite their best desire to cut spending first, that same Republican alternative did not contain one single specific spending cut beyond those included in the plan that we will vote on in the next 2 days. The alternative proffered a series of numerical targets of future cuts but declined to make the tougher choices that must be made now.

Mr. President, and despite their professed concern over the middle class, the Republican alternative would have slashed $90 billion more in Medicaid and Medicare cuts beyond the $60 billion already in the President's plan. Those cuts could easily have translated into increased out-of-pocket expenses for Medicare beneficiaries of $350 in 1994, and $850 a person in 1998.

So, consider the alternative—far less deficit reduction, no different spending cuts at all, except that they would have done more in Medicare. We already did a lot with Medicare, about $60 billion, but we do not affect the beneficiaries—we go after the providers. Under the alternative, if you are a middle-income person that needs Medicare, then you would have paid an awful price. That is a major difference, and still falls short of major deficit reduction.

Then consider the fellow from Texas, Ross Perot. Here is a guy who shows up on national television last Sunday, who says the whole message is "I have a better plan out there." He was asked what his plan was, and he says "I forgot my charts." If Ross Perot said that to a chief executive officer in a business, he would have lost his job, would have been fired. What does he think he was invited on the show for—to talk about his microchip business? He was asked on the show because he says he has an alternative plan. Then he gives the anemic, pathetic excuse that he forgot to bring his charts.

You know, I feel for the people who supported him because their frustrations are real. Their anger is real. They are worried about their country, about their kids. They are worried about the future. They deserve better. If you are going to be a leader of people like that, then you ought to have a better performance when you show up on a national show on an issue like this, and not say to the reporters, "I did not bring my charts. I did not bring my statistics with me." That is a pathetic performance, in my view, when the country is demanding some real answers. And if you have a better idea, then let us hear it. He did not do it.

In fact, when Clinton presented his original deficit plan, he said I ask two things of those of you who may be opponents out there—two things: to achieve the same net deficit reduction, roughly $500 billion, and be specific about your cuts. That was not a lot to ask. That is, in effect, what was being asked of the opposition—be specific. And the answer "I did not bring my charts" or "our cuts are no different than yours," and "we do not come anywhere close to deficit reduction" are the alternatives we are being asked to accept.

So I could vote "no," I guess, like anybody else in the next couple of days. But if I were a constituent of mine, I would say: What are you for, Senator? You tell me you are not for this package. Did you not bring your charts, your statistics? Why do you not stand up and be for something, be for something, for God's sake, instead of lining up with the naysayers and tearing everything apart. Any jackass could kick down a barn door. It takes an architect to build one. This place is in desperate need of architects, because God knows we have enough jackasses in terms of what needs to be done.

When I hear people going on shows with empty rhetoric, tearing things apart and not offering alternatives, you get what you see. You can run, but you cannot hide on these issues. Who can blame the American people for being concerned and frustrated? The time for naysaying, in my view, is over. Gridlock is in the past and should have been long ago.

In fact, interestingly, we are proving that it can become a thing of the past. The national service legislation—which passed 58–41—was a bipartisan effort. So were direct student loans. I worked directly on both of these bills. We would not have gotten them done without good bipartisan support; without people like Senator KASSEBAUM and Senator JEFFORDS and Senator DURENBERGER, and others. Family and medical leave will go into effect tomorrow, and it never would have become the law of the land without the support of Senator DAN COATS of Indiana and Senator KIT BOND of Missouri. I can get out a list of where we have worked together for the betterment of our own country.

Unfortunately, this issue seems to defy our ability to do so in the sense of having the opposition come forward and offer to be a part of a constructive solution. So it can work, and we can be effective. I regret, however, that we are not doing it on the single most important issue: The overall economic needs and the future of our country.

So, Mr. President, this is an opportunity, and there will be a lot of talk in the next several days about it. When you hear the talk and speeches, ask yourself these simple questions of those who would tear this apart: Are their criticisms bigger than the overall goal to be achieved here? Second, are they being specific about an alternative that can help us get on track? As viewers across the country watch the debate, that is a simple test to apply to those who stand up and oppose this effort. My hope is that there will be enough Members here to support this package.

I will end, Mr. President, where I began. I do not like the package. There are parts of it I think are pretty good, such as the earned income tax credit. I also mentioned the small business pieces. But, overall, this is deficit reduction, and this is raising taxes and

cutting spending. It would be a lot more fun to stand here and talk about cutting everybody's taxes and spending more money. You can make yourself a real hero in any community in America that way. You can say: Folks, I have cut your taxes, and I have raised the spending.

Frankly, those days are over. Now we are faced with the choice of how do you try to reduce the deficit intelligently, and in real terms. If there were a perfect or an easy package, we would have adopted it long ago, Mr. President.

I think every person in this country knows there are no easy solutions, and there are no perfect solutions. We have come up with the best that we can put together here. We think it is a good alternative, a good package that does what it says it will do. There are real numbers, real deficit reduction that I hope will make a difference. I do not think it is going to solve every economic problem for our future, but it puts us on the right track, a glidepath of deficit reduction that future Congresses should be challenged to try to meet.

If we do that, I think, quite frankly, that this Congress will go down in history as a good Congress. In fact, we will be able to borrow some additional lines from Winston Churchill and say, "This could become one of our finest hours."

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

The PRESIDING OFFICER (Mr. DORGAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BOND. Mr. President, I would like to describe an amendment which is not ready yet, but which is in the process of being cleared.

Last night when we first began discussion of this emergency disaster relief bill, I showed a picture of the devastation that has been caused on one of our short-line railways in the center of Missouri. This was a railroad bed which, as I said, I walked along about 6 days before. This rail line has been knocked out.

The devastation along that railway, the Gateway & Western, has been significant. You get an idea about the losses that have occurred on this short-line railway when you look at the bridge which connects to that rail bed. This bridge, obviously, has been totally wiped out and destroyed by the floodwaters on the Missouri. A little further down, the railway looks like this, where, once again, flood waters have undercut the approach to the railway bridge and have caused very significant damage.

When the Appropriations Committee reported out the disaster assistance legislation, it provided some $16 million for assistance for flood relief through the Local Rail Freight Assistance Program. The LRFA was created to preserve rail service to small towns and communities by providing financial assistance needed to rehabilitate lines that otherwise might be abandoned.

I can certainly tell you that this short-line railway provides a vital link through the center of Missouri. It is vitally important not only for agriculture, but for significant other commerce that travels on its rails. At the time I walked across this now destroyed railway bridge, this was the only remaining open link between St. Louis and Kansas City. All of the major railways serving our State, running east and west between St. Louis and Kansas City, were routing their trains over this bridge. This was the only link remaining in commerce.

Well, the Local Rail Freight Assistance Act, as the authorization is provided in this bill, is for railways with up to 5 million gross tons of commerce each year. The Gateway & Western is slightly over that.

Therefore, I will shortly be offering an amendment, along with my colleague, Senator SIMON of Illinois, which will enable the Secretary of Transportation to provide assistance in circumstances such as this, and what I understand is an equally important short-haul railway in the State of Iowa.

The estimates right now are that the damage to Missouri's railroad is over $17 million already. At least $8.5 million of that has affected the Gateway & Western which, as I have indicated earlier, is a regional railroad with 300 miles of track, running trains from Kansas City, MO, and Roodhouse, IL.

Clearly, the $8 million is beyond the financial capability of this railroad. If it does not receive assistance under the Local Rail Freight Assistance Act in this appropriations bill, there will not be the money to rebuild this bridge and to restore the levees that are a vital link in commerce in our State.

This railroad has been devastated. Since it is a small railroad, it does not have the resources that the larger railways have in our State.

I will urge my colleagues to support the amendment. When the amendment has been drafted and when we have had an opportunity to ascertain on both sides of the aisle that there is approval and clearance for it, I will be offering that amendment.

I take this opportunity to explain the amendment while there seems to be a lull in the proceedings, because there are very, very many important matters to deal with on this disaster relief measure, and I wanted to give my colleagues who may still be watching an opportunity to learn the importance of this measure.

Mr. President, the amendment has not yet been cleared, so I am not offering it at this time, but I appreciate the Chair giving me the opportunity to address my concerns and to inform my colleagues of the important needs in this area.

Mr. President, I yield the floor, and 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. BYRD. 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. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The question is on the amendment numbered 759, offered by the Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Mr. President, this amendment adds $123 million to the bill. But it constitutes the request of the administration, which, as I said before, indicates that the administration is very sensitive to the needs of the distressed areas and is making new assessments from time to time and is so informing the Congress.

Senator HATFIELD and I are supportive of this amendment, as we have been supportive of the requests today, heretofore on this bill, and heretofore on other bills of a similar nature, whether under a Republican administration or a Democratic administration. We have supported measures, worked them through our Appropriations Committee, managed them on the floor. Never have we sought, to my recollection, to cut one dollar from an administration's request for a matter of this nature.

So, we are joining in this amendment to comply with the request of the administration. And again for the record, it would add $11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers; it would add $2 million in contingent appropriations for the Commission on National and Community Service; it would add $100 million in contingent appropriations for the Department of Commerce, Economic Development Administration; and it would add $10 million in contingent appropriations for the Small Business Administration Disaster Loan Program account.

And it also stresses that in accordance with the request by the administration, each of these requests that I have enumerated,

* * * would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

Mr. President, I do not know what better evidence one could submit that is clearly indicative of the administration's support for whatever is needed in dealing with the disaster. I do not know of anything more clear than the joining of Mr. HATFIELD and myself in the offering of this amendment to indicate our desire to be helpful, to be prompt in helping people of the stricken States.

The Senator from Oregon and I have a responsibility. We have a responsibility to try to get this legislation passed in the Senate, take it to the conference, if there is a conference, and do everything we can to expedite final action on this bill.

It is my hope that if we can keep this bill clear of amendments, the House—I say it is my hope that the House will accept the bill as enacted by the Senate without a conference, thus sending the bill to the President for his signature. That is the way to do business. That is the way to save time. That is the way to get assistance to the people in the stricken areas as quickly as possible and clear the way for the Senate to act on other important matters which have to be acted upon before the Senate goes out for the recess.

Why do we take the time to add amendments to this bill, which put it in danger of a conference and at some point, possibly subjecting it to other votes in the House? If in the course of events this legislation winds up in the House with other votes being taken on it, it is entirely possible under the House rules for the House to add its own amendments to the bill. If the House Members see the Senate playing a game of adding amendments that Senators want to offer over and above the expressed needs by the administration, the House may get into that game also.

So, as the chairman of the committee, I want to do my duty. I intend to do my duty. It is my duty to try to get this bill through and ready to send to the President for his signature—quickly.

What could give the people in the stricken areas greater hope and greater confidence in their elected representatives than that we act quickly? The best way to expedite this whole matter is to leave this bill clean now.

The amendment Senator HATFIELD and I have pending is an amendment requested by the administration. I would have every reason to believe that if that amendment is agreed to the House will accept it because it is an amendment that is based on the best estimates of the administration which is in the best position to assess what the needs are. To me that is the way to proceed, and to assure the quickest action on this bill.

Does my friend from Oregon agree with me in what I said?

Mr. HATFIELD. Mr. President, I wholeheartedly subscribe to the analysis made by the chairman of the Appropriations Committee. That is what I oftentimes fear, that we are not looking far enough ahead to what is yet to be accomplished through the processes of the legislative branch of Government in order to make these resources incorporated in this supplemental appropriations bill available to be transmitted to meet the needs of those people out there in the Midwest.

This is a major step in that process, but one yet to be fulfilled.

If the chairman would indulge me for just another minute or two. Even if this current amendment the chairman and I are cosponsoring is disposed of, the amendment offered at the request of the administration, and the Harkin amendment is disposed of, I pointed out before but I do not think we are really that much aware as a body that on the Calendar of Business, page 2, we have yet listed, if they are all brought up and all debated and discussed—we have listed 40 additional amendments to be disposed of on this bill before this bill could even go to a conference.

Let me direct the chairman's view here to a rather simple sounding amendment of Senator DANFORTH, the Senator from Missouri, relative to flood prevention in St. Genevieve, MO.

That is a very interesting one because I would imagine there would be 100 votes in the Senate for it under these circumstances. On the other hand, it could be very controversial, for it does as I understand lift the local funding formula requirement for the repair of those facilities under the direction of the Corps of Engineers.

As the chairman knows, there is a local cost-sharing formula that is in law. And there will be an attempt to lift it because this is the only historic designation of a French settlement in the State of Missouri. I think all of us are very concerned about that. And it happens to have a very low income. Those people do not have the resources to come up with the cost-sharing part of it.

Yet, when you begin to deal with the fundamental formula set in law, that is going to elicit a lot of discussion, not only on this floor but I am sure as between the House and the Senate. I have served on that Subcommittee on Energy and Water, of the chairman's Appropriations Committee, and we have hardly a year that goes by that there is not some local community that has some very legitimate reason to ask for an exemption from that cost-sharing formula.

I use that just as one example.

Mr. BYRD. If the Senator will allow me, I have some in West Virginia right now that have written to me—the correspondence is in my office—wanting that requirement lifted.

Mr. HATFIELD. Yes. I would say I have one that has been verbally presented to me on the basis that the commitment made for the local cost sharing was at a $3 million estimated cost and that the corps now has escalated that to $10 million. These small port districts along the Columbia River do not have the capacity to triple their local cost sharing and are asking some kind of relief. I am sure there are others as well.

I also direct the chairman's attention to one from the Senator from Pennsylvania [Mr. SPECTER], "Relative to Sense of Senate on Bosnia."

Need I say, for the purpose of history, I have been here long enough—not as long as the chairman—to know we have expended literally days on the sense-of-the-Senate resolution which in some ways has no power of law, has no implementation, has no further action except to express an opinion at one particular moment in history of the U.S. Senate on a particular issue.

I am not saying they are irrelevant, but that sense-of-the-Senate resolution does not carry with it other than just a statement, an expression of opinion.

Knowing the complexity of Bosnia, knowing the emotions that run high on Bosnia and the potential of Bosnia exploding into a worldwide problem, as it already is moving that way, we could spend hours on our views as to whether we should bomb targets around Sarajevo or whether we should participate in United Nations expanded peacekeeping activities and all sorts of things.

Here we are 10 minutes of 2 on Wednesday, August 4. As the chairman has indicated, we have a long way to go on this bill in order to make it a reality and present it to the President for his signature.

I just mention those two items to support the chairman's thesis and his urging that we move on with it, get it accomplished and hopefully without conference with the House, for if we carry things like this to the House, the chairman has indicated it could be very, very difficult.

I would go so far—and I accept the fact we are in speculation because nothing is determined yet—but I could see the possibility of a stalemate in that conference lasting beyond Friday. We know that when that happens and everybody else has gone home, it does not make much difference whether the committee is sitting there trying to resolve this bill or not. It cannot be acted upon unless the Senate is in session and the House is in session.

Mr. BYRD. Yes; I agree with my friend. Relative to the sense-of-the-Senate amendment on Bosnia—the Senator has mentioned that one—I think it would be probably a good idea to debate that subject matter because much is being said in various quarters about taking some action vis-a-vis Bosnia: bombing or whatever. It seems to me that is a matter that should be thoroughly debated in the Senate.

Before we go too far under the aegis of the United Nations and commit ourselves to too much, it seems to me we ought to have some debate on that subject. But this is not the place or the time. The appropriations bill is not the appropriate place for debate on Bosnia. Not at all.

May I add to what the distinguished Senator has said relative to the number of amendments? We have been almost 4 hours now on this amendment, as modified, and now on the amendment which is no longer modified by the amendment proposed by the distinguished Senator from Mississippi [Mr. COCHRAN]. The majority leader has indicated that we ought to finish action on this bill before we go home, before the close of business today. He has good reasons for making that statement and for taking that position. He has other legislation that the Senate needs to act upon, one way or the other, before the Senate goes out for a recess.

So it seems to me that we ought not spend more time on this subject matter. The distinguished Senator from Iowa [Mr. HARKIN] is to be lauded for his dedication, for his efforts. He had this amendment when he came before the Appropriations Committee, and he did not offer it before the Appropriations Committee because the distinguished Senator from Oregon and I urged members not to call up controversial amendments before that committee when those amendments were going to have to be debated on the floor anyhow.

So he very kindly, and with his characteristic consideration of the chairman and the ranking member's wishes, did not call up the amendment. We spent now almost 4 hours today on that amendment and the amendment, as modified, earlier.

If the Senate adopts that amendment, how are we going to be able to withstand the pressure to add other amendments? If we are going to open it up with a billion dollar addition—and that is what it would be—if the amendment by Mr. HARKIN is adopted adding $1 billion, how can we explain our opposition to amendments that are waiting in the wings to add less money? "Well, you have already accepted, the Senate has already adopted an amendment adding a billion dollars." They would then say, "Why not my amendment? My little 'ole amendment only adds $100 million or $50 million, or whatever, can't you take that amendment?"

So it puts us in a difficult position if we start——

Mr. HATFIELD. Will the Senator yield on that point?

Mr. BYRD. Yes.

Mr. HATFIELD. To illustrate the validity of the Senator's position on this, let me just refer to another pending amendment, if it is offered. And it says, for the Senator from the State of Washington [Mrs. MURRAY] relative to federally impacted Northwest forests. I would say that coming from that part of the world that we in this basic committee amendment are making some declarations of emergency. The President will exercise his role in that emergency declaration for some accounts and some of these dollars. This could well be an amendment asking the Congress to declare an emergency for those thousands of working families that have been excluded from their jobs and their jobs wiped out or in the process.

I might say that one of the fastest growing parts of our homeless population today are families with children. And that we are not only talking about the numbers of jobs that are being removed or exterminated, we are talking about potential candidates for the streets—mothers and fathers and children.

We have people displaced from their homes in the Midwest because of floods, and it is a terrible disaster. Is it less a disaster to the individual, to the individual family that may be excluded from his or her home for economic and other such forces, other than flood forces? To those individuals, that is a disaster and to most of us looking at their plight, we would agree it is a disaster. We need a formula for the declaration of emergency. I do not know what the wording of the amendment of the Senator from Washington is to address this problem in the Northwest, but I know a case can be made for the need of people.

So, the Senator is quite right that we are opening this to a whole series of additions. And every addition we make to this is not a question of dollar addition, it is a question of whether the House will accept the Senate bill and reduce the timeframe normally that a conference would require and put us beyond the date of finalizing this bill before the recess.

I do not think either the chairman or I are intending to use scare tactics or any other thing but talk in very strong facts of reality as to the process of moving an appropriations bill to the President's desk for final signature. I just keep raising this point. We are at the risk level of losing any bill, having no bill before the recess and saying, "Well, we will have to do it when we come back after Labor Day." I do not think that risk factor is being helpful, or if that risk factor is taken as a gamble and lost, I do not think that is helpful to the people out there waiting for the emergency support that the administration is ready, willing, able to provide with our action on this bill.

Mr. BYRD. Mr. President, I thank my friend and colleague and agree with him completely.

The question on this amendment by Mr. HARKIN is the same question that the Senate made a decision on earlier. It is not in the same amount.

But if the amendment by Mr. HARKIN would be agreed to, it would add $1 billion to the bill and add $1 billion to the deficit.

Now, I am as compassionate as I think anyone can be with respect to those who are suffering from this act of God and as willing to add to the deficit as is anyone else at such time as the administration has taken the occasion to reassess it, with its myriad agencies—FEMA, HUD, Corps of Engineers, et cetera.

That is the time to discuss adding moneys for this purpose. As a Senator, I do not have at my fingertips the agencies which are at the disposal of the President. I cannot, with the snap of my fingers, ask this agency or that agency to do this and so and do it right away, and then put all these things together and make a request to the Congress that is based on substantial assessments.

When the administration is able to do that—and I am sure this is not going to be enough money, the money that we are voting on in this bill today. Anyone who has been living over the past few weeks knows that to be the case. There will be additional requests. When those requests come before my committee, they will be acted upon just as judiciously and compassionately, and with as much sympathy as I can possibly show.

I urge my colleagues not to support an amendment now that will add $1 billion to this bill. It just opens up the way for additional amendments. I assure the distinguished Senator from Iowa that I will be the first to line up in support of the requests of the administration for additional moneys for this purpose. And they will come. Those requests will come as sure as the Eastern Star shall rise tonight and again tomorrow night and again the next night and the next night and the next night.

So I urge my colleagues not to support this amendment.

Mr. HATFIELD. Will the Senator yield for just a second?

Mr. BYRD. Yes.

Mr. HATFIELD. The chairman has very correctly pointed out the increase in the dollars. But will the chairman not agree that in this amendment we are also changing the formula as to the last emergency disaster relief which we passed for Hurricane Andrew—not as against the authorized legislation on the books, but as against what our last disaster relief was for the victims of that hurricane that swept through a

number of States, as to the victims we are now trying to assist in the Midwest, so that there is additional consideration for the complexity of this amendment that adds not only the $1 billion but does address the formula change?

Mr. HARKIN. If the Senator will yield——

Mr. BYRD. Madam President, I yield for the purpose of a colloquy.

Mr. HATFIELD. I would just add one last point. In fact, that was the reason for the modification of the Senator from Mississippi, who wanted to address that discrepancy between the last disaster relief bill and this one as proposed in the original Harkin amendment that added $1 billion. I believe I am correct on that.

Mr. HARKIN. If the Senator will yield so I may respond, I find that an interesting argument, that somehow we cannot——

Mr. BYRD. Madam President, I retain the floor.

The PRESIDING OFFICER (Ms. MOSELEY-BRAUN). The Senator is correct.

Mr. BYRD. I yield with the understanding that I retain my rights to the floor.

The PRESIDING OFFICER. For the purposes of a colloquy.

Mr. HARKIN. I thank the Senator.

I find this argument by my friend from Oregon interesting. Let me see if I understand it correctly. We should not change the formula now to help the victims of the flood in the Midwest because the victims of disasters in 1990, 1991, and 1992 were paid at a different rate, and if we now change the rate, farmers in this flood will be getting a different compensation than those who suffered disasters in 1990, 1991, and 1992. It seems to me that is the argument the Senator is making.

Mr. HATFIELD. Will the Senator yield?

Mr. BYRD. I yield.

Mr. HATFIELD. I am merely stating the complexity of this amendment leading to a difficulty in conference with the House. I am merely making a statement of facts. And I assume the Senator from Iowa agrees that my facts are correct.

I am not arguing the judgment or the morality or the ethic or the lack of ability to make a change in formula. I am just saying we have in this amendment changed the formula as to the payments offered to those who were sufferers in the last disaster relief supplemental on Hurricane Andrew, which led the Senator from Mississippi to ask for a modification to make it retroactive, to bring those victims up to the same level as in this amendment.

I am not arguing the rightness and the wrongness. I am just saying those seem to me to be the facts of the case, and therefore lead to a greater difficulty in a conference situation with the House of Representatives and a greater delay in finalizing this particular bill.

Mr. BYRD. Madam President, the pending amendment is the amendment offered by the Senator from West Virginia and the Senator from Oregon and the Senator from Iowa; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I ask for the yeas and nays on the pending amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. BYRD. Madam President, I ask unanimous consent that the vote on this amendment occur at such time as—Madam President, I suggest the absence of a quorum.

Mr. BOREN. Madam President, while my colleagues are discussing the pending amendment, I ask unanimous consent that I might be allowed to speak as if in morning business for not to exceed 3 minutes.

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

NOMINATION OF JOYCELYN ELDERS

Mr. BOREN. Madam President, this week, as everyone knows, we have had an opportunity to vote on four very important nominations, but we have not yet had the opportunity to vote on another extremely important nomination still pending before us, and that is the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States. The nomination was reported out from the Labor and Human Resources Committee last Friday by a very strong bipartisan majority, of the members of that committee.

There has certainly been enough time to evaluate whether or not Dr. Elders is qualified and suitable for the job of Surgeon General of the United States. She was named on December 4 by the President—exactly 9 months ago today. Her original confirmation hearing was delayed to allow further time to evaluate her record. Over 200 questions have been submitted and have been answered about Dr. Elders, and the original FBI report on Dr. Elders has been available for over a month. The additional questions submitted by Senators KENNEDY and KASSEBAUM have been available since her confirmation hearing.

Madam President, it is time to allow the Senate to work its will and to act on this nomination. As I said to the members of the committee when I had the honor of helping to present Dr. Elders for her confirmation hearings, coming from Arkansas' neighboring State, I have had the opportunity to view the work and the record of this very remarkable person—the first African-American woman ever to graduate from the University of Arkansas School of Medicine; one of the most outstanding, widely recognized leaders in the field of pediatrics in this country; named director of the health department of her home State of Arkansas; endorsed by over 150 medical associations across this country to be the next Surgeon General of the United States; regarded by people in her profession as among the most highly qualified choices available in this country for this important post.

Above all, Dr. Elders has had the strength and the courage to speak out on controversial issues of the day. She has had the courage to open our consciences to the problems of teenaged pregnancy and many other health and social problems confronting this country; problems that are easily swept under the rug, problems that we do not like to hear about because they are painful and difficult. Yet, they are challenges which we must confront.

Madam President, unfortunately, the state of our politics has come to the point that, when a person takes stands on controversial issues, instead of debating those issues, we begin to attack that individual personally, we begin to distort his or her views, and we begin to treat that individual unfairly as a fellow human being.

Dr. Elders is a person of moral courage. She is a highly qualified person for this position. As I have already said, she has an outstanding record. She deserves to be considered on the basis of those qualifications and her record for personal courage and integrity.

I do not agree with every single thing that Dr. Elders has ever said. I do not agree with every single policy that she has advocated. But that is not the point. The point is that she is well qualified for this position. The point is that we need the Surgeon General of the United States to be a spokesperson to awaken us to the crises, both social and medical, that we face in this country. Above all we need our Surgeon General to have the courage to speak out on these issues and to bring them to the public's attention.

Dr. Elders has demonstrated time and time again that she has that courage. She has also demonstrated, in spite of what some who have criticized her have said, that she believes in local control and in parental control of the ultimate decisions that affect children in this country. While she has advocated school-based clinics, for example, to help young people in need of help, she has always maintained that the final decision about whether those clinics should be in a school should be made by the local school boards at the school district level. She has always felt that, whatever services were available to children, parents should have the right to determine ultimately whether those services are made available to the individual child of that particular parent.

There are many children in this country who are in terrible trouble—and we see the results of it: the high teenaged pregnancy rate, the fact that in some of this country's large inner cities last year 80 percent of the infants born were born out of wedlock, the fact that in 10 percent of the births of infants in the 10 largest cities in this country, both parents were gone within a week of the birth of that child. Coming into our statistical language for the first time is the term "no-parent children" because neither parent was available to help raise that child.

We have children at risk, children in danger in our country. We are not taking adequate care of them, and many of them do not have the family units to fall back upon. Dr. Elders has become the forceful advocate for the well-being of these children in our country. Surely she should not be penalized for having the courage to speak out about the needs of these children as they grow toward adulthood.

Madam President, it is time to allow us to vote on this nomination, to let us bring the nomination of Dr. Elders to the floor and to let us have a chance in the Senate to express our views about her nomination. And when that happens, I am convinced that the vast majority of the Members of the Senate will vote to confirm her to be the next Surgeon General of the United States, and I am convinced that there will be a significant number of votes for her nomination from both sides of the aisle.

The time for delay is past; the time for action is now. The serious problems that she has talked about will not go away. They need to be addressed. The American people need to be brought into the dialog. We need a Surgeon General of the United States on duty confronting these challenges. I urge my colleagues on both sides of the aisle to allow the nomination of Dr. Elders to come forward. Let us not break for the long recess without acting on this nomination. Let us give this good, well-qualified nominee a chance to have her rightful decision day before the U.S. Senate before we go into recess.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I have discussed the Harkin amendment with the author of that amendment. He is agreeable to limiting debate on the amendment. He is willing to agree to 20 minutes on his side.

I ask unanimous consent that the time on the amendment be limited to 20 minutes under the control of Mr. HARKIN and 10 minutes under the control of Mr. HATFIELD and myself; that the vote on the pending amendment, the pending Byrd-Hatfield amendment, occur at the conclusion of the time for debate on the Harkin, et al., amendment; and that the vote on or in relation to the Harkin amendment then occur following the vote on the pending Byrd-Hatfield amendment, as modified.

Mr. HARKIN. Madam President, reserving the right to object, and I might object, I want to get a handle on this on the time. As I understand it, we have an amendment right now that is pending that is offered by the chairman. I have some things I want to say about that. Is there a time limit on that amendment?

Mr. BYRD. There is no time limit on it. But, Madam President, I ask unanimous consent that there be a time limitation on the amendment of——

Mr. HARKIN. I would like to talk for a little bit on this.

Mr. BYRD. Only the pending amendment?

Mr. HARKIN. I believe so. I want to understand. The request was that at the conclusion of debate on this amendment that is pending, that then we would go back to the amendment that has been set aside?

Mr. BYRD. No. I did not ask for any additional time on the pending amendment. I do now recall that the Senator has discussed that amendment with me and would need to have a few minutes because he seeks to make a modification on that amendment, to which I am agreeable to his making.

I ask that the time on the Harkin amendment be limited to 30 minutes, 20 minutes to Mr. HARKIN, 10 minutes to Senator HATFIELD and myself, and that at the conclusion of that time, the Senate then vote on the Byrd amendment, on which the yeas and nays have already been ordered, and then follow that with a vote on or in relation to the Harkin amendment, because by then all time for debate on that amendment would have expired.

Mr. HARKIN. Madam President, further reserving the right to object, I wonder if we could, since the Harkin amendment is the preceding amendment, the amendment before, I am wondering if we could perhaps have the vote on that amendment first and then have the vote on the pending amendment at the conclusion of the vote on the Harkin amendment.

Mr. BYRD. Very well. We might be able to do that.

Mr. HARKIN. We would have the debate of 20 or 30 minutes, then we would go to a vote, and then after that, we could have the vote on the amendment.

Mr. BYRD. I will be very happy to consider that. That was a reasonable request.

Let us get on with the modification of the pending amendment, because our time is running. We have not disposed of one amendment today. What does the Senator wish to do with respect to the pending amendment? What modification does he suggest?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President——

Mr. BYRD. Madam President, I have the floor. I will yield to the Senator for a question.

The PRESIDING OFFICER. Has the Senator from West Virginia withdrawn his unanimous-consent request?

Mr. BYRD. I will withdraw the request temporarily, yes.

The PRESIDING OFFICER. Does the Senator from West Virginia yield for a question?

Mr. HARKIN. This Senator does not have a question, but I have remarks I would like to make on the amendment, and then I would like to get in a colloquy with the chairman about a modification of the amendment.

Mr. BYRD. He wishes to discuss the now pending amendment?

Mr. HARKIN. Very briefly.

Mr. BYRD. I yield the floor.

Mr. HARKIN. I will not take much time, because I agree that we have to move on with the bill.

The pending amendment before us, which I put my name on as a cosponsor, had a provision I was not fully cognizant of at that time. It deals with a provision of the Small Business Administration raising the loan limitation. I wish to discuss that for a couple of minutes to make the record clear as to what I am about.

I have an amendment that I was going to offer—one of the listed amendments—that would have removed the $500,000 cap and raised that to $1.5 million for the victims of this Midwest flood. The reason I was going to do that was because the $500,000 cap that is now in law was set in 1980, but it was administratively used since 1970. So since 1970, we have had a $500,000 cap on SBA disaster loans. Well, if you just factor in inflation over those years, if it was fully adjusted, the loan limit would be over $1.7 million.

So if we wanted to respond to small businesses hurt in this disaster, like a small business would have been hurt, let us say, in 1970, we would have a loan limit of over $1.7 million.

Madam President, I met with business people around Iowa that have been very severely hurt by these floods. Many of their businesses are not likely to reopen—or to reopen without significant reductions in employment—without SBA disaster loan assistance. Frankly, $500,000 just will not do the job.

I want to talk about a few of those cases. One company has been making automobile accessories for 70 years.

The company employs 102 people. On July 10, the Des Moines Water Works flooded. Now this company is not on a flood plain, and the owner was told he would be OK; he was three-quarters of a mile from the water plant. But, by that evening, the Raccoon River had filled the first 5½ feet of his business. His inventory and business losses are estimated at over $2.1 million. He has incurred over $850,000 in lost business. He needs help. Forty-two of his employees are out of work. This company believes it needs a $2 million loan to cover its need and get its employees back to work. It is going to be difficult for this company to get other assistance.

This amendment does not give businesses a grant to make them whole or give them a loan to meet their full needs, but it gives some help—a lot more than what only $500,000 will give.

Here is another example: A firm that has been in business for 34 years, and could face bankruptcy without help. The firm laid off its 18 employees—18 employees, I might add, all with families whom they must support. The company is now operating on a very limited basis with borrowed equipment. They had 12 feet of water in their warehouse and 9 feet of water in their office. Insurance will only cover some of the trucks and the computer equipment. They lost over $1 million in inventory and uninsured equipment. I understand that $500,000 will not provide the capital that will allow this business to get going again. An extra $500,000—which I might add is not a grant, only a loan—could allow this company to get back on its feet and get those employees back to work.

I talked personally with the President on Monday evening. I told him about the plight of these small businesses. I told him about the fact that this $500,000 had been in existence since 1970 and had never been raised, and that many of the hundreds of small businesses in Iowa—and I am sure in other States also—need more than $500,000 to get back on their feet. I do not mean a grant, I mean a loan. So all we are asking is to try to bring this level up close to what it would have been if we had factored inflation into that $500,000 limit begun in 1970.

The President expressed his concern. He wrote a letter, which I will take the liberty of reading here. It is to the chairman of the Appropriations Committee.

It says:

DEAR CHAIRMAN BYRD: The administration has requested that the pending emergency supplemental appropriations bill for disaster relief for victims of flooding in the Midwest be amended to lift the ceiling on SBA disaster loans to $750,000 from the current $500,000 figure.

We have also requested an additional $10 million in credit subsidy budget authority for that loan program. We understand that Senator Harkin may offer an amendment that would instead raise the loan amount limit to $1.5 million and provide $20 million in credit subsidy budget authority.

We also understand that the higher loan amount limit would apply only to loans related to the 1993 Midwest flood disaster.

The administration would support such an amendment. Once again, we thank you for your continued leadership on this urgent legislative task.

I think part of the mixup came because, as I was told in a telephone call, the director of OMB did not understand that I had spoken with the President personally about this figure and that figures were discussed. In light of that, he sent that letter with that paragraph in it.

I do have that amendment, but the amendment offered by the chairman incorporates the change cited in the first paragraph of the letter. I will ask the chairman for a modification of his amendment that would incorporate the provisions of my amendment, which would raise the limit from $500,000 to $1.5 million and provide the $20 million in budget authority to cover such loans.

Again, I point out that to raise the limit on these loans from $500,000 to $1.5 million will ensure that a lot of these businesses, hundreds of businesses, could get a decent loan to get back on their feet.

So I ask the chairman if he could modify the amendment to take that into account.

I yield the floor.

AMENDMENT NO. 759; AS MODIFIED

Mr. BYRD. Madam President, this is a request by the administration, and it is contained in a letter to me dated August 3. I believe a similar letter went to my colleague, Mr. HATFIELD. It comports with the statement by the distinguished Senator from Iowa, Mr. HARKIN.

I am willing, by unanimous consent, if I may gain it, to modify the amendment. I ask unanimous consent that my amendment be modified, and I understand that Mr. HATFIELD is in agreement with this, as is Mr. HOLLINGS, chairman of the subcommittee of jurisdiction.

Mr. HATFIELD. I understand it is raised $10 million, the SBA loan extension, which raises the total of the amendment 133.3; is that correct?

Mr. BYRD. I am advised that the figure would be 133.1.

Mr. HATFIELD. 133.1.

The PRESIDING OFFICER. Is there objection?

There being none, the amendment is so modified.

The amendment, as modified, is as follows:

Before the period at the end of the first excepted Committee amendment, insert the following: "*Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000 of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $80,000,000, of which $20,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $1,500,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of the title III of the Job Training Partnership Act shall be $54,600,000 of which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended"

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Madam President, if the Chair will momentarily indulge me, I ask unanimous consent that I may add to the list of cosponsors the distinguished Senator from Minnesota [Mr. WELLSTONE].

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

Mr. HARKIN. Madam President, I thank the chairman for modifying the amendment and the distinguished ranking Republican on the Appropriations Committee for accepting this amendment.

Mr. BYRD. I thank the Senator.

Now, Madam President, that brings us back to the pending amendment which I had hoped we could delay the vote on until such time as the vote is taken on the amendment by Mr. HARKIN.

Has the request been agreed to with respect to a time limitation on the Harkin amendment?

The PRESIDING OFFICER. There has been no agreement with regard to time on the amendment.

Mr. BYRD. I thank the Chair.

I ask unanimous consent there be a time limitation on the Harkin amendment as follows: 20 minutes to be under the control of Mr. HARKIN; 10 minutes to be under the control of Mr. HATFIELD and myself; and that at the conclusion of the time on the amendment, a vote occur on, or in relation, to the amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. Madam President, the pending amendment is the Byrd-Hatfield amendment.

Is it agreeable to the Senator and his colleagues that we vote on the Byrd-Hatfield amendment now or just preceding the vote on the Harkin amendment? I would hope to save time.

Mr. HARKIN. We would like to vote on the amendment right now.

Mr. BYRD. I was going to suggest that we vote on the one after the other, the Byrd amendment and then the Harkin amendment at the conclusion of the time on the Harkin amendment so that both votes will be taken together and save the time of the Senate.

Mr. HARKIN. I hope we can have a vote on the Harkin amendment at the conclusion of the debate on the Harkin amendment, and either then go to the vote on the Byrd amendment or have the vote on the Byrd amendment right now, if we want to get Senators over here. As a matter of fact, I would hope we can have a vote on the Byrd amendment now. That is what the people are here in the Senate for and that is to vote.

Mr. BYRD. Very well.

Mr. CONRAD. Madam President, reserving the right to object.

The PRESIDING OFFICER. There is no unanimous-consent request pending.

Mr. CONRAD. Has the unanimous-consent been agreed to on the time limitation on the Harkin amendment?

The PRESIDING OFFICER. Yes, it has. That agreement has been reached.

Mr. CONRAD. Madam President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CONRAD. The time agreement that was agreed to then is 20 minutes for the Senator from Iowa and 20 minutes divided between the Senator from West Virginia and——

The PRESIDING OFFICER. No. Ten minutes for the Senator from West Virginia and divided between himself and the Senator from Oregon.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

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

Mr. CONRAD. I object.

Mr. BYRD. I hope the Senator will not object.

Mr. CONRAD addressed the Chair.

The PRESIDING OFFICER. There is objection.

Mr. CONRAD. Madam President, I was asked by the Senator from Iowa to register objection until he is able to get a response that he is seeking and return to the floor.

Mr. BYRD. Madam President, I ask unanimous consent that the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection?

Mr. CONRAD. I object.

Mr. BYRD. Madam President, in case the distinguished Senator from North Dakota has not learned it yet, I am not a Senator who will cut a Senator behind his back, and I am not a Senator who will take advantage of a Senator behind his back.

I did not intend to call off the quorum in order to take some advantage of the Senator from Iowa.

As a former majority leader in this body, as a former minority leader in this body, as a former majority leader again in this body, and as a President pro tempore in this body, I have yet to act behind the Senator's back to take advantage of him.

I simply wanted to make a statement of about 30 seconds duration when I requested for the quorum to be called off.

The Senator from Iowa does not need the Senator from North Dakota to protect him. I will protect the Senator from Iowa as well as anyone else would. I will protect any Senator on this side of the aisle.

I was simply going to point out how much time we have been on this bill today, and we are still taking time in quorum calls when we have other Senators who have amendments that they may feel are as important as the amendment by Mr. HARKIN. They have not had a chance to offer their amendments.

That was all I was going to do—call attention to the passage of the time and put back in the quorum call to protect the Senator.

The PRESIDING OFFICER. Does the Senator object? The Senator from North Dakota.

Mr. BYRD. I yield the floor.

Mr. CONRAD. Madam President, I want to make clear to the Senator from West Virginia——

The PRESIDING OFFICER. The Chair must advise the Senator from North Dakota the quorum call remains in progress.

Is there objection to rescinding the quorum call?

Mr. CONRAD. I ask unanimous consent that the quorum call be rescinded.

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

Mr. CONRAD. Madam President, I want the Senator from West Virginia to know that in no way was I concerned that he was going to do something that would jeopardize the rights of the Senator from Iowa.

Mr. BYRD. Will the Senator yield?

Mr. CONRAD. If I might complete the statement, then I would be happy to yield.

I have been here 7 years. I know the Senator from West Virginia is a man of honor, that he protects other Senators' rights, that he has deep respect for this institution.

I hope the Senator from West Virginia would know that I was asked by the Senator from Iowa to raise objection if anyone put in a move to go out of the quorum call. I made that commitment to him and I felt honor bound to honor that commitment. And that is what I did.

I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I hope we can get on with action on this amendment.

I somehow doubt that the distinguished Senator from North Dakota would have objected if the majority leader had come in and asked that the quorum call be called off, even in the face of his promise. Perhaps I am wrong, but I doubt it.

Mr. DURENBERGER. Madam President, I rise to support the amendment by Senator BYRD which, among other increases, increases the appropriation to the Commission on National and Community Service from $2.0 to $4.0 million.

This $4.0 million would be on top of $455,000 in previous appropriations that the Commission is already making available to conservation and other service corps in several States and communities most affected by recent flooding.

I am pleased that the administration chose to include additional disaster relief funding for the Commission in its flood relief package—accepting the suggestion I first made to the President when he met with a group of Members from flood States several weeks ago.

At the same time, I also contacted the leaders of conservation corps in Minnesota and several other States to encourage them to prepare a detailed proposal on using young people to help communities respond and recover from the terrible damage they're now experiencing.

Proposals were generated from not just Minnesota, but also from Wisconsin and Iowa. And, the President and others in his administration quickly

saw the value of demonstrating what well-organized and highly motivated young people can do—not just in the short-term, but over the many months that these communities will need to fully recover.

I want to make it clear, Mr. President, that this additional funding is not intended to be a traditional short-term public jobs program. The kind of program that the Commission is prepared to fund will do much more than simply put young people to work on a temporary basis.

The conservation and other service corps that will apply for these funds are highly disciplined programs that provide an experience for young people that includes not just employment and service to their communities.

These programs also include an educational component—both basic classroom education and training in marketable job skills.

And, these programs are intended to make a positive contribution to the communities they serve for a period beyond addressing the most immediate needs those communities now feel.

The Commission intends to use some of the funding it awards to provide coordination and support for the infrastructure under volunteer efforts in these States.

And, the Commission's plans include not just young people in service and conservation corps, but also National Guard volunteer college students, school-based programs, and volunteer organizations like 4-H, the Red Cross, and the Salvation Army.

Finally, at least some of these programs will offer a post-service education that offers a real incentive to attend or return to college or another higher education program that these young people might otherwise not be able to afford.

I realize, Madam President, that this is a relatively small amount of money in a much larger response to the tragedy that is still unfolding all through the heartland of America.

But, I can think of no better way to demonstrate the value of national and community service, than to provide these additional resources to a program that has already demonstrated its value during previous times of crisis in Los Angeles and South Florida.

The Senate has just completed action on the National and Community Service Act. And, as the original Republican cosponsor of that important initiative, I believe the amendment now before us is an excellent way to demonstrate the value of national service in a timely and highly visible way.

I intend to support this amendment, Madam President. And, I urge my colleagues to do the same.

Thank you, Madam President. I yield the floor.

VOTE ON AMENDMENT NO. 759, AS MODIFIED

The PRESIDING OFFICER. Is there further debate on the Byrd amendment? The Chair hears no request for debate.

The question is on agreeing to amendment numbered 759, as modified, of the Senator from West Virginia [Mr. BYRD].

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

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

The result was announced—yeas 86, nays 14, as follows:

[Rollcall Vote No. 239 Leg.]

YEAS—86

Akaka	Feingold	Metzenbaum
Baucus	Feinstein	Mikulski
Bennett	Ford	Mitchell
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Bond	Grassley	Murkowski
Boren	Gregg	Murray
Boxer	Harkin	Nunn
Bradley	Hatch	Pell
Breaux	Hatfield	Pressler
Bryan	Heflin	Pryor
Bumpers	Helms	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Campbell	Jeffords	Rockefeller
Chafee	Johnston	Roth
Coats	Kassebaum	Sarbanes
Cochran	Kennedy	Sasser
Cohen	Kerrey	Shelby
Conrad	Kerry	Simon
Coverdell	Kohl	Simpson
Danforth	Lautenberg	Specter
Daschle	Leahy	Stevens
DeConcini	Levin	Thurmond
Dodd	Lieberman	Wallop
Dole	Lugar	Warner
Dorgan	Mack	Wellstone
Durenberger	Mathews	Wofford
Exon	McConnell	

NAYS—14

Brown	Gorton	McCain
Craig	Gramm	Nickles
D'Amato	Hutchison	Packwood
Domenici	Kempthorne	Smith
Faircloth	Lott	

So the amendment (No. 759), as modified, was agreed to.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, the pending amendment now is the Harkin amendment; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. And there is a time limitation.

The PRESIDING OFFICER. The Chair will state, under the previous order, the time remaining on the Harkin amendment is limited to 30 minutes: 20 minutes under the control of the Senator from Iowa, and 10 minutes controlled by the managers.

Who yields time?

Mr. BYRD. Madam President, while there is a fairly good attendance in the Senate, I would like to take this opportunity to state that the pending amendment by Mr. HARKIN is the amendment that he started out with, and he was willing to modify that amendment by some suggested verbiage by the Senator from Mississippi.

Mr. SIMPSON. May we have order?

The PRESIDING OFFICER. The Senate is not in order. The Senate will be in order.

The Senator from West Virginia.

Mr. BYRD. I thank the Chair.

Madam President, the distinguished Senator from Iowa was willing to modify his amendment by accepting the verbiage offered by the Senator from Mississippi [Mr. COCHRAN]. And I assume Mr. HARKIN did that because he thought that would gain some votes. Well, it did not. I do not know what it did. The only thing I know is that the Senate registered its opinion as being in opposition to the amendment as modified.

Now the Senator goes back to his original amendment. He brought that amendment before the Appropriations Committee and very agreeably withheld or restrained the urge to call it up at that point and elected to bring it to the floor, which was the right thing to do because it was controversial, as we see. But what it does is add $1 billion to the deficit. You can cut it any way you want to, thick or thin, or grind it up in the mill. It adds $1 billion to the deficit.

We are being asked later this week to vote on a deficit reducing bill, the reconciliation bill, and it is going to have matters in it that will not please everybody. As I understand it, the administration is working hard to try to help get the votes to enact that bill.

Now why add with the left hand and take away with the right, or take away with the left and add with the right? That is what we are doing here; a reconciliation measure that is supposed to reduce the deficit by some almost $500 billion. Now we are being asked in the pending amendment to add $1 billion to the deficit.

Madam President, my sympathy and compassion with and for those who are suffering from the floods has no bottom, no width, breadth, or height. There is no limit to my compassion for them, but there is a way to do things. We have an appropriations process in this Senate. The Appropriations Committee wants to be supportive of the administration's requests because we take the administration's requests, having been thoroughly and carefully assessed, and we have stated time and time again that the administration will undoubtedly be requesting more moneys. We just voted on an amendment that comports with the administration's request to make an addition in connection with this disaster.

The distinguished Senator from Oregon and I quickly threw our support to that and we offered the amendment. That is how fast we get things done if you will leave us alone. When the administration sends up further requests, we will act quickly on those requests.

Let the administration send up their requests to both Houses. That is the

way it is done. They generally send up a request to both Houses. The matter is presently in the Senate. And they generally send up a request to the Republican manager and myself. Now we are hearing it from other Senators. They want to call up an amendment.

That is not the way to do things. That will open up the real floodgates, if I may use the pun. Everyone is going to want his amendment agreed to. That is why we have to take a stand against an amendment like this. I have a heart for it. My heart says fine. But I also, after 35 years in this Senate, have finally come to the conclusion that somebody has to take a responsibility around here once in a while to say no to the heart and say, now hold on, wait a minute. We will take care of the heart later.

So I urge Senators not to support this amendment. I want to get this bill through. I wish to get it through quickly. I wish to get it through tonight. And I hope it will be the kind of bill, when we finish action on it, the House will accept it, it will not go to conference, and it will go to the President.

If we add amendments, if we add one, why not add two, why not three, and take it back to the House. And then the other body will want to add some amendments. They like to get into that game, too: Look at those Senators. They added amendments on this. I have an amendment.

A billion here and a billion there, and it adds up where it will wipe out whatever gains are made in the reconciliation bill at some point. So I think we have to draw the line. I say draw the line where the administration put it. And when the administration requests more money, then we will take that into consideration.

So I make that plea with Senators and I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from North Dakota [Mr. DORGAN].

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 5 minutes.

Mr. DORGAN. Mr. President, I understand from time to time on legislation the desire of Members to protect the President's mark or to protect the President's request, but that is not what this debate is about.

We have a letter from the President, from the President's Director of OMB on this specific amendment. Here is what the Clinton administration's position is on this amendment:

> The administration will not oppose the amendment because it is limited to 1993 crop losses.

This is not about protecting the President's mark or protecting the President's request. This administration has no opposition to this amendment. It will not oppose this amendment. Here is the letter.

Now, this is not about protecting a kernel of corn or a kernel of wheat. This is about families. It is about people who have lost everything, and it is not about sending an enormous amount of money from the Federal Treasury that far above that which is requested. This is about how much should we provide in disaster assistance to family farmers who have lost everything. That is the issue.

Now, we have a formula, and the formula says if you have lost 35 percent of everything you have, then you get 65 percent of the target, and then that is divided by 50.04.

What a goofball computation that is. It makes no sense. It is arbitrary. It is not grounded in any kind of mathematical or judgmental sense. It is just there because it happened 2 years ago. It is not the way it happened in 1988 and 1989 with the drought. Nobody said we are going to give you a helping hand, but you are only going to get half a hand. We are going to throw you a rope, but you just get half a rope. That is a not what happened in 1988 and 1989. In 1988 and 1989 the disaster formula for families who lost everything was, if you had a 35-percent loss, you got 65 percent of the expected deficiency price on that loss.

Now it is 35 percent, 65 percent, and half of that. This makes no sense. Now, we say restore it by getting rid of that 50-percent limitation. Even then, those family farmers will still only receive 40 cents on the dollar and many will still go broke. But the issue here is a survival of families who have lost everything through a vicious act of nature—certainly nothing of their making.

The question is what are we going to do. It has been said here this will radically increase the deficit. I have heard numbers thrown around this floor that are flat out wrong. You know what the consequence of this flood is, among other things? Less grain is going to be produced. The price of grain is going to rise. And this Government will have fewer outlays for deficiency payments and we will save money on deficiency payments we otherwise would have been required to make.

That is where this money comes from. We are not suggesting a raid on the Federal Treasury. We are not saying let us break the bank. We are saying we are going to save money on deficiency payments. Let us get rid of this arbitrary formula and at least provide 40 cents on the dollar for families out there that otherwise are going to go belly up.

So, Mr. President, again, I know this is all very arcane. It is about complex Byzantine formulas. But in the end, it is about a family. Is this family going to keep operating or is it going to discover the helping hand of the Government is only half a hand and withdrawn at the last moment, and say you have $1 loss, you get 20 cents, my friend, and smile because it is plenty. It is not what you got before. We were able to do 40 cents because we saved billions on deficiency payments we did not have to make.

I just ask this, that we amend this legislation the way the Senator from Iowa asks, do it in a way that is compassionate and right. Let us do it the right way the first time. Let us not say, yes, we will have another supplemental. We will come back and do it later.

If we are going to do something, let us do it the right way. On behalf of families who have lost everything, the right way is this way with this amendment right now.

I yield the floor.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I yield 5 minutes to the Senator from Minnesota [Mr. WELLSTONE].

Mr. WELLSTONE. I thank the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, when President Clinton traveled and met with people out in the Midwest, he talked about providing disaster relief. People understood him to say 50 cents on the dollar. The President could not have possibly known then about this formula about which the Senator from North Dakota just spoke.

This is not an abstract debate, and in all due respect to colleagues here whom I deeply respect, this discussion about process is so abstract. People right now are saying to us, we will not be able to get back up on our feet and farm if the only compensation we are going to get is 20 cents on the dollar. So please, Congressmen and Senators, do not pass a disaster relief bill and pretend like you are really responding to a disaster, in this particular case in agriculture, when you know by definition you are not even providing anything more than 20 cents on the dollar for those farmers, especially the young and beginning farmers. They will not be back. Then if you want to talk about running up the deficit, just think about the cost of that. Where are they going to go? What is going to happen to them? We are talking about homelessness; we are talking about unemployment benefits; we are talking about people forced off the land.

I say to my colleagues, we came out with one amendment and a number of people said to us, we cannot vote for that because it goes back to 1990, 1991,

1992. Well, now we have an amendment that deals with this flood, the worst flood in this century, and I cannot believe that on the floor of the Senate we cannot do better for people. The most horrible flood seen in this whole century, and we cannot even provide some relief for people?

I hear the discussion of the deficit. I have to say to my colleagues, the bottom line to me, and I thought it was the bottom line for Senators of all regions—and I hope we will get support from Republicans and Democrats alike—if there is a role for the Federal Government, it is to respond to people who find themselves in dire circumstances, in time of emergency where people reach out—in this particular case many of them are rural citizens—and say you need the assistance; you need the disaster relief.

That is what you are there for, Federal Government. Please respond to the pain and the concerns and circumstances of our lives.

I think that is what this amendment is about. I hope our colleagues will support us.

Mr. DURENBERGER. Mr. President, I wonder if my colleague will yield me 2 minutes.

Mr. HARKIN. Mr. President, I yield 2 minutes to the Senator from Minnesota.

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

Mr. DURENBERGER. Mr. President, I appreciate the comments that have been made. I rise in support of the amendment by my colleague. I supported their prior amendments.

I have been listening to the debate quite intently since about 5 or 6 o'clock last night. I would like to make a couple of observations for my colleagues who might be in doubt. The debate here is not about real need because it is very difficult from an individual farmer or an individual community standpoint to know right now what the real need is. If anybody thinks we are actually meeting people's needs, forget it. I think we know the emergency need, $622 million of this, that is important.

What the debate has turned into is a debate about spending, and a debate about the deficit, and a debate about income laws. What is important about this amendment is that farmers need some predictability as to unemployed factory workers on unemployment comp, as to what kind of a replacement income they can expect. I think that is what this debate is all about. We are learning from the experiences of the last 2 or 3 years what happens to OMB-driven formulas. We are trying to inject some predictability even though there is not a dollar amount in it.

Mr. President, I have also been listening to my telephone today. I have to tell you out there in America, the four things that are on people's minds are similar to discussions here. It is about spending, it is about taxes, it is about the deficit, and it is about increase in personal income.

It is going to be very, very difficult to resolve this issue in favor of farmers unless we can concentrate on the real issues and the real needs that are here. I agree with everything that I heard as do the people on the telephone about the need to cut spending, cut taxes, raise the income level of Americans, and cut the deficit as well.

I will have an amendment shortly to give everybody an opportunity to respond to what you are listening to on the telephones right now by at least 3, 4, 5, and 6 and in some States 10 to 1 and to meet the needs that all of us from the flood States—from the depth of his heart what the chairman of the Appropriations Committee would like to see done—hear and to inject some predictability into the promises that we need to make to the American farmers.

Mr. HARKIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from Iowa has 9 minutes 30 seconds.

Mr. HARKIN. Mr. President, I just wanted to speak for a minute on what the Senator from Minnesota just said. There are a lot of people who want to cut spending. I do not think anyone here does not want to cut the spending, cut the fat and waste out of Government. But I would say to the Senator from Minnesota, I would say to any other Senator who is interested in cutting spending here, we all are, I will bet you if you went to every one of those persons who called you on the phone and said do you think that in cutting spending we ought not respond to the victims of the flood, they would say no, meet our obligations. That is not what they are talking about. They are talking about the wasteful kind of spending that goes on around here—things like Star Wars, things like that; spending money on crazy schemes; and things that waste taxpayers' money. But when it comes to this flood and responding to the real human needs, the American people want us to respond. They want us to help. They are willing to pay for it. I believe our children and grandchildren would be willing to pay for a part of it, too, to make sure they have a better life.

Let us not get confused on what we are and are not spending money on. I will make this point repeatedly. I will make one other point repeatedly that the Senator from North Dakota earlier made; that is, because of the crop losses, the price of crops for those lucky farmers that are going to have some crops in some places of the country will be high enough that the Government will save up to $2 billion, perhaps more, in deficiency payments. What this amendment that I have now before the Senate asks for is $1 billion—half of that—back in to help these farmers who have been hurt in the disaster.

Mr. President, I yield 3 minutes to the Senator from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota is recognized for 3 minutes.

Mr. CONRAD. I thank the Senator from Iowa. I thank the Chair as well.

I just hope my colleagues understand that this amendment is substantially different than the previous amendment we voted on. The previous amendment had a reachback provision that would have allowed the Secretary discretion to provide for increased disaster assistance to farmers in 1990, 1991, and 1992. That is not part of this amendment. That amendment was voted down. It is dead.

Before us now is an amendment that says for 1993, we will give farmers the same level of disaster relief that we gave in 1988 and 1989. If we fail to enact this amendment, we will give farmers one-half as much as we gave in 1988 and 1989. That is the issue.

Just so colleagues understand, the authorizing committee passed this formula in 1988, passed this formula in 1989, passed this formula as part of the 1990 farm bill. The authorizing committee made a judgment. Their judgment was this is the appropriate level of relief in an agricultural disaster. That was changed by administrative action—cutting it in half for 1991 and 1992.

Now we are revisited with a major agricultural disaster. And what we are asking for is the same treatment we gave farmers in 1988 and 1989. It is not 50 cents on the dollar. It is 40 cents on the dollar.

If we fail to enact the Harkin amendment, we will give farmers 20 cents on the dollar of their losses.

Mr. President, there is an enormous human tragedy that is playing out in the heartland of this country. People who are on the brink of losing everything deserve our support. Always in the past we have dealt with emergencies differently than other appropriations measures. I hope we do that again.

I thank the Chair.

I yield the floor.

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

The PRESIDING OFFICER. The Senator from Iowa has 4 minutes 40 seconds.

Mr. HARKIN. The other side?

The PRESIDING OFFICER. The other side has 3 minutes 50 seconds.

Mr. HARKIN. Mr. President, I yield 2 minutes to the Senator from Missouri [Mr. BOND].

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I thank my colleague.

We are back here again trying to get simple fairness for farmers. I had hoped that our discussions earlier today would make it perfectly clear to the Members of this body that what we are asking for is action by this body to say to farmers as we say to everybody else affected by the floods that you are going to get what the law authorizes you to receive in terms of assisting you in recovering from this disaster. I talked about the hardship, the hard work and the dedication of the people in my area and throughout the Midwest. They are hurting and hurting very severely.

Because of, I think a misunderstanding or miscommunication, the administration initially set up a proposal saying for you farmers, we are going to cut you in half. We are going to give you half of what is authorized. But for small businesses, small communities, airports, railroads, transportation infrastructure, the unemployed, everybody else, we are going to give you 100 percent of what is authorized.

I regret that the administration has not come out clearly and said that we should restore 100 percent because I think we could avoid a vote. But, nevertheless, the Members of this body have the opportunity to correct an inequity when we have farmers in our States who are not only out of production this year, probably many of them out next year because of the disaster, and possibly even the year after. The least we can do is to give them the full measure of the disaster assistance authorized in law passed by this body and signed by the President of the United States.

This is a question of simple fairness. We do not treat farmers like we treat every other affected by the flood unless we get rid of the arbitrary 50 percent reduction in the aid that they will receive.

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

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa has 2 minutes remaining.

Mr. HARKIN. Mr. President, I had 2 minutes 40 seconds, and all of a sudden I lost about 40 seconds.

Mr. President, I yield myself a minute and a half. Again, let us set the record straight. There is $1.4 billion approximately in the bill right now for the disaster payments to farmers. This amendment adds $1 billion. That brings it to about $2.4 billion. The amount we are going to save in deficiency payments this year, conservatively estimated, is around $2 billion.

So when people talk about adding to the deficit, this does not. What it does is, as so many have said before me, it responds to a real human need. That need is to ensure that those farmers who have suffered the biggest losses are able to get through this year and get into next year.

Mr. President, again, the administration has written a letter saying they will not oppose the amendment. I must say, in all candor, Mr. President, I thought the administration would support this amendment. I am getting different stories from different sources in the administration. I am sorry to hear that.

I know that the Senator from West Virginia has a big heart, and I know he wants to respond. I just wish the administration would respond clearly in favor of this amendment.

Mr. President, we need this amendment badly. I would not have taken the time of the Senate today—none of us who have been here all day doing this would have done it if we did not think it was absolutely crucial to our farmers.

Do I still have 30 seconds left?

The PRESIDING OFFICER. The Senator's time has expired. The managers have 3 minutes 20 seconds remaining.

Mr. HARKIN. I ask Senator BYRD, may I have 30 seconds?

Mr. BYRD. I ask unanimous consent that Senator HARKIN have an additional minute and that I have an additional minute.

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

Mr. HARKIN. Mr. President, I was saying that I was getting crossed signals from the administration. I wish I perhaps had some time stamps on these letters.

We now have received a letter that says:

DEAR MR. CHAIRMAN: I appreciate your support this morning in opposing the amendment that would have permitted the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990 to 1992 in order to receive payments up to 100 percent of their eligible claims. That amendment would have increased the cost of disaster payments by $3.4 billion.

It is my understanding that a compromise amendment may be offered which would eliminate the 50 percent pro rata for agricultural disaster payments for the 1993 crop losses.

This amendment is estimated to add $1 billion in costs to the $1.4 billion crop disaster assistance program requested by the President and contained in the committee bill. The administration supports this compromise amendment because it is limited to the 1993 crop losses.

Sincerely,

LEON PANETTA.

The last word, Mr. President, is that the administration supports the amendment that is now before the Senate.

Mr. DORGAN. Will the Senator yield for a question?

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

Mr. HARKIN. I ask unanimous consent for 4 additional minutes for a question and for the chairman.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HARKIN. And then I will yield the floor.

Mr. DORGAN. I appreciate the Senator yielding briefly.

The letter now says the President supports this amendment and wants this amendment to be added to the flood aid bill; is that correct?

Mr. HARKIN. That is correct. It says the administration supports the compromise amendment because it is limited to the 1993 crop losses.

Again, I just say that I think obviously the administration has been very wrapped up in the reconciliation bill. I understand the President is focused on that. They have been working on it all day. I know that their time is taken with that and getting the budget through. There probably have been some miscommunications around the Hill and downtown. I understand how those things go when you are dealing with matters like this.

But because of our conversations with the White House and because they now have the clear knowledge that my amendment has no retroactivity whatsoever, and that it is only for the losses from the 1993 crop losses; it is only $1 billion, added onto it; and I am sure because of the fact that we are going to save money in the deficiency payment, the administration now supports the amendment.

Mr. DORGAN. Mr. President, this is an enormously helpful step. I, for one, and I think others, especially appreciate the position of the President. I hope the body will now embrace that, and that this becomes part of what the President is requesting; add it to his proposal. This is important, and I hope we will proceed to support the Senator's amendment.

Mr. HARKIN. I, too, want to express my gratitude to the President for his support for this amendment. It is vitally important, as I have said earlier, to the people in the Midwest.

I cannot begin to tell you how much this is going to mean to the farmers and to the small business people in the communities out there knowing, just knowing, that they are going to get disaster payments at the level that was put in the farm bill in 1990.

I can tell you that this is a shot in the arm to the farmers and the people in our small towns and communities all over the Midwest, whose anxiety level is very high because they do not know if they could get a crop in next year, or whether farmers will be able to pay their bills and buy equipment and supplies, or whether the rural economy would be strong enough to let people live like they have lived in the small towns and rural communities.

Mr. President, I am deeply grateful to the President of the United States for his support for this amendment.

I reserve any remaining time I may have.

The PRESIDING OFFICER. The Senator from Iowa has 1 minute 20 seconds remaining. The managers have 6 minutes 40 seconds.

Who yields time?

Mr. HARKIN. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute 20 seconds.

Mr. HARKIN. I will reserve a little time in case there are any questions.

The PRESIDING OFFICER. Who yields time?

Mr. HARKIN. Mr. President, again, I will use up my time. I will close again by saying—and I am sure I speak on behalf of all of the Senators who have on both sides of the aisle fought so hard to get this disaster payment back to where it was in the 1990 farm bill—that we are grateful to the President. I hope the body will respond and that we will adopt the amendment.

Again, I cannot begin to tell you what this is going to mean in the Midwest—a sigh of relief, a collective sigh of relief, again, among farmers and people in the small towns and communities. There will be the knowledge that they will be able to get their lives going again, rebuild, recover, and move ahead into the future.

The people who have fought the flood in these States have shown a great resiliency. They have bound themselves together, and neighbor has helped neighbor. They have done everything that anybody can ask of them. I believe it is our turn now to fulfill our obligations and make sure that the provisions of the 1990 farm bill are fully lived up to.

If this body adopts this amendment now, believe me, I cannot begin to tell you the collective good it will do in the upper Midwest.

I yield any time I have.

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

The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair and I thank the distinguished Senator from Iowa for the spirited and able effort that he has made on behalf of his amendment.

He is a valuable member of the Appropriations Committee, a member of whom I am very fond, and a member who has always given to me, as the chairman, the utmost cooperation, courtesy, and consideration.

Mr. President, I intend to support this amendment now that the letter from the administration has been received.

Let me just say few things before I do that. There have been some statements here today that might be interpreted as meaning that the Appropriations Committee has not responded to the needs of the people in the areas that have been flooded.

May I say to the distinguished Senator from North Dakota, this Senator, not in anything he said, is attempting, to use that Senator's word, to protect the administration. I have never said anything about protecting the administration. I have been talking about protecting the taxpayer and at the same time delivering the help that the administration, through its vast machinery of agencies and departments, has been able to evaluate the needs and to present them to the Congress. I have that responsibility. It is not a matter of protecting the President. He can very ably do that himself.

Also, there have been those who said we ought to respond, that the American people expect us to respond. What have we been doing? We brought a bill here that is $4.8 billion; that is $4.80 for every minute since Jesus Christ was born. That is a lot of money, and I support every penny of it.

So the Appropriations Committee has been responsive and, as I have said, we will be responsive the next time. Four dollars and eighty cents for every minute since Jesus Christ was born is not chicken feed, and that is no failure to respond.

The Senators who are pleading today for more money are going to look to this Senator for help in the future, and they will get it when it is requested by the administration for this matter.

So let us not leave any impression that this Appropriations Committee is a Scrooge committee, hard-hearted, does not respond to the needs of the people. But we have to have some orderly way of going about this process.

I hope, Mr. President, that once this amendment is disposed of Senators will not attempt to make a Christmas tree out of the bill.

Now that we have a letter from the administration saying that the administration supports the amendment by Mr. HARKIN, I am sure that the other body will be the recipient of the same request, and I still have the hopes that we can take this bill, take it to the House, and the House will accept it after the Senate completes action on it and it will be sent to the President so we can expedite the effort on the bill. That is what the Senator from Oregon and I have been attempting to say and do all along.

Let me plead to Senators, now that we have this amendment, or presume we will have it out of the way, that we restrain ourselves from offering the amendments that are listed on this calendar. Let us not attempt to make this a Christmas tree, and let us not attempt to make it a vehicle of which we would try to take advantage in a moment in extremis.

This is an emergency. We are trying to deal with a disaster. I hope Senators will not attempt to use this vehicle now to get their pet amendments on. I have a lot of pet amendments. I have a lot of things I would like to have, but I restrained myself because this is needed by the people in the Midwest.

Mr. President, I ask unanimous consent to print in the RECORD the letter that was just received as of the hour of 2:29 p.m. today, a letter from Mr. Panetta, stating "The administration supports this compromise amendment because it is limited to 1993 crop losses."

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 4, 1993.

Hon. ROBERT C. BYRD,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I appreciate your support this morning in opposing the amendment that would have permitted the Secretary of Agriculture to make retroactive payments to farmers who suffered crop losses from 1990–1992 in order to receive payments up to 100 percent of their eligible claims. That amendment would have increased the cost of disaster assistance by $3.4 billion.

It is my understanding that a compromise amendment may be offered which would eliminate the 50 percent pro rate for agriculture disaster payments for 1993 crop losses. This amendment is estimated to add $1 billion in costs to the $1.4 billion crop disaster assistance program requested by the President and contained in the Committee bill.

The Administration supports this compromise amendment because it is limited to 1993 crop losses.

Sincerely,

LEON E. PANETTA,
Director.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the yeas and nays—have they been ordered?

The PRESIDING OFFICER. The yeas and nays have not been ordered.

Mr. BYRD. Very well. I am not going to request them. Other Senators may wish to. They are within their rights to do it. But as far as I am concerned we can accept the amendment, take it to conference, and save the time of the Senate.

The PRESIDING OFFICER. All time has expired.

Mr. DOLE. Mr. President, I wonder if I might be permitted to speak for 1 minute.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I do not see the need for the yeas and nays. I think that will save time.

I agree with the distinguished chairman of the committee. Hopefully, this bill will move along very quickly, and obviously the letter from the President changes everything.

There may be an amendment later on to pay for some of this in the bill, and I think I will support that amendment because I am concerned about the very thing raised by the distinguished chairman of the committee.

But I believe it is because of a close vote this morning that we now have a compromise, and I want to thank the administration.

This is very important, and again I would say this is not trying to make anybody whole. This is going from 21 cents to 42 cents. It is not a lot of money, but it may mean a lot of farmers in North Dakota, Kansas, Minnesota, Iowa, Missouri and other States in that ten Midwestern States area will be back on the farm again next year, and overall that will save money.

So I commend the administration for agreeing to this compromise and for those who were able to work it out.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I do not rise to oppose the amendment. I will support the amendment. But I think when we are explaining $1 billion we do not need to worry about the 10 minutes the Senate spends in taking a rollcall vote.

I, therefore, ask for a rollcall vote. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. All time has expired.

The question is on agreeing to the amendment of the Senator from Iowa.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

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

The result was announced—yeas 68, nays 32, as follows:

[Rollcall Vote No. 240 Leg.]

YEAS—68

Akaka	Exon	Metzenbaum
Baucus	Feingold	Mikulski
Bennett	Feinstein	Moseley-Braun
Biden	Ford	Moynihan
Bingaman	Glenn	Murray
Bond	Gorton	Nunn
Boren	Grassley	Pell
Boxer	Harkin	Pressler
Breaux	Hatch	Pryor
Bumpers	Heflin	Reid
Burns	Hollings	Riegle
Byrd	Inouye	Robb
Campbell	Jeffords	Rockefeller
Chafee	Johnston	Sarbanes
Conrad	Kassebaum	Sasser
Coverdell	Kennedy	Shelby
Danforth	Kerry	Simon
Daschle	Kohl	Stevens
DeConcini	Leahy	Thurmond
Dodd	Levin	Warner
Dole	Lieberman	Wellstone
Dorgan	Mathews	Wofford
Durenberger	McConnell	

NAYS—32

Bradley	Domenici	Kempthorne
Brown	Faircloth	Kerrey
Bryan	Graham	Lautenberg
Coats	Gramm	Lott
Cochran	Gregg	Lugar
Cohen	Hatfield	Mack
Craig	Helms	McCain
D'Amato	Hutchison	Mitchell
Murkowski	Roth	Specter
Nickles	Simpson	Wallop
Packwood	Smith	

So, the amendment (No. 758) was agreed to.

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

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

The motion to lay on the table was agreed to.

Ms. MIKULSKI. Mr. President, I rise in strong support of this important legislation which will help the thousands of victims of the devastating floods in the Midwest.

The bill provides a total of $4.7 billion, including funds for temporary housing, crop insurance, flood control activities by the Corps of Engineers, community development grants, and many other important programs.

These funds will be available to help those who have lost their homes, property, and communities begin to rebuild their lives.

Mr. President, I traveled to the Midwest with the President a few weeks ago. What I saw was devastating. Hundreds of homes submerged under water, millions of acres of cropland destroyed, community water systems contaminated. The damage is so widespread that President Clinton has declared nine States major disasters.

We have been so pleased to see FEMA respond so quickly to this disaster. FEMA has been in every State, working hand-in-hand with the National Guard troops and the Governors. We commend the new FEMA Director, James Lee Witte, for his good work.

It has been heartwarming to see the American people's good will shine during this calamity. Neighbors have helped neighbors, thousands of volunteers from across the country have filled sandbags, volunteer organizations like the American Red Cross have provided over a million meals to disaster victims.

Now it is time for the Congress to respond to the devastation by ensuring that needed funds are available for recovery.

Let me say, Mr. President, once the flood waters recede, we know the estimates on the damage will be revised. As chair of the Appropriations Subcommittee which funds FEMA, I'm committed to doing everything I can to ensure that the fiscal year 1994 appropriation for FEMA disaster relief includes adequate funds for flood victims.

Mr. President, while the rains continue in the Midwest, the Southeast has been stricken by drought. The drought has resulted in enormous crop loss up and down the east coast. So I'm very pleased to note that the bill will also aid farmers in Southeastern States. In my own State, farmers on the Eastern Shore have lost many acres of corn and soybean.

In closing, I thank the distinguished chairman of the Appropriations Committee for quickly moving the President's request for this vital legislation. I urge its speedy adoption.

Mr. LIEBERMAN addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent to proceed as in morning business.

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

A VOTE FOR CHANGE

Mr. LIEBERMAN. Mr. President, this Friday we will vote on President Clinton's economic plan, a decision that will affect the direction in which our country will go for at least the next 5 years. As we approach this decision——

Mr. BYRD. Mr. President, will the Senator allow me to interrupt him? And I apologize.

Mr. LIEBERMAN. Certainly.

Mr. BYRD. Would the Senator be willing to put a time limit on his statement?

Mr. LIEBERMAN. I certainly would. I ask for up to 10 minutes and hope I do not use it.

Mr. BYRD. I thank the Senator.

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

Mr. LIEBERMAN. Mr. President, as we approach this decision this Friday on President Clinton's economic plan, the American people know and I think we, as their representatives, must show that we cannot afford to just keep on going down the same old road of inertia and inaction.

Our economy has been in recession for too long and too many jobs have been lost. Our budget has been out of balance for too long and too much of our economic strength has been sapped. The American people are right not to want more of the same. They want and need change. They want less Government spending, they want us to eliminate the deficit and, most of all, I think they want us to get our economy moving again to protect the jobs of those who have them and create new jobs for those who do not.

So, Mr. President, after a careful review of President Clinton's economic plan, as reported out by the conference committee yesterday, I have decided to cast my vote for change. This is certainly not a perfect plan, but I am convinced that it is as good a plan as we are going to get out of this Congress, and that is why I will vote for it.

In that sense, if we pass the President's plan, we are not, to paraphrase Churchill, at the beginning of the end of our work, we are at the end of the beginning of our work to restore America's strength and balance.

When I voted for the Senate version of the economic plan a few weeks ago,

I did so very reluctantly, and only after I received the commitment from the President and the majority leader that they would fight in conference for the kind of job-creating incentives that were absent from the Senate bill. To the best of their ability, I am pleased to say they have fulfilled their commitment.

The economic plan before us includes many of the incentives I have been working for since I came to the Senate in 1989. For example, the plan now contains, one, capital gains tax cuts for investments in new businesses that will create new jobs; a special deduction for small businesses that buy new equipment that will protect or create new jobs; a research and development tax credit to stimulate the investment that will sustain the competitiveness of our businesses and also create new jobs; and enterprise zones which will bring businesses and jobs to our suffering poor cities and rural areas and will get people off welfare and put them back to work.

All of these incentives, I believe, will produce jobs in my State of Connecticut where they are desperately needed and throughout the country, and all of these incentives, supported now by most congressional Democrats, show that we have come to understand that you cannot be projobs and antibusiness; that if we want to create jobs in this country, we need to help business do it, and tax incentives are one good way to make that happen.

Mr. President, the economic plan also contains real and substantial deficit reduction. Unlike previous budgets, this plan will cut spending by $250 billion, including 100 cuts in domestic programs. Cutting the deficit will also create jobs and stimulate the economy because it will help keep interest rates low and give the private sector and people around the world the confidence that America is moving at long last in the right direction toward a smaller Federal Government and a balanced Federal budget.

To achieve job-creating incentives and deficit reduction, we are being asked to swallow some painful tax increases. I appreciate the fact that the vast majority of tax increases will not fall on the middle class. But like everybody else here, I hate to raise taxes, particularly when our economy is so fragile. Although there are more spending cuts than tax increases in this plan, I wish we had cut even more spending to avoid raising the gas tax at all. That is why I supported the Presiding Officer in voting to cut the gas tax out of this plan when it was before the Senate.

To get the kind of job creation and deficit reduction we desperately need, I am prepared to make that tough choice. I must say I am grateful that the conferees at least kept the increase in the gas tax from going above 4.3 cents a gallon.

Sacrifice is clearly required of many Americans in this plan, particularly higher income Americans, and some older Americans, higher income older Americans. But I hope all who are affected by this bill will recognize that their sacrifice today will reduce the burden of the deficit that will otherwise fall on their children and grandchildren tomorrow and that their sacrifice today will create more and better jobs for their grandchildren and children tomorrow.

Mr. President, I would also like to note in this regard my displeasure at the decision to make the income tax increases in this plan retroactive to last January. I personally believe that that is grossly unfair, and I hope that we can do something to alleviate and eliminate this unfairness.

Finally, I go back to my quotation from Winston Churchill about this being only the end of the beginning of our work. If we merely pass this plan, go away and do nothing else, that is obviously not enough. We must recognize that we are imposing taxes at the same time we are trying to stimulate economic growth in an uncertain economy, and that is a difficult and perilous balancing act. That is why our work will not be done this week, why we must come back and get to work again on more growth, more investment, and less spending. That is why I have joined with several of my colleagues, under the leadership of the Senator from Nebraska, BOB KERREY, in calling for a special session of Congress after Labor Day devoted exclusively to cutting more Government spending. We have discussed this idea at length positively with the majority leader and others, and I hope the details of a plan to hold such a cost-cutting session can be worked out and announced in the next few days.

Mr. President, I also believe we need to recognize that the Federal bureaucracy must be reorganized; that our Government must be reinvented by eliminating outdated and redundant Federal agencies and by streamlining the Government in a way that dramatically lowers its cost while increasing its effectiveness.

Some of us in the Senate are now hard at work under the leadership of the Vice President and his National Performance Review to get this kind of reorganization underway. I hope that some of the fruits of those efforts could become the focus of this special cost-cutting, reinventing-government session that many of us would like to see occur after Labor Day.

The bottom line for me is that this economic plan, as imperfect as it may be, represents today our best hope for change, our best hope for a break with the status quo, for a chance to show that we can get something done in Washington, a chance to grow our economy, to create jobs, to eliminate waste, and to get our governmental books back in balance. President Clinton was elected to bring about that kind of change. I believe he deserves the opportunity that passage of this bill will give him to make that change happen.

I thank the distinguished Presiding Officer and the President pro tempore and chairman of the Appropriations Committee for his graciousness in allowing me to proceed at this time.

I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico, Mr. DOMENICI.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

Mr. DOMENICI. Mr. President, I rise to speak on the bill, after which time I will ask for about 3 or 4 minutes in morning business. First, let me talk about the bill that is before this Chamber.

Mr. President, in the early 1970's, I had just come to the Senate, and a big disaster hit the country. It was not as big as this one, but it had the name of Hurricane Agnes. For some around here, it was much worse in these parts, traveling all the way up into New York and Pennsylvania. I was on the Public Works Committee, which had jurisdiction over disaster relief. Quentin Burdick, now deceased, was the chairman of that subcommittee. Actually, I think they put me on that subcommittee because it was the subcommittee no one wanted to be on, which will be part of my discussion here with the Senate today. I was the most junior member.

Well, the hurricane hit, and Senator Quentin Burdick and Senator PETE DOMENICI became very important because we were called upon to travel all over the Eastern United States to see whether the existing laws regarding disaster relief were workable, whether they did the job, and whether we could come out of the disaster with a minimum amount of taxpayers' dollars and with maximum relief for those who needed it.

Let me suggest that it turned out that even for that hurricane, which maybe—I do not remember in scale, but I am going to just speculate that maybe it was about one-fifth or one-fourth the size of this disaster. It was a big, big mess.

What we found was that the laws were not worthy of the problem; that we did not have laws on the books that would address it correctly; that if we would have just poured money into existing programs, we probably would

have spent billions of dollars and would not have gotten help to the people who needed it, to the businesses that needed it, or we would have been immersed in a series of arguments, perhaps lasting years and years, about whether the law even applied here, there or elsewhere.

Now, yesterday and today, we have been discussing a flood of far more serious proportions than Agnes as a hurricane with attendant floods. It may be, as many have said, biblical in size. Clearly, it is, indeed, America's worst ever, both in terms of damage and in terms of how we get out from under the mess, because the problems that we are going to have to solve we have not entirely fathomed yet.

So I rise today to suggest that if we want to help the people, the economy, the children, and the various communities stricken by this flooding, and we want to do that correctly, then we better not count on the existing laws to do the job.

I am willing to predict for the Senate tonight that if we do not set about to see whether our laws fit the needs of this disaster—and if they do not, change them—we may find that we do not even have laws on the books to help part of these communities get out from under this disaster and bring vitality back. If we do not get with it and go out and find out what is needed, we are probably going to stretch existing laws and existing relief. When you do that, you can end up with another disaster because nobody is happy; you do not get the programs where they ought to be; bureaucrats are accused of all kinds of things such as, "You are not helping us; you are delaying things." Much of that is because the laws are not tailored to a disaster of this proportion.

Now, today, there was a request for $200 million in additional appropriations for the Economic Development Administration.

Mr. President, I did not vote for that amendment, I say to my friend, Senator BYRD. I did not vote for it even though in that case it fits the chairman's criteria that the administration asked for it.

I am absolutely convinced that if we take 6 weeks, and if our authorizing committees will join together and go out to the Midwest and see what the problems are on an ongoing basis, we will do far more with $200 million than EDA is ever going to do in the area. We will find some areas of need, and we will find some ways to really get to them without all the conditions of an EDA program which may or may not fit the disaster situation, and which is going to have to be moved around to fit the needs of the disaster victims. It is a worry that you do not get anything done very fast under EDA. In fact, I believe it is one of the Federal programs with the slowest spend-out rate. I am not sure of that, but I think for the $200 million, normally we would not spend out very much money—only 10 percent or so in the first year.

Now, that does not mean I am against aid. I am merely suggesting here tonight that this may be a $10 billion or $20 billion disaster. I do not know. I do not believe this bill is enough, and on one score I do not agree with the chairman, for whom I have the highest regard, my friend, Senator BYRD. I do not think the administration can just go out there and take a look and send funding requests up to Congress, because for the most part they will try to see how it fits with existing laws.

I think it is incumbent upon the Congress to send their authorizing committees into a commitment stage where they will start having hearings on that disaster and see what we can do to take our taxpayers' money, which we are all willing to spend for this disaster, and spend it better, help more people, and get programs that are more apt to work than straining those that we currently have on the books.

Let me assure you that even with Hurricane Agnes, the laws then on the books—and that is not an ancient event—were not adequate. It was during the early 1970's, and we had disaster relief laws on the books. Let me suggest that we had to come back from Hurricane Agnes as authorizers and rewrite the whole law. The whole public works law for disasters was rewritten about that time to solve the almost incredible problems of Hurricane Agnes.

Now, 20 years have passed, and instead of Hurricane Agnes we have these extensive floods. This disaster may be tenfold bigger. It is an agricultural area, and Hurricane Agnes was only partially agriculture. Incidentally, it closed down a lot of businesses, I might say to the Senator. A lot of manufacturing was closed down, including big companies. I remember Corning. I did not know that much about the east coast then, but at Corning, the water went right in the front of this big facility that hired hundreds and hundreds of people. I can remember the front end of it; all of the rocks and bricks were torn away. Corning did not know where they were going to begin to rebuild. We had a hearing right in that town to talk about public works and matching grants, and how to use the cities and the States in the massive cleanup effort.

I think it is incumbent upon us, for the people of this disaster area, and the people who are going to pay the bill—because we want to pay the bill for them, we want to help them—I think it is incumbent upon us to get with it quickly and start hearings about how we better solve this problem even if it means changing existing laws.

I want to close by saying that we ought to even be considering some flexible money, some money that is not so tied in strings and knots by the ongoing programs of this Nation. It may very well be, within limitations, that there ought to be a sizable amount of money that can be made available to the Governors in conjunction with the President to do the kinds of things that can be done quickly, that make sense.

I predict, if we do not do this, we are going to have the flood victims waiting 2 and 3 years for things that we ought to be doing in 6 or 8 months.

Now, that does not mean I have the answer to agriculture either. I voted in the Appropriations Committee for everything that was asked for by the President. I have not voted for the add-ons here. I frankly do not think that many people really know exactly what we are doing. I stand ready to add more funding to the agriculture relief effort, but, frankly, I think we ought to have somewhat of a better game plan and know a little bit more about what we are doing for the farmers, and what we can do best for the taxpayers of the country.

Mr. BYRD. Mr. President, will the Senator yield?

Mr. DOMENICI. I will be pleased to yield.

Mr. BYRD. Mr. President, some reference has been made to my—I do not know just how to say it—reference to my supporting the administration's requests. I have to say that I have been a little disturbed today.

Today and yesterday, I received four letters from the administration concerning the amendment by Mr. HARKIN, or amendments by Mr. HARKIN. Four letters I received. Three of them today, one at—well, three today.

I find it very difficult to work hard on a bill and get it through the Appropriations Committee—we have 29 members of that subcommittee—and try to persuade my colleagues not to offer amendments in committee.

And they are very good about that. Both Republicans and Democrats are very good about honoring that request. I think it is a sensible one. We do not fight there and then come up here and fight here.

But it takes a lot of time. It takes my staff. They spent hours in the evenings and the nights, early mornings. I was here in my office this morning at 8:03. I will be here late tonight. The ranking member, I am sure, spends a lot of time himself.

So we come out here shoulder to shoulder to try to defend an administration's request on a matter of this kind. I try to support the administration on a matter of this kind because as I explained earlier today—I do not need to repeat it—they are in a better position to know. I am in no position to assess the damages. We do want to help those people.

But I have been 35 years in this Senate. I was not made chairman of that

committee by any President, Republican or Democrat. And I am no President's man. I said that when President Carter was President and I was the majority leader. I am nobody's man. I do not wear any man's collar but my own. I am not bragging. But that is just the way it is.

I do not take it lightly when I get all kinds of signals. I am here trying to support the administration's request for reasons I will state later.

I do not like to be whipsawed. I have a certain amount of honor. And I have a certain amount of responsibility to my colleague here, the ranking member. I take a stand, he takes a stand, and we get different signals.

Well, he may not be supporting a particular proposition for the same reasons that I am. I felt a little badly when, by my criteria, I said OK, I am going to support that. But the Senator from Oregon never laid out those particular criteria. He has his own.

What we did is we still added $1 billion to the deficit. But we also changed the formula that had been used for disasters for the past 3 years. We made it 100 percent instead of 50. Right? So its effect was to treat the victims of these floods differently than we have treated the victims of hurricanes and droughts.

These are the kinds of things that ought to be determined by the authorizing committee, as the Senator from New Mexico said, working with the administration. It should not be done in these appropriations bills. But I am a little bit tired of being whipsawed, having this Senator, that Senator, another Senator, and another Senator come in and say: I have a letter now. It makes me wonder what this appropriations bill is being used for. Is it vulnerable because there is a tougher bill coming down the track? A reconciliation bill? Is that it?

I hope that decisions on this appropriations bill are not being made downtown on the basis of what will secure the most support on the reconciliation bill.

I live by my own credo, Mr. President. I am a Democrat. I always have been a Democrat, and I expect to be a Democrat. But the party does not come first with me. It never has.

I just hope that somebody will get a message that this is one chairman that takes the other person for his word, depends on him to stand there until he has a good reason to change his mind and then he explains it to me. And I do not like to be whipsawed.

I like to give a man my word and keep it. If I see I cannot—I have heard many people say: "I support the Cochran amendment." Well, the amendment was not the Cochran amendment that they committed to. The amendment had been modified by Mr. COCHRAN's amendment.

So if a man says, "I will vote for your amendment, your amendment A," and then I come back later and find out that you have changed that amendment A and included B in it, I did not make any commitment to support A and B. I made a commitment to support A. And the Senators came to me and said, "I committed to support Mr. COCHRAN's amendment." But the amendment we were voting on was not the Cochran amendment. The amendment we voted on was the Harkin amendment as modified by the Cochran amendment. That is a different matter.

So I guess I just came up the old fashioned way, taught to know what I was committed to, what I was saying, and to stick to it when I said it. That is the way I have to be dealt with by any Member.

I thank the Senator for yielding the floor.

Mr. HATFIELD. Mr. President, will the Senator yield for a moment?

Mr. DOMENICI. I am pleased to.

Mr. HATFIELD. I will just follow up on the chairman's comments.

As the chairman indicated, we had a good agreement between the majority and the minority on the committee. We came to the floor with that kind of partnership. The chairman and I have cosponsored a formal request to add another $33 million more to this from the administration. We did so.

The chairman and I, in effect, took the cue from the administration on the Harkin, pure Harkin amendment, and it was based in part, as far as I was concerned, on a letter sent to me, a copy of a letter addressed to Chairman BYRD, sent at 1321, Navy time for 1:21, and signed by the Director of the OMB, that the $1 billion Harkin amendment would not be opposed.

Well, that is not a request, Mr. President. One hour later, at 1429, from the same source, the Director of the OMB, addressed to Chairman BYRD:

> The administration supports the compromise amendment of adding $1 billion.

Mr. President, I ended up voting against that. The chairman supported it on a final vote, not that we were divided on the matter.

Let me make it very clear merely from the standpoint the chairman felt that the administration is saying it now supports the amendment, which constituted a request. And we had both said we would respond affirmatively to the administration's request.

But in the context of that 1 hour, I had I think legitimate reason to question the evolution of this particular issue as not really evidence of thoughtful policy.

Therefore, I voted "no." But I want to focus on the matter that these mixed signals did not in any way impair the partnership role the chairman and I have been playing on this bill at this time in trying to respond to the administration's requests, as representing the needs of the people and continue to do so for the rest of this period.

I thank the Chair.

Mr. DOMENICI. Mr. President, let me repeat that I do hope the Senate and House get themselves together with the authorizing committees and work on how we ought to solve this disaster.

I compliment the chairman and ranking member for the way they handled this bill.

Senator BYRD, I have the utmost respect and admiration for you, and I hope nobody thinks the Appropriations Committee is not going to grant the victims of this disaster everything we can to get them out of the problems they are in and move them ahead. But it will happen. If we split on some of these votes, we are for doing what Americans want us to do to help the region.

I yield the floor.

Mr. DOLE. Mr. President, I take the floor primarily to urge Members who have amendments to get over here and offer them. As I understand it, we agreed yesterday that we would finish this bill today, and it is now 4:40 p.m. and the last time I counted there were at least 25 to 30 amendments, or more, to be dealt with. I understand many may not be offered, and some are in the process of being compromised, and others will be offered.

I just say to my colleagues on this side of the aisle that we have a lot to do yet in the next 2 days if we are going to leave here on Friday. One commitment we made is to finish this legislation today, and perhaps maybe if we can get an agreement, even try to work on Interior appropriations. But I understand that there are a couple of issues here that may prevent that. Hopefully, it will not take long to work out an agreement on those two issues.

So I urge my colleagues—since most of these are Republican amendments—to come to the floor, if nothing else, as a courtesy to the managers who are prepared to do business. I make that request of my colleagues.

I have two amendments on this list to offer, and I will offer the relevant amendment which would, in effect, say you should not have retroactive taxes on any flood victims. It is a sense-of-the-Senate resolution that would not have any impact on the law, but maybe it would change the minds of the conferees who are still conferring on certain parts of the economic package, and not have a retroactive tax policy.

I pointed out today that in article 57 of the draft constitution now being set in the Russian Republic, there is a constitutional amendment against retroactive taxes. We did this once during the Vietnam war crisis. I was a Member of the House at that time. We had a temporary 2-year surtax at that time, but that was far different than what we have today. We did not extend the rates and make them retroactive. It was just a surcharge on income. That is the only time I can think of. It

was much different because we were in an economic crisis and because of the drain on the Treasury from the Vietnam war. That was later eliminated in 1970.

In any event, I say to the managers that we want to do all we can to cooperate. We would like to finish early this evening because we have other matters to deal with.

Mr. DOMENICI. Will the Republican leader engage me in a colloquy on the reconciliation bill? Has the entire bill been filed, to your knowledge? Do we have the bill we are supposed to be studying?

Mr. DOLE. As far as I know, the bill has not been filed. It is going to make it difficult. The House is supposedly going to vote tomorrow. A number of Members on each side of the aisle and their staffs would like to look at this massive piece of legislation. So my understanding is that, as recently as an hour ago, some details were still being worked out.

Mr. DOMENICI. I thank the Senator.

The PRESIDING OFFICER. The Chair reminds the Senator from Oregon that the first committee amendment is now pending and needs to be set aside.

Mr. HATFIELD. I ask unanimous consent that it be set aside.

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

AMENDMENT NO. 760

(Purpose: To make certain amendments regarding Local Rail Freight Assistance)

Mr. HATFIELD. Mr. President, on behalf of Senator BOND, 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 Oregon [Mr. HATFIELD], for Mr. BOND (for himself, Mr. SIMON, Mr. DANFORTH, Mr. HARKIN, Mr. WELLSTONE, Mr. DURENBERGER, and Mr. PRESSLER), proposes an amendment numbered 760.

Mr. HATFIELD. 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 18, line 10 through 14, restore the matter stricken.

On line 14, strike the numeral.

On line 25, strike "$6,000,000 of".

Mr. HATFIELD. Mr. President, I offer this amendment on behalf of Senator BOND. This amendment has been cleared on both sides. It deals with the Local Rail Freight Assistance Act and support program. All this amendment does is bring it in conformity with the House provision, both in terms of language and in terms of the level of funding. The House funded this at $21 million. We in the Senate have funded it at $16 million.

So this now conforms to the House figure on the funding level. We have added one bit of new language, and that is the mandate that this be expended by the end of fiscal year 1994. That was done on the basis of recognizing the emergency character of this and how it should be utilized.

This has been cleared by the chairman of the Appropriations Subcommittee on Transportation, Senator LAUTENBERG of New Jersey, and has been cleared by the ranking member on the subcommittee, the Senator from New York, Senator D'AMATO. It had an implication as well in the authorizing committees, and this as well has been cleared by both the chairman and the ranking member, I am told, of the authorizing committees.

I have a letter from Leon Panetta, Director of OMB, indicating that the administration supports this amendment. So I think it has been cleared throughout.

Therefore, Mr. President, I urge its adoption.

Mr. BYRD. Mr. President, the amendment is as has been described by the distinguished Senator from Oregon [Mr. HATFIELD]. The administration has written a letter saying that the administration supports such an amendment and, therefore, I believe that, with the administration's support, the House might be inclined to accept it and not make us go to conference.

Therefore, I have no objection to the amendment.

Mr. BOND. Mr. President, last Friday, the Senate Appropriations Committee reported H.R. 2667, legislation to provide emergency supplemental appropriations for flood relief assistance.

The flood assistance bill approved by the Appropriations Committee last week included $16 million for rail flood assistance through the Local Rail Freight Assistance [LRFA] Program. The LRFA was created to preserve rail service to small towns and communities by providing financial assistance needed to rehabilitate lines that might otherwise be abandoned.

I appreciate my colleagues' prompt attention to the critical situation affecting an important segment of our transportation system. The need is clear. Early estimates show railroad flood damage of $17.4 million in the State of Missouri alone. At least $8.5 million of Missouri's railroad damage affects Gateway Western Railway, a regional railroad with 300 miles of track running between Kansas City, MO, and Roadhouse, IL.

Ironically, Gateway Western, which is the hardest hit railroad in the Midwest, would be ineligible for assistance under the bill approved by the Senate Appropriations Committee because, last year, it carried slightly more freight per mile than the 5-million-ton-mile eligibility limit allowed.

During the Appropriations markup, Senator LAUTENBERG, the chairman of the Transportation Appropriations Subcommittee, indicated that he would be willing to consider an amendment to ensure that railroads like Gateway Western receive the help they need. The amendment that I am offering, Mr. President, would replace the Senate language with the rail assistance provision included in the House-passed emergency flood relief bill.

Briefly stated, the amendment provides assistance to repair and rebuild rail lines damaged by the flood. Through the LRFA, $11 million would be available for smaller non-class I railroads, that carried 5 million gross ton miles or less per mile during the previous year, and $10 million would be available for other railroads, including Gateway Western, at the discretion of the Secretary of Transportation.

Mr. DANFORTH. Mr. President, I support Senator BOND's amendment to ensure that emergency assistance is available to railroads like the Gateway Western, which has sustained $8.5 million in flood damages to date.

I appreciate the work completed by the Appropriations Committee, which included $16 million for rail flood assistance through the Local Rail Freight Assistance [LRFA] Program. I understand that both the Administration and the Senate Appropriations Committee leadership support this amendment, which increases the total funding available through LRFA to $21 million. Also, it makes up to $10 million in rail assistance available, at the discretion of the Secretary of Transportation, to rail lines that carried over 5 million gross ton-miles-per-mile last year.

Early estimates show flood damage to railroads in the State of Missouri approaching $18 million. $8.5 million of Missouri's railroad damage affects Gateway Western Railway, a regional railroad with 300 miles of track running between Kansas City, MO, and Roadhouse, IL.

Gateway Western's total economic losses are now approaching $13 million, including detour expenses and losses of revenue. This legislation addresses only the physical damage sustained by the railroad, including the need to rebuild 2,100 feet of collapsed embankment and a major bridge at Glasgow, MO. The best help we can give them is assistance to rebuild and get back into business.

Mr. President, I urge my colleagues to support this important amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

The question is on agreeing to the amendment.

The amendment (No. 760) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I hope Senators will come to the floor and offer their amendments. Mr. President, other Senators and I, and the floor staffs, have been trying to encourage Senators to let us take their names off the list in the event they do not plan to call up their amendments. I hope Senators who do not intend to call up amendments will let us know so that we can remove their names. If they intend to call them up, they should come to the floor.

The leader indicates that action on this bill should be completed before the close of business tonight. I think that is a perfectly legitimate request, and I intend to do what I can to help bring it about.

I will say that if Senators are lax in not calling up their amendments, at some point I will give them a frank notice that I intend to move to third reading. I will tell them when I intend to move to third reading, and if they are not here to call up their amendments, I will move and get the yeas and nays on the motion.

I am not going to take advantage of any Senator, but I do not think the Senator from Oregon and the Senator from West Virginia should have to spend the day here and a good bit of the night waiting on amendments that never materialize in the Senate.

The PRESIDING OFFICER. The Chair recognizes the minority leader.

Mr. DOLE. Mr. President, I ask unanimous consent to proceed as if in morning business to introduce a bill.

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

The Senator from Kansas is recognized.

Mr. DOLE. I thank the Chair.

(The remarks of Mr. DOLE pertaining to the introduction of S. 1356 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The first committee amendment is still pending.

The Chair recognizes the Senator from Minnesota [Mr. DURENBERGER].

AMENDMENT NO. 761 TO FIRST COMMITTEE AMENDMENT

(Purpose: To reduce the amount declared to be emergency spending and offset the resulting nonemergency budget authority through reductions in fiscal year 1994 discretionary spending)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 761 to the first committee amendment.

At the appropriate place, add the following:

FUNDING SPENDING THROUGH SEQUESTERS

SEC. . (a) REMOVAL OF EMERGENCY DESIGNATION.—Notwithstanding any other provision of this Act to the contrary, all the amounts designated in this Act as emergency requirements for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be treated as not being emergency spending under the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) It is the sense of the Congress that spending reductions required by this section shall be achieved through reductions in administrative expenses rather than in the expenses of underlying programs or assistance.

Mr. DURENBERGER. Mr. President, I allowed the amendment to be read so that particularly the chair of the Appropriations Committee, who has labored so hard to do this bill in the most appropriate way, could hear it and so could all of my colleagues.

It is not as great of an amendment as I once proposed. I was thinking, as the flood developed, starting in Minnesota, which is at the head of the Mississippi—some time early in May you could see this disaster developing very slowly. Of course, in early May we had no idea of the dimensions of this, and we did our usual thing, those of us who represent Minnesota. At some point in time when it became clear that farmers were going to have difficulty planting, we went to the President to ask for emergency declaration for six counties. At that point in time, in late May, early June, that was about all anybody knew or cared about what was going to be visited on us and what brings us to the floor today.

As June went on, the problems kept getting worse, and prayers were not being answered. The rivers started filling up, and the watershed started filling up, and the problem became greater for all of us. I began to think back on the votes that I cast starting way back when I first got here on Mount St. Helens and working its way through all the eighties and the period of the early nineties—in fact, 1991–92 I think was the last year we did Chicago, Los Angeles, Florida, and so forth.

It was not until the last year, or so, that I began to consider whether or not the disasters with which I was dealing, even though they were quick disasters like Hurricane Andrew—they sweep in from the coast and cover the southern tip of Florida and leave in 24 hours and leave behind tragedy and billions of dollars of loss—or one that went as long as this one that begins in May and is still going on. It is still wrecking havoc. I began to think several thoughts. One was how long do we in Congress continue to react the same old way to this process?

Second, I thought about it in the context of, well, suppose this gets to be $5 or $10 or $20 billion. You know, are we just going to add that to the deficit?

I recall that last year I voted three times against very large appropriations for emergency relief to Los Angeles, Chicago, and Florida because we did not take the time to determine exactly what it was we were trying to do, for whom, what it would cost, and then say to the rest of America, "We have decided that the national solution to this part of the problem is the most appropriate solution and we are also going to ask all Americans to contribute to it." We did not take the time to do that.

In fact, I recall being right about here in 1980 watching the then-chairman of the Appropriations Committee, Senator Magnuson, of Washington, standing right down in the well and spending. Spending, Mr. President, hundreds of millions of dollars, and I remember that he just did it—unlike our chair now who has stood out here for almost 24 hours now, with the exception of 6 hours to sleep or something, defending principle. I recall the then-chairman of the Appropriations Committee standing down there ignoring the rules of the Senate and spending hundreds of millions of dollars.

And that impression has not left me to this day, and it really has not so much to do with Mount St. Helens or disasters as it has to do with the way in which one person at this point in time could spend a whole lot of money meeting a lot of people's needs, but he was the judge of what those needs are.

I think things have changed. All of us are now involved in that process. All of us have to take responsibility for doing something about it.

But the fact of the matter is the way in which we go about it has changed from Senator Magnuson standing down there making decisions to now, when all are involved in making the decision. It has also gotten much more difficult to be chairman of the Appropriations Committee because that was before big deficits.

I think the deficit that year—or I do not know what the deficit was—maybe $30 billion, but the national debt was like $876 billion, which was an unheard of figure at that time. We thought it was a lot. And every year we would debate in the Finance Committee and here on the floor whether we should raise the debt ceiling from $876 billion to $877 billion or from $888 to $900 billion, or something like that.

And here we are at $4.1 trillion, going to $5.3 or $5.4 trillion, and we no longer debate raising the debt ceiling.

A lot of pressure has been put on the appropriations process as a result of that. As we all know, the implications of Gramm-Rudman-Hollings and the implications of the budget resolution process, and so forth, have not been fair to the kinds of spending that is done by this body through a process of authorizing and appropriating and decisionmaking and categorical programs and specific spending programs to meet specific needs around America. It has not been kind to that kind of process.

The process has been very kind to these programs invented in the thirties

and forties. Those are the programs that automatically take from payroll and put moneys into a fund and then transfer moneys to people because of retirement or disability or ill health, or something like that.

It has been an unkind process, as you view it, if you are an appropriator or even an authorizer. The authorizers around here are having difficulty spending the kind of money that they used to spend. The appropriators are having to make incredibly difficult decisions, balancing a variety of competing interests that have built up in programmatic responses over 25 or 30 years of a National Government trying to deal with these problems.

So, I come to the floor with this particular amendment. The amendment itself, if you want to reduce it to its simplest terms, says that the amount of money that finally gets spent meeting the needs of people in the States that are suffering from this disaster, the amount of money that we decide to spend will, in effect, come out of next year's or the fiscal 1994 budget and will come out of the 1994 budget, as you know, the first dollars out, if you will, at the top.

I think in next year's budget the discretionary account will be something like $539 billion in the discretionary spending. I think, as of last count here, we have decided to spend $5.7 billion or projected $5.7 billion in spending.

So, in effect, that means the top 1 percent will be coming off the top of appropriated accounts to go to meet the needs of the disaster victims.

A couple hours ago, that sum was less. That sum was $4.7 billion. Now it is $5.7 billion.

So I could have stood here with a chart and said only eight-tenths of 1 percent. Now it is 1 percent. I suspect by sometime this fall, when we come back to doing the individual appropriations accounts, it will be 1.5 percent. It might even be 2 percent, listening to the speeches here about how serious these problems are.

So I am not particularly comfortable coming to the floor saying that we need to add another burden to the responsibility of the chairman of the Appropriations Committee. I am not particularly comfortable coming to the floor saying we ought to add more of a challenge to the burden carried by my colleagues on the Appropriations Committee.

But, in effect, Mr. President, I personally do not have any other choice. I do not know about the rest of my colleagues, but I do not have any other choice. I took a stand on other people's disasters—that they were not emergencies; they were disasters, but they were not emergencies—the Chicago flood, the hurricane in Florida, the tragedy in south-central Los Angeles. The emergencies were taken care of within the communities, just as they are on this flood. You keep people from drowning in an emergency. You save people, you sandbag, you dike, you feed them, shelter them, this whole series of things.

FEMA has a large fund of $629 million, is the last I saw, that can do things only Government can do by way of putting money into the hands of the people that do not have a home, do not have a way to get to their work, do not have a way to get to their children.

So emergencies are taken care of immediately by local resources—the Red Cross and all these church organizations. And I made this argument last night.

The disaster, on the other hand, takes a longer period of time to determine its depth, its breadth, its quality, its quantity, whatever else. Whether it is Senator Magnuson on the floor of the Senate 12, 13 years ago, or it is all of us today, we have all reacted in the same way. A disaster, an emergency, is a reason to come to the floor and spend money. And in that kind of process, it is very difficult to say, "I now want to send you a bill for the money I have spent," because we are not convinced that that amount of money is really going to solve the problem, but it is the best we can do at a given point in time.

Mr. President, I had looked back to try to find out what happened to the money that went to south Florida, what happened to the money that went to south-central Los Angeles, what happened to the money that went to Chicago. It is pretty hard to find out.

If I cannot find out, how do you think the average taxpayer is going to know where this money goes? Do you think the average taxpayer could follow the debate here on the floor of the Senate over CCC formulas and things like that? I doubt it.

I think it is because all of us have been reacting the way we have always reacted in this place.

Mr. President, if I may be so bold as to say this, I think this is the problem with everything we do. We always seem to react in the same fashion when presented with the same or a similar set of circumstances.

So then I say to myself: Maybe that is part of the reason why, when I came to this body, the national debt was $800 some billion, and it did not make any difference whether Senator Magnuson stood on the floor of the Senate and added a billion here or a billion there. It did not make any difference because debt service was not a problem.

But today, the national debt is $4.1 trillion, and the debt service on it takes 14 percent of our current tax collection or our current spending, or whatever the case may be. And that is money we cannot spend on children and preventive health care and national health care reform, a better educational system, or all the other things that we complain about in this body all the time.

So I just wondered to myself—and I wonder aloud, for the benefit of any of my colleagues who may be watching this—if this is not the time, when everyone is focused on flood waters and the disaster and so forth, for us to make some decisions about how we respond as a nation, as a representative of the people of this Nation, to the problems that are faced by our constituents in Wisconsin, Minnesota, Iowa, and so forth.

And, simply stated, this amendment just says what the little sign I saw last night in the 7-Eleven says, you know. "If you care about the flood victims, send money."

Now, every person in the 7-Eleven that sees that sign on the wall has to go into their pocket like this, you know, and they have to pull out real dollars.

Am I violating some rule by waving money around here?

You have to pull out real dollars. And once that real dollar is gone, you know, it is going to help somebody, but I do not have that dollar anymore.

But that is not what we are doing. We are not sending real dollars. Yes, we will send enough money to relieve some of the problems for some of the farmers in some of the communities, and so forth, even though we do not know how serious the problem is.

But the bill is not going to be paid by me. It is not going to be paid by you. It is going to be paid by my children and grandchildren.

Why do I worry about that? I worry about that for a lot of reasons that we are all concerned about: The burden that we are shifting downward in our generation.

I think we all know that ours, mine—to give you an idea how old I am, I will not tell you exactly, but my wonderful parents are both still alive and yesterday celebrated their 60th wedding anniversary. I am their eldest. So that sort of brackets my generation. My generation is the first that is going to leave its children less well off than it was left by its parents. We have had 13 generations of Americans since the founding of this country, and mine is the first to fail Thomas Jefferson's moral tenet that each American generation leave the next at least as well off as it was left. So that is a problem for me.

I have another related problem, and that is that if we can come to the floor of the Senate for every one of these disasters and we can decide $4.7 billion—no, I guess it was $3.4 billion on the House side a week or so ago, and then it gets over here and it is $4.7 billion and an hour later it is $5.7 billion—if we can do that that cavalierly—and I voted for all of those, because it is going home to Minnesota; at some point in time, it is going to help out the people in Minnesota—but if we can

do it that cavalierly—last year, it was $8.9 billion in total. This year, it is probably going to be $8.9 billion just on one of these events.

But suppose we talked about the same kind of disaster occurring in the year 2000 or the year 2010? What do you think it is going to cost the next generation after that? Do you think they are even going to have the money to deal with these disasters?

So I have another reason for saying, "let us pay for it," and that is I want to be able to protect those who will have the responsibility that I have 10 years from now to be able to meet real needs. Because mother nature is not going to shut off the rains, the melting snows, the tornadoes, the hurricanes, all of these natural disasters. They are going to continue to occur.

But who is going to take the responsibility, and who is going to be able to accept the responsibility for paying for them 10 years from now if we do not change the way we are doing this?

I have a third reason for suggesting this, and it is called prevention. It is something that we do not do anymore, do not practice very much in our American lexicon, because if it is easy come and easy go, then why prevent? We do not do it in health care. We are satisfied.

I was in a hospital in Sioux Falls, SD, about 6 weeks ago. In fact, it was in connection with the visit of the Secretary of Agriculture to our State of Minnesota.

I had an hour while I was waiting for the Secretary of Agriculture's plane, so I went over to—I think it was Sioux Valley Hospital. I met this wonderful doctor who heads up the neonatal care unit of the hospital and he introduced me to 45 little neonatal intensive care units and 38 teeny, little babies in those units. On the average, those kids are costing about $100,000 each to be born before they ought to be born.

I said, "Doctor, if you could name one thing that moms could do that does not cost anything to reduce the number of the severely premature, the low-birthweight babies, what would it be?" And he said—just like that—"I can reduce 25 percent of these if the moms would not smoke." Prevention. Prevention.

Where is prevention in floods? You cannot turn off the sky. Crop insurance. I am going to have an amendment on crop insurance. If we had a decent crop insurance system in this country, if we had any incentive to have one so all these farmers we are spending money on today could be covered by crop insurance—prevention—we would not be here debating the formula that does not pay more than 20 cents, 40 cents or 52 cents. Because we would have a crop insurance system that works. But there is no incentive to reform the crop insurance system because every time we have a disaster that affects our farmers we pay them off, the ones that were insured and the ones that were not insured. Because, we say, "The crop insurance system was defective." This was defective because it does not cover you if you cannot get in your fields because they are flooded.

So, prevention, I guess, is a third reason I use to suggest to my colleagues that they think once again, as they did last year when my colleague from Florida, Senator GRAHAM, had a similar amendment, that we think about the importance of making a decision to pay for this amendment.

I would add a fourth, and that is that after some of our colleagues from Minnesota on the House side went to the floor of the House a few weeks ago and stopped this same bill on the House side for some period of time until the House could make a decision on whether or not to pay for it, the editorial writers back in Minnesota—where everybody is waiting for the money to get there—the editorial writers stood up and said that is not only a brave thing to do, that was a prudent thing to do. That is the word they used, "prudent." Here is the Minneapolis Star and Tribune, "Prudence surely dictates finding a way to pay for relief without piling it onto the national debt."

So the victims of this disaster know several things about it.

One, they know real emergencies, like in an emergency room and so forth, are being taken care of. They do not need us to do that. Second, they know the depth of the disaster will not be known until this fall. You cannot know how serious it is until the water is gone. You cannot know how serious it is until the crops come in. They all know that out there. So they are saying you have plenty of time to deal with this particular issue which is, Are you willing to pay for this or not?

I do not have to be accused of being heartless because I say, "Let us pay for this." I mean, we stood down here now debating, if we have a farmer who is drowning 100 feet from shore, whether or not we are going to throw him a 25-foot rope or a 40-foot rope, and I think we ended up throwing him a 52-foot rope instead of a 100-foot rope.

That is not the way the folks that I represent would like to be represented. If someone is drowning and he is 100 feet from shore and you have a 100-foot rope, throw it to him. That is what they will do. They will put their money in the little pot at the 7-Eleven, because that is their only way of getting some money to Minnesota.

KARE-TV, Channel 11, an NBC affiliate in Minnesota, 3 or 4 weeks ago went on the air one evening with a plea for Des Moines, IA. We in Minnesota make fun of Iowans for some silly reason I do not quite understand. But it has sort of built up over time. It is very unusual for a Minnesota television station to make a plea to help out Iowans. Usually we make fun of them. Anyway, they said, "Can you, Minnesotans, get some fresh water to the folks down in Iowa?" And that night, that night, 75,000 gallons showed up. By 24 hours later, when they started putting the trucks together to go to Des Moines, 250,000 gallons of Minnesota fresh water were on their way, along with people, to Des Moines, IA.

So, you know, when people are confronted with this decision, what should I do? How should I do it? People are willing to make the decision that somehow or other, over the years, we have gotten out of the habit of doing; that is, actually going, to make sure: What is the need? What can I do to help? If it is money, send money. If it is something else, do something else.

Mr. SPECTER. Will the distinguished Senator yield for a question?

Mr. DURENBERGER. I am pleased to yield to my colleague from Pennsylvania.

Mr. SPECTER. Preliminarily, let me compliment the distinguished Senator from Minnesota on his amendment and on his very articulate presentation.

As I note, the thrust of his amendment is to pay for the costs for flood relief, and I certainly concur with the sense of this body and the sense of the House that the flood relief is indispensable. I am hopeful we will pass this bill and have it conferenced and concluded so it can be signed by the President before we adjourn for the August recess. That is a duty on our part.

I think the distinguished Senator from Minnesota is on the right track in looking for a mechanism to pay for these expenses. I think the flood relief does fall in the category of an emergency but it would be preferable for us to pay-as-you-go. My son, who is a conservative young taxpayer, a practicing lawyer, made the suggestion to me several weeks ago as we witnessed the television depiction of the ravages of the Midwest.

I might say in passing, I hail from the State of Kansas and my home area has been very hard hit. But, my son, Shanin Specter, made the suggestion there be a small percentage of a surtax added on to income tax. It might be one-tenth of a percent. And he felt, much as he did not like paying taxes, that Americans would be willing on the demonstrated need for flood relief to have this paid for.

Finding the money is always hard. But I do think the thrust of what the distinguished Senator from Minnesota has said here is right on target. And the question I have—and I know it is hard to quantify —but I wonder if my colleague from Minnesota has any idea more specifically as to where we would look in administrative costs to undertake the payment for the kinds of funds which are involved in this emergency flood relief.

Mr. DURENBERGER. Mr. President, I do not have a specific. I think my colleague from Pennsylvania is a member of the Appropriations Committee. As I said before he came to the floor, I know they have a difficult undertaking. But my colleague would probably be better positioned than I to know precisely where the administrative and overhead expenses might best come from.

Mr. SPECTER. If my colleague would yield, the Appropriations Committee acts not without wonders, but we may not be quite as astute as the Finance Committee, a committee the distinguished Senator from Minnesota holds membership on. So maybe we could find somewhere, one way or another. I do know, in posing the question, it is hard to particularize where the administrative expenses come from. When you talk about this not being declared an emergency, I know there is no intent on the part of the offeror of this amendment to in any way minimize or downplay the seriousness of the event.

So I want to compliment my colleague for offering the amendment. I think the ideas which he is exploring and illuminating here are very important. On some occasions, the better the amendment, the fewer the votes. But I want my colleague to know I intend to support him.

(Mr. WELLSTONE assumed the chair.)

Mr. DURENBERGER. Mr. President, I appreciate the comments of my colleague from Pennsylvania. Just let me say, not wanting to hold him here, I began this by thinking the way the person at the 7-Eleven thought when they put up the little sign that in effect said, yes, we ought to be able to raise the taxes to do this. That literally is what paying for it ought to be.

The more I thought about that, and the more I tried that on people around this place, they said you cannot raise taxes. I started out where what the Senator from Pennsylvania calls his conservative son started out. Today I got on the phone and started listening to some of the calls coming in, because Bob DOLE gave out the 202-224-3121 number last night. I must tell you, most of those people were saying no taxes, no new taxes, no taxes this, no taxes that. I do not know that that necessarily reflects the kind of Americans who have a concern for this disaster. It was sort of the advice I was given.

So I switched to another area that the Senator mentioned. My colleague mentioned the Finance Committee. I said, "Well, it is not fair to ask that all of this money come out of discretionary accounts, the so-called discretionary, the $539 billion, because most of us agree that that is the only place we go to get money and we leave the other, the Finance Committee account—Social Security, retirement funds, so forth—we do not dare touch those."

What I did was say half the money in the original amendment I presented yesterday, half the money would come from reducing some of the overhead and administrative in discretionary; but the other half would come as a small percentage of the cost-of-living increase in entitlement programs.

It turned out—I do not know if we have that chart here—but anyway, it turned out that if I had followed that particular course, it would have amounted to taking one-tenth of 1 percent of the cost-of-living adjustment for all of these entitlement programs if you went across the board.

Mr. SPECTER. If my colleague will yield for a moment without his losing the right to the floor, I think he made the point effectively by looking to administrative costs. Had he looked to entitlements, it would have caused at least a minor furor; that had you looked at the discretionary amounts it would have been extremely promising.

I know as the ranking member on the Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies how tight those funds are.

When our distinguished Republican leader said cut spending first, with the implication that there might be some justification for minor tax increases, maybe he did not mean that, but the spending has to be cut first. I know in 1990 when this body and the Congress were considering the overall budget summit, I used the recess to travel through my State of Pennsylvania, and found that there was a consensus for understanding the need for taxes if it went to deficit reduction. But my constituents were very unhappy about paying taxes into the general fund which gave more money for spending, which my constituents understandably think is excessive, and that is why we ought to be cutting expenses first.

But I think where there was a real value to be served, something which is understood and appreciated, or when there is an emergency like the floods, I think the people can understand a small fraction increase as a matter of percentage on income tax.

Mr. DURENBERGER. Mr. President, I appreciate again the comments of my colleague. Let me say that I have another amendment which I will offer as soon as this one is disposed of, which deals with future floods and which does give us an alternative, gives the President an alternative to recommend to the Congress. In the case of a flood like this, you either go to the discretionary account, entitlement account, or both, to reduce them, or you go to a tax source to get the money. I think that is the kind of thinking we need to continue to develop.

Mr. President, what we are talking about here is a sacrifice of a few pennies by today's Americans. The alternative is a sacrifice of many dollars in interest by our children's generation and by generations in the more distant future. I do not think it is too much to ask that you and I bite the bullet today—so that we do not add to the $5 trillion burden our generation has already piled on future Americans.

Mr. President, let me just say then, given the comments by my colleague from Pennsylvania, that I hope that my colleagues have given some thought to this amendment; that the changes that I have made in it, as far as where we go to pay for it, have struck a responsive chord, if the argument did not, and that we will have an opportunity soon to vote on the amendment and vote on it up or down.

I certainly urge my colleagues who have made all of the speeches that the chairman of the Appropriations Committee said we would make about spending—everybody—he usually looks to this side of the aisle, but I think they have been made on both sides of the aisle, talking about spending, spending, spending; that our colleagues will take a look at that in the context of the debate that has taken place on this amendment and will vote in favor of my amendment.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The President pro tempore is recognized.

Mr. BYRD. Mr. President, I cannot think of a nicer Senator than the Senator who has offered this amendment. He always wears a smile. I can understand the feelings of the barbarian who was sent to execute Gaius Marius; when he went into the prison, Gaius Marius saw him enter with the sword, and, Gaius Marius said, with a fierce look and piercing eyes, in a loud voice, "Fellow, darest thou slay Gaius Marius?" The barbarian threw down his sword and ran. I feel a little like the barbarian when I venture forth to attack the amendment that my friend, the very congenial, amiable, likable Senator from Minnesota has offered.

But as much as I like him, I cannot support his amendment. So if I can, I am going to execute it. I am opposed to the amendment to pay for disaster assistance for natural disasters. Providing emergency appropriations outside the budget caps was contemplated in the Budget Enforcement Act and is provided for in law under section 251(b)(2)(D)(i) of that act. Since the enactment of that provision in 1990, there have been four bills which included an emergency designation for appropriations totaling $8.6 billion in domestic natural disaster assistance.

We did not ask the victims of Hurricane Andrew along the gulf coast how they were going to pay for the assistance they needed. We did not ask the residents of the Island of Kauai in Hawaii, after Hurricane Iniki devastated that island, how they were going to pay for the aid they required. We did not ask the victims of Typhoon Omar on

Guam to pay for the cost of restoring their devastation. And we did not ask the thousands of farmers who have received disaster payments in the last 3 years because of freeze, drought or flood damage, to pay for that assistance. Not because we did not care about the deficit.

We did not ask them to absorb deductions in other programs to pay for that assistance because fundamentally the Congress believes that when part of our Nation is hurting, the whole Nation is hurting and the Nation should respond in an attempt to help put the suffering back on their feet.

That provision was not put into the Budget Act as a loophole.

And that is what I am concerned about in one sense. Some Senators seem to think this is a loophole. It was included because we recognized that there are certain things that man cannot control.

Every one of these emergency designations has been for an act of God. Man cannot control these—small, finite, little man.

"What art man, that thou art mindful of him?"

Every one of these emergency designations has been for an act of God. There was not a thing that any of the victims could have done to stop them. There was not a thing that anyone could have done to stop the hurricane, or the typhoon, or the cyclone, or the freeze, or the drought. There is not a thing that anyone could have done to stop the rain in the Midwest over the last month or so.

There is a legitimate need to address national disasters in a way that does not penalize other unrelated Federal spending.

I also know there is the possibility for abuse of the emergency designation spending provision, and I do not want to discredit the provision by proving its critics right and by turning disasters into spending opportunities. Therefore, I have opposed amendments which would increase the cost of this legislation beyond what the administration has requested.

I believe there are meritorious uses of the emergency designation provision in the law, but I certainly do not favor exploiting that provision. I hope we will not let our fervor to reduce the deficit cause us to apply a new standard to natural disaster emergencies.

How can we go to those who have lost their homes, their jobs, and maybe their businesses, and say that we are going to reduce those discretionary items that might have helped them to get back on their feet? As if that were not enough, we are going to reduce the mandatory programs like unemployment compensation and veterans' benefits that they may be counting on to put food on the table and keep a roof over their heads until the water recedes and they can put their lives back together. We cannot put these people back where they were before. We cannot take away the water. We cannot put back their crops or their homes or their businesses. We cannot make them whole. That is not within our province or within our means to do. But we can offer some hope and incentive to hold together, keep going, and to have faith in the future.

Mr. President, if this amendment were to be agreed to, we would have to absorb the outlays in future years—$2 billion in 1994, $1.1 billion in 1995, and $527 million in 1996. One small effect would be that the Agriculture Subcommittee, which has just completed conference, would have to go back and cut $1.154 billion in outlays from their 1994 bill. How is that for a joke? Nobody is going to laugh, especially the Agriculture Subcommittee.

When the other 1994 bills that are affected by this bill are marked up, they will have less to work with: Commerce, $59 million. Tell that to Senator HOLLINGS; Energy and Water, $146 million. Tell that to Senator JOHNSTON and Senator HATFIELD, who is the ranking member; Labor-HHS, $30 million. We might get Senator HARKIN's attention on that; Transportation, $56 million. Senator LAUTENBERG will be casting his vote on this matter shortly; and VA–HUD, $511 million. Somebody get word to Senator MIKULSKI as to what this will do for her; Interior, $36 million.

Mr. President, surely we do not mean to say that we expect these disasters that result from acts of God—was it Job who said, "What art man, that thou art mindful of him?"

Well, man is beginning to wake up to the fact that there is a God, that there are some things that man cannot do. He cannot stop the water. He cannot put back the homes. He cannot restore lives of human beings or livestock. Do we expect to help those people? If we do, do we expect to give it with one hand and take away with the other?

In other words, zap it to the veterans' programs, to the health programs, to the parks, to the Forest Service programs, to education, research, environmental programs. It has to be paid. It is going to go on the deficit one way or the other. Discretionary spending, especially domestic discretionary spending, has been zapped all too many times in the past few years. And it is going to be worse. Wait until this reconciliation bill passes and then we see the freeze on discretionary spending that will result from that.

We have an alternative. I suppose we could resort to sequester from time to time—sequester all programs: Defense, military, domestic, and so on, just cut them all equally. How long will the American people stand for that?

Mr. President, I do not question the good intentions of my colleague on the other side, but I urge Senators to defeat this amendment, and I am prepared to move to table it.

Does the Senator wish to say anything else before I move to table the amendment?

Mr. DURENBERGER. Mr. President, just a couple of minutes.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. BYRD. No. No. This Senator has the floor.

The PRESIDING OFFICER. The Chair apologizes.

Mr. BYRD. How long would the Senator like to speak?

Mr. DURENBERGER. Mr. President, I would speak for probably 3 minutes.

Mr. BYRD. Mr. President, I ask unanimous consent that I be permitted to yield to the distinguished Senator for 3 minutes and that I retain my rights to the floor with my intention to move to table the amendment.

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

Mr. DURENBERGER. Mr. President, I appreciate very much not only the comments of my distinguished colleague but the demeanor, and I certainly do appreciate very much his compliment.

He indicated early in his comments that we did not ask last year's victims to pay for damage repair, and that is true. There is also nothing they can do to stop the rain or the hurricanes and there is very little they can do to pay for it themselves. But the fact is the Nation can, and the Nation should. It should have last year.

Last year, on the L.A. riot emergency supplemental, which also sent money to some islands in the Pacific and to Chicago, my colleague from Florida, Senator GRAHAM, a Democrat proposed a similar amendment, only he said you cannot spend the money in Chicago, L.A, or those islands until you have capped the spending. I do not do that. But on his amendment, there were 45 yeas—31 Republicans or 74 percent of the Republicans, and 14 Democrats, 25 percent of the Democrats—45 to 52 last year said we ought to pay for it.

For every $1 billion we add to the national debt, the cost is about $70 million a year. For $5.7 billion added to the debt, the cost will be $400 million a year.

Mr. President, our colleague, JAY ROCKEFELLER, had a little piece in the Washington Post today with regard to the President's economic package, which is an effort to stabilize spending and taxes in this country. He said:

> If the measure fails, America's $300 billion deficit will double within a decade. Twenty cents of every tax dollar will go to pay interest. Long-term interest rates will spike up, bringing higher mortgage and car payments. Stock prices will slump, economic growth will stall, and business investment will dry up in an already withering job market.

And he went on to make some caustic, uncalled for remarks about Republicans, but in the end, he said:

I realized then we had become lost in a maze of refracted personal perspectives—

With regard to the deficit and what we are going to do about it—

hopelessly separated from our original objective. On this path, there will always be one more objection.

The right product? A vote for the perfect product would be easy—if perfection were ever possible.

I am still quoting our colleague:

This is not about a product. It is about a process that begins to repair the damage and pay the debt from more than a decade—

He says. It goes a lot further back than that—

of national neglect. This was never supposed to be easy.

This is not about what we can get out of the deal. It is about what we will give.

Still quoting my colleague, the junior Senator from West Virginia:

This is not another political painkiller. It is long-overdue honesty—and it requires some courage.

What more can I say? If we do not have the courage on this, we will not have the courage when it comes to reconciliation. We will not have the courage on Russian aid. We will not have the courage on sending aid to the Northwest to buy out the spotted owl. We will not have the courage to spend money for base closures. We will not have the courage on any of these things. Let us start with something we can all understand. It will have a lot of meaning to people in Minnesota if we have the courage to pay for this. So I urge my colleagues to support my amendment and to oppose the motion to table.

Mr. KOHL. Mr. President, I am tempted to vote for this amendment. It is clearly motivated by a desire to exercise fiscal discipline and that is a motive which I share and support. But while I applaud the intent of the amendment, I find fault with the way it seeks to achieve its goal.

Philosophically, I do believe in the concept of emergency spending which should be exempt from the normal budget discipline we have established. When the Nation faces a disaster—as the floods in the Midwest clearly are—we have to respond. The budget law allows us to do that. Our own experiences as individuals proves that we need to do it. If a furnace fails in the winter, we replace it—even if we have not budgeted for that expense. If a car breaks, we repair it—even if we have not budgeted for that expense. If a child needs health care, we make sure she or he gets it—even if we have not budgeted for that expense.

We can disagree about whether a specific situation should be treated as an emergency or not, but once we decide it is an emergency, a disaster, we have to respond to it.

Earlier this year, I offered an amendment to the supplemental bill requested by the President which would have required us to pay for half of the funds he was requesting. Even though my amendment was identified as a pay for it alternative, it recognized that there was at least a quasi-emergency and we ought to respond to at least part of it outside the scope of the budget constraints.

The pending amendment, while well motivated, does not recognize the fact that we can and should respond to some situations—true emergencies outside the control of human beings—by going beyond the normal budget process.

The flooding in the Midwest is such a situation. I have seen the pain and the fear in the faces of the farmers of Wisconsin. I know they are facing a disaster. I know they need relief. And I know they need it now. This bill will provide some of that relief and we need to deliver it to them now.

Mr. BYRD. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. DOLE. Will the distinguished chairman object if I had 2 minutes of morning business before the rollcall starts.

Mr. BYRD. Mr. President, I have no objection.

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

RETROACTIVE TAX INCREASES

Mr. DOLE. Mr. President, we have talked about retroactive tax increases, and I think the White House has gone ballistic. They have gone way back to 1917 to show that we had a wartime surtax or surcharges in World War I, World War II, the Korean war, and even the Vietnam war. But that does not make the policy any better, and it is a little different. I am going to explain that very quickly.

The Treasury Department is even pointing to other tax increases, as far back as 1917, that they claim were retroactive. That is pretty desperate—going back to 1917. Most, if not all of these, were temporary, wartime surtaxes imposed during the critical times America faced during World War I, World War II, the Korean war, and the Vietnam war.

Now, the Clinton administration may like you to believe otherwise, but there is a big difference between a temporary wartime surtax, and a permanent peacetime tax rate increase which was made retroactive. This is not a surtax.

But the Clinton administration's spin control cannot change the fact that its permanent, retroactive tax rate increases are a terrible idea—it is bad policy, whether it has been done before or not. It is such a bad idea, that even article 57 of the new draft Russian Constitution bans retroactive tax increases. And let me tell you, if there is one thing that has infuriated callers to my office—and I understand to other congressional offices, as well—it is this unfair retroactive provision, not only on the living, but on the dead. Nobody can escape this tax plan, living or dead. And they do not like it, whether they are affected by it, or not.

But, if we are going to split hairs, let me add my 2 cents' worth. The President last night claimed that the National Association of the Self-Employed supports his plan. Today, the NASE spoke up for itself, and said that it "does not support the bill." And a coalition of small businesses also came forward today to make it clear that they do not support the Clinton tax plan. These are the businesses that are creating most of the new jobs in America—they are the last people we should be hitting with the new taxes in America.

I ask unanimous consent to have printed in the RECORD the release from the NASE, which says very quickly that the NASE does not support this bill. President Clinton said last night they did.

So these are the latest people who have learned that they are going to be hit by the bill. I also ask unanimous consent to print in the RECORD a list of the others who oppose this bill; hundreds of business groups opposing this bill representing small business.

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

CLARIFICATION OF THE NATIONAL ASSOCIATION FOR THE SELF-EMPLOYED POSITION ON THE BUDGET RECONCILIATION BILL

Last night, August 3, President Clinton named the National Association for the Self-Employed (NASE) as an organization supporting the conference agreement on the budget reconciliation bill. The NASE does not support the bill.

On July 20, the NASE issued a public position statement stating that although it supported a number of provisions in the House and Senate versions of the Bill, it opposed other provisions and was awaiting the results of the conference report. We have issued no further statements.

The NASE hopes that when the budget reconciliation process is completed, a bipartisan group of small business supporters, including the President and the SBA Administrator, can move forward together to assist the nation's job-generating small businesses as they assist the nation's economic recovery.

The Honorable

U.S. Senate/House of Representatives, Washington, DC.

DEAR SENATOR/REPRESENTATIVE: On behalf of the millions of business we represent and the tens of millions of workers they employ, we urge you to oppose the conference report on budget reconciliation, H.R. 2264, and draft a new package with fewer tax increases and greater spending cuts.

If enacted, the conference report would do severe harm to an already fragile economic recovery without promising much in the way of significant deficit reduction. The dramatic tax increases—exacerbated by their retroactive effective dates—will dampen the recovery and seriously slow economic growth. Slower economic growth will reduce federal tax collections and increase federal outlays, resulting in significantly less deficit reduction than anticipated.

The economics are simple. Higher taxes on successful business owners mean less investment in new employees and equipment. These high taxes will hit particularly hard the small and medium-sized businesses that have traditionally provided most of the new jobs.

Finally, the conference report contains too few spending reductions. Previous attempts to reduce the deficit through higher taxes have been unsuccessful. Hard economic times have forced businesses across the country to tighten their belts and downsize. We believe that the federal government should follow their lead.

Once again, we urge you to oppose the conference report on budget reconciliation.

Sincerely,

Advertising Mail Marketing Assn.
Air Conditioning Contractors of America
Air Transport Association
Air-Conditioning & Refrigeration Institute
American Bakers Assn.
American Chamber of Commerce Executives
American Council of Independent Laboratories
American Cyanamid Company
American Feed Industry Assn.
American Furniture Manufacturers Assn.
American Gear Manufacturers Assn.
American Institute of Merchant Shipping
American International Automobile Dealers Assn.
American Machine Tool Distribution Assn.
American Seed Trade Assn.
American Small Business Assn.
American Society of Travel Agents
American Supply Assn.
American Warehouse Assn.
Arizona Chamber of Commerce
Assn. for Manufacturing Technology
Assn. of the Wall & Ceiling Industries-International
Associated Builders & Contractors
Associated Equipment Distributors
Associated Landscape Contractors of America
Associated Specialty Contractors
Automotive Parts Rebuilders Assn.
Berks County Chamber of Commerce
Birmingham Area Chamber of Commerce
Bureau of Wholesale Sales Representatives
CH2M Hill
Connecticut Mutual Life Insurance Company
Copper & Brass Servicenter Assn.
Dairy & Food Industries Supply Assn.
Door and Hardware Institute
Dresser Industries, Inc.
Florists Transworld Delivery Assn.
Fort Worth Chamber of Commerce
Georgia Chamber of Commerce
Greater Columbia Chamber of Commerce
Greater Knoxville Chamber of Commerce
Greenville Chamber of Commerce
Independent Bakers Assn.
Independent Insurance Agents of America
Independent Insurance Agents of Arizona
Independent Insurance Agents of Georgia
Independent Insurance Agents of Louisiana
Independent Insurance Agents of New Jersey
Indiana Chamber of Commerce
Indianapolis Chamber of Commerce
Industrial Distribution Assn.
Institute of Shortening & Edible Oils
Intellectual Property Owners
International Foodservice Distributors Assn.
International Assn. of Refrigerated Warehouses
Irrigation Assn.
Kamsco, Inc.
Kansas Chamber of Commerce & Industry
Lancaster Chamber of Commerce & Industry
Louisville Area Chamber of Commerce
Mechanical Contractors Assn. of America
Metro Newark Chamber of Commerce
Metropolitan Richmond, VA, Chamber of Commerce
Missouri Chamber of Commerce
Minnesota Chamber of Commerce
National Air Carrier Assn.
National Assn. of Chemical Distributors
National Assn. of Convenience Stores
National Assn. of Hosiery Manufacturers
National Assn. of Mirror Manufacturers
National Assn. of Wholesaler-Distributors
National Beer Wholesalers Assn.
National Club Assn.
National Electrical Contractors Assn.
National Electrical Contractors Assn., Inc. Montana Chapter
National Electrical Contractors Assn., Inc. W. Ohio Chapter
National Fastener Distributors Assn.
National Federation of Independent Business
National Food Brokers Assn.
National Grocers Assn.
National Roofing Contractors Assn.
National School Supply & Equipment Assn.
National Society of Public Accountants
National Tire Dealers & Retreaders Assn.
National Wooden Pallet & Container Assn.
National-American Wholesale Grocers' Assn.
Nebraska Chamber of Commerce & Industry
New Jersey State Chamber of Commerce
New Orleans & the River Region Chamber of Commerce
Opticians Assn. of America
Outdoor Power Equipment Institute
Peanut Butter & Nut Processors Assn.
Pet Industry Joint Advisory Council
Petroleum Marketers Assn. of America
Power & Communication Contractors Assn.
Recreation Vehicle Dealers Assn. of North America
Retail Bakers of America
Rubber Manufacturers Assn.
Screen Printing Assn. International
Society for Marketing Professional Services
Specialized Carriers & Rigging Assn.
Swain Electric, Inc.
Texas Chamber of Commerce
The Greater Washington Board of Trade
Travel Industry Assn. of America
U.S. Chamber of Commerce
Wholesale Florists & Florist Suppliers of America
Wichita Chamber of Commerce
Woodworking Machinery Distributors Assn.

Mr. DOLE. I thank my colleagues. I yield the floor.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. The question occurs on the motion to lay on the table the amendment of the Senator from Minnesota.

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

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

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

[Rollcall Vote No. 241 Leg.]

YEAS—54

Akaka	Bond	Bumpers
Baucus	Boxer	Byrd
Biden	Breaux	Cochran
Conrad	Inouye	Moynihan
Danforth	Johnston	Murray
Daschle	Kennedy	Pell
DeConcini	Kerry	Pryor
Dodd	Kohl	Reid
Domenici	Lautenberg	Riegle
Dorgan	Leahy	Rockefeller
Exon	Levin	Sarbanes
Feingold	Lieberman	Sasser
Ford	Lott	Shelby
Glenn	Mathews	Simon
Graham	McConnell	Stevens
Harkin	Mikulski	Warner
Hatfield	Mitchell	Wellstone
Hollings	Moseley-Braun	Wofford

NAYS—45

Bennett	Faircloth	Mack
Bingaman	Feinstein	McCain
Boren	Gorton	Metzenbaum
Brown	Gramm	Murkowski
Bryan	Grassley	Nickles
Burns	Gregg	Nunn
Campbell	Hatch	Packwood
Chafee	Heflin	Pressler
Coats	Helms	Robb
Cohen	Hutchison	Roth
Coverdell	Jeffords	Simpson
Craig	Kassebaum	Smith
D'Amato	Kempthorne	Specter
Dole	Kerrey	Thurmond
Durenberger	Lugar	Wallop

NOT VOTING—1

Bradley

So the motion to lay on the table the amendment (No. 761) was agreed to.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 757

(Purpose: Commending the United Nations on the establishment of an international tribunal to try war crimes in the former Yugoslavia, and calling on the United Nations to select promptly judges and prosecutors for the tribunal, and for other purposes)

Mr. SPECTER. Mr. President I call up amendment No. 757 on behalf of Senator DODD and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. DODD, proposes an amendment numbered 757.

Mr. SPECTER. 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:

At the appropriate place in the committee amendment insert the following:

The Senate finds: That

Numerous atrocities have been reported on the conflict in the former Yugoslavia;

Such atrocities against innocent civilians and prisoners would violate universally accepted law as embodied in the Geneva Conventions of August 12, 1949, for the Protection of War Victims; the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of October 18, 1907; the Convention on the Prevention and Punishment of the

Crime of Genocide of December 9, 1948; and the Charter of the International Military Tribunal of August 8, 1945;

In October 1992 the United Nations Security Council adopted Resolution 780 establishing a Commission of Experts to gather and evaluate evidence of such war crimes;

The Commission of Experts submitted an interim report dated January 26, 1993 which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including wilful killing, "ethnic cleansing," mass killings, torture, rape, pillage, and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests;

The Commission of Experts has been hindered in carrying out fully its legal charge because of insufficient resources;

On February 22, 1993, the United Nations Security Council adopted Resolution 808 establishing an international tribunal to try individuals accused of the commission of war crimes in the former Yugoslavia;

On May 3, 1993, the Secretary General of the United Nations issued his report which established the procedures for an international war crimes tribunal;

The United Nations is presently in the process of selecting judges and prosecutors for the international war crimes tribunal;

According to reports, the atrocities in the former Yugoslavia continue unabated; and

There is a dire need to establish promptly the tribunal and commence prosecution of alleged war criminals: Now, therefore, (a) the Senate hereby commends the United Nations for its recognition of the importance and necessity of the rule of law as evidenced by its establishment of an international tribunal for the prosecution of war crimes in the former Yugoslavia.

(b) It is the sense of the Senate that the United Nations should:

(1) expedite the selection of judges and prosecutors for the tribunal in order to begin prosecutions of alleged war criminals; and

(2) provide all assistance necessary to continue gathering evidence for such prosecutions.

Mr. BYRD. Will the Senator yield for a question?

Mr. SPECTER. Yes.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator will withhold for a moment.

The Senate is not in order. Senators will please take conversations out of the well and into the Cloakrooms.

The Senate is not in order.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I wonder if the distinguished Senator would be willing to enter into a time agreement on this amendment; and would he also be willing to stipulate as to what this amendment is about?

I want to be sure we do not get into a full-blown discussion here as to whether or not we should get involved in Bosnia, either on the ground or by delivering air attacks. As far as that is concerned, I think we ought to have a full-blown debate, but not on this bill.

Mr. SPECTER. Mr. President, if the President pro tempore will yield, I would be willing to have a short time agreement—as I said to the distinguished managers—of 10 minutes, equally divided.

I do not expect this to be controversial. I expect it to be very limited in scope. I do not expect it to involve the question of Bosnia. It is a very narrowly defined sense-of-the-Senate resolution; and that is dealing with the war tribunals only, not with any military action or not with Bosnia or Yugoslavia generally.

It commends the United Nations for steps taken so far and urges the United Nations to go forward with resolutions which have already been adopted by the United Nations for the appointment of judges and prosecutors, a mechanism for the war tribunal for prosecutions, and it is just that. It does not involve any broader issues at all.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

If we could stipulate that the amendment has to remain within those narrowly defined limitations, we could have 10 minutes, equally divided, but if it gets beyond those limitations, that the time limitation comes off and the amendment comes down.

Mr. SPECTER. Mr. President, I have already discussed with the distinguished President pro tempore my willingness to do that. I do not think we will go beyond those limitations. I do not intend by this amendment to get into any far-flung debate which would tie up this important bill. It is very narrowly circumscribed, and this Senator will keep within those limits. I will just take a few minutes to speak.

Mr. BYRD. Does the Senator wish to have a rollcall?

Mr. SPECTER. I do not. I would take a voice vote.

Mr. BYRD. Mr. President, I now ask unanimous consent that there be a time limitation on the amendment not to exceed 15 minutes, 10 minutes for the Senator from Pennsylvania and 5 minutes for the opposition, if opposition develops; and that if the debate gets beyond the narrow confines as delineated by the distinguished Senator, a call for regular order will pull the amendment down.

The PRESIDING OFFICER. Is there objection to the unanimous consent request? Hearing none, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair, and I thank the distinguished President pro tempore and the ranking member of the Appropriations Committee.

Mr. President, I can be very brief. There have been reports of atrocities in the fighting in Yugoslavia. Those atrocities are prohibited under international law.

The U.N. Security Council has established a commission of experts to gather evidence. Those experts have reported that there are serious crimes. The United Nations has adopted a resolution to establish an international tribunal to try individuals accused of war crimes.

I believe that this sense-of-the-Senate resolution will give impetus to what the United Nations is now doing, commending them for action taken thus far, and asking them to move ahead as promptly as possible with the mechanics of the appointment of judges and prosecutors and moving expeditiously to try the cases.

If I may have the attention of the distinguished President pro tempore, I have stated the essential factors. If there is no opposition, I am prepared to yield back the remainder of my time and to move the adoption of this narrow resolution.

The PRESIDING OFFICER. Is there further debate?

Mr. BYRD. This is a sense-of-the-Senate resolution, is it not?

Mr. SPECTER. It is.

Mr. BYRD. Mr. President, I know next to nothing about this particular matter. It is a sense-of-the-Senate resolution and the Senator has certainly kept to his word, as he expressed it earlier. I have no objection.

The PRESIDING OFFICER. Is there further debate?

Mr. HATFIELD. Mr. President, I have no objection.

Mr. SPECTER. Mr. President, I ask that the sense-of-the-Senate resolution be agreed to.

Mr. DODD. Mr. President, I rise in strong support of the pending amendment and I urge its immediate adoption. I also want to thank Senator SPECTER for his initiative on this very important issue. This resolution commends the United Nations for the work it has done so far in attempting to establish an ad hoc tribunal for the crimes committed in the former Yugoslavia and urges the United Nations to move with all due speed in completing this very important task.

Mr. President, over the course of the last year we have all watched with horror as the former Yugoslavia has been torn apart by a tragic and brutal conflict. This tragedy is compounded by the fact that the parties to this conflict, mostly the Serbian and Croatian forces, have engaged in willful and large-scale violations of the laws of war. As this conflict has continued the world has learned with increasing despair and devastation of concentration camps, of mass executions, of senseless slaughter based on ethnic and religious differences.

The atrocities that are being committed in the former Yugoslavia are clear and unmistakable violations of well-established international laws. Many of these are laws that, like the Geneva Conventions of 1949, were adopted by the international community as a response to the Holocaust. If we truly believe that we are a society that value the established rules of the international community—if we truly, believe in the rule and law and not in the rule of the jungle—then of one

thing there should be no doubt: the perpetrators of these crimes must be brought to justice.

Mr. President, since last fall the international community has been hard at work in carrying out this very task. In fact on May 25, 1993, the U.N. Security Council voted to establish and ad hoc tribunal with jurisdiction over all war crimes committed in the former Yugoslavia since the beginning of 1991. The successful completion of this tribunal is essential if our commitment to justice and our support for the rule of law are to be anything more than hollow words and empty statements.

Mr. President, I would also draw the attention of my colleagues to a related matter of even greater importance, in my view: the establishment of a permanent facility to try those accused of international crimes. Rather than establish an ad hoc tribunal every time the laws of war are breached, I believe the international community should move with all due haste to establish a permanent international criminal court. Indeed, this matter has been under the consideration of the United Nations for the last 4 years, in a little-known U.N. agency called the International Law Commission.

On that subject, Mr. President, I would draw the attention of my colleagues to a provision in the State Department authorization bill now awaiting consideration by this body. As reported by the Foreign Relations Committee last month, this bill contains a measure based on a proposal I introduced on January 28 that places the Congress on record in support of the establishment of an international criminal court and urges the Clinton administration to advance this proposal at the United Nations. If such a court is ever to be established by the international community, the United States must make clear its support for this very important concept.

Mr. President, I wish I could say with any confidence that in the future there will be no more Saddam Husseins, that there will be no more Slobodan Milosevics. But I think my colleagues will agree that that is an unlikely prospect. The challenge of establishing an ad hoc tribunal in the former Yugoslavia—indeed, the offering of this very amendment this evening—demonstrates that in the long run we must commit ourselves to the concept of a permanent international criminal court. If we truly believe we are a people ruled by law, there is simply no realistic or effective alternative.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Pennsylvania [Mr. SPECTER].

The amendment (No. 757) was agreed to.

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

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

The motion to lay on the table was agreed to.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

AMENDMENT NO. 762

(Purpose: To prohibit the use of certain disaster relief payments to satisfy the claims of persons who have twice failed to maintain flood insurance)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Colorado [Mr. BROWN] proposes an amendment numbered 762.

Mr. BROWN. 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:

At the end of Chapter VIII add the following new section:

SEC. . PROHIBITED FLOOD DISASTER ASSISTANCE.

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of law, no Federal funds made available for assistance under this Act in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)) is amended—

(1) By striking ",during the anticipated economic or useful life of the project,"; and

(2) By adding at the end of the following: "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.".

(c) DEFINITION.—For purposes of this section, the term "flood disaster area" means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. Section 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), as a result of flood conditions existing in or affecting that area.

Mr. BROWN. Mr. President, current law, section 4012(a) has a requirement for flood insurance. The amendment that is in the law already reads as follows:

After the expiration of 60 days following December 31, 1973, no Federal office or agency shall approve any financial assistance for acquisition or construction purposes for the use in any area that has been identified by the Director of this area as having special flood hazards in which the sale of flood insurance has been made available under this chapter.

It goes on, under the current statute, to spell out the details of this.

Mr. President, I am concerned about the operation of this provision. What the law appears to say is, we are not going to compensate anybody if they build facilities in the special flood hazard areas. That makes sense. If you are going to build in that special flood hazard area and you do not buy insurance, probably we should not be compensating you for it. That appears to be what the law says.

However, the way this law is now interpreted under the current disaster bill and other current disaster bills is that, if you are within that special flood hazard area and you have not purchased flood insurance and it was available and a disaster occurs, you can still go sign up for flood insurance and get full payment and recompense, even though you did not have insurance at the time the disaster occurred.

Perhaps that is a fair reading of the statute. We do not know the full legislative history.

It does not appear to be a complete reading, as you look at the statute.

In addition, though, Mr. President, there is this phrase: "During the anticipated economic or useful life of the project."

That refers to when you should have flood insurance. The way that has been interpreted is that you are only required to have flood insurance for 3 years.

Mr. President, here is the dilemma. You can have a disaster, have the Federal Government come in and pay you for that disaster, be required by law to get flood insurance, take out the policy, and 3 years later on a building that may last 50 years or 40 years or 36 years, under our tax laws' depreciation schedules, only be required to have flood insurance for 3 years; have a second disaster and the Federal Government ends up paying for the same construction in a hazardous area twice or three times or four times or as many times as that occurs.

In other words, our requirement, under the way this law is construed, is to not have a full commitment to buy flood insurance even though the Federal Government has had to pay for the problem once. I think that is a mistake. I think what we ought to do is say if there is a disaster and the Federal Government steps in to help compensate you in that disaster that you ought to have to have flood insurance. And if a second disaster occurs and you do not have the flood insurance you were required to originally, we should not pay you a second time. That is what this amendment does.

This particular amendment is within an area that other Senators are studying. I believe the Banking Committee is looking at this entire area and will within this session bring forth on this floor a series of reforms in this area. I bring this amendment up because my preference would have been to eliminate paying the second time if someone has had notice and gotten recompense. I do not think they should be paid a second time if they had not maintained the flood insurance they should. I think this statute is being misconstrued.

But at the request of Senators who are active in this area, who are in the process of drafting reforms, I want to withdraw this amendment. But, Mr. President, I want to make it clear that I think, one, this is wrong. This is wrong to stick taxpayers a second time. And, two, I want to serve notice that when this reform measure comes to the floor, I fully intend to make sure that this, I believe, mistaken policy is corrected.

Mr. President, at this point I ask unanimous consent that the amendment be withdrawn.

The PRESIDING OFFICER. The Senator has that right. The amendment is withdrawn.

The amendment (No. 762) was withdrawn.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to take a moment to congratulate the Senator from Colorado for bringing this amendment in the first place and also to thank him for his forbearance in not proceeding forward with it at this moment.

The Senator from Colorado is 100 percent correct. We have an egregious situation on our hands in this country where we have an insurance system that has literally encouraged people to live within floodplains—and floodplains include not just what we see happening in the Midwest, it includes all of the coastline of the United States and other areas.

We have about $220 plus billion of liability we are carrying for properties that people have not insured. We have some, I think it is, 2 million-plus homes that are insured out of the 11 million that are in the floodplain. So the vast majority of homes are uninsured.

Senator D'AMATO and I have been working within the Banking Committee these last months to put together a piece of legislation which we are literally in the last hours of closing on that we believe will provide a combination of enforcement mechanism and fairness and balance to the need to recognize some people live within the floodplain—and there are reasons in certain parts of the country where that is the case—but that there must be some responsible approach to the insurance for those homes in those areas.

The Senator from Colorado has singled out one—and it is only one—of the egregious components of the evasion of responsibility which has characterized our flood program. We have people who go out and get emergency assistance and rebuild immediately right within the area of potential hurricane or beach erosion or storm. Then they turn around and get assistance again from the Federal Government when, indeed, the storm hits or the beach erodes. It is absurd. The only reason they can carry insurance is that the Federal Government is subsidizing it.

We should not be subsidizing people to live in the erosion areas where we know we can predict with certainty their homes are going to disappear. Moreover, we should, obviously, require greater responsibility and accountability with respect to the insurance program in these areas.

So, I thank the Senator from Colorado for his response on this issue, and I can guarantee we will be addressing this in September when we return.

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

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

AMENDMENT NO. 763 TO THE FIRST COMMITTEE AMENDMENT

(Purpose: To modify the provisions of the Federal Crop Insurance Act governing yield averages and to provide late planting coverage and prevented planting coverage under such Act)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER], for himself, Mr. GRASSLEY, and Mr. PRESSLER, proposes an amendment numbered 763.

Mr. DURENBERGER. 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:

At the appropriate place, insert the following new section:

SEC. . FEDERAL CROP INSURANCE FAIRNESS.

(a) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—Subsection (a) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508(a)) is amended to read as follows:

"(a) AUTHORITY TO OFFER INSURANCE.—

"(1) IN GENERAL.—If sufficient actuarial data are available, as determined by the Board, the Corporation may insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved.

"(2) CAUSES.—The insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lighting, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board.

"(3) PERIOD.—

"(A) IN GENERAL.—Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field.

"(B) DEFINITION OF FIELD.—For purposes of subparagraph (A), in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(4) STANDARD YIELD COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 percent of the recorded or appraised average yield of the commodity on the insured farm for a representative period.

"(B) ADJUSTMENTS.—Average yields established under subparagraph (A) shall be subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, that are subject to the same conditions, may be fair and just.

"(5) LESSER YIELD COVERAGE.—In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 percent of the recorded or appraised average yield, as adjusted.

"(7) ADDITIONAL PREMIUMS.—Additional insurance under this subsection shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines—

"(A) appropriate to reflect accurately the increased risk involved; and

"(B) actuarially sufficient to—

"(i) cover claims for losses on the insurance; and

"(ii) establish a reasonable reserve against unforeseen losses.

"(8) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—The Corporation may make available to producers on a farm located in a growing area a level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted, if the Corporation determines that normal variations in yield in the growing area have not resulted in the payment of claims for losses while the level of coverage is limited to 75 percent.

"(9) MAXIMUM LEVEL OF COVERAGE.—Except as provided in paragraphs (6) through (8), the corporation may not make available to producers any level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted.

"(10) PROJECTED MARKET PRICE OPTION.—One of the price elections offered shall approximate (but be not less than 90 percent of) the projected market price for the commodity involved, as determined by the Board.

"(11) UNINSURED LOSSES.—Insurance provided under this subsection shall not cover losses due to—

"(A) neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed; or

"(C) the failure of the producer to follow established good farming practices.

"(12) INSURANCE RISKS.—The Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

"(13) AGRICULTURAL INCOME IN COUNTIES.—Insurance shall not be provided on any agricultural commodity in any county in which the Board determines that the income from the commodity constitutes an unimportant part of the total agricultural income of the county, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program.

"(14) ANNUAL REPORTS.—The Corporation shall report annually to Congress the results of the operations of the Corporation as to each commodity insured.

"(15) PROJECT MARKET PRICE LEVEL.—Beginning with the 1994 crop year, the Corporation shall establish a price level for each commodity on which insurance is offered that shall not be less than the projected market price for the commodity, as determined by the Board.

"(16) PRICE ELECTION.—Insurance coverage shall be made available to a producer on the basis of any price election that equals or is less than that established by the Board. The coverage shall be quoted in terms of dollars per acre.".

(b) DISTRIBUTION OF COVERAGE INFORMATION.—Section 508(m) of such Act (7 U.S.C. 1508(m)) is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTION OF COVERAGE INFORMATION.—The Corporation shall distribute information on Federal crop insurance coverage offered for a commodity to each producer participating in a price support or production adjustment program established for the commodity.".

(c) LATE PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) LATE PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall be offered late planting coverage that would permit planting after the final planting date for a commodity by up to 25 days for coverage under the contract.

"(2) REDUCTION OF COVERAGE.—If the producers on a farm purchase late planting coverage under paragraph (1), the yield guarantee shall be reduced by—

"(A) 1 percent per day for each of the 1st through 10th days planting is delayed beyond the normal final planting date;

"(B) 2 percent per day for each of the 11th through 25th days planting is delayed beyond the normal final planting date; and

"(C) such other amounts as can be demonstrated to offset the additional insurer risk of providing the coverage.

"(3) PRESUMPTION OF COVERAGE.—The producers on a farm shall have late planting coverage as part of a basic policy of insurance under this Act unless the producers notify the Corporation that the producers waive late planting coverage.

"(4) RAISES IN PREMIUMS.—If the Corporation determines that late planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer late planting as a separate endorsement.".

(d) PREVENTED PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(o) PREVENTED PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall have prevented planting coverage as part of the basic policy of insurance under this Act.

"(2) COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if the producers on a farm are prevented from planting a crop of a covered commodity as the result of excess moisture, drought, or other natural disaster, the producers shall be eligible for coverage equal to 35 percent of the guaranteed level of coverage for the crop.

"(B) OPTIONAL COVERAGE.—The producers on a farm may purchase additional coverage described in subparagraph (A) such that the total coverage for the producers is not greater than 50 percent of the guaranteed level of coverage for the crop.

"(3) SUBSTITUTE CROP.—The producers on a farm shall have the option of planting a substitute crop, in lieu of an insured crop, as part of the basic policy under this Act. The value of the substitute crop shall offset the remaining guaranteed level of coverage of the insured crop.

"(4) PRESUMPTION OF COVERAGE.—The producers on a farm shall have prevented planting coverage as part of a basic policy of insurance made available under this Act unless the producers notify the Corporation that the producers waive prevented planting coverage.

"(5) RAISES IN PREMIUMS.—If the Corporation determines that prevented planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer prevented planting as a separate endorsement.".

(f) YIELD AVERAGES.—Section 508A(b) of such Act (7 U.S.C. 1508a(b)) is amended by adding at the end the following new paragraph:

"(4) YIELD AVERAGES.—

"(A) ESTABLISHING A MINIMUM LEVEL OF INSURANCE PROTECTION.—The Corporation shall establish a minimum level of insurance protection for those covered producers who have had reduced yields due to natural disasters.

"(B) NONSTANDARD CLASSIFICATION PROCEDURES.—The Corporation shall make adjustments in the Nonstandard Classification procedures established under subpart O of part 400 of chapter IV of subtitle B of title 7, Code of Federal Regulations, to account for producer yield declines due to recurrent natural disasters.".

(g) DATE OF IMPLEMENTATION.—

The provisions of this amendment will take effect on January 1, 1994.

Mr. DURENBERGER. Mr. President, I rise today to offer an amendment on behalf of myself, Mr. GRASSLEY, and Mr. PRESSLER. This amendment will redesign crop insurance coverage. It will also get the Government out of the business of trying to make income replacement payments to farmers in the Congress whenever we experience a natural disaster, which is what brings us here today.

Today we are considering a bill that will cost $4.7 billion. Eventually the final cost of the Midwest disaster will be more than $10 billion. A large part of this cost is the result of agricultural crop losses.

One reason why the Government will pay disaster payments to farmers this year is because only 70 farmers in the 9 States that have been affected by the heavy rains purchased prevented planting coverage for their crops. Prevented planting coverage would have protected farmers who could not get into their fields to plant a crop. As a result of the heavy rains, farmers throughout Minnesota and the rest of the Midwest could not plant a crop this year.

In Minnesota, 1.1 million acres—or 27 percent of agricultural land was prevented from planting.

I visited the Elmer Petersen farm in Lucerne, MN, with Secretary of Agriculture Espy back in June. The reason we went to Lucerne, which is on the border of South Dakota, is because the airports in Mankato and Jackson and Marshall in the south central area of Minnesota were under 2 feet of water.

The Petersen farm was under water too—and a tractor was stuck in the mud midway through a field. Elmer Petersen is suffering this year.

And so is Richard Peterson of Jackson County, MN, who still has a shed full of seed. Richard could not plant most of his corn this year—and he is suffering the fourth year of significant crop loss since 1986. There are thousands of farmers just like Elmer and Richard throughout the Midwest.

In Minnesota, total crop losses are estimated at $1 billion. Iowa's losses are $1.2 billion, South Dakota's farmers have lost $757 million, North Dakota's crop losses have reached $300 million, Missouri crop losses are estimated to be $2.7 billion, Nebraska has registered $250 million in crop losses, farmers in Kansas have lost $450 million of crops to the floods, and Illinois farmers have lost $565 million.

That's only crop losses. Infrastructure repair and emergency services will send the final cost of this disaster well past $10 billion.

Now the Government has a big financial problem on its hands. And it is not the fault of the farmers either, because most of them—at least in Minnesota—never knew that prevented planting coverage was available to them.

Even representatives at the Federal Crop Insurance Corporation admit that crop insurance agents do not push prevented planting coverage because of the small commission. The option for late planting coverage is not pushed either—despite the fact that it does not raise the farmer's premium.

And what is ridiculous about this is prevented planting coverage is not expensive. A policy for an average corn farmer in Minnesota would only cost $1 per acre and would guarantee him $52.50 in return.

My amendment will make prevented planting coverage part of the basic Federal crop insurance policy. This year's statistics reveal why this change needs to be made; 56,000 crop insurance policies sold in Minnesota and none had planting coverage; 95,000 policies sold in Iowa and only 37 had prevented

planting coverage; 63,000 policies sold in Illinois and only 17 had prevented planting coverage; 66,000 crop insurance policies sold in Kansas and only 13 had prevented planting coverage; 18,000 policies sold in Missouri and only 1 had prevented planting coverage; 68,000 policies sold in North Dakota and none had prevented planting coverage; 57,000 policies sold in Nebraska and only 2 had prevented planting coverage; 8,500 policies sold in Wisconsin, and only 1 had prevented planting coverage; 10,000 policies sold in Kentucky and none had prevented planting coverage; and 31,000 policies sold in South Dakota and none had prevented planting coverage.

So, Mr. President, we need to change the incentives that have landed us in this mess. This amendment will bring some much needed reform to the program, making it more farmer friendly by providing farmers with real coverage. And—through increased participation—these changes will finally put the Federal Crop Insurance Corporation on sound footing.

These reforms will get the Government out of the business of income replacement when farmers are prevented from planting.

My amendment is very simple. It will do four things:

First and most importantly, this amendment makes prevented planting coverage part of the basic Federal crop insurance policy. That means that a farmer who cannot get into his field to plant—like Richard Peterson, and Grant Annexstad, and Sharon Clarke—would be reimbursed for 35 percent of his coverage. Farmers would also have the option to purchase additional prevented planting coverage up to 50 percent of their policy.

Farmers would be permitted to waive the prevented planting coverage. However, if they do, they will be going into the planting season at their own risk. Given the current disaster payment system of about 20 cents on the dollar, most farmers will stick with the prevented planting coverage.

Farmers will buy prevented planting coverage because it makes financial sense. An average corn farmer would receive $52.50 per acre in prevented planting coverage for only a $1 per acre premium.

Second, in case a farmer plants at the last minute because he is delayed beyond the FCIC—The Federal Crop Insurance Corporation—final planting date, this amendment would improve late planting coverage by extending the last planting period by 5 days, from 20 to 25 days. It would also prorate coverage loss by the day rather than by 5-day increments. Farmers currently lose 10 percent of coverage every 5 days. My reform would change the reduction to 1 percent per day for the first 10 days, and 2 percent per day for the remaining 15 days.

The reason for this much needed reform is simple. In southern Minnesota the growing season is a lot shorter than that in Georgia or Florida, as examples. In Minnesota the first frost comes by mid-October, so if you do not have your corn or beans in by July 1—you can be pretty sure that you have lost half your crop.

So, in Minnesota and the rest of the Upper Midwest, Mother Nature is already taking money away from you if you plant after the first week in June. There is no reason why crop insurance ought to be taking a huge grab at 10 percent of your coverage every 5 days.

Third, this amendment directs FCIC to establish a minimum yield coverage floor in order to protect farmers from having a series of diasters artifically lower their yield coverage.

Farmers currently have to provide 10 years of yield data to determine their crop insurance coverage. Some farmers in the Midwest are excellent farmers and during normal weather are averaging yields of 120 bushels an acre and up. However, if they have to work into their average 3 or more years of abnormally low yields—or zero-yield as some farmers will have to do this year—then the insurance will not reflect the true yield that the farmer ought to be covered. Without a minimum yield floor, it would be like insuring a $100,000 house for $70,000.

Fourth, and last, the amendment mandates the FCIC to send information on all available crop insurance to every farmer participating in Federal farm programs.

Farmers are not signing up for the different coverage that the Federal crop insurance offers because they do not know about it and they do not know what it would do for them. In order to fill this information gap, every farmer who participates in a Federal farm program would receive information on available crop insurance.

The Federal Crop Insurance Corporation has made numerous commitments to me during the past 2 years that they would make the changes administratively. I received these commitments in November 1991, March 1992, June 1992, November 1992, and June 1993. In June 1992, FCIC Administrator Jim Cason sat in my office and told me that he was going to make late and prevented planting coverage part of the basic crop insurance policy, and nothing happened.

So, here we are, Mr. President, with one of the largest disasters in a century. And FCIC is still telling me—next year. I do not trust this bureaucracy. The Senate needs to protect farmers from crop losses next year, and the way to do that is to approve this amendment.

The PRESIDING OFFICER. Is there further debate?

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. How much time does the Senator wish on this amendment?

Mr. DURENBERGER. Mr. President, I think Senator GRASSLEY may wish to speak, so I would imagine 10 minutes would be an adequate amount of time.

Mr. BYRD. Mr. President, I ask unanimous consent that there be a time limitation of 10 minutes; that there be 10 minutes on the side of the Senator who has offered the amendment and not to exceed 10 minutes on this side.

The PRESIDING OFFICER. Is there objection?

Mr. DOMENICI. Reserving the right to object, and I shall not. I wonder if the Senator might accommodate me in that I might have 5 minutes to speak as in morning business prior to the vote.

Mr. BYRD. Yes, I include that in the request.

The PRESIDING OFFICER. Is there objection to the request, as modified?

Without objection, it is so ordered.

Who yields time?

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, I yield 5 minutes to my colleague from Iowa.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. GRASSLEY. Mr. President, before I speak in support of Senator DURENBERGER's amendment, I want to thank Secretary of Agriculture Espy because he made a decision today to turn a negative into a positive, and that is in regard to whether or not farmers in the disaster areas, because of floods, should be able to make forage, legumes, or what we call hay from their Conservation Reserve Program, the CRP, acres.

Before, the decision had been very difficult for farmers to make because the USDA was requiring 50 percent repayment of the annual payment that the farmer got from USDA for their CRP. So today Secretary Espy announced that he reduced that 50 percent down to 25 percent. He also announced administrative changes that will make it easier for counties to qualify for the release of the CRP.

Whereas, in the past, counties had to demonstrate a 40-percent loss of all crops in the counties, now counties can demonstrate a 40-percent loss on forage only in order to qualify for emergency haying and grazing. Traveling in Iowa as I have—15 out of the last 30 days—I can attest to the need for this change and the fact that it is going to be very helpful to farmers who have had a loss of crop, either from flooding or from excessive winterkill of legumes in our part of the State.

I do now want to speak in support of Senator DURENBERGER's amendment. I am very happy to be an original cosponsor of this legislation. I think this

legislation has broad bipartisan support. But, more important, it enjoys the support of every farm group that I know about. Had this legislation been enacted last year, our task today would be much easier. Had this legislation been enacted last year, farmers who purchase crop insurance would have had protection from the rains which forced them to plant their crops late in the season or who were prevented from planting their crops altogether because of either flooding or just plain old wet weather.

There is no more telling statistic which demonstrates the need for this amendment than this, and it is the fact that in the 95,000 policies for Federal crop insurance written in Iowa, only 37—only 37, 3-7—out of 95 had prevented planting riders written for them. I can tell you that every one of the farmers in my State would have appreciated prevented planting coverage or a more reasonable late planting option.

Had this legislation been enacted last year, the 70,000 farmers in Iowa holding 95,000 policies would now be looking forward to indemnity far and above, higher than the 21 cents on a dollar that current disaster legislation now provides.

To be sure, there will be those who will not vote for this despite the obvious merits. People might be taking shelter behind the notion that, well, let us wait to see what the administration will propose, or let us try the reforms soon to be enacted through the Agriculture Committee budget reconciliation package, or let us take more time to study the problem. But this, my colleagues, has been studied. There is not a person from the President on down—and I have heard him say that—who does not say that Federal crop insurance needs to be reformed. There is not a person in this body who does not believe that.

Well, now you have an opportunity to make some of those very important changes that need to be done to make Federal crop insurance workable so that disaster aid is no longer a necessity. My good friend from Minnesota, Senator DURENBERGER, has ably crafted such a package which will address many of the inequities in the current system.

Reforming the yield calculations, changing the late-planted option, and the prevented-planting riders are all absolutely essential to instilling in the farmer confidence in this program so that more farmers will buy it and there will be less need for disaster aid.

Had the Federal Crop Insurance Program included prevented planting as a standard element of a crop insurance program, the FCIC would today be the hero of the day and many farmers would have been fully covered, and our task today, talking about disaster aid for agriculture and the very important debate we had on Senator HARKIN's amendment, would have been much less needed.

I urge my colleagues to support this much-needed measure. Do not wait. Let us make some changes now so we do not get caught later on and have to apologize for inaction.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. I believe I have 5 minutes.

The PRESIDING OFFICER. The Senator is correct. He is recognized for 5 minutes.

BUDGET RECONCILIATION

Mr. DOMENICI. Mr. President, I rise to deliver at least a partial explanation of what the numbers are in the reconciliation bill. We do not have everything, but we think these are pretty accurate.

It is astounding what numbers are being thrown around as to what this reconciliation bill is going to do. So I am just going to read off a few and then put a chart in the RECORD.

First, let me give you what is going to happen in 1994. Believe it or not, in 1994 there will be no cuts—zero for 1994. There will be $31.7 billion in new taxes and user fees. That is an extraordinary ratio—$31.7 billion in taxes to zero, effectively, in cuts.

Now, let us move to 1995. In 1995, Americans are being told we have to sacrifice. We are really cutting. Listen to the numbers: $4.3 billion in net cuts for the entire year of 1994, including whatever the Medicare and entitlement so-called reform or cuts are; taxes for that year, $45.9 billion. That is a whopping ratio of $10.60 in taxes to $1 in cuts for the whole of 1995, the second year of this agreement.

The third year of this agreement, the net spending reductions are finally something, $19.6 billion, and the taxes are $52.1 billion. The ratio in the third year is $2.61 in taxes and fees for $1—for $1—in reductions.

Now, I am not going to give you the next two. They get slightly better. But the net effect of all of this is that 80 percent of the so-called spending cuts occur in 1996, 1997, and 1998. The year the President will be running for reelection and the 2 years following will be 80 percent of the cuts that have been so nicely told to the American people that we are all going to sacrifice; Government is going to get smaller.

And, yes, on the tax side, they go up regularly from $31 billion, to $46 billion, to $52 billion, to $63 billion, to $61 billion, for a whopping total of $255 billion, versus a total cut of $119 billion. The final ratio, therefore, is $2.13 to $1. I might remind everyone, it is taxes first, spending later—maybe.

Now, having said that, there is a dispute over $44 billion. The Congressional Budget Office does not give the President credit for $44 billion which he continues to claim. We are going by CBO numbers. The $44 billion is taking credit for $44 billion of savings that are prescribed according to CBO, the Congressional Budget Office, by the 1990 agreement. They choose to say, since we have to cut them now, we will take credit for them. But the 1990 agreement provided for those cuts.

Therefore, I would like to submit the table for the RECORD. There is nothing in this evaluation that speaks of $500 billion in deficit reduction.

Mr. SASSER. Will the Senator yield for a question?

Mr. DOMENICI. I am going to finish and then I will sit down.

Mr. SASSER. There will not be any time then.

Mr. DOMENICI. Mr. President, $427.5 billion is what I find in the summary from our staff which I think is absolutely accurate, if not perilously close.

It is 427.5, and included in that is $52.6 billion in interest savings.

I ask unanimous consent that the table be made part of the RECORD, and I would be pleased to explain it to anyone. There are some who want to know about the $44 billion. We will be glad to sit down with them and show them what it is at every opportunity henceforth, now that I have some numbers.

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

CONFERENCE BUDGET RATIOS

[In billions of dollars]

	1994	1995	1996	1997	1998	1994–98
Spending Reductions:						
Appropriations	.....	1.3	−7.5	−22.4	−37.3	−65.9
Reconciliation	−3.3	−7.0	−13.8	−18.2	−22.2	−64.6
Other[1]	3.2	1.4	1.7	2.1	2.3	10.7
Subtotal	(*)	−4.3	−19.6	−38.5	−57.2	−119.6
User fees	2.2	2.4	3.7	3.1	3.3	14.7
Revenue increases	29.5	43.5	48.4	60.7	58.5	240.6

CONFERENCE BUDGET RATIOS—Continued

[In billions of dollars]

	1994	1995	1996	1997	1998	1994–98
Subtotal	31.7	45.9	52.1	63.8	61.8	255.3
Debt management	−0.5	−1.0	−1.3	−1.6	−2.0	−6.4
Debt service	−0.9	−3.4	−7.4	−13.4	−21.1	−46.2
Subtotal	−1.4	−4.4	−8.7	−15.0	−23.1	−52.6
Grand total	−33.1	−54.6	−80.4	−117.3	−142.2	−427.5
Ratio of taxes and user fees to spending reductions	(2)	$10.66 to $1	$2.66 to $1	$1.66 to $1	$1.08 to $1	$2.13 to $1

[1] Assumes $8.4 billion in intragovernmental offsets from future Federal pay legislation and $2.3 billion from the previous enactment of extended unemployment benefits.
[2] Not applicable.
Note: (*) Based on preliminary CBO/JCT estimates.

BUDGET AGGREGATES

[In billions of dollars]

	1993	1994	1995	1996	1997	1998
CBO capped baseline:						
Discretionary	548	539	540	555	570	585
Mandatory	771	815	866	913	983	1,050
Subtotal	1,319	1,354	1,406	1,468	1,553	1,635
Deposit insurance	−7	4	10	(*)	−13	−9
Net interest	199	211	231	251	271	293
Offsetting receipts	−67	−69	−73	−74	−76	−79
Total spending	1,443	1,501	1,574	1,645	1,734	1,840
Revenues	1,142	1,214	1,290	1,355	1,413	1,480
Deficit	302	287	284	290	322	360
Reconciliation conference:						
Discretionary	548	539	541	548	548	548
Mandatory	771	815	860	901	967	1,030
Subtotal	1,319	1,354	1,402	1,448	1,515	1,578
Deposit insurance	−7	4	10	(*)	−13	−9
Net interest	199	210	227	242	256	270
Offsetting receipts	−67	−71	−75	−78	−79	−82
Total spending	1,443	1,497	1,563	1,613	1,677	1,756
Revenues	1,142	1,244	1,334	1,403	1,474	1,539
Deficit	302	254	229	210	205	218

Prepared by SBC Minority Staff, August 4, 1993.
Note: (*) Less than $500 million. Details may not add to totals due to rounding. Preliminary CBO/JCT estimates.

Mr. DOMENICI. My last observation has to do with some of the statements about how many new jobs are going to be produced by this plan.

We have received a copy of a release in the planning and research of the State of California, one of their major departments. What they end up saying each and every year during this package is that the great State of California will lose 351,000 jobs rather than creating any. Over the 5 years, they are planning a job reduction of 1.75 million in the State of California. They put it this way:

This study estimates that the likely compromise deficit reduction plan currently being prepared will cause California to suffer a reduction in economic activity of $5.4 billion in 1994, an average of $13.5 billion over the 5 years, equivalent to two Loma Prieta earthquakes a year. Those are very big numbers, equivalent to three-quarters of California's personal income tax levies.

Noted Richard Sybert of the Office of Planning and Research, the Director.

There is a modification to it because the conferees have lowered the taxes to a 4.3 on gasoline. So there is an addendum to it adjusting these numbers to the ones that are correct.

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

The Senator from Minnesota has 5 minutes remaining.

Mr. DURENBERGER. Mr. President, the Federal Crop Insurance Corporation has made numerous commitments to me and to others during the past 2 years that we have been working on this bill. Earlier I indicated the number of times in which they have told me they might take some action, and did not.

As a result, Mr. President, I put this bill together with my colleague, Senator DASCHLE, during the 102d Congress, introduced in March 1993, with Senators DASCHLE, PRESSLER, BURNS, DORGAN, CONRAD, GRASSLEY, KEMPTHORNE, and GORTON.

As my colleague from Iowa pointed out the amendment is supported by the National Corn Growers, the National Association of Wheat Growers, American Soybean Association, the National Barley Growers Association, the American Oat Association, all of their Minnesota counterparts.

One of the central aspects of the Federal Crop Insurance Fairness Act which we introduced was a reform in the way the FCIC determined yield coverage or yield average for coverage of crops. I am proud to say that the importance of using actual production history, was recognized by the Agriculture Committee and was incorporated into the budget reconciliation.

As far as I can tell, that is about all we are going to get in the way of remedial legislation from the process. While I know and I would expect that my good friend from West Virginia is going to raise a point of order on this, I must just say that the reality is that the Agriculture Committee has had an opportunity to deal with this subject and they have dealt with it only to the extent of raising the issue of actual production history.

The administration is not dealing with crop insurance reform in any particular way. Dealing with it in some other place is not going to protect the American farmers against having us debate after the next natural disaster that visits our part of the country—stand here and debate what should be a decision taken by every single farmer across this country.

I applaud the good sense of the Agriculture Committee. I applaud the good sense of those involved in the budget reconciliation. Even if farmers this year purchase coverage based on their actual production history, they did not and will not be able to purchase prevented planting coverage until something is done about it. This is the place

to do it. This is the vehicle, the only vehicle available to us to accomplish it.

I think, Mr. President, that there is no question that we must approve this amendment tonight. The experts have come from Minnesota, they have come from Iowa, from all over. We do not need to hear from any more experts on the subject. We do need action. It is ridiculous to face a situation here where we are talking about a good part of $5.7 billion being expended on the floor of the Senate simply because only 70 farmers out of literally hundreds of thousands in the flooded States purchased prevented planting coverage.

So I urge all of my colleagues to support this amendment. I yield whatever time remains.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mr. BYRD. Mr. President, I understood that someone on the Agriculture Committee was going to come to the floor and oppose the amendment.

The administration intends to pursue, I am told, with the authorizing committees, comprehensive crop insurance reform with less reliance on Federal disaster payments for farmers affected by future natural disasters, and to provide such assistance in a more timely and cost effective manner.

Mr. President, it seems to me that is the way we ought to do business on this subject matter. We ought not be reforming. We ought not be enacting reform in a piecemeal manner on an appropriations bill.

I see the distinguished chairman of the Agriculture Committee coming to the floor.

I yield such time as I may have remaining to him in the event he wishes to speak.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

What is the parliamentary situation on time, Mr. President?

The PRESIDING OFFICER. The Senator from West Virginia controls 8 minutes, 27 seconds; the Senator from Minnesota has 1 minute, has yielded his time.

Mr. LEAHY. I would add only this: I have heard the debate and listened to what the distinguished chairman of the Appropriations Committee, the Senator from West Virginia, has said.

I think it would be a tremendous mistake to try to reform this crop insurance program on this bill. I have discussed this matter with President Clinton and with Agriculture Secretary Mike Espy. Both of them agree that this insurance program should be changed. They are working on developing reforms. My authorizing committee, the Committee on Agriculture, Nutrition and Forestry will be working on it. But I am willing to bet that there is not a person in this country who would write the reform of the system tonight, even if they were guaranteed that their proposal would automatically go into law.

I do not doubt the good intentions of the Senator from Minnesota or others. I would like to see the Federal Crop Insurance Program reformed and I am working with this administration on ideas to reform it. But this emergency flood relief package that we are debating tonight is not the right bill for that job.

Reform crop insurance is going to require significant hearings and tough debate. Different States are affected differently under the crop insurance program. In some States, there is very substantial enrollment. In other States enrollment is much less. This factor, as well as the types of crops covered and the use of different insurance options varies from State to State.

Let us have the hearings in the Committee on Agriculture. The President of the United States has assured me that he wants to work on this issue. The Secretary of Agriculture has made it very clear both in public and in private meetings with me and with Senators of both parties that he too wants a solution. I think we should give them an opportunity.

I intend to join with the chairman of the Appropriations Committee, the distinguished Senator from West Virginia, in whatever action he takes. If he moves to table this amendment, then I will join him in that. If he prefers to vote the amendment up or down, then I will join him in that approach. But I would hope that my colleagues would understand that as chairman of the authorizing committee, I intend to vote with the chairman of the Appropriations Committee on this matter, not because I disagree on the need for reforms but because I do not believe that this is the place to adopt them.

We are going to get one real bite at the apple on reforming crop insurance when the administration makes its proposals. Let us do the job right at the right time to do it.

I yield back to the distinguished Senator from West Virginia with the statement that I totally agree with the position he has taken.

Mr. BYRD. Mr. President, I thank my distinguished colleague, the Senator from Vermont.

Mr. President, does the distinguished Senator wish to say anything further?

Mr. DURENBERGER. Mr. President, I might take just 1 minute.

Mr. BYRD. Would the Senator like for me to yield a minute? I would be glad to.

Mr. DURENBERGER. I thank the chairman.

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

Mr. DURENBERGER. Mr. President, I just did not draft this amendment simply because of this year's flood. We have had a whole series of droughts, then floods. And the preventated planting coverage has been an issue for all involved with agriculture for a long time. I found out 3 years ago the seriousness of the problem and found that it prevailed all through our area. I brought a lot of people in; drafted this amendment; and met with the people on the Agriculture Committee staff.

We have been talking about these crop insurane reforms for a long time. We have been in and out of the administrations both Bush and Clinton. I repeated it 100 times. I think if the Agriculture Committee were actually interested in doing this, we would have had a hearing. We have not had a hearing—even though Senator DASCHLE and I have requested a hearing from the Agriculture Committee.

I offered, myself, at various times to various people on the committee to be available to use any amendment as a vehicle.

It is a very bipartisan amendment. It is not all that complicated. It is a very complicated issue, as my colleague from Vermont says, but the bill itself is not very complicated.

I just sense a resistance on the part of both the administrations that we have served with to address the need for crop insurance reform. I appreciate the chairman of the Agriculture Committee coming to the floor. But, we are about to lose billions of dollars because we have not dealt with the issue of crop insurance reform. I do not see any vehicle other than this bill, therefore this is an appropriate vehicle.

This is not one person's idea of how to resolve the problem. It is the result of many people all over this country participating in the process.

So, much as I respect my colleague from Vermont, I just may say to my colleagues we do not have any choice other than the amendment before us if we really care about saving money—and saving our farmers.

The PRESIDING OFFICER. The time of the Senator has expired. Is there further debate on the amendment?

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

The PRESIDING OFFICER. The Senator from West Virginia has 3 minutes.

Mr. BYRD. I yield 2 minutes to the Senator from Vermont.

Mr. LEAHY. Mr. President, I note for my friend from Minnesota that this is not the only forum to take action. In the reconciliation bill, there is language on crop insurance reported from the Committee on Agriculture that fits within the Byrd rule. This language gives broad leeway to the Secretary of Agriculture to take immediate administrative action to address some of the most serious problems facing the crop insurance program. I am assured by the Secretary that he is going to act under this authority.

I expect that this legislation will pass and will be signed into law this

week. I think we ought to go forward with the reconciliation crop insurance reforms, allow the Secretary to use the new authorities. Then we should try to bring together those regions of the country and those diverse interests that have made reform difficult in the past and bring them together to produce a consensus on money forward.

I hope that the Senator from Minnesota and others will join with the Committee on Agriculture in working to resolve this issue. I think meaningful reform is possible. I would like to see a combination of the administrative actions that the Secretary of Agriculture will be able to take under the reconciliation legislation, plus the new proposals for future legislation forthcoming from the Administration. These two together will result in the best program for the country.

But this emergency disaster relief package that we are debating tonight simply is not the best vehicle to move forward on the issue.

Mr. PRESSLER. Mr. President, I rise in support of the Durenberger amendment No. 763.

The amendment will greatly improve the crop insurance program and enable the program to serve as a better risk management tool for farmers. I urge its adoption.

I was planning on offering a crop insurance amendment. However, I have decided to wait offering that amendment until the Senate turns to crop insurance reform later this Congress.

The amendment is quite simple. I would give producers the option to drop the 1993 crop year from future yield and rate determinations for Federal crop insurance. Without this amendment, farmers and ranchers likely will face higher premiums for less coverage under the Federal Crop Insurance Program. This should not happen.

It is now evident that the administration and Congress will be rewriting our crop insurance laws to provide risk management tools for farmers and producers facing natural disasters. For too long, we have seen the legal problems that exist when the Government provides both disaster payments and Federal crop insurance indemnities. More often than not, it has been the farmer who has suffered.

The Federal Crop Insurance Corporation uses a formula based on a 10-year average in determining a producer's yield and coverage rates. Including the 1993 crop in future yield and rate determinations could have a detrimental impact on thousands of producers in South Dakota and the Midwest in disaster areas. These detrimental effects could last for the next decade. As a result, future Federal crop insurance coverage could be cost prohibitive for many producers.

Though crop insurance is intended to be farmers' main delivery system for disaster assistance, this latest disaster could leave many producers without coverage. It also could raise the need for further disaster payments should new disasters strike. Eliminating the 1993 crop from future yield and rate determinations would make future crop insurance coverage a better risk management tool for producers.

Mr. President, there is growing consensus that crop insurance is the best way for the Government to provide relief from natural disasters for farmers and ranchers. My amendment would adjust the program to ensure greater effectiveness. I am joined by Senators GRASSLEY and DURENBERGER. I will work to see that the Senate adopt this amendment at a later time.

Mr. BAUCUS. Mr. President, I rise today in opposition to the Durenberger amendment to the Supplemental Appropriations Act. This amendment would add automatic coverage for prevented planting to the insurance packages offered through the Federal Crop Insurance Corporation.

On the surface, this amendment is worthwhile. The improvement of the crop insurance program is imperative and the time for reform is at hand. However, this bill is the wrong vehicle for this reform.

We have received assurances that the Clinton administration is committed to crop insurance reform. The authorizing committee for this program, the Senate Agriculture Committee, on which I sit, is committed to reform this program. Change is imminent but we must not confuse reform with relief legislation.

Disaster relief must be approved quickly. Reform of the insurance program should follow the customary procedure. Hearings should be held to obtain appropriate input. Then, this body can reform this vital program.

Mr. President, I support the goal of crop insurance reform. Meaningful reform is desirable but I must remind my colleagues that this is not the correct legislative vehicle. In our haste I am worried that we might cause the average citizen, our farmers, the flood victims, or the Federal Treasury to bear unfair burdens created in our haste.

I urge my colleagues to join me in opposing this amendment and I look forward to working together—soon—toward comprehensive reform in the vital crop insurance program.

Mr. President, I yield the floor.

Mr. BYRD. Mr. President, I yield the remainder of my time and make a point of order against the amendment as being legislation on an appropriations bill under Rule XVI.

Mr. DURENBERGER. I raise the defense of germaneness of the amendment to language already in the bill, and I ask for the yeas and nays.

Mr. BYRD. Mr. President, I move to table the question of germaneness.

The PRESIDING OFFICER. Is there a sufficient second on the motion to table.

There is a sufficient second.

The yeas and nays were ordered.

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

The clerk will call the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

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

The yeas and nays resulted—yeas 68, nays 31, as follows:

[Rollcall Vote No. 242 Leg.]

YEAS—68

Akaka	Graham	Mitchell
Baucus	Gregg	Moseley-Braun
Biden	Hatfield	Moynihan
Bingaman	Heflin	Murray
Boren	Helms	Nunn
Boxer	Hollings	Packwood
Breaux	Inouye	Pell
Brown	Jeffords	Pryor
Bryan	Johnston	Reid
Bumpers	Kennedy	Riegle
Byrd	Kerrey	Robb
Campbell	Kerry	Rockefeller
Chafee	Kohl	Roth
Cochran	Lautenberg	Sarbanes
Conrad	Leahy	Sasser
Coverdell	Levin	Shelby
DeConcini	Lieberman	Simon
Dodd	Lugar	Simpson
Domenici	Mack	Smith
Feingold	Mathews	Stevens
Feinstein	McConnell	Warner
Ford	Metzenbaum	Wofford
Glenn	Mikulski	

NAYS—31

Bennett	Durenberger	Lott
Bond	Exon	McCain
Burns	Faircloth	Murkowski
Coats	Gorton	Nickles
Cohen	Gramm	Pressler
Craig	Grassley	Specter
D'Amato	Harkin	Thurmond
Danforth	Hatch	Wallop
Daschle	Hutchison	Wellstone
Dole	Kassebaum	
Dorgan	Kempthorne	

NOT VOTING—1

Bradley

The PRESIDING OFFICER. On this vote, the yeas are 68, the nays are 31, the motion to table is agreed to.

The motion to table having been agreed to, the Chair rules that the Durenberger amendment numbered 763 is a legislative proposal offered to an appropriations bill, in violation of rule XVI. The point of order is sustained.

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, while several Senators are present on the floor, there were 40 amendments on the list this morning. Out of 40 amendments that were listed under the unanimous-consent agreement—40 this morning—11 amendments remain.

I hope, and have some reason to believe, that some of these will not be called up. I wonder if we could get some indication from Senators whose names are listed as to whether or not they are really serious about their amendments.

The majority leader has indicated that he wanted to finish this bill tonight, and I am hopeful of doing that.

How about Mr. DECONCINI? Does he intend to call up his amendment?

Mr. DOLE?

He just indicated to me he may or may not.

Mr. DURENBERGER has one remaining and he will call that amendment up.

Can we get a time limitation on that amendment?

Mr. DURENBERGER. Mr. President, I am willing to enter into a time limitation. I need only 20 minutes for myself and a colleague on the amendment.

Mr. BYRD. Mr. President, I ask unanimous consent that there be a limitation on the amendment of 25 minutes: 20 minutes to the Senator who is the author of the amendment and 5 minutes to the opposition.

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

Mr. BYRD. I thank the distinguished Senator.

Mr. President, Mr. GRASSLEY is down for two amendments. Does he intend to call both amendments up?

Mr. GRASSLEY. Neither one.

Mr. BYRD. Mr. HELMS has two amendments.

Mr. KOHL has one amendment.

Mr. MACK; Mr. METZENBAUM; Mr. PRESSLER.

Very well. I think we made progress. It appears that of the 11 amendments remaining, that possibly we have about 8 left.

I thank the Senator for yielding.

Does he wish to proceed with his amendment?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

AMENDMENT NO. 764 TO THE FIRST COMMITTEE AMENDMENT

(Purpose: To establish a procedure to offset "emergency spending" on natural disasters by rescissions, sequesters of discretionary and mandatory spending, and taxes if necessary)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. DURENBERGER] proposes an amendment numbered 764 to the first committee amendment.

Mr. DURENBERGER. 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 Amendment No. 764 is located in today's RECORD under "Amendments Submitted."

Mr. DURENBERGER. Mr. President, this amendment is a relatively simple one. It would rewrite our policy on paying for disasters to bring them more in line with the demand of the American people for fiscal responsibility in the U.S. Congress.

I spent a fair amount of time debating a similar amendment as it would apply to the current disaster which has been visited on the Midwest, including my State of Minnesota, so I will not repeat a lot of the arguments both as to why it is appropriate on this bill and why it is just appropriate public policy.

Mr. President, the purpose of the amendment is to set up a procedure for us to deal with the issue which is before us in the future. I see the issue, as expressed in common parlance, as: If you are going to spend money, find a way to pay for it.

Spending in supplemental disaster relief bills after this year and after this particular disaster, except spending on capital expenses, will have to be offset within 1 year. Spending on capital expenses will not be affected by this amendment at all. The offsets in this bill will be recommended by the President, not the mandated offsets that I had in my amendment which came very close to passage here earlier.

These offsets are to be recommended by the President. They can be changed by the Congress. The President and the Congress may choose from rescission, sequestration, or, under certain specified circumstances, a tax.

In our earlier debate, we walked through, with the help of our colleague from Pennsylvania, a variety of these options and a variety of the consequences of the adoption. As a matter of policy, it is declared in this amendment that the President and the Congress should first try to make rescissions, then turn to sequesters, and only resort to taxes in extreme situations. Cuts in discretionary spending are made through the appropriations process in the following fiscal year following the disaster by lowering the discretionary spending ceilings.

Cuts in mandatory spending may be made by Congress and are patterned generally after Leon Panetta's 1992 bill with which the experts on this floor are familiar. Across-the-board, special treatment for low-income programs, retirement benefits, and Medicare. Social Security and Railroad Retirement are exempted.

Sense-of-the-Congress language is included in the amendment directing that administrative expenses should be cut before program muscle is cut. If offsets are not made in the spending bill, the President is required to sequester funds in the next fiscal year. That backup sequestration is from discretionary accounts only and according to the Budget Act procedures. Spending bills for disaster relief get expedited consideration—no nongermane amendments on the bill, no nonrelevant amendments and amendments between Houses or conference reports. And there is a 60-vote rule in the Senate.

No other mechanism is available to pass emergency relief supplementally. Taxes cannot be used to offset spending unless the spending in the bill and prior emergency supplemental relief bills in the current fiscal year exceed 1 percent of funds available for sequestration.

Any tax imposed in an emergency relief bill must expire at the end of the calendar year. Amounts sequestered from mandatory programs do not reduce the baseline for future spending.

Finally, the amendment provides sense-of-the-Congress language should the legislation be passed to have the President make periodic certifications as to the adequacy of preparations for natural disasters in States and providing for disincentives in the disaster relief program for States which have not made adequate preparations.

Mr. President, all of this has been put together both at the behest of experts and with the help of experts. These are not new ideas, new materials, and so forth. They reflect basically the concern of all of our colleagues who have approached the issue of demonstrating a sense of responsibility.

I have said it before and I will say it again: Because we ask people to pay for disaster relief does not mean we do not have heart. It is time to do disaster relief appropriately. It is time to make sure we do not run out of money for disasters in the future. It is time for us to take on the responsibility of preparing ourselves for the next response to a natural disaster.

This amendment will do that. I recommend it to my colleagues.

I will yield whatever time he may require to my colleague from Idaho.

The PRESIDING OFFICER. The Senator from Idaho is recognized.

Mr. CRAIG. Mr. President, I am pleased to join my colleague from Minnesota, Senator DURENBERGER, in debating and presenting this amendment to the U.S. Senate. I do believe in the old adage that charity begins at home. I think there is not an American today who has not watched what has gone on in the Midwest and recognized that this country must respond. So I do associate myself with the remarks the Senator has just made, that this is not a question of whether we should or should not have disaster relief.

But I think those Americans who have displayed their concern and their voluntary effort in the contributions they sent in and in the recognition that this Government will respond are also increasingly frustrated by an administration that has just presented the largest tax increase in history, by a Federal deficit of nearly $300-plus billions, the fact that this is borrowed money, and the fact that we are not trying to go back into the budget and find the $4 billion-plus and pay for it, offset it, take care of it.

I said to citizens of my State I would vote for disaster relief. Someday Idahoans might need the same help that Illinoisans, Missourians, and folks from Iowa are needing at this moment. But we do have a responsibility to be responsible in the sense of paying for this. The Senator from Minnesota has now come up with what I think is a reasonable approach—in other words, if you will, to craft into our policy a mechanism by which we approach this. And the ultimate test, of course, after we have gone beyond 1 percent of the discretionary funding—if in fact a disaster were greater than that and the Midwest disaster might well get greater than that by the time all of the expenses, all of the losses are brought forward—that we then ask the American people to do what we should and that is to pay for it by some form of tax that would last only for the period of time of the payment. And that would be a responsible approach.

I have crafted an amendment. I recognize the hour is getting late. It was my plan to offer an amendment that was similar, only it would have sent the appropriators back into the 1994 budget to find the money. A similar amendment dealing with discretionary moneys was proposed and voted on a few moments ago, an amendment by the Senator from Minnesota, and this Senate rejected it on a 54–45 vote, I believe. So I am not at all convinced they would agree to my amendment.

But I do believe it is just very responsible for us to address paying for this issue, showing the charity, showing the responsibility we have, but at the same time saying to the American people we are not going to increase the deficit, we are going to ask those who gain favor by largess of the Public Treasury that they must share, too. Their increase in program or their increase in payment might be down by one-half of 1 percent this year because someone in the Midwest lost all that they owned, lost all that they had worked their lifetime to gain. That is just what this country is made of. That is the kind of stuff that I think all of us recognize is part of what we are about.

What we are not about, and what Americans have never been about, is piling up debt—not taking on the responsibility of paying for that which they owe. Yet we have not been that responsible, and this amendment offers that kind of responsibility that when there is a need and a national disaster we will not just pile it up on the debt side. We will ask the American people to be responsible in sharing with us, in caring for, and then paying for that which we have asked them to participate in.

So I am pleased to join the Senator. I think he has set forth a reasonable approach that suggests the President play an important role in this, that he could choose the rescission or sequestration under the circumstances, or offer forth even a revenue-raising measure, and he would have that kind of prerogative, and the Congress should respond by alternative selections. But it sets forth a clear procedure.

What we are doing now is just piling up debt and that is not responsible. What we are doing, though, is caring. And that is the conflict we find ourselves in. That is a conflict none of us should ask of ourselves or the taxpayers of this country. We ought to be able to cut discretionary spending; we ought to be able to offset and do those kinds of things that clearly are important, yet at the same time, as the Senator does in his amendment, hold whole those programs that are directly life-supporting as it would relate to Social Security and other programs. Those are separate and apart. That, I believe, is also important.

So I do stand in strong support of this and the sense-of-the-Senate legislation that the President make periodic certifications of the adequacy of the preparations for natural disasters in States.

I think it is important that this Senate say to the collective States of this Nation: You, too, must share in this and you ought to prepare. This is the second major and largest natural disaster we have had in a very short time, from the one in Florida that cost the taxpayers and the debt structure of this country billions of dollars, to this great disaster now of the Midwest that will cost the citizens and the debt structure of this country literally billions more.

So when you can stand here and debate a method for paying, it does not mean that you are not in support of participating and it does not mean that this Government is not in favor of doing what it ought to do. What it simply means is that we are only responsible when we put forth a mechanism that provides a payment process, and when we, in fact, offer up a method by which to pay it. I think the American people are asking that at this moment. That is what they expect of us, as their legislators, to do: To come forth with those kinds of reasonable and forthright approaches to resolve these problems, to move toward keeping our fiscal house in order, and why I am pleased to join with the Senator in the cosponsorship and the offering of this amendment.

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield myself 2 minutes.

This may or may not be a good idea, but 31 pages—31 pages—that come under the jurisdiction of the Finance Committee, the Agriculture Committee, the Environment and Public Works Committee, the Governmental Affairs Committee, and who knows, I have only glanced through that little of it to identify at least four committees of jurisdiction. And no hearings.

I think it is fine to make our statements on the principle, but I cannot believe this body is ready to write this kind of legislation on an emergency supplemental appropriations bill.

The Appropriations Committee gets a lot of criticism from time to time of reaching out, and yet here we are asking the Appropriations Committee to carry this kind of 31 pages of legislation. It is not just a question of legislation on an appropriations bill; this is a violation of every concept of this body, of having committees of jurisdiction to authorize and an Appropriations Committee to appropriate and a Budget Committee to set standards, and so forth.

It seems to me that this is really—I hate to say it, but I do not think that I can really be serious on this, asking us to do this at this hour of the night on this bill, trying to meet the emergency needs of people out there suffering all through the Midwest. And, therefore, Mr. President, I do hope at the appropriate time we can move this on to a final decision.

I am not saying it is not the right of any Senator to bring this up. But I just want to remind the body, the very thing that oftentimes the Appropriations Committee is criticized for doing, now we are being asked to do it and want to impose it on a supplemental appropriations bill.

Mr. CRAIG. Will the Senator yield?

Mr. HATFIELD. I will be happy to yield.

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

Mr. HATFIELD. On your time.

Mr. DURENBERGER. I am pleased to yield to my colleague how much time he needs.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I mean this in the most positive vein. This is 32 pages of legislation. Within less than 48 hours, we will be asked to vote on 1,800 pages of legislation that most Senators have not seen, nor will they have the ample opportunity to examine.

So you see, we have, in fact, done that before, and we will be doing it before this body adjourns for the August recess. It is not uncommon to establish public policy in the manner that has been proposed by the Senator from Minnesota and, of course, I think we all recognize that if this Senate were to choose to act tonight on this amendment, then the appropriate process would go forward that would allow those committees to participate, as they would under the appropriate authority.

So this form of legislation most assuredly is not unique. We will be deeply

involved in it before the next day is up, and it will be known as, of course, the great budget bill that will be debated on this floor in a very short time.

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. HATFIELD. Will the Senator yield for just 10 seconds for me to respond to the Senator from Idaho? Eighteen hundred pages of legislation from the committee of jurisdiction, not on top of an appropriations bill, piggybacking on an appropriations bill.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. May I inquire how much time I have remaining?

The PRESIDING OFFICER. The Senator from Minnesota has 5 minutes 16 seconds.

Mr. DURENBERGER. Mr. President, I yield myself such time as I may need. I express my appreciation to my colleague from Idaho for the gentleness of his response. But it is true that within—and we have all been through this before—within just a matter of 48 hours, hopefully, we are going to see an 1,800, or whatever it is, page bill. I think I heard the first description of some of the basic numbers tonight; we have nothing behind it.

Mr. President, that may come from a committee, but let me say to my friend and colleague from Oregon that it affects the Committee on Agriculture, Nutrition, and Forestry; the Committee on Armed Services; the Committee on Banking, Housing, and Urban Affairs; Budget; Commerce, Science, and Transportation; Energy and Natural Resources; Environment and Public Works; Finance; Judiciary; Governmental Affairs; probably Foreign Relations.

Mr. HATFIELD. Will the Senator yield for a question? All hearings have been held in those committees, have they not been?

Mr. DURENBERGER. I do not know whether hearings have been held on all of these issues. I know there are ERISA waivers coming through—at least one that is coming through—that was never heard in the Senate Finance Committee. I could go through a variety of other legislation that is going to be on this reconciliation bill that will not have had a hearing. I cannot describe it in specific terms because I have not seen the bill.

We all know that it is going to happen and it is going to be there and it is going to be in front of us; it is going to be buried in 1,800 pages and nobody is going to find it. I have presented a long amendment, as my colleague said. I have had it distributed. People have an opportunity to see it before they vote on it. I have stood here, and I have explained it to everyone here.

I do not want to belabor the point of being prepared, but I only, with my colleague from Idaho, contest the allegation of my colleague from Oregon that just because this one happens to violate every rule of this body, that that is going to make a lot of difference to the people out there who are calling on our telephones here all day long. I think the last count I had at 5 o'clock today was something like 1,759 telephone calls on the kind of subject we are dealing with today: The issue of spending, the issue of taxes, and the issue of the deficit.

The people who are on my telephone could care less about the rules of this body or the rules of this place in which we work or at this hour of the night. It is only 10 minutes to 8. I do not know if there is an appropriate hour for us to debate the issue of whether or not this body will continue to spend money that it does not have, and it is not willing to ask people to pay for it.

I have raised the issue, Mr. President, before and I will raise it again: If, in fact, we cannot ask the people of this country to respond financially to the needs of this disaster, how in the world are we going to get them to respond to anything else? A $4.1 trillion debt, 14 percent of our Federal spending going into debt service rather than to meet the needs of this country.

It has to come to an end at some point in time. We came very close on a 54 to 45 vote to end it with regard to a disaster that has cost the people of my State $1.3 billion. I felt an obligation to stand up here and ask my colleagues to ask the people of this country to pay for it.

Now, this amendment that is before us now is not quite that kind of an amendment. The one before us now simply says before the next natural disaster comes, before the next one is visited on us, can we not get ready for it and put in place a system that will be responsive, not only to the needs of the people who are hurt by the disaster but to the next generation of Americans, the people who have to carry the load of meeting the decisions, the financial obligations and decisions that we make here.

The PRESIDING OFFICER. Who yields time?

Mr. HATFIELD addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. HATFIELD. Mr. President, I yield myself 1 minute.

Mr. President, I think the point where we are today in this appropriations bill now has resolved itself down to really a simple question. The people may not be interested in the rules and regulations and procedures and processes of the Senate at this particular point, but they are interested in getting the relief to help ease their misery out there in the Midwest.

We are now at the point of whether we are going to go back and redefine the Budget Control Act, whether we are going to redefine procedures and processes not only under that act that involves at least four jurisdictions of this Senate without hearings, without any kind of presentations. At this hour the question is are we going to move this money out to the people in need or are we going to stand here and debate and argue the procedures and the processes of the Senate? That is the question.

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

Who yields time?

Mr. DURENBERGER addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DURENBERGER. Mr. President, in response to my usually very generous colleague from Oregon, let me simply say that if this amendment passes—and I certainly hope that it does—it will probably take the Appropriations Committee of the Senate maybe 2 or 3 or 4 minutes to persuade their colleagues from the House to agree to this particular amendment. We are not holding anything up. The money will get to Minnesota; it will get to Iowa, wherever, as soon as our colleagues are able to get the House to agree to this particular amendment.

The PRESIDING OFFICER. Who yields time?

Mr. DURENBERGER. Mr. President, do I have time remaining?

Mr. BYRD. How much time remains?

The PRESIDING OFFICER. The time of the Senator from Minnesota has expired. The time of the Senator from West Virginia is 1½ minutes.

Mr. BYRD. Mr. President, I know there is no rule around here, while we are talking about procedure, concerning consistency, but my friend from Minnesota voted earlier this morning to increase the budget deficit by $3.4 billion. He voted twice to do that. So I just say that for the RECORD.

Consistency, thou art a jewel but not the hobgoblin of little minds.

Mr. President, there are those who would belittle procedure. What is the difference between a lynching and a fair trial? Procedure. So it is important.

I yield back the remainder of my time. I make the following point of order. Section 306 of the Congressional Budget Act of 1974, as amended, prohibits consideration of an amendment in the jurisdiction of the Budget Committee unless offered on a measure reported from that committee. This amendment is in the jurisdiction of the Budget Committee, offered to a bill that has been reported not by the Budget Committee but by the Appropriations Committee. Therefore, I make a point of order under section 306 against this amendment.

Mr. DURENBERGER. Mr. President, under the relevant provisions of the Budget Act, I move to waive the point of order and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

The bill clerk called the roll.

Mr. FORD. I announce that the Senator from New Jersey [Mr. BRADLEY] is necessarily absent.

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

The result was announced—yeas 35, nays 64, as follows:

[Rollcall Vote No. 243 Leg.]

YEAS—35

Bennett	Faircloth	McCain
Bingaman	Gorton	Murkowski
Brown	Gramm	Nickles
Chafee	Grassley	Nunn
Coats	Gregg	Packwood
Cohen	Hatch	Pressler
Craig	Heflin	Robb
D'Amato	Hutchison	Simpson
DeConcini	Jeffords	Smith
Dole	Kempthorne	Thurmond
Domenici	Lugar	Wallop
Durenberger	Mack	

NAYS—64

Akaka	Ford	Mikulski
Baucus	Glenn	Mitchell
Biden	Graham	Moseley-Braun
Bond	Harkin	Moynihan
Boren	Hatfield	Murray
Boxer	Helms	Pell
Breaux	Hollings	Pryor
Bryan	Inouye	Reid
Bumpers	Johnston	Riegle
Burns	Kassebaum	Rockefeller
Byrd	Kennedy	Roth
Campbell	Kerrey	Sarbanes
Cochran	Kerry	Sasser
Conrad	Kohl	Shelby
Coverdell	Lautenberg	Simon
Danforth	Leahy	Specter
Daschle	Levin	Stevens
Dodd	Lieberman	Warner
Dorgan	Lott	Wellstone
Exon	Mathews	Wofford
Feingold	McConnell	
Feinstein	Metzenbaum	

NOT VOTING—1

Bradley

The PRESIDING OFFICER. On this vote the yeas are 35, the nays are 64.

Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

The amendment of the Senator from Minnesota contains provisions within the jurisdiction of the Senate Budget Committee. The bill before the Senate was not reported by that committee. The amendment therefore violates section 306 of the Budget Act, and the point of order is sustained.

Mr. BYRD. Mr. President, it seems that we are down to a possible 4 amendments out of 40, and I hope that not all 4 of these will be called up.

Mr. DECONCINI, I understand, will want to call his amendment up, and I understand that Senator DOLE will call up his amendment. So that is two out of the 4.

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. GRASSLEY. 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. GRASSLEY. Mr. President, I ask unanimous consent to speak for 4 minutes as in morning business.

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

IN-COMING CALLS AGAINST THE PRESIDENT'S BUDGET

Mr. GRASSLEY. Mr. President, last night, President Clinton made an appeal to the American people on behalf of a budget reconciliation conference agreement. He told Americans to let their voices be heard. He said the following:

I need for you to tell the people's representatives to get on with the people's business.

I assume that the President would then abide by the wishes of those who followed the President's advice and called their representatives, lest we feed the growing cynicism and the distrust of elected leaders.

Today my offices in Washington and Iowa have been inundated with calls; they are overwhelmingly against the President's budget. The people of Iowa have made it clear to me that their business is to cut spending first, and this budget fails to do that.

I received nearly 400 calls as of 3:30 this afternoon. They are still coming in. Seventy-five percent reject the Democrats' tax-and-spend budget.

I have talked with several of my colleagues, and their calls are coming in at roughly the same ratio, against the President's budget.

If these numbers hold up, it is very clear that the people do not want us to tax and spend. And in that case, the President has a moral obligation to pull down the bill. And then he should start all over again by cutting spending first.

Mr. President, it was a risky strategy for President Clinton to appeal directly to the people, because now he is obliged to do their bidding.

During the Reagan era, the great communicator that Reagan was—he employed a similar strategy. His was successful. He and the people saw eye to eye, not because he sold the message well or because he was simply a supreme communicator; it was because of the substance of his message. People want spending cuts and they do not want tax increases. It is just that simple.

With this budget, they are getting the opposite. In fact, this is the worst. This is worse than tax and spend, because the taxes are retroactive. So it is tax yesterday, and it is cut spending tomorrow. We tax the past, the present, and the future and we cut spending tomorrow. It is the "manana budget." No wonder the people are saying no.

Mr. President, last night President Clinton called for the "yeas and nays." Today, Americans are voting thumbs down. It is the President's move now. His is a moral obligation. I urge him to consider pulling down the bill and starting over.

I yield the floor, and 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. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

The Senate continued with the consideration of the bill.

AMENDMENT NO. 765 TO FIRST COMMITTEE AMENDMENT

Mr. KOHL. Mr. President, I rise to offer an amendment in behalf of myself and the Presiding Officer, Senator FEINGOLD.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] for himself and Mr. FEINGOLD, proposes an amendment numbered 765.

Mr. KOHL. 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:

Insert at the appropriate place in the amendment:

The Secretary shall implement an emergency forage program under the same terms and conditions used to administer the 1988 Emergency Forage Assistance Program authorized by section 103 of Public Law 100-387, except that it shall apply to pasture damaged by winterkill, excessive moisture, flooding, drought and/or related conditions in 1993. *Provided*, That funds for this purpose shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to Congress. *Provided further*, That the entire amount of funds used under this paragraph is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. KOHL. Mr. President, the administration has indicated its support for

this amendment. Simply, what this amendment would do is provide 50-percent cost-share assistance for reseeding of forage crops in areas with significant losses of forage crops due to this year's disastrous weather.

This program was used in 1988 to provide assistance to farmers with forage losses as a result of the drought of that year. This amendment would simply renew that program for purposes of this year's disaster.

Mr. President, this is a very modest amendment. The Congressional Budget Office has stated that the cost of this amendment would be only $18 million. But this amendment is very significant to livestock producers in the Upper Midwest, who depend so heavily on forage raised on the farms to feed their animals.

In my own State of Wisconsin, we have lost 750,000 of our 2.2 million acres of alfalfa. Other States in the Upper Midwest have also seen significant losses.

It is important to get those acres reseeded, not only from a standpoint of feed, but also for conservation purposes. The more bare ground we have, the more soil we are going to have running off our fields and into our streams.

I have discussed this with the chairman and his staff, and I have also discussed this amendment with Senator HATFIELD.

(By request of Mr. KOHL, the following statement was ordered to be printed in the RECORD:)

EMERGENCY FORAGE RELIEF BADLY NEEDED IN THE UPPER MIDWEST

• Mr. FEINGOLD. I am pleased to join my distinguished colleague, the senior Senator from Wisconsin, in introducing this amendment. Senator KOHL and I have been working on since this disastrous weather began earlier this year. This amendment is quite simple. It merely revitalizes the Emergency Forage Assistance Program which was in place during the 1988 drought and makes it applicable to the poor weather conditions occurring this year in the Midwest.

The Emergency Forage Assistance Program recognizes the devastating impacts of poor weather on livestock producers who grow their own forage. Dairy farmers who produce their own forage, primarily high quality alfalfa hay, are hit several times by this disaster. First, they have lost their forage crops to the poor weather resulting in drastic forage shortages in the Upper Midwest. As a result forage prices are abnormally high—in fact they are nearly double the normal price. This results in an increase in the cost of milk production and a decrease in milk yields. Farmers are either feeding dairy cows low quality forage or they are culling their herds due to the lack of feed. The cumulative effect of this is desperately low cash flow for dairy farmers.

Adding to the problems faced by so many producers is the fact that so many of the alfalfa fields have to be completely reseeded in order to get a forage crop next year and possibly a late cutting this fall. In Wisconsin, there are nearly 800,000 acres of alfalfa hay that must be reseeded. Other flood and disaster States in the Midwest that produce alfalfa hay or other type of forages have had those crops devastated by either winterkill, spring root rot, excessive moisture, and flooding. USDA has estimated that there are over 2 million acres of forage and pasture land that would be aided by this emergency forage program.

The cost of reseeding alfalfa hay can be as high as $100 per acre. During a crop year in which farmers can barely feed their cows, not to mention their families, they can ill-afford to reseed their fields. This amendment simply would allow eligible producers to receive a 50-percent cost share on the expense of reseeding pasture lands used for haying and grazing which were demolished by this year's bad weather. This will enable dairy farmers to reestablish their forage crops for harvest late this year and next year.

This type of assistance is almost as crucial to dairy farmers in my State as the overall disaster payments. If farmers are unable to reseed their fields this year they will suffer from the disaster of 1993 in 1994, when we revisit this devastating hay shortage. Without assistance many farmers in the Midwest be unable to reseed their fields.

So again, I thank the Chairman for his interest in this amendment, and for recognizing the severity of the forage shortage and the need for this very important legislation. I, too do not wish to slow down the process of approving this aid for farmers. So I will look forward to working with the chairman and the administration in the near future to find a solution to this very severe problem.

Thank you, Mr. President.•

Mr. KOHL. Mr. President, I am going to withdraw the amendment itself at this time because I recognize that the chairman of the Appropriations Committee would not want to have this amendment discussed and considered at this time, but I am going to take an opportunity after the recess to find a vehicle to offer this amendment, and I hope that at that time we can get it passed because I really regard it as a very important amendment, very important to my State and other States of the Middle West.

As I said, I simply do not want to complicate proceedings at this time, but I will ask that we find a vehicle and a way to get this amendment done after the recess.

The PRESIDING OFFICER. Without objection, the Senator's amendment is withdrawn.

The amendment (No. 765) was withdrawn.

Mr. BYRD. Mr. President, I thank the Senator for withdrawing the amendment.

I would like to be helpful with the Senator on his amendment and expect to be helpful at some point. It is not the amount of the money that is involved. It is probably a good amendment.

But Senator HATFIELD and I have a problem. We have a bill here that ought to move, and we do not want it to get delayed in the other body or in conference. We do not want to trigger in the other body amendments on the part of Members who would see an opportunity, if the Senate had amendments to this bill, to add amendments that are not supported by the administration in writing, clearly supported.

So we have been able to encourage Senators not to call up amendments today.

I do thank the Senator, and I will certainly try to be helpful to him on another vehicle before this session is out.

Mr. HATFIELD. Mr. President, will the chairman yield?

Mr. BYRD. Yes.

Mr. HATFIELD. Mr. President, I wish to associate myself with the comments made by the chairman as to the amendment of great interest to the Senator from Wisconsin. I do not, frankly, feel that the Senator from Wisconsin wants to have difficulty in finding an appropriate vehicle because I think most of us here, being realists understand that for the period of time that we are in recess the administration is going to be doing a lot of new evaluating, a lot of new assessing of what is going to be required to meet this tragedy.

I imagine the administration would have a vehicle pretty quickly in place or, that is, in mind as another supplemental appropriation.

Certainly, I join with the chairman in assuring the Senator from Wisconsin my commitment to helping in every way possible.

I urge the Senator also that maybe by that time the administration would incorporate the idea, or at least approve of it, so that we could then move ahead with what the administration has requested.

Mr. KOHL. I thank the Senator, and I thank Senator BYRD.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER (Mr. WELLSTONE). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 766

(Purpose: To provide relief in connection with the Bennett freeze)

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

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arizona [Mr. DECONCINI] proposes an amendment numbered 766.

Mr. DECONCINI. 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:

At the appropriate place, add the following:

SEC. . (a) Notwithstanding any other provision of this Act, in the administration of this Act, $118,000,000 of the aggregate amount appropriated by this Act, from such accounts as shall be determined by the Director of the Office of Management and Budget, in consultation with the Secretary of the Interior, and other appropriate heads of Federal departments, agencies and entities receiving appropriations under this Act, and after consultation by the Secretary of the Interior with the tribal governments of the Navajo Indian tribe and the Hopi Indian tribe, shall be available as follows:

(1) $100,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Navajo Indian Reservation in Arizona, which funds shall remain available until expended; and

(2) $18,000,000 shall be available for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Hopi Indian Reservation, which funds shall remain available until expended.

(b) For purposes of this section, the term "former Bennett Freeze Area" means that portion of the Navajo Indian Reservation and that portion of the Hopi Indian Reservation for which the restriction referred to in subsection (c)(1) was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992.

(c) For purposes of this Act—

(1) the 26-year restriction on construction and development on an area of the Navajo Indian Reservation and the area of the Hopi Indian Reservation, commonly referred to as the Bennett Freeze, referred to in section 10(f) of the Act of December 22, 1974 (25 U.S.C. 640d–10(f)) is deemed a natural disaster; and

(2) those portions of the Navajo Indian Reservation and the Hopi Indian Reservation for which such restriction was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992, are each deemed a disaster area.

(d) No funds made available by this section may be expended on any portion of the Navajo Indian Reservation or any portion of the Hopi Indian Reservation with respect to which there is in effect a restriction on construction or improvement pursuant to the order of the United States District Court for the District of Arizona on December 18, 1992.

Mr. DECONCINI. Mr. President, this amendment directs that $118 million of the funds appropriated for this act be designated for providing relief to what is known as the former Bennett Freeze Area. This is a very parochial matter in my State, but it has significant national implications.

The former Bennett Freeze Area, which is on a map here behind me, is this area of the Navajo Reservation in Arizona. It is 1.5 million acres, located on the Navajo Reservation. It is the home of about 7,800 Navajo Indians.

These Navajos are in dire need of emergency relief assistance now. My amendment declares the former Bennett Freeze Area a natural disaster and thereby makes it eligible for disaster relief.

Mr. President, I am compelled to offer this amendment because I believe that the U.S. Government must own up to the disastrous emergency conditions which it has created for the people of the former Bennett Freeze Area communities.

Nowhere in this country have we ever allowed Federal Government policy to stifle the ability of citizens to lift themselves out of poverty and force them to live with the catastrophic consequences for more than a quarter of a century, as we have done right here on the Navajo Reservation.

Some would suggest that we have our own Gaza Strip in the Bennett Freeze. It is a national disgrace. It represents an ill—conceived effort by the Federal Government to hasten the resolution of conflicting tribal land claims to the 1934 Navajo Reservation.

Instead, the imposition of the freeze only penalized innocent people by suspending all construction and development projects they needed to improve and sustain their livelihoods. As unbelievable as it is, this great Nation denied its own citizens—in this case, Navajo native Americans—the right to make a better life for themselves and their children.

Mr. President, the tragedy is that the U.S. Government has pursued this policy for the past 26 years. It held people in a state of abject poverty. As a direct consequence, families live in substandard conditions which are shocking, trapped by a Government ban on construction and development, and prohibited from improving or building a home.

Mr. President, they were unable to repair a broken window, fix a leaking roof, or build a new home for growing families. Shockingly, the ban did not apply only to federally funded construction or development.

People who had hard-earned money and wanted to improve their house or build a house could not do it on this 1.5 million acres of the Indian reservation. The Bennett Freeze is an unfortunate example of government at its worst—destroying the individual incentive to take care of family and community needs. We denied them the chance to pursue and realize the American dream.

Mr. President, they were denied participation in all Federal poverty and disaster assistance programs. They were left behind while their neighbors and the rest of America enjoyed the benefits of progress, when we were having economic upturns and people could improve their homes and they could apply for Federal programs if they were applicable.

Their families and communities have been fractured. Frail elderly grandparents and parents were abandoned to live in isolation because their children were not allowed to build homes near them. Despite a 65-percent increase in family members since 1966, when the ban was imposed, no new homes were built.

The houses which were in place are now severely overcrowded and in serious disrepair. Ramshackle wood and tarpaper houses are commonplace. Aging structures have collapsed around inhabitants. I will show you some pictures in just a moment.

Many simply live with the daily risk of roofs falling in on top of them. One elderly man lives in a structure which may fall down on him any day. He has no other choice. He cannot improve it.

One other man resorted to living in a cardboard box which he fashioned into a makeshift shelter. That is this picture right here. Actually, an American lives in that house tonight. That is his house. He cannot improve it. He has no light, has no electricity, no running water. The wind will blow it down. He puts it back up.

Ninety percent of the existing housing lacks running water or indoor plumbing. An elderly woman walks 2 miles daily to get water because she does not have any other means of transporting water to her home.

Deplorable and unsanitary conditions caused by the lack of running water and electricity make the communities highly susceptible to the spread of infectious diseases and viruses like the Hantavirus.

Tribal and Indian health officials note a higher incidence of diseases like respiratory infections, skin diseases, hypertension, depression and gastro-intestinal infections among former Bennett Freeze residents.

School children struggled to do homework by candle light or kerosene lamps because 97 percent of their homes have no electricity. Many are forced to leave home for boarding schools at early ages because school buses cannot be driven on the rough dirt roads in their communities.

None of the communities located in the former Freeze area has been able to get roads, electricity lines, water and sewer systems, and other basic community infrastructure built. They must travel rough dirt roads, haul water from distant sources, rely on firewood for home heating and go greater distances to get basic services.

They have had no new schools, clinics or other community facilities constructed. They have been bypassed by

every federally funded construction program which has benefited other communities.

How, in good conscience, can we allow this travesty to continue. I plead with my colleagues to rectify this 27-year injustice by supporting my amendment.

This amendment will make available $100 million for the Navajo portion of the former Bennett Freeze area and $18 million for the Hopi portion of the former Freeze area.

My amendment will not allow the use of these funds for the development or construction of facilities in the area which has been determined by the District Court of Arizona to have been jointly used by both tribes—so only in the area that now has been divided.

This limitation preserves the modified freeze which the court reimposed in December 18, 1992, in response to the Hopi Tribe's appeal. My amendment will not contravene the court's order in any way whatsoever.

My amendment will only allow funds to be used to provide emergency relief for that portion of the former Bennett Freeze area for which the freeze was completely lifted by the U.S. District Court of Arizona on September 25, 1992.

This court decision represents the conclusion of the trial on the merits of the Hopi tribal claims to the 1934 Navajo Reservation as authorized by Congress under Public Law 93-531. In this decision, the court partitioned 60,000 acres of the 1934 reservation to the Hopi Tribe and the balance remained a part of the 1934 Navajo Reservation.

My amendment gives the OMB director the authority, after consultation with the two tribal governments, to work with the Secretary of the Interior and other heads of appropriate Federal agencies to determine how the $118 million for Bennett Freeze relief assistance will be allocated among the various accounts for which this bill appropriates emergency funding.

The two tribes have assessed the relief assistance required to construct homes, roads, water and sewer lines, electric power systems, and community facilities. They will have to justify the relief assistance needed to the OMB Director and the appropriate Federal agencies.

Bennett Freeze citizens have been denied the basic human needs for far too long. They have been unable to pursue the American dream like other American citizens. They have been forced to live as second class citizens for the past 27 years by the U.S. Government. It is time for us to end this travesty and tragedy.

I want to quote an Arizona paper, the Mesa Tribune, which published an editorial titled "Righting a Wrong," on July 21, 1993. I agree with the editorial which stated that "Families, some of whom are living in tiny one-room log and mud hovels, must be brought into the 20th Century." If Congress can find a way to help foreign countries like Russia, surely we can assist our own citizens to rebuild their lives and communities.

They are not asking for the impossible and we must respond after 26 years of neglect and deprivation.

Mr. President, I ask unanimous consent that copies of newspaper articles and an editorial which appeared in the Mesa Tribune and Washington Post describing the conditions in the former Bennett Freeze area be printed in the RECORD in their entirety.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Mesa Tribune, July 21, 1993]

RIGHTING A WRONG

In the long and tortured history of misguided government policies dealing with American Indians, few have been as ill-conceived as a directive issued in 1966 that came to be know as the Bennett Freeze. It's a little-known story of government-imposed deprivation that has locked an estimated 2,500 families in grinding poverty on a 1.5-million-acre expanse of the western Navajo Reservation in Arizona and has driven many young Navajos from their ancestral homeland.

Congress has an opportunity now to right some of the wrong, if it can muster the courage to admit failure and provide the funds to being making amends.

The problem is rooted in a series of egregious errors by the federal government, dating back more than a century, in its clumsy efforts to set up reservations for the Southwest's Indian tribes. Various sets of seemingly arbitrary boundaries were drawn, sowing the seeds of a bitter dispute between neighboring Navajos and Hopis.

One of those boundaries, drawn by Congress in 1934, put the Hopi village of Moenkopi on the new Navajo Reservation. Rather than fixing the problem after the Hopis protested, Congress let it fester. The Hopi protest grew to include a historical and spiritual claim to much of what had been designated as the western Navajo Reservation, land long occupied almost exclusively by Navajos.

Still, Congress did nothing.

Finally, in 1966, then-U.S. Indian Commissioner Robert Bennett imposed a freeze over any new construction on 1.5 million acres of the western Navajo Reservation in dispute, including Moenkopi and Tuba City. Bennett's intention ostensibly was to force the two sides together to settle the land dispute. Instead, it heightened tensions.

And the freeze, originally intended as a temporary measure, dragged on year after year. For 27 years.

Growing families were not allowed to build new homes. Older homes could not be upgraded with plumbing and electricity. Schools and medical clinics could not be built. Economic development was nonexistent.

Enforced squalor has meant unsanitary living conditions and rising disease rate. Children, as they grew up and had families of their own, were forced to move off the reservation or to Tuba City, where the freeze was lifted. The results have been increased unemployment, alcoholism and other social problems as traditionally close extended families were forced to split up.

Finally, last fall a federal judge said enough is enough. He did what common sense dictated and what Congress should have done long ago: He designated the area around Moenkopi as Hopi territory and the rest of the disputed area occupied by Navajos as Navajo territory.

While the political problem hopefully has been resolved, decades of deprivation must be undone. Families, some of whom are living in tiny one-room log-and-mud hovels, must be brought into the 20th century.

Economic development must be sparked and public facilities brought up to date.

Navajo tribal officials estimate it would take $300 million to bring the former Bennett Freeze area up to the standards of the rest of the reservation. In tight budget times, it's unrealistic to expect that kind of money. So this spring they requested $21.5 million, mainly for housing, utilities, roads, schools and clinics.

It's a modest request, one that defines a house as a simple two-room, 1,000-square-foot box.

As Navajo President Peterson Zah told a congressional subcommittee earlier this month, if Congress can help the Russians through economic hard times, surely it can help 2,500 American Indians out of the deplorable conditions that Congress itself has tacitly imposed and tolerated.

U.S. Sen. Dennis DeConcini, D-Ariz., supports the $21.5 million appropriation, but admits it will be tough getting it approved, given tight budget constraints.

Yet it's the very least Congress can do to begin improving conditions that ought not be tolerated anywhere in this country. Failing to act now would be to perpetuate what amounts to nothing less than a national shame.

[From the Mesa Tribune, July 10, 1993]

NAVAJO, HOPI DISPUTE TRAPS FAMILIES IN PAST

(By Bob Schuster)

TONALEA.—At the end of a bumpy 20-mile ride on rutted dirt roads that extend like a spider's web across the red sandy hills and white limestone mesas of the western Navajo reservations, Nellie Benally sits locked in time.

At 89, she is spiritually and physically dependent upon the earth-covered hogan that resembles a tiny mountain, where she lives with her eldest daughter, Fay, and son-in-law Billy Shorty. For more than two decades she has longed for a small house and a few modern conveniences like running water and electric lights to make life a little easier in her old age.

But as with most of the estimated 2,500 families living in this 1.5 million-acre section of the western reservation, the housing improvements never came. The area, until last fall, was under a government-imposed construction freeze for nearly 27 years.

To the Navajo, everything in nature has gender, including the traditional one-room dwellings built of cedar logs and dirt. Nellie's is the male-style hogan, with the rough-hewn logs planted firmly in the ground in a 10-foot circle, extending upward and interlocking near the smoke hole at the peak. The doorway greets the rising sun to the east.

Here, near the base of Preston Mesa, she raised her three children. It is the same parched land where her mother and maternal grandmother raised their children, herded sheep and grew summer vegetables. That is the Navajo way, even if she is among a dwindling number of elders still living by it.

"If a house was built for me, I think I would feel better. My spirit would be raised

up a little bit," Nellie says through an interpreter. Sitting on a folding metal chair next to the tiny cast-iron stove in the center of the hogan, Nellie looks down at the earthen floor and explains that her requests to the local chapter for a house have gone unanswered.

A two-room house was allowed for Fay and Billy after their nearby hogan collapsed last year, but it was built a mile away in a low area prone to flooding, Nellie says. So the couple stay with Nellie on the family ancestral land that grudgingly has provided sustenance for generations.

The family has no car or truck, sand water must be hauled on foot or horseback from a windmill a mile or so away, but occasionally one with a truck will offer a ride into Kaibito 10 miles to the north or Tonalea 20 miles to the south. Or they will go on foot.

Neither Nellie nor Fay has heard about the Four Corners illness that has claimed at least 22 lives. By late last week, public health workers had not made it to this remote part of the reservation to warn residents about contact with deer mice, the rodents found to carry the hantavirus disease.

Most of those who have heard of the illness seem to take it in stride, joking that they have lived with rodents for generations with no apparent ill effects.

Log corrals to the east of Nellie's hogan hold the family's two dozen or so sheep and a couple of horses. On a rise a hundred yards behind the hogan is a ragged stack of cinder blocks intended for a house that was never built because of the construction ban known as the Bennett Freeze.

Similar piles of weathered building materials such as lumber, roof trusses, drywall and shingles sit near many of the aging and dilapidated homes here. In most cases, family members explain, they bought the materials years ago in hopes of upgrading, expanding or replacing older dwellings. Or to build a house for a son or daughter's new family.

Some were to be built by family members and others through tribal housing programs. But nearly all were blocked by Hopi tribal officials who, until last September, determined what, if anything, could be built in the freeze area over which the Hopis long have claimed ownership rights.

LEGACY OF BROKEN PROMISES

Alex Goodman was 4 years old when the Bennett Freeze was imposed in 1966 on his parents' land near White Mesa. Today, there is no place for him, his wife and six children to stay when they visit his parents in their ramshackle wood and tar paper hogan.

It is the large female-style octagon hogan, with a rickety shed of scrap boards nearby. Alex's father, Roy, hauls water by truck from a windmill two miles away, or goes into Red Lake about seven miles away when the windmill is broken.

"A lot of people have gotten nice houses (outside the freeze area), but he can't get a simple two-bedroom house," Alex says of his father, a 60-year-old Korean War veteran. "When we come here we sleep in the back of the truck."

Roy, who suffers from heart problems, arthritis and a severe hearing loss, jokes sarcastically about the many broken promises he and his wife, Ester, have heard over the years.

"For 20 years I have asked for housing improvements. I ask if there is any housing assistance for veterans, but I don't get any. First they told me I was on the waiting list. Now they say there is no money."

He shakes his head and laughs softly.

Then he talks about how none of his eight children was allowed to build a home near his. They and his 25 grandchildren had no choice but to move to Tuba City or even farther away.

"I don't have a good home. My kids have to live in town. There's no room when they come to visit so they don't come around much. We all feel bad about it," Roy says.

Of growing concern are his health problems, which he suspects are linked in part to the years back in the 1960s when he worked in a uranium processing mill in Tuba City. The workers were protected only by thin paper masks from the uranium ore dust that hung in the air, he says.

Local medical facilities lack the specialized equipment and doctors needed to treat him, he says, so he must travel to Phoenix when his health problems kick up.

Tribal officials say health has become a major concern in the former Bennett Freeze area because of crowded homes, unsanitary living conditions due to lack of indoor plumbing and refrigeration and lack of modern medical facilities. A recent survey by Navajo/Hopi Legal Services and the Indian Health Service found that only 7 percent of homes in a portion of the Tonalea Chapter within the former freeze area have electricity and none has running water, sewer or septic services, while 52 percent of Tonalea Chapter homes outside the area have running water.

The survey also found residents of the former freeze area are dramatically more likely than other Navajos to seek medical treatment for a variety of ills, including psychiatric problems.

Louise Yellowman, a Coconino County supervisor for 12 years whose district encompasses much of the former Bennett Freeze area including her Tuba City home, says unsanitary conditions here should be considered an emergency priority, especially in light of the deadly hantavirus outbreak on the eastern reservation. The same conditions that led to the increased rodent population there also are present on the western reservation, she says.

"From what we hear, it's a very dangerous situation if those rodents get that disease in this area," Yellowman says. "I don't think it's here yet, but the sanitation is 30 years behind."

Yellowman says it is heartbreakng to see the squalid living conditions of many of the area's elderly residents and to see younger residents forced to leave their parents to get housing and jobs elsewhere. Even if young people come back now that the freeze has been lifted, she says, there are no jobs because the construction ban also applied to business and industry.

She blames rising alcoholism in the area at least in part on the lack of employment.

"A lot of these young people are just wandering around with no jobs. It's really sad . . . We need industrial development of some sort for these young kids so that people can go to work."

GENERATIONAL TIES TO THE LAND

It was in 1925, when Andrew Nez was 6 years old, that he first met a Hopi when he was sent to boarding school in Tuba City. Residents of what later became the northern portion of the Bennett Freeze area say few Hopis had been seen in the area before the 1920s, and when they came it was to trade grain and handcrafts for the Navajos' mutton.

Nez, a former Tonalea Chapter officer and retired worker at the Navajo Generating Station at Page, says everyday relations between Navajos and Hopis have always been cordial.

Nez recalls his grandfather, Keshkali, telling stories about how he and other members of a band of Navajos known as the Manygoats Clan fled to Navajo Canyon in an area now inundated by Lake Powell to escape Army Col. Kit Carson's roundup of the tribe in 1863.

During Carson's campaign of burning hogans, slaughtering sheep and forcing Navajos on what became known as "The Long Walk" to Fort Sumner in what is now New Mexico, clan members hid out in the canyon, farming and herding a few sheep. When the 8,000 Navajos who survived starvation, cold and disease at Fort Sumner were allowed to return to their land four years later, the Manygoats Clan emerged from Navajo Canyon and returned to their ancestral lands, Nez explains.

The generational link to the land was broken again by the Bennett Freeze, he says, which has forced his only child to move away from the family's ancestral home.

HOPIS FEAR NAVAJO EXPANSION

For their part, the Hopis, who live mainly in a cluster of villages on their reservation surrounded by the Navajo reservation, maintain their claim to vast expanses of northern Arizona is spiritual as well as historical and physical.

"The Hopis view themselves as being the original and the indigenous tribe in northeastern Arizona," says David Warren, a Denver attorney whose firm has represented the Hopis in its land disputes since 1986. "And based upon their own traditions, they have a view that, practically speaking or in a religious sense, all of the land we're talking about in this entire area including most of the Navajo reservation was theirs by prior rights."

Warren admits the land dispute "has been one of those molasses lawsuits that has gone on for years and years and years" but adds the Hopis have a legitimate fear of being hemmed in territorially by the Navajos because of the Navajos' historical prosperity to disperse themselves over vast expanses of territory.

The Hopis have appealed last year's lifting of the freeze to a higher federal court and vehemently oppose the Navajos' push for additional construction in the area, says Warren, who acknowledges the Bennett Freeze has caused hardship for Navajos.

But he insists the Hopis have at least partially approved more than half of all requests to replace or upgrade housing in the area.

Edison Dale, program director in Tuba City for the Navajo Nation Housing Service, says that's simply not true. "Of 300 applications for homes in the past 13 years, only about 40 have been approved by the Hopis," Dale says. "Out of those, only one home got electricity and plumbing.

"If the family was living in a 20-by-20 shed that was falling down, that's what we had to build. Almost exactly the same as what was there before. To me, that's building substandard housing. * * * They cannot say they approved homes."

Nez, the former chapter officer, blames political leaders on both sides and in Washington, DC., for starting and perpetuating this and other land disputes. Many other residents of the area voiced similar complaints, often over what they claim to be a slow and indifferent tribal bureaucracy in Window Rock.

Hopis and Navajos continue to live amicably as neighbors in the Tuba City area, Nez points out, accusing politicians of whipping up suspicions for political gain.

"Navajos believe the land was put here for everybody to use," Nez says. "We're not supposed to be fighting over it."

[From the Washington Post, July 11, 1993]

IN ARIZONA, A 26-YEAR 'FREEZE' OF POVERTY

(By Sue Anne Pressley)

TUBA CITY, AZ, July 10.—Every Monday, Etta Begay's husband, Bennie, drives 140 miles to a job where he builds and repairs other people's houses.

This is a fact of great irony because, for 26 years, the federal government did not permit the couple to make a single repair or addition to their family shack in the Arizona mountains. There is no telephone, no running water, no electricity, not for the Begays or for nearly all of their Navajo neighbors.

Each day, buckets of water must be hauled in from Tuba City, five miles away. Ice is bought and stored in an icebox to preserve the family's meat. At night, Nizba Begay, 15, must do her homework by kerosene lamp. For years, Etta Begay hoped to build a pen for her sheep, but that was against the law.

This area, a 1.5 million-acre expanse of sandstone and sagebrush east of the Grand Canyon, is called Bennett Freeze. It takes its name from Robert Bennett, a former U.S. commissioner of Indian Affairs who in 1966 decided to try resolving a bitter dispute about who had rights to the land—the Hopis, who claimed it for cattle grazing, or the Navajos, who lived there in hogans and huts.

Bennett placed a "freeze" on construction and renovations. Intended as a temporary measure, the moratorium instead lasted until last Sept. 25, when a federal judge lifted it. Over the years, angry tribal disputes and federal neglect delayed resolution of the case.

The result is that this region of lonesome beauty, of snow-frosted mountainpeaks and dirt yards cluttered with old tires and snarling dogs, is among the poorest in the nation. Within the Navajo Nation, the federal reservation that covers 17 million acres in three states and is home to the country's largest Native American tribe, there is nothing quite like it.

"It's a national disgrace, this deprivation," said Sen. Dennis DeConcini (D–Ariz.), who held a hearing here Friday on the economic needs of Bennett Freeze for the Appropriations subcommittee on Interior and related agencies. "It's another Somalia, here in our own country."

To right the wrongs in Bennett Freeze, to build new roads and repair houses for its 10,000 residents and construct health centers and other facilities, the Navajo Nation is asking the federal government for $21.5 million for fiscal 1994 and $308 million over the next five to 10 years. "I doubt we'll get anywhere near that amount," DeConcini said, "but maybe we'll get a bite of it."

Witnesses presented considerable evidence of urgent needs within Bennett Freeze:

James Farrell lives in a cardboard box alongside U.S. 160 outside Tuba City;

Haskey Littleman's old hogan on Coalmine Mesa is about to fall down;

Norman Watson keeps tires on the roof of his house at Rare Metals; they anchor the plastic that keeps the rain and wind from coming in; and

Margaret Keebahe has to cook her meals on an outdoor fire on Shadow Mountain.

At the hearing, Navajo President Peterson Zah emphasized that, because of the restrictions in Bennett Freeze, its residents were prevented from participating in the anti-poverty programs of the late 1960s and have never been able to take advantage of other special services.

"I know of no other situation in history in which the U.S. government has imposed a land freeze like this," he said. "Housing conditions in the Bennett Freeze have been described as the worst in America. It is now poorer than the poorest county in the United States—Shannon County, South Dakota."

According to the 1990 census, Zah said, about 25 percent of households in Shannon County, located in the Sioux Nation in the southwest corner of South Dakota, lacked indoor plumbing. In Bennett Freeze, that is true for 90 percent of homes. Virtually every home in Shannon County has electricity; in Bennett Freeze, 90 percent do not.

Health officials testified that there are two and three times as many cases of diabetes, gastro-intestinal ailments and alcoholism at Bennett Freeze than on other parts of the reservation. School officials noted that Bennett Freeze children often must leave their families and attend boarding school in town because the dirt roads to their homes are far-flung and often impassable.

An anthropologist who has studied the Navajos for 20 years said such conditions are destroying the traditional "Navajo way" in that young people had to leave their parents' land because they could not build homes nearby.

The hearing was three hours of stories of desolation and terrible poverty. Etta Begay would have liked to have been there, not to testify because she is shy and more comfortable speaking Navajo, but because she is interested and to show her support. But Begay had another commitment that morning. She had to walk the eight-mile round trip to the store to buy the day's supply of ice.

Navajos have difficulty speaking about Bennett Freeze without revealing their hostility toward the Hopis. During those 26 difficult years, the Hopis used helicopters and field patrols, the Navajos said, to make sure that residents were not violating the freeze.

When Marie Johnson tried to repair a broken window in Kerley Valley, she said in an interview at her home, a Hopi official came by and posted a cease-and-desist order. When Reed Tso quietly tried to build his dream house outside Tuba City, he came home one day to find his carpenters idle. The Hopis had come, the workers said, threatening arrest. No one wanted to be arrested.

At the hearing, Vernon Masayesva, chairman of the Hopi Tribe, stressed that the freeze also has hurt people. He spoke of forgiveness but also he said he is tired of the Hopis being cast as the villains responsible for the freeze. "If you're outnumbered 10 to 1, any legal protection helps," Masayesva said. "When it comes to repairing roads and windmills, our priority was always last."

The Hopi reservation is completely enclosed by Navajo territory, and about 10,000 Hopis live in Arizona, compared with 250,000 Navajos scattered throughout Arizona, Utah and New Mexico. The Hopis have a different lifestyle—they are more communal, preferring to cluster in small, neat villages. The Navajos value privacy and find paradise in an isolated valley in view of the Sacred Mountain.

Because the principal Hopi settlement, Moenkopi, was exempted from the moratorium along with Tuba City, dominated by Navajos, it is true that the Bennett Freeze did not have such a dramatic impact on Hopi lives and housing.

Surprisingly, there was little rejoicing among Navajos in September when the freeze was lifted. Instead, there was great skepticism. The Hopis immediately moved to appeal the ruling. Besides, the Navajos said, construction costs had risen so much in 26 years that no one has enough money to repair their broken-down houses.

Zah said he becomes angry at government officials who try to excuse Bennett Freeze "with racist assertions such as: 'These Navajos want to live like this.'"

"There are, indeed, many Navajos who want to live in what we call the traditional way—living on the land, farming and raising sheep and practicing the Navajo religion," Zah said. "But that does not mean they wanted to live with inadequate sewers, unpaved roads, no running water or electricity and under the watchful eye of the Hopi tribe. They did not wish to live under a law that prevented them from building a new hogan if the old one collapsed or was struck by lightning.

"The Navajo do not want to live like this. Nobody does."

Mr. DECONCINI. Mr. President, I do want to thank the distinguished chairman of the Appropriations Committee, Senator BYRD, for the many, many, courtesies he has given on behalf of the native Americans. He is the chairman of the Interior Committee and he is very receptive to the problems on our reservations and has been extremely helpful.

I understand his opposition to this. It is not supported by the administration. But I cannot vote for an emergency bill without bringing to the floor one of the tragedies of American history right here that has been going on for 26 years. Because the court has lifted it. If we have a tragedy, we have a disaster, we have an emergency in the middle part of this country due to natural disasters, then we have one on the Navajo Reservation due to the action of the Federal Government—a severe, severe tragedy; a severe, severe emergency; a severe disaster. I hope this amendment will be adopted.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I compliment the Senator from Arizona on his dedication to the service of his people. He is a member of the Appropriations Committee, a fine member. It cannot be gainsaid that he is as active as anyone on that committee in being of help to his people, people whom he represents. But he proposes to declare as a natural disaster a situation that has existed on the Navajo Reservation for nearly 30 years—I believe the Senator indicated 26 years, to be exact—and which is a result of longstanding disputes between the Navajo and the Hopi Tribes.

The situation involves a freeze on infrastructure development which has existed in a portion of the Navajo Reservation since 1966. The freeze was imposed administratively by the Commissioner of Indian Affairs and later legislatively imposed by Congress, subject to a ruling by the courts.

Senator DECONCINI's amendment—now, get this—proposes that $118 million of the funds provided in this bill

for relief to the persons affected by the flooding in the Midwest be taken off the top and redirected to the Navajo Indian Reservation—$100 million—and the Hopi Indian Reservation, $18 million. Senator DECONCINI proposes to make funds available for the two tribes as a result of a decision in Federal district court last December.

As part of the decision, the judge allowed for a partial lifting of the construction freeze. The judge's ruling, however, is on appeal in the Ninth Circuit Court of Appeals. The Hopi Tribe, which would be one of the beneficiaries of the proposed amendment, opposes the amendment. The freeze was imposed in order to protect the rights of both tribes in the resolution of the legal claims to the lands in question.

It is premature to appropriate such significant additional funds while the status of the lands remains in dispute. By providing additional funds for infrastructure development on the lands in dispute, this could prejudice the future consideration of the matter by the courts.

Mr. President, we have had a long day. The Senate has heard many good amendments proposed. But, thus far, the Senate has, in its good judgment, rejected all amendments that have not been supported by the administration—and some that were supported by the administration.

I hope we will not add this amendment to the bill. Mr. HATFIELD and I, and all the members of the Appropriations Committee—and Mr. DECONCINI is a good one—we have to go to the House if we run into a stump between now and the final enactment of this legislation. I hope we will not give the House cause to try to offer a good many amendments.

So in the interests of helping the flood victims—that is what this bill is about—the administration has urged that we "keep the bill free of amendments that are not related to providing relief to the victims of the flood."

I am reading from a letter dated August 3 from the administration.

So, Mr. President, I am prepared to make a point of order against the amendment, and I do make a point of order against the amendment on the basis that it is legislation on an appropriations bill and, therefore, violates the provisions of rule XVI of the Standing Rules of the Senate.

Mr. DOMENICI. Mr. President, I wonder if the chairman will permit me to just have a discussion with Senator DECONCINI for 2 minutes before the Senator gets a ruling on the point of order?

Mr. BYRD. Yes.

Mr. President, I ask unanimous consent the distinguished Senator have 3 minutes, and then I would like to press my point of order.

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

Mr. DOMENICI. I appreciate it.

Mr. President, let me say while I agree with the chairman we should not pass this amendment tonight—and I doubt we will—I think we should all recognize this part of the Navajo and Hopi reservation cries out for some kind of legislation that will create a more equitable situation for the people there. This is as much the result of nobody wanting to address an issue, as much the result of lack of attention on the part of Congress and administrations, as anything else, and the easy way was to let stand an order by a man named Mr. Bennett, who was the head of the Bureau of Indian Affairs.

This has caused this to become desolation, and the people who are there are, indeed, desolate. However, I do not believe it belongs on a bill that is talking about flood relief.

I think, I say to my friend from Arizona, we ought to urge the Committee on Indian Affairs to look carefully at this to see what the best judgment is as to the role of the U.S. Government in this desolate area that has been deprived of almost everything except people living in conditions that are unlivable as a result of this order.

I think it should no longer be a matter of blame. We ought to decide constructively what can be done. So in that respect I want to commend him for bringing this issue before the U.S. Senate. It belongs in one of our committees for serious discussion, not continually put over onto some administrator who says, "Let's not do anything until these two Indian groups decide their problems among themselves," which has not occurred in 26 years.

I yield the floor and thank the chairman for yielding time to me.

Mr. BYRD. Mr. President, I withdraw my point of order for the time being.

The PRESIDING OFFICER. The point of order is withdrawn.

Mr. BYRD. I am willing to go to a vote on the amendment. I am not going to ask for the yeas and nays.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment.

The amendment (No. 766) was rejected.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the amendment was rejected.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I compliment the Senator on his efforts. It was not with great comfort that I opposed his amendment. He certainly has a serious problem, and he has presented it well.

Mr. HATFIELD. Will the Senator yield? I would like to also say to the Senator from Arizona, I admire and respect the Senator from Arizona for trying to make some kind of a resolution, create some kind of resolution on the Hopi-Navajo conflict, but I would like to take a second to say I recall Senator Paul Fannin in this body and as a colleague of his, I recall Senator Goldwater, as well, valiantly tried to resolve the ancient conflict between the Hopi and the Navajo.

I think it is just an example of the tenacity of the Senator from Arizona to continue this effort. I wish him well. As a member of the Indian Affairs Committee, I am most happy to assume a cooperative role and thank him for his manner of raising this amendment and letting it be voice voted.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. DECONCINI. Mr. President, I thank the Senator from Oregon for his, first of all, understanding and his little bit of history regarding this problem. This is really different from the Navajo-Hopi relocation problem, which is another big problem on this large reservation in Arizona that has to be dealt with and is still being dealt with.

I also appreciate the position of the President pro tempore and chairman of the Appropriations Committee. He has a bill to get through here.

The boundary bill of 1934 confirmed ownership to what is now known as the 1934 Navajo reservation lands to the Navajos and other Indians residing on these lands. Starting in the early 1960's, the Hopi Tribe began to assert its claims to the 1934 lands.

In 1966, the BIA Commissioner imposed an administrative freeze on all development and construction in the 1.5 million acres of the 1934 Navajo Reservation.

He took this action in response to the Hopi Tribe's legal counsel assertion that Hopi tribal approval was required on all development involving the 1934 lands.

The Commissioner acknowledged that financial hardships would be imposed on both tribes by not allowing either tribe to take unilateral actions within the area that trespass on the rights of the other.

He stated, "the period of hardship and administrative difficulties would be shortened * * * by a friendly confrontation of the tribes, to the end that in face-to-face talks they might agreeably negotiate * * * their respective interests and thus form the basis for an early and amicable legislative" settlement.

In 1972, the freeze was modified to exempt the Moencopi Village area where the Hopi residents of the 1934 reservation lived. This allowed the Hopi tribal members to be exempted from the devastating impact of the development ban.

In 1980, Congress authorized the District Court of Arizona to settle the tribal claims to 1934 reservations. It

also codified the Bennett Freeze which was to remain in effect until the Court had determined the rights of the litigating parties (Public Law 96-305).

EFFECT OF THE FREEZE

The freeze did not prevent Hopi residents of the 1934 reservation from building homes because their residential area—the Monecopi Village was exempt from the freeze.

By and large the people who were hurt the most are the Navajo people who live in scattered homesites all over the land subjected to the freeze.

Mr. President, I will have to indulge this body again, and maybe again, as well as the committee system. I cannot in good conscience satisfy myself with the defeat of this amendment, nor will I be deterred by the defeat of this amendment. I am intent on being sure that there is ample discussion on this and that some relief be brought to the Native Americans on the Navajo Reservation and the Hopi Reservation.

I thank the Chair, and I thank the distinguished Senator from West Virginia.

Mr. BYRD. Mr. President, I believe there is only one more amendment, if it is called up. Senator HATFIELD and I have four amendments which we wish to present en bloc and they have been agreed upon on both sides.

AMENDMENTS NOS. 767, 768, 769, AND 770, EN BLOC

Mr. President, I send those four amendments to the desk. I ask unanimous consent that they be considered and agreed to en bloc; that the motion to reconsider be laid on the table en bloc; and that appropriate statements be included in the RECORD at the appropriate place in explanation thereof, and that the several measures appear in the RECORD as though acted upon individually.

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

The amendments considered and agreed to, en bloc, are as follows:

AMENDMENT NO. 767

Proposed by Mr. BYRD:

On page 22, at line 8, after 1993 insert: "and other disasters".

DESTRUCTION OF CHUM SALMON RUN IN THE ARCTIC-YUKON-KUSKOKWIM RIVER REGION OF ALASKA

Mr. STEVENS. Mr. President, in the winter of 1988-89 Alaska experienced an extremely severe and unusually cold winter which froze salmon fry overwintering in the river systems of the Yukon-Kuskokwim River Delta. Temperatures dipped below the 80 degrees below zero that National Weather Service thermometers are capable of measuring.

In 1989 then Alaska Governor Cowper declared a disaster in the region which includes 52 Eskimo villages and more than 20,000 people. The region is roughly the size of the States of West Virginia, Connecticut, Delaware, Rhode Island, and New Hampshire. I will ask unanimous consent that Governor Cowper's declaration be printed in the RECORD.

Shortly after Governor Cowper's 1989 designation, a Presidential declaration of disaster was made due to freezing problems associated with water and sewer facilities and because of the inability at the time to obtain goods and services in much of interior Alaska. There are no roads in the area, and planes were grounded due to frozen fuel lines. I will ask unanimous consent that President Bush's disaster declaration be included in the RECORD.

However, it was not known at the time that the salmon fry had been destroyed. As a result of the deep freeze, the salmon killed in 1988-89 did not return to the rivers to sqawn this year as they should have. Instead of 1.8 million chum salmon, the catch in the summer of 88—only 33,00 fish returned this year, a devastating 98-percent reduction. I will ask unanimous consent that the salmon return figures prepared by the Alaska Department of Fish and Game for the past 5 years be included in the RECORD.

With an average unemployment rate in the region of 48.5 percent according to the Department of Labor and a rate in some villages exceeding 80 percent, the Yupik Eskimo people of the region rely on hunting and fishing for their livelihoods. The average income for the region is only $5,059 and 42.6 percent of the people live below the poverty line according to the 1990 census. Roughly 80 percent of people's subsistence food comes from fish—primarily salmon.

There are no other alternatives to hunting and fishing for the Eskimos to support their families. They are forbidden from developing their own Native lands because Congress included them in the Yukon-Kuskokwim National Wildlife Refuge, the country's largest refuge which is larger than the State of West Virginia.

Development of the coal, gold, timber, and oil, and gas on Native-owned lands located within the refuge is forbidden by section 22(g) of the Alaska Native Claims Settlement Act. I will request unanimous consent that a copy of that provision be printed in the RECORD.

Because of the near elimination of the salmon run, the State Department of Fish and Game closed all commercial chum salmon fishing in the region and for the first time ever closed the subsistence fishery as well. The Eskimo people are now forbidden from taking the few chum salmon returning to their rivers.

Deprived of their primary source of food and their only cash income, Alaska Gov. Walter J. Hickel declared a disaster in the Kuskokwim River region of Alaska on July 19, 1993 and has asked for Federal assistance. I will ask unanimous consent that a copy of the Governor's disaster declaration and his subsequent letter to President Clinton requesting disaster assistant be included in the RECORD.

In order to meet short-term needs of the people of the people and to restore the fishery, funds are needed to address the region's economic losses estimated at between $8 and $15 million by the State of Alaska and the Association of Village Council Presidents.

An additional $25 million is needed to construct fisheries enhancement projects, expand sonar coverage, conduct aerial escapement surveys, develop a fishery recovery plan, and provide for other needs.

It was my intention to offer an amendment to provide the funds necessary to address these needs to the emergency supplemental appropriations bill currently pending before us. However, I am informed that the Office of Management and Budget objects to the amendment, and believes that the urgent needs of the region can be addressed within previously appropriated funds. I will ask unanimous consent that the copy of Director Panetta's letter which OMB provided my office be included in the RECORD.

While it would be my preference to address this problem in the context of the pending legislation, that is not possible without the administration's support. However, I am told that OMB will form a task force to address these urgent needs, and I am grateful to Director Panetta for his willingness to consider the plight of the Eskimo people. I look forward to working with Director Panetta in the days ahead to identify specific programs that can help restore the chum fishing runs and to ensure the Eskimo people have the needed resources to make it through the winter.

I ask unanimous consent that the documents to which I referred be printed in the RECORD.

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

STATE OF ALASKA, DECLARATION OF EMERGENCY

Whereas, the State of Alaska has experienced extreme cold weather conditions and unusually harsh winter conditions; and

Whereas, current weather forecasts indicate that extreme weather conditions will continue and could likely deteriorate further; and

Whereas, as a result of these conditions, scheduled delivery systems have been disrupted to rural villages statewide, causing shortages of essential commodities; and

Whereas, other villages are experiencing cold weather related problems in the operation of water, sewer, electrical power generation and heating systems, the failure of which will require emergency response action in order to prevent loss of life and property;

Now, therefore, on this 28th day of January, 1989, under the authority granted by the Alaska Statutes, Section 26.23.20, I, hereby declare that a condition of emergency exists to mitigate the effects in areas of the extreme conditions throughout Alaska;

Further, the Director, Alaska Division of Emergency Services, is hereby authorized to

utilize funds from the Disaster Relief Fund for response to conditions induced by extreme weather that pose an immediate threat to the lives and property of residents and local governing bodies of the affected areas. The Director, Alaska Division of Emergency Services, is further authorized to task, as necessary, the state departments and agencies to provide appropriate assistance in accordance with the State Emergency Plan.

Further, any significant incident requiring extensive recovery assistance or anticipated extensive use of funds will be handled as a separate independent declaration to authorize the commitment of additional funds to the specific event/jurisdiction.

This declaration is applicable to incidents occurring within thirty days of today's date.

STEVE COWPER,
Governor.

THE WHITE HOUSE,
Washington, DC, May 10, 1989.

Hon. JULIUS W. BECTON, Jr.,
Director, Federal Emergency Management Agency, Washington, DC.

DEAR MR. BECTON: I have determined that the damage in certain areas of the State of Alaska, resulting from severe freezing conditions during the period January 15—February 15, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93–288, as amended by Public Law 100–707. I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate fro funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under PL 93–288, as amended by PL 100–707, for Public Assistance will be limited to 75 percent of the total eligible costs.

Sincerely,

GEORGE BUSH.

FACTS CONCERNING THE KUSKOKWIM RIVER CHUM SALMON RUN

1. The peak of the run into the Kuskokwim River historically occurs during the first week in July.

2. In 1987 the Alaska Department of Fish and Game tagging studies indicated a travel time from the False Pass Fishery to the Kuskokwim River of between 21 and 25 days.

3. Based on those tagging studies, by July 1, Kuskokwim chum salmon are no longer found in the False Pass area.

4. Historical commercial ohum salmon catches have been:

	Kuskokwim River	June False Pass	North Peninsula	Post June South Peninsula
Year:				
1987	574,336	443,000	368,700	933,300
1988	1,381,674	527,000	393,500	1,378,200
1989	749,182	456,000	157,200	538,200
1990	461,624	519,000	125,800	713,800
1991	431,802	772,000	191,300	815,400
1992	345,862	426,000	332,000	927,000
1993	35,000	529,307	10,000	693,000

Note.—Peninsula 1993 totals thru July 3.

5. Presently, under the Post June salmon Management Plan for the Southern Alaska Peninsula, most of the South Peninsula area is closed until July 20. This is the first year this regulation will be fully utilized, as in 1992 the area was reopened prior to July 20 by court order.

6. Most North Peninsula chum salmon catches occur after July 15.

7. The Alaska Department of Fish and Game estimated that in 1987 approximately 19–32% of the June False Pass fishery catch originated in the Kuskokwim River.

8. Permit information:

Alaska Peninsula seine = 119 total permits, 92 held by Alaska residents.

Alaska Peninsula drift gillnet = 159 total permits, 90 held by Alaska residents.

Alaska Peninsula set gillnet = 113 total permits, 91 held by Alaska residents.

Kuskokwim gillnet = 830 total permits, 829 held by Alaska residents.

ALASKA NATIVE CLAIMS SETTLEMENT ACT DEC. 18, 1971 AND AMENDMENTS 1973–1979, PL 92–203 (85 STAT. 688)

SEC. 22.

(g) If a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge.

DECLARATION OF A DISASTER EMERGENCY

Whereas, the return failure of chum salmon in the Kuskokwim fishery resulting from the adverse affects on this species' fecundity due to the extreme cold weather during the winter of 1988–89; and

Whereas, as a result of this return failure, local residents are subjected to severe economic injury and subsistence losses; and

Whereas, the Kuskokwim Region, mostly Yupik Eskimos, has endured severe economic depravation over an extended period; and

Whereas, the residents of this region rely heavily on chum salmon for subsistence.

Now, therefore, on this 19 day of July 1993, under the authority granted by the Alaska Statutes, Section 26.23.020, I hereby declare that a condition of disaster exists in the Kuskokwim River Region, and is of sufficient severity and magnitude to warrant a disaster declaration in order to provide assistance and to seek additional federal assistance.

Further, the Governor's Cabinet level task force is hereby authorized to utilize funds made available for these purposes in such amounts as considered necessary.

WALTER J. HICKEL,
Governor.

STATE OF ALASKA,
July 27, 1993.

THE PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: On January 28, 1989, Governor Steve Cowper of Alaska declared an emergency due to widespread record cold temperatures that persisted throughout the Interior of Alaska. In some areas temperatures were below the −80 degrees that official National Weather Service thermometers can measure. Winds pushed chill factors in excess of −115 degrees. Shortly thereafter, President Bush issued a disaster declaration recognizing that these extreme conditions crippled rural water and sewage service and prevented the delivery of vital goods and services in much of Interior Alaska. Copies of the declaration issued at that time by the Governor and the President are attached.

The water, sewage, and transportation problems were immediately obvious and were addressed by emergency services provided as a result of the state and federal declarations during January and February of 1989. However, the long-term effects of these adverse environmental conditions on the fishery resources and dependent Eskimo fishermen in this area were unforeseen and have only recently come to light.

A widespread failure of western Alaska chum salmon runs is occurring in 1993, and this failure is particularly acute in the Kuskokwim River. Returns in many areas are less than 10 percent of normal levels.

According to scientific analysis prepared by the Alaska Department of Fish and Game, the leading cause of chum salmon run failures occurring in much of western Alaska, including the Kuskokwim, is the extreme environmental conditions that occurred while these juvenile fish were rearing in interior river systems.

One-third of the Eskimo people live below the poverty line and 48.5 percent are unemployed. As a result, the effects of this shortfall have now created an emergency situation for thousands of Native Alaskans who rely almost exclusively on fish for their livelihood as well as their traditional food supply. It is estimated it will take in excess of $40 million to recover from the drastically diminished run of salmon and the subsequent shortfalls.

As a consequence of these unforeseen damages, I have recently extended Governor Cowper's proclamation and have declared a disaster in this region. A copy of my declaration is attached for your review. I request that the provisions of the regional Presidential Declaration of 1989 (FEMA–826–DR–AK) be similarly extended and that emergency funding, as may be determined by the Federal Emergency Management Agency (FEMA) in coordination with the State of Alaska, be provided to address the additional damages which have just become known from the 1989 disaster. The additional resources are needed to restore the region's fisheries and to address the Eskimo people's nutritional and other immediate needs. I further request that you declare the amount an emergency requirement pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended.

With best regards.

Sincerely,

WALTER J. HICKEL,
Governor.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, August 3, 1993.

Hon. WILLIAM H. NATCHER,
Chairman, Committee on Appropriations, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Administration commends the Senate Appropriations Committee for acting expeditiously to approve requested legislation that will provide urgently needed assistance to the flood-stricken areas of the Midwest. The Administration is committed to working with the Congress to ensure mutual agreement on funding needs.

The Administration supports passage of H.R. 2667 as reported by the Senate Appropriations Committee. In order to expedite action on the bill, the Administration urges the Senate to keep the bill free of amendments that are not related to providing relief to victims of the flood.

The Administration continues to review the cost estimates for disaster assistance programs. Based on this review, we urge the Senate to approve funding beyond the levels requested and approved by the Committee for the following accounts:

$11.1 million in contingent appropriations for title III of the Job Training Partnership Act, which authorizes assistance to dislocated workers. This additional funding would be available for the Secretary of Labor to finance temporary jobs to repair damage caused by the flooding in the Midwest, clean up affected areas, and provide public safety and health services. This amount is in addition to the $43.5 million already approved by the Committee;

$2 million in contingent appropriations for the Commission on National and Community Service. The Commission helps to finance State-level Youth Corps and Conservation Corps programs to assist in disaster clean-up activities. The $2 million, which is in addition to the $2 million approved by the Committee, would fund the participation of young people in youth corps services over the next year to help with disaster relief services.

$100 million in contingent appropriations for the Department of Commerce, Economic Development Administration. These funds, which are in addition to the $100 million approved by the Committee, would be used to promote the long term recovery efforts in the region affected by the floods.

$10 million in contingent appropriations for the Small Business Administration Disaster Loan program account. These resources, which are in addition to funds approved by the Committee, would provide additional loan authority of $49 million. Language is requested that would increase from $500,000 to $750,000 the current law limitation on business disaster loans. This increase in the limitation would be available to victims of the flood;

Each of these requests would be available only to the extent that the President subsequently submits an official budget request to the Congress that designates the entire amount of the request as an emergency requirement, pursuant to the Balanced Budget and Emergency Deficit Control Act, as amended.

I understand that an amendment may be offered by Senator Stevens to provide economic assistance related to the destruction of chum salmon in the Arctic-Yukon-Kuskokwin River region. While we are sympathetic to the hardships endured by the residents of this region, we believe their needs can be met with existing resources. We will work with the Bureau of Indian Affairs, the Economic Development Administration, the Department of Housing and Urban Development and USDA to identify steps that can be taken administratively to respond to this problem.

We look forward to working with the House and Senate Appropriations Committees as the bill moves through the Congress.

Sincerely,

LEON E. PANETTA,
Director.

AMENDMENT NO. 768

(Purpose: To prohibit the Secretary of Agriculture from requiring the repayment of advance deficiency payments prior to January 1, 1994, in the case of producers on a farm that is located in a disaster area)

Proposed by Mr. BYRD for Mr. PRESSLER:

After section 701, insert the following new section:

SEC. 702. In any case in which the Secretary of Agriculture finds that the farming, ranching, or aquaculture operations of producers on a farm have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) during the 1993 crop year, the Secretary of Agriculture shall not require any repayment under subparagraph (G) or (H) of section 114(a)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445j(a)(2)) for the 1993 crop of a commodity prior to January 1, 1994.

Mr. PRESSLER. Mr. President, this amendment is quite simple and straightforward. It would prohibit the Department of Agriculture from forcing farmers to repay advance deficiency payments until next year. It would provide much needed relief to producers in the Midwest who were prevented from planting a program crop this year due to this year's unprecedented flooding in South Dakota and the Midwest. It could provide breathing room for farmers who are suffering.

The full extent of this year's flood damage will not be fully assessed until this year's harvest is complete. The production of wheat and small grains looks promising, but those crops could be lost if farmers are unable to harvest due to wet fields. Unfortunately, this is becoming a reality in South Dakota.

Producers who were unable to plant this year's crops soon will be forced to repay advance deficiency payments. Many of these producers simply do not have the cash on hand to make repayments. Waiting until next year to require repayment would, at least, provide a little extra time for financially strapped producers to accumulate the resources to repay the Government. The administration has taken steps to make this reality less of a burden. My amendment will assist this effort.

By the first of the year, disaster assistance should be in the hands of producers needing relief. My amendment also could help other producers. Depending on the outcome of this year's harvest, it is possible there will be no deficiency payments on certain crops. Should this happen my amendment will provide breathing room for those producers as well.

Mr. President, the Congressional Budget Office has stated there is no cost to this amendment. I am joined in this effort by Senators GRASSLEY and DASCHLE.

I ask unanimous consent that a summary of the amendment be printed in the RECORD.

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

PRESSLER AMENDMENT 768, REPAYMENT OF ADVANCE DEFICIENCY PAYMENTS

SUMMARY OF THE PRESSLER AMENDMENT

The Pressler Amendment would prohibit the Secretary of Agriculture from requiring the repayment of advance deficiency payments prior to January 1, 1994. Would only apply to producers in designated disaster areas.

EXPLANATION OF THE PRESSLER AMENDMENT

When producers enter into farm programs, advance deficiency payments have been made to help offset the costs of planting crops. These payments are based on expected market price for the commodity and what government payment would be made dependent on the crop's target price.

Should a producer receive an advance deficiency and fail to plant his intended crop, any advance deficiency payment made to that producer must be repaid immediately to the Department of Agriculture. This seldom happens since most producers follow through with their planting intentions.

However, this year's excessive rains and flooding conditions prevented many farmers from planting their crops. Due to no fault of their own, farmers could not follow through with their planting intentions. Producers in this situation are required to repay advance deficiency payments they received. Yet most of the producers have already spent their advance payments and are in no situation to repay. The Administration understands this situation and has stated the Department would not aggressively pursue repayments.

The Pressler Amendment would delay any repayment of advance deficiency payments until next year. This would provide producers time to plan their repayment. Disaster payments will have been made by that time, and financially strapped producers will be able to use that assistance to repay the government.

It is also possible that there may be no deficiency payments on crops this year. This will depend on final production and market price. Should this occur, all producers will have to repay advance deficiency received. The Pressler Amendment would assist those producers as well.

The Congressional Budget Office has stated there is no cost to the Pressler Amendment.

AMENDMENT NO. 769

Proposed by Mr. BYRD for Mr. KERREY:

On page 20, line 17, following "flood", insert the following: ", high winds, hail and other related weather damages";

On page 22, line 8, following "floods", insert the following: ", high winds, hail and other related weather damages".

AMENDMENT NO. 770

Proposed by Mr. BYRD:

Under the heading "National Park Service, Historic Preservation Fund" strike the following: beginning with the word "to" after "1993," and continuing through "(16 U.S.C. 470),"

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. DOLE. Mr. President, I was going to offer two amendments. I thought I would make a statement on one in particular, to make a point. It probably would not have any impact, but it was a sense-of-the-Senate that flood victims would not be subject to any retroactive taxes in the reconciliation package proposed by the President.

Retroactively it has been discussed today rather extensively. As I have said before, the draft Russian Constitution in article 57 provides that there will be no retroactive taxes. I wish we could take a look at that draft constitution. I understand there may be a

constitutional amendment offered by Members maybe on both sides which would prohibit retroactive taxes.

We have had some retroactive surtaxes or surcharges during wartime. The Treasury was sort of panic struck today and dug back to 1917 and found retroactive taxes during World War I, they found some in World War II, they found some in the Korean war, and they found some in the Vietnam war.

I think that is a little bit different when it's wartime creating an economic crisis as well as an international crisis. I recall the one with reference to Vietnam. I was in the House at that time and supported President Johnson. It was a temporary 2-year surtax. It was not a retroactive tax rate increase. There is a rather vast difference. And that expired after a couple of years. It was very necessary at that time, according to President Johnson, and most of us, I think, supported it on both sides of the aisle.

I think it is well to make the point. I do not know whether the report has been filed yet on the reconciliation bill. It had not earlier this afternoon, but I do believe—and I say it not critically—but I think this is going to cause a lot of trouble. I know they tried to doctor it up this morning, saying they are still going to have retroactive taxes but you will have 3 years to pay it and there will not be any penalty. That is not going to satisfy a lot of people, because they are going to be reminded every year that the tax is retroactive.

It seems to me, politically, it makes it a bit worse because every year that you have to dig up another third, you are going to be reminded about a retroactive tax rate increase. It is a tax rate increase. And the same is true on the State taxes. Many State tax laws piggy back on Federal taxes.

The flood of 1993 will be a disaster that will remain in the minds of Americans for many, many years. In my home State of Kansas, one-fourth of the State's crops have been destroyed by rain, hail, high wind, and tornadoes. Almost a quarter of the State's 19.5 million acres under cultivation has been adversely affected by the weather. This is over 434 million dollars' worth of agricultural damage in Kansas. That's just agricultural damage—not damage to businesses, not damage to individuals. And that's in the State of Kansas, alone.

The people in these areas have shown courage and resilience as they return to their towns and try to rebuild their homes, their businesses, their livelihood. They have looked toward the Federal Government for assistance. The Federal Government cannot fix every problem, nor is the Federal Government the answer to the disaster, but the Federal Government does have a role and a responsibility. And that role is to help these victims back on their feet, not to drown them.

We continue to believe that the proposed tax legislation, as currently drafted, is wrong for America. If the Clinton plan is enacted, small businesses will soon be sending more hard-earned dollars to Washington. The retroactive tax increases that the President envisions will penalize these hard-working Americans all the way back to January 1, 1993. All the way back before the floods even began. By doing so, we are telling small business men and women who have been paying their income taxes at the current rate that, "what you've sent in the past 7 months isn't enough. Not only do you have to figure out how you're going to mend your lives and repair your businesses due to the flood disaster, not only are you going to be burdened with this tragic and unforeseeable cost, you're going to pay more—a lot, lot more."

And it's not just income tax rates that are retroactive in the Clinton plan. People who died since January, I guess you are not going to bother them, but they have heirs, they have families. They are going to be subjected to higher estate taxes, and they are going to be retroactive. I think that is stretching the point. It seems to me the best way to deal with that is not have it retroactive but have it date of enactment, whatever. But it's probably too late to do that.

I do not think this amendment would do much good except to call attention to the fact that maybe at least flood victims should not be subject to retroactive tax rate increases. And certainly, if someone died between January and the date of enactment, there would not be retroactive estate tax rate increases.

So, Mr. President, I am not going to offer the amendment.

I ask unanimous consent that the amendment be printed in the RECORD.

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

At the appropriate place, add the following:

It is the sense of the Senate that all those who are affected by the Emergency Supplemental Appropriations Act of 1993 should not have to bear the additional cost of retroactive tax rate increases as proposed in the President's tax reconciliation bill.

Mr. MCCONNELL. As the chairman of both the Committee and Subcommittee for Labor, Health and Human Services and Education knows, communities emerging from disasters pass through three phases, immediate relief, recovery and long-term rebuilding. While FEMA works closely with Red Cross to provide urgent relief in the early stages, a number of private nonprofit organizations are actively involved in the long-term efforts to help rebuild communities. To that end, they provide crucial assistance in the health and human services area, including counseling for depression, prevention of domestic violence, and identification of affordable housing and child care. This assistance is essential to rebuilding the social health and well-being of these communities.

As a part of this supplemental bill, we have increased the amount of funding available to the Secretary of Health and Human Services public health and social emergency fund. This is one of a number of accounts which will address these vital long-term community needs.

Mr. HARKIN. The Senator from Kentucky is correct. The Secretary's fund has been increased by $71 million. Under existing law, the Secretary has broad discretionary authority to use the money to respond to emergency community needs.

Mr. MCCONNELL. Could I clarify one point with the chairman? Are private nonprofit groups which are engaged in the kinds of social services I mentioned eligible to receive grants from the Secretary's funds?

Mr. HARKIN. I see no reason why not. Although the Secretary has traditionally worked through community-based health and human service organizations, if a nonprofit is able to fill a void and provide needed services, they would be eligible for grants. Given the vast and damaging nature of this disaster, it would seem to me that these groups could provide crucial help.

Mr. MCCONNELL. I thank the chairman. There is no doubt in my mind that the damage done by the flooding will stretch State and localities resources. I am confident that the services available through our Nation's nonprofits will ease the suffering of these devastated communities and speed their recovery.

Mr. GRASSLEY. Mr. President, the devastation of the flood is difficult to imagine unless you have seen it personally. I have been in Iowa 15 out of the last 30 days and it is very critical. The effects of this disaster will be felt for years to come in every area of the life of my State.

While I appreciate what is included in this supplemental, I am certain that there are issues that are not addressed in this bill that will have to be addressed at a later time. I would like to take this opportunity to raise some of these extra issues that have been brought to my attention in recent days.

Obviously, in times of natural disaster, some individuals and families who would never dream of needing public assistance are suddenly placed in circumstances of overwhelming need. These families, which normally are self-sustaining, will place an unexpected draw on resources that have been allocated for public assistance.

With this in mind, for a period of 24 months, the State is requesting that the Federal medical assistance participation rate in disaster areas be established at the ceiling allowable under

law and regulation, notwithstanding the application of the appropriate formula.

The State is also requesting a 24-month waiver of the State match requirements for AFDC, food stamps, child support, title 19, 4–E foster care, and 4–F jobs and supportive services, to the extent the number of eligibles increases. Iowa expects that there will be an increase of up to 7.5 percent in the number of individuals and families who become eligible for public assistance.

This increase, at a time when State and county revenue is down, raises a concern of how to serve a greater need at a time when the ability to generate the State match is in question.

Other requirements that Iowa requests be waived include AFDC transitional housing, emergency assistance, medicaid optional State programs, individual and family grant, and food stamp, employment, and training program match requirements.

Citizens who have lost their housing, personal property, or employment as a result of the flooding may be offered immediate assistance in the form of donated clothing, food, or even cash assistance. This kind of charitable assistance is proper and should be encouraged.

The problem is that current law requires that these items be considered gifts, often making the family ineligible for AFDC, food stamps, or medical assistance or at least reducing their potential benefits. It is therefore important that these donated items or temporary assistance not be considered in determination of eligibility for these programs.

With the overwhelming devastation in the State, the Department of Human Services has been swamped—literally—with new responsibilities related to flood relief. Because these new duties have been the necessary priority, other issues of an administrative nature have been temporarily laid aside to address more immediate concerns.

Practically speaking, this means several things. First, the Department has not stayed on its regular schedule concerning Federal reporting requirements for food stamps, AFDC, and the jobs program. Each of these Federal reports is due in the next 6 weeks and the State has requested an extension of 90 days in order to meet these deadlines, while still addressing the immediate needs.

Another issue of administrative concern is the need for an extension of time to address the corrections identified in the conditional certification in the current child support software system. Without this extension, the State may lose Federal financial participation in the effort, making the effort impossible to fulfill.

The State has also requested that quality control functions be suspended between September 1, 1993, and February 28, 1994, for AFDC, food stamps, and medical assistance, and that a zero error rate be assigned.

While I am usually very supportive of tight quality control restrictions on Federal programs, at times of great crisis, it is necessary to set aside the redtape and deal with the immediate crisis at hand. This waiver is not intended to encourage sloppiness on the part of State administrators. It is simply a short-term grant of flexibility in addressing the immediate crisis at hand.

Finally, I believe there is a need for any State with more than one-third of its counties declared as disaster areas in 2 of the past 5 months to receive 100 percent Federal funding to the single State agency administering the 4–A Program.

While I am certain there are other issues of concern to the people of Iowa and other flood devastated areas, these social services needs are at the heart of disaster assistance and should receive prompt attention in later legislation in the immediate future.

DISASTER ASSISTANCE GREATLY NEEDED

Mr. PRESSLER. Mr. President, today the Senate will decide how much assistance can be made available to thousands of Americans suffering from the worst floods ever to hit America's heartland. The dramatic sights and reports on the flooding over the past months have spellbound this country.

The situation we are witnessing in the Midwest is unprecedented. The devastation is mind boggling. Lives have been lost. Homes have been torn apart. Thousands of acres of farmland lie under water. Spires, rooftops, and signposts are the remaining landmarks of submerged towns. Islands and new lakes have been created. Torrents of water have carved new natural boundaries.

Nature's devastation has left an enduring mark on the geography and character of the Midwest. The effects of this flood will be observable for a long time. Every person living in the Midwest will feel the effects of this disaster for years to come.

Farmers and ranchers have lost their source of income for this year, and perhaps beyond. Thousands of people are without homes or shelter. Many businesses could close their doors permanently. Roads, bridges, and rural infrastructure have been destroyed or damaged indefinitely.

Federal assistance clearly is needed. Current damage estimates far exceed the damage done by Hurricane Andrew. We must act now to help people recover.

South Dakota has been a barometer of how bad the flooding would be. Excessive rainfall has been evident in South Dakota since the first of May. Thousands of acres of farmland were never planted or were flooded out. Crops in the eastern half of South Dakota are gone. South Dakota agriculture will suffer proportionately more than other affected States. The president of the American Farm Bureau Federation, who happens to be from Iowa, recently reported that the rain and flooding will inflict the most damage on South Dakota agriculture. The full extent of the damage to South Dakota will not be known until well after harvest, but we do know that the damage to South Dakota is unprecedented. An economist for the Federal Reserve Bank in Minneapolis recently reported that the farm-driven economy of South Dakota likely will suffer the most from flooding in the upper Midwest. It probably will take more than a year for farm income and spending to recover. The bank estimates that in southeastern South Dakota southwestern Minnesota, and northwestern Iowa, farmers stand to lose $1 billion in crops they could not plant due to wet conditions, and another $1 billion in damage to crops that were planted.

Clearly, the news from South Dakota is not good. Hundreds of South Dakotans are applying for temporary unemployment insurance. Many of these individuals simply won't make it in farming. South Dakota was expected to lose 500 farmers already this year. The floods will increase that number.

Mr. President, this year's disastrous planting season follows last year's extremely wet harvest, when farmers experienced lower yields and poor quality crops. Tremendous amounts of income were lost last year. In fact, many farmers were unable to harvest and much of last year's crops still sit in flooded fields.

Most South Dakota farmers today have never experienced a planting season this disastrous. Time is running out for many of these farmers. Action is urgently needed to permit farmers in the devastated counties to earn some income this year. These farmers are suffering. We must act now to help ease their suffering.

Mr. MOYNIHAN. Mr. President, I would like to address a subject that is very much involved with the topic at hand not often spoken of. I refer to the Army Corps of Engineers' flood control efforts in the Mississippi and Missouri River basins. By this I do not mean the corps' current emergency work of repairs to levees and flood walls. In these matters their expertise in unmatched and we are all thankful for their dedicated efforts. Rather, I wish to look into how we got to where we are. We have spent a great deal of money on levees and other flood control structures and have very little understanding what we have got for our money.

The corps has done a great deal to control these rivers and, to be sure, has met with substantial success in most regards. Water borne commerce, once a

dubious prospect at best, is now routine and profitable. Flooding is less frequent, but, it turns out, more severe when it does occur.

The corps has built 10,500 miles of levees and flood walls in the United States, and yet flood damage per capita was two and one-half times higher in the 35-year period that began in 1950 than it was over the 35-year period previous to 1950. These numbers are, of course, adjusted for inflation.

What happened? Something, clearly. First off, our system of public works construction developed with little or no attention to the concept of productivity. During the debate in 1991 on the Intermodal Surface Transportation Efficiency Act—or ISTEA as we call it—I called this lack of attention to productivity a case of public sector disease. This condition has been rampant in the area of surface transportation, and the result is a transportation system where money is spent with little or no regard whether it will generate a return. Assets are managed with scant attention to maximizing their yield for society. In this legislation we made important steps toward changing this pattern, although I must say I do not know if we will succeed.

In the area of water resource infrastructure—that is, flood control, dams, reservoirs, and the like—we have also made some progress. The Water Resources Development Act of 1986 instituted cost sharing for all corps projects, an attempt to keep money spent on water projects from being wasted quite so willfully. The aphorism we adopted during consideration of ISTEA—that free goods are inevitably wasted—was never more true. It took us 16 years to get this bill passed but finally we did.

Of course this was possible in part because there were no more large water projects to be built. And so the issue on the Mississippi and Missouri systems has until now been one largely of sunk costs. Assets in place could be managed a little better here and there, but no great changes have seemed possible.

It could be now that this has changed. The total cost of damage to flood control structures will not be known for some time, but we may be granted a second chance on the Mississippi. Our dominant flood control philosophy for 150 years has been the hard option—dams and levees made of concrete, stone and dirt. More recently a new philosophy has emerged, best summed up by Mr. Larry Larson, director of the Association of State Floodplain Managers in a story from the July 20 New York Times:

> For too long we have been trying to adjust rivers to human needs, and then we wonder why our rivers to human needs, and then we wonder why our rivers are messed up and why we continue to get flooded; it's not a mystery.

More and more people in the flood control profession are starting to think this way. Nonconstruction alternatives—soft solutions, as they are called—are being considered in some instances now and more than a few have been built. Or should I say "chosen."

As I said so often during consideration of ISTEA in relation to our transportation policy, "We have poured enough concrete." The Corps of Engineers would do well to learn this lesson.

Mr. President, I ask unanimous consent that the aforementioned article be included in the RECORD at this point.

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

[From the New York Times, July 20, 1993]

THE HIGH RISKS OF DENYING RIVERS THEIR FLOOD PLAINS

(By William K. Stevens)

For decades Americans have insisted on settling next to rivers and streams, like moths drawn to a flame, just as people have throughout history. And to protect their cities and farms, engineers have tried to ward off the inevitable flood waters with levees, flood walls, dams, dikes and diversion channels. To some extent this ambitious attempt to bend nature to human desires has worked.

But nature still wins often enough, as this month's destructive floods in the upper Mississippi valley vividly testify. Even the gains have come at enormous cost to the ecology of flood plains, some experts say, and in some cases control measures have perversely resulted in worse flooding.

By cutting off the flood plain's waters, levees and diversion channels have destroyed and degraded stream-side habitats that contain some of the country's richest biological resources. They have also prevented the flood plain from performing one of its most important natural functions: flood control. By storing and slowing flood waters, the plain reduces their force and height. Containing this water in a narrowly corseted channel, as is commonly done to protect farms and urban settlements, has the opposite effect. It raises both the velocity and the height of the flood and makes it all the more frightening and destructive when it breaks through defenses, as it has repeatedly done in the Midwest.

These realizations are leading flood-plain managers at all levels of government toward a different approach: cooperating with nature rather than trying to subdue it. The emphasis increasingly is on keeping new development away from the flood plain, preserving or restoring its ecosystems and letting water flow as freely as possible so that natural flood-control mechanisms can work.

Across the country, states and communities are exploring alternatives to dikes, levees and flood walls. They are acquiring wetlands to serve as natural flood basins. They are sculpturing the plain to create detention areas for flood waters. They are preserving stretches of flood plain in urban areas which, in between periods of high water, serve as parks, ball fields and greenways. Some communities are discouraging new development on flood plains by requiring expensive flood-proofing measures, such as putting buildings on piers and constructing private detention ponds. One town, Soldiers Grove, Wis., has taken the radical step of moving its entire business district to higher ground.

"For too long we've been trying to adjust rivers to human needs, and then we wonder why our rivers are messed up and why we continue to get flooded; it's not a mystery," said Larry Larson, director of the Association of State Floodplain Managers, an organization of professionals engaged in floodplain management and flood control. "We need to adjust human behavior to river systems."

Sometimes, he said this means that developed areas "need to be cleared out so the river can flood, as we know it will, without damaging property." In other instances less drastic measures can suffice.

One obvious limitation to the new strategy is that many communities have long since committed themselves to living on the flood plain, and with traditional structural methods of flood control. "We can't pick Des Moines up and put it on a hill," said Harry Kitch, an Army Corps of Engineers official in Washington who handles flood-control planning in the central United States. The more natural approach to flood control might seek its greatest success where new development is poised to move onto the flood plain. But particularly for areas already developed, Mr. Kitch said, "you're going to end up with a balance" of structural and natural methods.

Flood-control disputes of the future are likely to involve the tricky and contentious issue of just what balance should be struck. A classic example is the long-running controversy about floods along the Passaic River watershed in northern New Jersey. Towns have existed in the watershed's lower reaches for years, while other parts of the basin are only now becoming ripe for development.

The basin is one of the most floodprone in the country. Over the past decades, various portions of it have been declared Federal disaster areas seven times. Some flooding occurs almost every year, and the Corps of Engineers estimates that a record flood, like that of 1903, would cause $2 billion in damages.

Under a joint Federal-state project authorized by Congress but not yet finally approved by the state, the Corps of Engineers has proposed a hybrid solution. The Passaic's flood waters would be shunted underneath developed areas through a $2 billion, 20-mile-long tunnel terminating in Newark Bay. The idea of the tunnel, Corps officials say, is to avoid disturbing the land. The plan also calls for the state to buy up more than 5,000 acres of wetlands on the flood plain to serve as a catchment to reduce flood volume and speed. As a result, the plan might also prevent some development.

Critics say the plan comes down too little on the side of nature. They favor sharply restricting development in the entire central and upper basin, buying out flood plain residents and acquiring far more natural flood storage acreage than the plan now calls for. Critics also raise fears about the ecological impact of a rush of fresh flood waters into the marine environment of Newark Bay. Some oppose the construction of the tunnel under any conditions. The issue has divided politicians and citizens and has become an issue in the New Jersey Governor's race. Gov. Jim Florio, a Democrat, has refrained from taking a position for or against the tunnel pending an environmental impact study to be completed by the Corps of Engineers in 1995; his Republican opponent, Christine Todd Whitman, is against the tunnel, arguing that buying out flood plain residents would be less expensive. The corps argues the opposite.

Flood plains, the subject of this and many other disputes across the country, are among the most productive ecosystems in the world. When flooded in spring, they become breeding grounds for fish. Most flood plain acreage is wetlands, and about half the country's endangered species require wetland habitat. The riparian zone along rivers is home to distinct assemblages of soils, microbes, plants and animals that depend on high water tables and occasional flooding.

People originally settled along rivers because they provided water, transport and power. That is no longer true, "but now the city is there," said Mr. Larson. Later, people were drawn to flood plains because land there was cheaper. By 1991, according to an interagency Federal task force on flood plains that issued a report last year, floodplain land in 17,000 communities occupied more than 145,000 acres and included nearly 10 million households and $390 billion in property.

This large-scale development, according to the task force, has come at "a high price extracted annually in deaths, personal injury and suffering, economic loss and damage to or destruction of natural and cultural resources." Despite extensive and expensive efforts over the years to control floods through public works (the Corps of Engineers has built 10,500 miles of levees and flood walls alone), inflation-adjusted flood damages per capita were almost 2.5 times as great in the period from 1951 to 1985 as from 1916 through 1950.

Part of this may be attributed to a growing ratio of construction to population, but levees themselves evidently contribute to the escalation. They are the most common type of flood-control measure, and when they fail, as they have many times in the Mississippi basin in recent weeks, they make the damage worse. The Federal task force noted that a breached levee, like a breaking dam, can release a large wave at high velocity on communities that believe they are protected. Images from the Mississippi basin this past week have grimly borne this out. The remaining levee system may subsequently prevent water from draining back into the river, prolonging the flood. The task force reported that levee or flood-wall failure is involved in one-third of all flood disasters.

When a river's flow is constricted, its sediments are no longer deposited to fertilize the flood plain but instead may be dropped within the narrow river channel just outside the levee. This in time raises the height of the river, and the levee must be heightened in turn. "In general, a river wants to recreate itself as a river with a flood plain; it's rising in response to these rising levees," said James T. B. Tripp, an expert on floods with the Environmental Defense Fund, "River systems have a way of adjusting themselves in response to human manipulation of the flood plain in ways that can never be entirely foreseen."

A better approach, according to the emerging new wisdom, is to get the river to work for you rather than against you. The new approaches may be best suited to smaller rivers, but these spawn most of the flash floods, and flash floods are responsible for three-fourths of all Presidentially declared disasters.

After a 1984 flash flood killed 13 people and caused $180 million in property damage in Tulsa, Okla., for instance, the city and the Corps of Engineers collaborated to create a more natural flood-control system. They scooped out a series of permanent lakes in a greenway corridor set aside in Tulsa's Mingo Creek flood plain. Most of the lakes are dry, and when there is no flood the lake bottoms are occupied by soccer and baseball fields and tennis courts. When there is a flood, the lakes store and slow down the water. They are connected by a network of "trickle trails" that serve as jogging paths in dry times and low-flow flood channels in wet ones.

At the same time, development in the flood plain is strictly regulated. Developers must build their own detention ponds to make up for the increased flow that paving causes. Buildings in harm's way must be floodproofed, usually with raised piers. One result is that developers have been discouraged from building in the flood plain—a counterforce, possibly, to whatever incentive to development may be provided by Federal disaster relief and flood insurance.

Only 15 to 30 percent of the nation's flood-prone structures are actually insured by the supposedly self-financing National Flood Insurance program, according to the flood plain task force. Disaster relief is available to an uninsured property only once: If the property is flooded a second time and is still uninsured, owners are on their own.

NATURAL FLOOD CONTROL A SUCCESS

The Tulsa system has been tested by storms that would have been expected to cause serious flooding in earlier years and has passed with flying colors, said Jack Page, who oversees development for the city. He sees "more acceptance of 'soft' engineering; we're getting away from the concrete and the pipes and are leaving the channel in a natural state." The Corps of Engineers says it considers the Tulsa project a model.

Other localities have moved in this direction as well, often with corps involvement. As a pioneering alternative to dams and levees in the Charles River basin of metropolitan Boston, for example, the corps purchased or secured easements on 8,500 acres of wetlands to contain floods while also providing wildlife habitat and promoting recreation. The system was tested by major floods in 1979 and 1982 and each time performed effectively.

The city of Littleton, Colo., established a 625-acre park in its flood plain to attenuate floods rather than allow the South Platte River to be channeled. And in the San Francisco Bay area community of North Richmond, citizens successfully brought about the creation of a naturally meandering flood channel and restored the stream-side ecosystem in a way that would maintain ecological health while accommodating once-in-a-century floods.

In the end, if Mr. Larson and Mr. Tripp are right, there simply may be no way to protect against the very worst floods, no matter what strategy is employed. "We've got to figure out some way to help people understand that Mother Nature will reclaim what's hers from time to time," said Mr. Larson. "We must keep that in mind when we go to build our communities and cities and try to find a way to live in harmony with nature."

To which Mr. Tripp adds: "We can try and manage these river systems to some degree, but we've got to be prepared to accommodate ourselves to the river. If we think we can do things to rivers so they will never flood, we're naive."

Mr. DOLE. Mr. President, I understand on this side of the aisle that there is no request for a rollcall vote, but I understand there may be one request on that side. It was my suggestion that if there was not any request, that it will be a unanimous vote, but if there is a vote, it might be less than unanimous.

Mr. BYRD. Mr. President, I know of no Senator on this side who is going to request the yeas and nays on this bill. It would be a unanimous vote in all likelihood, it being an emergency bill, to provide assistance to the flood victims, somewhat different from the ordinary appropriations bill in that respect.

The PRESIDING OFFICER. If there are no further amendments, the question is on agreeing to the two committee amendments on page 2, lines 6 through 13, and page 2, line 22.

The committee amendments were agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendments and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

So the bill (H.R. 2667), as amended, was passed.

Mr. BYRD. Mr. President, I move to reconsider the vote by which the bill was passed.

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

The motion to lay on the table was agreed to.

Mr. BYRD. Mr. President, I thank all Senators.

I thank the leaders on both sides for their very helpful efforts in expediting action on the bill. I especially thank my colleague, Mr. HATFIELD, for his very good work on this bill, in helping to persuade various Senators to refrain from calling up their amendments, and for his support in arguing against some of the amendments that were called up.

I think the Senate has done a good day's work. The bill has withstood the attacks of several Senators who in good faith attempted to get their amendments up and agreed to. There were other Senators who had amendments but they agreed not to call them up, and some who called up and then withdrew the amendments.

So, all in all, it is a day of which we can be proud. I thank the Appropriations Committee staff and the floor staffs on both sides.

Mr. President, Jim English, the Director of Appropriations staff has been recuperating from a very serious heart operation for several weeks. Tim Leeth, Jack Conway, Mary Dewald, Barbara Videnieks and Marsha Berry have been pillars of strength to me in this period of Mr. English's recovery.

I want to give them their just dues. They have been absolutely invaluable to the Committee over these several months. They stepped right into the

breach and demonstrated that they are the kind of professionals who make us proud to have an Appropriations Committee that is second to none. I extend to them my profound thanks.

Mr. HATFIELD. Mr. President, I would like to express my appreciation as well to the chairman of the committee. It is always not only a pleasure to work with the Senator from West Virginia but a learning process as well. I never fail to learn something about parliamentary procedure, something about Roman history, something about wisdom, such as tonight I felt that one of the brilliant utterances that will be historic for me—I cranked it into my computer hoping that I can pull it out at some future time—is the difference between a lynching and a trial of due process. It is procedure.

I think it was one of those, again, wonderful learning experiences being associated with the Senator from West Virginia.

I also want to express deep appreciation for the two key people not only in this Chamber, Tim Leeth on the majority side and Keith Kennedy on our side, but around the back of the room we have on both sides staff people of 13 subcommittees ready to move at any moment an issue confronts them in their area of expertise. So we have had a real army of staff people here assisting us in this whole effort.

Mr. BYRD. Mr. President, I am glad that the distinguished Senator has mentioned these fine subcommittee staff people who are here early and here late, ready to be helpful, and they have been helpful and without their dedication, high purpose, and high sense of duty, we, indeed, would be unable to carry on our work.

I hope that the House will not ask for a conference in view of the fact that the Senate has not added many amendments—only those that the administration is supporting, and I hope the administration will be able to get the support of the House in accepting this bill so that it will be sent to the President forthwith.

The PRESIDING OFFICER (Mr. SIMON). The majority leader is recognized.

Mr. MITCHELL. Mr. President, I join in thanking my colleagues, the distinguished chairman and ranking member, former chairman of the committee, for their usual outstanding job in managing important legislation.

This is a very important bill, as I noted in moving to it last evening. Considering the scope of the tragedy in the Midwest, it is imperative Congress act this week. And that would not have been possible but for the steady hand of the two managers of the bill and the cooperation of our colleagues, both Democrat and Republican, in getting this bill done. So I thank them. I thank the Republican leader.

Mr. DOLE. If the majority leader will yield, I think the only appropriations bill we have not done that is available is Interior, and there is still some hope, I think on both sides, we may get some agreement that we might be able to do that if there is any downtime here between now and the time of the vote on reconciliation.

Mr. HATFIELD. If the leader will yield, I would only like to raise a possible signal that the administration's forestry program, which has been identified as Option 9, is in the process of being viewed and reviewed, and I get some indications the administration may ask us to help implement that on the Interior Appropriations subcommittee bill. Therefore, I would only like to check with the administration, or have that check made in case that is being considered as a possible vehicle.

EXECUTIVE SESSION

Mr. MITCHELL. Mr. President, I now ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 309, the nomination of M. Joycelyn Elders to be Medical Director of the Regular Corps of the Public Health Service and to be Surgeon General of the Public Health Service.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The legislative clerk read the nomination of M. Joycelyn Elders, of Arkansas, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years.

The Senate proceeded to consider the nomination.

Mr. MITCHELL. Mr. President, as we all know, this nomination, which we will now begin to consider, has been the subject of considerable controversy. Numerous statements have been made which I have seen reported—I am not certain whether they were made on the Senate floor or in press conference, perhaps in both—to the effect that no vote would be permitted on this nomination prior to the Labor Day recess.

I have discussed this matter with the distinguished Republican leader privately prior to now, and we have agreed to have a discussion on the floor, and I have indicated my intention and desire to proceed to a final vote on this nomination this week. I inquire of the Republican leader as to whether he is now in a position to indicate whether or not that will be possible.

Mr. DOLE. If the majority leader will yield, Mr. President, I am not in a position at this time to say it will be possible. But as just demonstrated we did not object to going to the nomination. We did not see any purpose in having a vote on going to the nomination; it probably would have been unanimous. I am not in a position at this time. We did have a meeting late this afternoon on this nomination, and I think some of the principals involved on our side are probably on the way to the floor. I may not be able to tell the majority leader this evening but perhaps sometime midmorning tomorrow.

Mr. MITCHELL. Mr. President, I thank the Republican leader for that information and for his courtesy. I now believe that it would be best under the circumstances simply to permit the principals to debate the matter here this evening, and then I will pursue the matter further sometime during the morning tomorrow.

Mr. President, in light of the fact that we are now going to be on this nomination and that we do not anticipate a response tonight on the question of whether our Republican colleagues will permit a vote to occur on this nomination this week, I think it is appropriate for me to announce that there will be no further rollcall votes this evening.

There will be debate on this matter for some period this evening. That will continue tomorrow morning, at which time we will have a further discussion in accordance with our discussion here this evening, if that is agreeable to my colleagues.

Mr. President, I believe the managers on the matter are now on their way to the Senate floor.

Mr. President, awaiting the arrival of the managers—I understand they will be here shortly—I now suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

THE OMNIBUS RECONCILIATION ACT

Mr. DOMENICI. Mr. President, on a couple of occasions in the last few days a number of my colleagues on this side of the aisle have asked me where is the so-called "reconciliation bill" that we are supposed to vote on Friday. Is that right? I ask the Republican leader. I, in turn, have been asking where it is.

About an hour ago what is currently said to be the reconciliation bill and the report were delivered to the Budget Committee's office. I just wanted to pick it up here and show it to you. My guess is it is—I could not hold it too long because it is probably 23 or 30 pounds. It is 1,800 pages. We surely are

going to do our best to look this over so we can see what is in it. I just want to repeat, the Senator from New Mexico was not invited to attend any of the meetings. Not that I would have helped, because I am not for this, but at least I might know what is in it. At this point I do not. There have been literally hundreds of changes made in both the House and the Senate bill in order to avoid the Byrd rule on matters that should not be in the reconciliation bill.

It is going to be interesting to see how they were fixed because essentially the Byrd rule was supposed to be airtight in terms of measures that are not part of real deficit reduction. I understand most of those are in—but changes to make them either real cuts or real spending instead of authorization, and that that might even be worse. But we will find that out as we try our best to go through this.

I might say to Senator DOLE that if he had been invited to these meetings and participated—two-thirds of this bill comes from the Finance Committee, so it is taxes and all kinds of changes in the code as it pertains to special interests. We do not know what they are yet. But there are a couple that are rather intriguing.

You know, one Senator that seemed to be against this on the Democratic side comes from a State with a lot of restaurant activity. So there is an interesting provision in this, I say to the Republican leader. You see what has happened is the original proposal by the President was that you were not going to permit corporations and business people to deduct meals. You could only deduct part of them. And now that was 50 percent.

It turns out that that really offended some. So to see if they could change some of the restaurant-loaded States in America in their vote, the tax was changed to 60 percent. Sixty percent is deductible.

There was a very interesting thing. The restaurant owners no longer have to pay Social Security on the tips. They were paying that in. It is about $1 billion. The restaurant owners are now going to be permitted to take a $1 billion tax credit, which means that the general taxpayer is going to pay that bill.

But, frankly, we are going to do our best as instructed by our leadership and we are going to circulate it in parts to our various ranking members and their committees, and hopefully in the next few days we will be able to tell the Senate and the people of the country what is in it.

Mr. DOLE. Mr. President, I think this demonstrates—I say it has happened before. I am not being particularly critical. It has happened, I guess, over the years. Here it is 9:20 on a Wednesday night. This is the 400—supposed to be $500 billion, about $420 billion package—billion. It is all right in those papers.

Nobody knows precisely what. You look page by page, $260 billion in taxes in that package, $260 billion—$242 billion in new taxes and $18 billion in fees. So it is a total of $260 billion.

There is a provision in it that makes it retroactive to January 1 this year whether you are alive or dead. It is retroactive. If you died, you cannot escape this package. Whether you are dead or alive, you are going to get taxed. That is all in that package.

We are supposed to read all of this and be able to discuss it thoroughly, in the House tomorrow and in the Senate on Friday. It is 2 to 1—$2 I think, if I am correct, $2.13 in taxes for every $1 in spending cuts.

Again, we have to go back and verify all of that. I am not certain how much spending cuts are there in the first year. Are there any spending cuts in the first year?

Mr. DOMENICI. We have our calculations, and in the first year there are no net spending cuts. And there is almost $31 billion in new taxes.

Mr. DOLE. What about the second year?

Mr. DOMENICI. In the second year there is a very large cut in spending, $4.3 billion, in a $1.5 trillion budget.

Mr. DOLE. How much taxes?

Mr. DOMENICI. Big. It looks like in that year, it is $44 to $48 billion. So that is a well over 10 to 1 in the second year, and then we are getting close to the election year of 1996. There, again, I might say the cuts that are contemplated are beginning to look like this: In the last 2 years of this 5, after the next Presidential election, 80 percent of the cuts allegedly in this package, mandatory and discretionary, will occur, if they do. So it is not only a tax first, but it is tax first and cuts later, and maybe. I am sure we will show this in more graphic manner in the next 48 hours. That is what is supposed to be in here.

Mr. DOLE. I think it is important. And I know it is 9:20 at night, and I am not certain how many people may be viewing what is happening in the Senate. But as I add that up, I guess in the first 2 years there are about $4 billion in cuts and $78 billion in taxes.

Mr. DOMENICI. That is correct.

Mr. DOLE. We are so anxious to tax, we are going to back it up until January, and if the spending cuts come, they will come after 1996. That is why today in the Republican offices, there are thousands of people calling in, and 80 percent are against this package. Nobody knows what is in it, but they are against it because they know it is a lot of taxes. I think we ought to see how much it weighs tomorrow, and maybe bring it back to the floor again, if they can carry it back tomorrow.

Mr. DOMENICI. We need to get a scale.

Mr. DOLE. I think it is a serious matter that ought to be discussed. We are about to try to pass this in 4 or 5 hours on the floor. Keep in mind, it is over $400 billion, $260 billion in taxes, and I think the American people will find it hard to believe how we can deal with something this fast between now and Friday evening.

Mr. DOMENICI. I yield the floor.

NOMINATION OF M. JOYCELYN ELDERS, OF ARKANSAS, TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The Senate continued with the consideration of the nomination.

Mr. KENNEDY. Mr. President, what is the business before the Senate?

The PRESIDING OFFICER. The nomination of Dr. Elders as Surgeon General of the United States.

Mr. KENNEDY. Mr. President, I urge the Senate to act promptly to confirm Dr. Joycelyn Elders as Surgeon General.

Dr. Elders is eminently qualified for this position, and it is time to end the delay, distortion, and misrepresentation that have surrounded her nomination.

Few positions in American Government are more important to the health of the Nation than the Surgeon General of the United States. The nominee we are considering this evening has the potential to become one of the best Surgeon Generals in history.

The Surgeon General has many responsibilities; all are important. All must be fulfilled with the highest level of competence. As the Chief of the Commission Corps of the Public Health Service, the Surgeon General must lead a body of dedicated health professionals serving the country wherever their skills are needed.

The Surgeon General is the chief public health adviser to the Assistant Secretary of Health, to the Secretary of Health and Human Services, and to the President.

Whether the issue is controlling the AIDS epidemic, meeting the challenges of infant mortality, dealing with the new plague of drug-resistant tuberculosis, or addressing a variety of serious public health challenges we face, the Surgeon General is a principal resource for analyzing the problem and providing guidance to the administration, Congress, and the Nation.

But most of all, the Surgeon General must mobilize public opinion and public commitment to the cause of good health. In the 1960's, Surgeon General Luther Terry aroused the Nation to the dangers of smoking. In the 1980's, Surgeon General C. Everett Coop educated the Nation about the danger of AIDS. And in the 1990's, Dr. Joycelyn Elders will be a forceful and eloquent voice for the cause of better health for all Americans, but most especially for children and the poor.

By training, by experience, and by temperament, Dr. Elders is superbly qualified for all of the varied responsibilities of a Surgeon General. Her career itself is an inspiring story that demonstrates her outstanding qualifications to be Surgeon General, and it also demonstrates one other thing—that the American dream is alive and well in 1993. When people use the phrase "we shall overcome," they are talking about people like Dr. Joycelyn Elders. She has truly overcome in her own life, and she will do the same as Surgeon General.

No amount of scientific knowledge or intellectual ability can substitute for a commitment to helping those in need the most. Dr. Elders cares deeply about her mission, because in her own life she has surmounted incredible obstacles and experienced great hardship in building her remarkable career of service.

She was born to a teenage mother and a sharecropper father in the tiny town of Schaal, AR, 40 miles from Texarkana. She grew up on the family farm in a three-room cabin, with her seven brothers and sisters. The cabin had no electricity and no indoor plumbing. As a child, Dr. Elders worked in the fields to help support her family from June through Thanksgiving. School had to give way to work on the farm. Still, she was able to skip two grades, and she graduated as valedictorian of her segregated high school when she was only 15.

Dr. Elder's mother never had the benefit of prenatal care. In fact, her children were delivered in her home without medical assistance. One of Dr. Elder's earliest memories is of her young brother crying with the pain of a ruptured appendix, being taken 10 miles on the back of a mule to the nearest doctor. Until she went to college, Dr. Elders herself never saw a doctor, not for a physical exam, not for childhood vaccinations, not for treatment of any illness. She understands the pain of those who have no access to health care, because she has been there herself.

Dr. Elders won a full tuition scholarship to Philander Smith College in Little Rock. Money was so scarce that her brothers and sisters worked in the fields to help pay her bus fare and buy her clothing. She graduated from college magna cum laude in 3 years. She joined the army in 1953 so she could earn the right to GI bill assistance to finance her medical education.

She and her fellow African American students at Arkansas Medical School were forced to eat in a segregated section of the student cafeteria. Dr. Elders went on to an internship in pediatrics at the University of Minnesota. Because of her ability, she was invited back to the University of Arkansas Medical School to the prestigious position of chief resident in pediatrics. After her internship, she was invited to stay on at the university as a professor in pediatrics. In 1987, Governor Clinton named her to lead the Arkansas Department of Public Health.

To be effective, a Surgeon General must have the ability and perseverance to fight for what is right. Dr. Elders has clearly demonstrated the strength of character needed to take on any job no matter how difficult.

To be effective, a Surgeon General must have a strong scientific background and a fine intellect. She must understand the basic issues underlying the difficult questions of health policy.

Dr. Elders is a distinguished pediatric endocrinologist with 150 scientific papers to her credit, who has spent most of her professional life in academic medicine. I would like to read just a few of the titles of those papers now so Senators and the country will have a better idea of the extraordinary background and extraordinary ability of this nominee.

Elders, M. Joycelyn and Knicker, W.T.: Biological role of fetal thymic hormone. J. Pediatric 69:955, 1966.

Chaney, C., and M.J. Elders: Management of juvenile diabetes mellitus. J. Ark. Med. Soc. 72:239–248, 1975.

Elders, M. Joycelyn, Herzberg, Victoria L., Hill, Donald E., Boughter, J. Mark, Harris, Linda, and Heinrich K. Schedewie: Growth hormone effects on erythrocyte insulin binding. Pediatr. Res. 15(4): 507, #402, 1981.

Elders, M. Joycelyn: Keynote Address to the Academy for Educational Development Conference—Urban Middle Schools Adolescent Pregnancy Prevention Program. May 1990 AED.

Elders, M. Joycelyn and Hui, Jennifer: Article, "School-Based Clinics: Meeting Health Needs of Adolescents". California Pediatrician—Spring 1990, Vol. 6.

And the list goes on and on.

Finally, to be effective, a Surgeon General must bring to the job a strong record of commitment and accomplishment in the field of public health. By that standard Dr. Elders is one of the best qualified Surgeon Generals in the Nation's history.

As director of the Arkansas Health Department, she guided one of the most effective and innovative programs in the Nation. Her peers, the chief health officers of the 50 States and territories selected her as the president of their organization, the Association of State and Territorial Health officers. Of all the States and territories, she was selected by the health officers in this country and territories to be the head of that organization, which deals with public health.

Under Dr. Elders' leadership, the Arkansas Department of Public Health doubled the proportion of children receiving timely immunizations. In this country today half the children that are 2 years old do not have immunizations. In this reconciliation bill there is $500 million to help provide those immunizations for children all across this country. We have someone nominated that has the sound record of dramatically increasing immunizations in the State of Arkansas, doubling the proportion of children receiving timely immunizations. We know that we need her leadership in that area.

She established a program that has become a model for the Nation. She launched an assault on infant mortality that significantly increased the number of women receiving adequate prenatal care. She increased by tenfold the number of poor children receiving comprehensive health screenings. She expanded home care opportunities for senior citizens. She led a crusade against teenage pregnancy. She dramatically expanded early screening and detection services for cancer in women. She fought for school-based clinics because she understood that the only realistic way to reach children in need and give them access to at least minimal health services, was to reach them in their schools.

Let me say to all those who reject the idea of school-based clinics for fear that in some schools some children may hear the dreaded words "condom" or "abortion," I say to you, Dr. Joycelyn Elders is living proof that you are wrong. School-based clinics can be a lifeline to a vast number of children who otherwise never see a doctor.

Local officials can decide about controversial issues of health policy like condoms and abortion. But how can anyone deny that basic noncontroversial health care is needed by these children? And they can get it in their own schools.

The fact of the matter is, the decisions about the school-based clinics were made by the local school committee. The decisions about health education for the appropriate age, was made at the local school level. In many of the school-based clinics in Arkansas they do not have that kind of education program. In some they do. If in a local community they make a decision that they want that kind of education, and parents do not want their children to have that education, they can so indicate and the child will not be included in the program, or have available the kind of services of that particular clinic.

The local school district and local parents make the judgment and determination regarding health education programs. The Arkansas Legislature, not considered to be some flaming liberal organization, decided and accepted that the people of Arkansas should make that judgment and decision.

So, Mr. President, it is important to know that in terms of bringing clinics to schools, Dr. Elders puts the value on local interests, local support, and the parents that will be affected by the program.

It is an interesting fact that in Arkansas there are scores of schools that

want to take advantage of these programs, but it has been such a success that they lack adequate resources.

Mr. President, I must say that that kind of attention to the needs of young people, with the decisions being made at the local level, is an important need in schools across this country.

For all of these reasons, Dr. Elders is the right person at the right place at the right time to be Surgeon General. And in the years to come, millions of children are likely to see Dr. Elders as their doctor, too. Yet she has been subjected to unremitting, unfounded, unfair attacks on her character, her views, and her record.

This confirmation proceeding has been plagued with delays from the outset. Her opponents have raised round after round of questions about her positions and her activities. Dr. Elders has patiently answered all of them, answered them effectively, and after considering all of these issues, the Labor Committee recommended her confirmation by a vote of 13 to 4.

Her confirmation has also been marked by unfair distortions, misrepresentations, and unnecessary procedural delays. President Clinton announced her nomination as Surgeon General on December 24, 7 months ago. The issue have been exhaustively debated ever since, and the Senate should take final action before we adjourn for the August recess.

Last month, Senator KASSEBAUM and I postponed Dr. Elders' confirmation hearing for a week to allow the committee additional time to review the specific allegations concerning Dr. Elders' service on a board of a bank in Arkansas. The FBI conducted an intensive investigation of this issue and has made a summary of the investigation available to all Senators.

The suggestion was made that the committee should hold a closed session on the nomination. But Dr. Elders insisted that her hearing be open and to the public. She has nothing to hide. And after the public hearing, it was clear to everyone that she had nothing to hide. During her hearing Dr. Elders eloquently answered every question fully, honestly, effectively, and repeatedly.

When the hearing concluded, none of the Senators present had any further questions. But on the following Tuesday, 198 additional questions were submitted. Never before have so many questions been submitted to a nominee in our committee. Even though many of the questions had already been raised and addressed during the hearing, Dr. Elders answered them fully again. She stayed up to 5 o'clock in the morning one night to do so. These questions were received by Dr. Elders on Tuesday, July 27 at noon, and Dr. Elders had completed all 198 answers by Thursday, July 29, a full 24 hours before the committee met to vote on her nomination.

Yet, just yesterday Dr. Elders received 36 new questions on issues that were exhaustively discussed in the hearing and also addressed in the early questions. Once again, she worked long into the night to accommodate the concerns of my colleagues, to thoroughly address all the issues, and her answers were available this morning.

Any lawyer worth his salt can think of dozens of more questions, but there comes a time when the process becomes harassment. We have passed that point on this nomination.

Dr. Elders has proven that she can answer the questions as fast as her opponents can think them up and ask them.

Mr. President, I see a number of our colleagues here. The Senator from Maryland wishes to address the Senate and also is supposed to preside, so I would be glad to yield.

I see my colleague from Kansas here.

Mrs. KASSEBAUM. Mr. President, I wonder if the Senator will just yield for 2 minutes, if that much?

Mr. KENNEDY. I am glad to yield to the Senator.

Mrs. KASSEBAUM. Mr. President, I support the nomination of Dr. Elders, and I will be speaking later. But I would just like to correct a statement made by the Senator from Massachusetts, the chairman of our Labor and Human Resources Committee, in speaking about delays.

They were not unnecessary delays. The papers on Dr. Elders did not come from the administration to our committee until July 1. We then were on a July 4 recess and did not come back, I believe, until July 11.

So we moved in an expeditious manner after once the papers were here.

There were some additional concerns which Senator KENNEDY and myself both joined together in questioning the FBI to take a look at some concerns that had been raised with the office of the Comptroller of the currency.

So, I would just like to point out, and I appreciate the Senator from Maryland yielding, that I believe the committee has moved in an expeditious manner once we received the papers and once we were able to answer some of the questions that had been raised that we felt were important to answer before the committee hearings started.

I yield the floor.

Mr. KENNEDY. Mr. President, the Senator from Kansas is quite correct in her reciting the facts. But she did not mention the fact that there was objection by the chairman of the Republican Policy Committee to allowing our committee to have an opportunity to meet on Friday. We went ahead after the Senate completed its business in the late afternoon. Quite frankly, I think the nominee was entitled to be able to address the membership in attendance that morning, rather than having an objection to the committee meeting, using an arcane parliamentary process and procedure. The hearing was going to be available via C–SPAN to millions of interested Americans.

I think that kind of parliamentary maneuver and procedure is available to the Members, and we are very understanding of that. Also, I want to express, certainly, the position that the Senator from Kansas was not involved in this in any way whatsoever, nor do I believe any of the Republican members of our committee were involved.

But, nonetheless, those individuals who have expressed vocally in the press, and to the membership here the strongest opposition to this nomination, exercised that parliamentary device. I think it was unwarranted and an unjustified delay. I think Members can make a judgment whether it was or was not.

Finally, I would just say that we had a number of other nominations earlier this week. We approved Dr. Payzant; we approved Ellie D. Acheson to the Justice Department; we approved Sheldon Hackney to head the NEH, all of which I think were enormously important. I am very hopeful we would permit Mr. Dellinger to move ahead and be approved, as well. I believe we will be accommodated.

But at some point, somewhere, when we have an individual who has been subjected to the kind of, I believe, harassment, certainly in terms of the questions, repeated questions, that have been filed with the committee, and I think that that individual is entitled to some form of judgment.

I would be glad to yield to the Senator from Maryland.

I see the Senator from Indiana wants to speak.

What I would like to do, if we can let the Senator from Maryland speak, and then I would summarize very briefly my final remarks.

I see a number of our colleagues would like to speak, as well.

I yield the floor.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Ms. MIKULSKI. Thank you, Mr. President,

I rise in enthusiastic endorsement of the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States.

I want to acknowledge that the tradition of the Senate is that usually we alternate between Republican and Democrat. I thank our two Republican colleagues on the floor for allowing me to speak. I will be relieving the Chair at the designated time of 10 o'clock and, therefore, thank everyone for allowing me to complete my remarks now.

Mr. President, I am very pleased to express my full support for the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States. I

69–059 O—97 Vol. 139 (Pt. 13) 18

cannot think of a more qualified choice to protect the health of the American public.

Mr. President, Dr. Elders has a long and distinguished record of achievement that makes her very qualified to become the top health official in the United States.

I am not sure how many people are aware that Dr. Elders career in public health began as a commissioned officer in the U.S. Army.

She served her country for 4 years—staying 1 year beyond her original obligation.

During those 4 years, she worked as a physical therapist at Brooke Army Medical Center to try to make up for a shortage of physical therapists at that time.

Dr. Elders' military service not only gave her the opportunity to serve her country—it gave her an opportunity she otherwise would not have had—to go to medical school. Like so many Americans at that time, she earned a GI bill. And that GI bill paid her way through medical school.

Now that is what this country is all about. You help America and America helps you. Dr. Elders helped veterans to get well and on with their lives. And as a veteran—I would say our Veteran of the Year—she went on to fight new wars against disease and poverty.

Dr. Elders had a vision of a future few women of her generation could imagine: To be a doctor.

She told me when we spoke last week that it was during her time in service to this country that going to medical school really became a dream for her. And how lucky we are. Because it was in medical school where she began to focus on what has become her great compassion and life's work—to improve the health of this Nation's children.

That is why she became a pediatrician.

Dr. Elders is a special kind of pediatrician. She is a pediatrician with perspective. While she treated one child at a time in her doctor's office, she was developing a plan to help all children, especially poor and minority children be healthy.

She has shown that in her 20-year clinical practice career during which she became one of the foremost experts on juvenile diabetes and growth problems.

Dr. Elders has demonstrated over and over again a unique capacity to combine new ideas for public health with an exceptional understanding of medicine.

But she does not stop with words and rhetoric. She turns these ideas into action. She reaches out to children and families and provides them medical and preventive services where they are—and where they are most likely to get them. And it is this that has caused the most controversy.

Dr. Elders has won the strong backing of the community for her efforts. She has built public health services from the ground up in Arkansas—through the state and county departments of health, the churches, the schools, organizations like the YMCA's, and even with business—Arkansas will be a model for our Nation. She is trusted because she knows what she is talking about.

Mr. President, many of my colleagues are not aware that Dr. Elders is also an exceptional scholar. As a full professor of medicine during 11 years at the University of Arkansas Medical School she taught courses—practiced medicine—and published over 150 articles on important developments in pediatrics.

Her programs to end teen pregnancy; reduce infant mortality; improve the well-being of children and families are all based in science.

Her victories fighting disease are too plentiful to recount.

But it is no wonder that President Clinton chose Dr. Elders when he was Governor to head the Arkansas Department of Health. And it is no wonder that President Clinton has asked Dr. Elders to move to Washington to become this Nation's chief medical officer as the Surgeon General of the United States. Dr. Elder's experience as a scholar, innovator, and veteran will serve well in her new role. Because Dr. Elders is veteran of many wars.

She started her career in health in the U.S. Armed Forces. She spent countless years in the trenches fighting to improve the public health of Arkansas. And now she will be bringing with her all that experience and wisdom to serve our country once again.

Mr. President, I believe Dr. Elders has the proven ability to get people to pull together to improve public health. I can think of no more qualified candidate.

I urge my colleagues to give their support to this remarkable nominee for Surgeon General.

Mr. President, I ask unanimous consent that the statement that Dr. Elders gave before the Committee on Labor and Human Resources on which you and I serve and at which she testified about herself, her background, and her navigational chart she would like to pursue as Surgeon General be printed in the RECORD.

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

STATEMENT OF M. JOYCELYN ELDERS, M.D., BEFORE THE SENATE LABOR AND HUMAN RESOURCES COMMITTEE, JULY 23, 1993

Good morning!

Mr. Chairman, Senator Kassebaum and members of the Senate Labor and Human Resources Committee, it is a great honor to appear before you today as President Clinton's nominee for the position of Surgeon General. I want to thank you for taking time from your busy schedules to meet with me during the past few weeks. I appreciate that opportunity and look forward to talking with those of you I have not yet met.

Before proceeding further, I would like to take this opportunity to thank my dear husband, Oliver Elders, and all of my family and friends, many of whom are here today, who have supported me throughout my career, and particularly, for their support during the past six months. Many say I am a lightning rod. Please know that they have been my thunder.

I appear before you today at a time when our entire Nation is facing great challenges in public health. AIDS, violence, teenage pregnancy, a new strain of tuberculosis, low immunization rates all indicate we have not done a very good job at selling healthy lifestyles in this country. I believe the only way to heal our Nation is through prevention. Prevention requires education. If confirmed, I would make my utmost goal the education of our people, all our people, on how to stay healthy.

I have some personal and professional understanding of these challenges that I would like to share with you.

First, I am the oldest of eight children. I had never seen a physician prior to my first year at college. One of my earliest memories concerning the lack of health care was my four year old brother, who had a ruptured appendix and was taken to the doctor more than ten miles away on the back of a mule. His abdomen was lanced, a drain placed, and he was sent home. I have heard my mother scream during difficult child deliveries, without any medical help. I have seen bright young people all over this country surrounded by social problems impacting health such as drugs, alcohol, violence, homicide, suicide, AIDS and teenage pregnancy. My experience has led me to know first hand many of the programs administered by the Public Health Service and other Federal agencies.

Second, I know about taking advantage of opportunities. The United Methodist Church helped me reach the first rung of the ladder that enabled me to be here today by providing a scholarship to Philander Smith College at age fifteen. After college, I enlisted in the Army and became a physical therapist. Following my service years, I attended medical school on the G.I. Bill and after completing my medical training became a board certified pediatric endocrinologist. I know the importance of providing opportunities for our children today.

Third, as a physician in public health clinics and at the University of Arkansas School of Medicine, I have been the provider of many of the services supported by public health programs.

Fourth, I am a teacher. For over twenty years, I have been on the faculty in the Department of Pediatrics at the University of Arkansas School of Medicine.

During my medical career, I was a National Institutes of Health career development awardee. I served on NIH study sections, advisory committees for both the NIH and the FDA, and, as a consultant to or as a member of advisory committees for many of the programs sponsored by the Public Health Service. I am an experienced researcher having authored many articles on hormonal growth disorders in children. I appreciate the need to have good scientific facts to back up conclusions.

For the past five and a half years, I have been an administrator at the State level as Director of the Arkansas Department of Health. Last year, I was honored by my fellow health directors when they elected me President of the Association of State and Territorial Health Officers (ASTHO).

Finally, I am a coalition builder. Since becoming the Director of the Arkansas Department of Health, I have spent a great deal of

my time, recruiting the help of churches, schools, civic organizations, judges, businesses and local communities. I realized that I could not do the job alone. I needed to mobilize all of the resources available in our communities to help save the most valuable resource we will ever have, our human capital. I do not believe that we can dictate from above what local communities need to do to solve the public health problems we are encountering today. We must empower each community to design their own solutions.

As a result of my background, education, training, and experience, I have become a strong advocate for programs that will strengthen families, reduce risky behaviors, improve health and enable children to become healthy, educated, motivated and to have hope for the future. Far too many of our children have become members of what I call the 5-H Club—hungry, healthless, homeless, hugless, and hopeless.

I would like to explain what I am about. But before I do that, I would like to address some issues about me that have been raised.

I am about early childhood education to help children get a good start in life. Only 18% of Medicaid children in Arkansas, the poorest of the poor, have the opportunity to attend Headstart. We know that early childhood education is cost effective and a preventive measure that reduces the likelihood that such children will end up as drop-outs, in prison, or as teen parents.

I am about—and always have been about—comprehensive health education from kindergarten through the twelfth grade. Comprehensive health education means age-appropriate health education programs which include information on: self esteem, alcohol and substance abuse including tobacco, nutrition, exercise, violence prevention, AIDS and human sexuality. It means being healthy and feeling good about yourself. Comprehensive health education teaches children to take care of themselves. Our children deserve that chance.

I advocate educating our parents so that all will know how to instill in their children the courage, strength and perseverance to meet the challenges of growing up. We do not teach parents how to be good parents. Because they do not want to do anything wrong, too often some parents simply do nothing when it comes to providing sound, solid direction and guidance for their children.

I believe we must teach our young men to be responsible. Children being born today need all the help they can get to succeed in this world—including two nurturing parents when possible. They deserve to know and receive support from both parents.

I am about comprehensive school-based or school-linked health services which provide primary preventive care for children at or near where they spend most of their day, in school. In Arkansas, it was my policy (which was later codified) that the local community and the local elected school board would decide if they wanted a clinic in their school and what services to be provided in the clinic. Only four out of twenty-four clinics in Arkansas offer contraceptives on site. Even in those clinics, the parents must sign a release statement before their child can receive family planning counseling and contraceptives from the clinic.

I believe we must offer our bright, young people hope for the future by providing scholarships to those who stay out of trouble and do well in school so they can attend college. It is far cheaper to send them to college than to send them to prison.

Finally, I am about improving the quality of life of all Americans by:

preventing chronic and infectious diseases, including cancer, heart disease, hypertension, tuberculosis, and AIDS;

reducing infant morbidity and mortality;

eliminating the serious disparities in health problems that minority groups experience;

preventing and reducing the toll of injuries and disabilities in our society;

improving womens' health; and

providing care and services for our elderly so they can live in dignity and comfort during their final years.

As Surgeon General, I will be a true advocate for the improvement of health in America, a strong dedicated leader for the U.S. Public Health Service Commissioned Corps and an effective representative for the Public Health Service.

If confirmed, I am excited about commanding the PHS Commissioned Corps. What doctor wouldn't be excited about working with over 6,500 highly-trained and experienced health professionals? The Commissioned Corps has played such a key role in addressing the public health threats of the day—whether they be polio, AIDS, floods or hurricanes. I commit to you that, under my leadership, the Corps will continue to be a vital force in protecting the health of America.

Mr. Chairman, and members of this committee, I want to change the way we think about health—by putting prevention first. I want to change the behaviors and attitudes of Americans by promoting programs and policies which will enable us to be responsible for our own health. I want to be the voice and the vision for the poor and the powerless. I want to change concern about social problems that affect health into commitment. And, I would like to make every child born in America a planned, wanted child.

Should I be confirmed, I would like to work with you and all America to develop an action plan to improve the health of our country. To me, it is not enough to just reform the health care system. We will never have a large enough budget to address all the health care needs of our citizens if we do not start thinking prevention and taking personal responsibility for our health.

I am a hard worker. I am willing to give my time and my talent. We have a big task before us, and I hope you will see fit to make me part of your team.

I will be most happy to respond to any questions.

Ms. MIKULSKI. Thank you, Mr. President.

I want to just share with my colleagues two important conversations that I had with Dr. Elders, one in my own office, and the other in the dialog of the committee hearing that we held on the confirmation of our distinguished nominee.

When Dr. Elders came into my office, we greeted each other with enthusiasm and her usual energy and talked immediately about what we had in common—we were both about the same size; we are about the same age.

And as we recalled our youthful educational experiences—she from the South and I from the Northeast—we recalled that, as we grew up, we grew up in an atmosphere of segregation, and that we lived in our young adult lives through the most enormous actions and passions that this century probably presented itself: To see not only the end of the cold war and the Berlin Wall come down, but that to live through other types of civil actions in our own country in which we watched, through Presidential leadership and congressional support, the walls of segregation come down and create an opportunity structure in the United States of America.

Dr. Elders recounted for me the days of her own poverty-stricken youth, in which she herself did not have access to health care until she was a freshman at college; the fact that she never dreamed that she could go to the college but, because of the United Methodist Church that reached out to talented, young leadership in the African-American community, that reached out and gave Joycelyn Elders a scholarship, she was able to leapfrog over so many of the obstacles of a young African-American woman in that time and that place in history.

And, yes, she did leapfrog over in order to be able to take advantage of an educational opportunity. But then she never forgot where she came from. Because when she moved ahead, she remembered those who had been left behind, and then devoted her life to seeking an opportunity where she could be a healer in a world that she felt desperately needed healing.

She talked about why she chose the field of physical therapy and why she went in the Army. She went into physical therapy and joined the Army because it was an opportunity in probably what was a more desegregated environment in our society where you could be recognized for talents and abilities—not because of what you looked like, but because of what you could do.

She distinguished herself as a member of the U.S. military. She was a physical therapist in the U.S. military. And on coming out, she took advantage of the GI bill and went to medical school. She became a board-certified endocrinologist.

Mr. President, talk about denying stereotypes. My, gosh, the field of endocrinology is one of the most sophisticated fields of medicine in which one needs to be not only a clinical practitioner but one needs to be a scholar.

And she took those talented hands that God gave her, that great mind, and that great heart and put them to work. And when one looks at what she has done, she has not only been a physician, but she has been a scholar.

She has received an NIH award. She served on a variety of NIH study sections, advisory committees for both the National Institutes of Health and the FDA. And she has been a consultant to members of advisory committees for many of the programs sponsored by the very Public Health Service which we hope she will lead.

Her experience has been in fields like juvenile diabetes and hormonal growth disorders in children.

I think, Mr. President, when one looks at what has been said about Dr. Elders, one can see what her scholarship and her commitment to service has been.

When I asked Dr. Elders what she thought of this confirmation process, she said:

Senator, it hurts. You think you know who you are, you think you know what you have done, and the President of the United States calls you and you know what you want to do and what more you can do for this country.

But she said:

When you go through this nomination process, something happens. In speeches I have made, one liners are taken out of context; other kinds of aspects of my life. I feel like I have been made a caricature of what I truly am.

So I said:

Well, Dr. Elders, tell me who you are and what are you most proud of.

She said:

Senator, I am most proud of what maybe only shows up as one line on my resume. Yes, I am proud that I am a doctor. Yes, I am proud that I led the Arkansas Health Department. But I am proud that I am married to a fine man, who is a basketball coach in our local community. And between us both, we have raised two swell, smart, community-dedicated, God-fearing young men.

She said:

I know what it is like to be a wife and a mother and to take young African-American men, who are often looked at as having no hope and no future, and in my own family raise those boys up with my husband. But with that, I also want to reach out to others regardless of their ethnicity or the way they pray or what they believe.

We want people to have hope and we want people to have responsibility. We want people to embrace the values in our society. That is what I tried to do in my own family.

She said:

My own family does not recognize what is being said about me, Senator.

I said:

In what way, Dr. Elders?

She said:

We are church-attending, God-fearing, Methodist hymnal-book-singing members of a church. My own brother is a minister. He has chosen the healing of the soul while I have chosen the healing of the body. When they hear about me and what they say I am, my family says, "That is not Momma; that is not my sister." And, certainly, that is not me.

I think that says something. I think that says something.

The other thing she said is:

I am a coalition builder, Senator. They had me up there sounding like I am going to say the most radical things, the most offensive things, the most coarse things. That is not me. Maybe when I am in a classroom, I use a one-liner to get the kids' attention. Maybe sometimes in my enthusiasm, I have been a little flip. If only you could reel that back. But Senator, you know; you have given speeches. How do you feel?

I said:

Believe me, I know there are some words I would like to take back.

But she said:

Do you know what? What is continually being missed is that I am a coalition builder. In my own home State, everywhere I have worked, in everything I have done, I have tried to bring people together out of mutual need. When they came together out of mutual need, they got mutual respect. And then, when they got mutual respect, we went on to not only solve the problem, but to build a sense of community and relationship that endured and was sustained long beyond the problem for which we came together in the first place was solved.

I am a coalition builder. And you know that right now, in the United States of America, we need people who can reach out across those lines that normally divide us to bring us together for coalitions.

I thought that was pretty powerful. And she said:

I am not this caricature they want to make me out to be. I am a serious person, dedicated to the public service. Regardless of what judgment the United States Senate makes about me, I am willing to stand before my own family, feeling I have served them well, and to stand before my own Creator and feel I have served him well, as well.

I will tell you, I like a Surgeon General who talks like that. There is more I could say about Dr. Elders, but I wanted people to get that flavor.

Then later on, when we were at the hearing, in terms of the confirmation hearing, I raised some very specific issues, because we want a Surgeon General who, yes, has identified the fact that she wants to make children her number one issue. But I asked about aging. I chair the subcommittee on aging.

Dr. Elders, without missing a beat, talked about how she wants preventive health services not only for children but for elderly. She believes that health insurance, when we use the term long-term care, it is not a synonym for nursing home reimbursement but should be a synonym for a long-term care strategy, a continuum strategy that keeps people out of nursing homes and enables them to stay in their own community. She has supervised and administered those services in her own community to do exactly that.

At the same time, I asked her about Federal emergency management. I chair the subcommittee that funds FEMA. I said: "The Midwest is being flooded; public health problems are going to be at an enormous level.

She outlined how she worked with the Arkansas Federal Emergency Management System so when Arkansas was hit by floods, they could have a public health strategy: Restoring clean water, safety for the kids, immunization against tetanus, at the same time delivering the mental health services that come when you lose a community and lose your job.

I think that is a pretty versatile Surgeon General to be. And she has shown she can be on the firing line, as well as somebody who I believe can hold her own on Night Line.

So, Mr. President, I have come to the conclusion that I believe Dr. Elders is a seasoned clinician, a distinguished scholar, and she also brings character and she brings commitment. She knows how to deal with adversity without herself becoming a victim.

I think she will be inspirational. I think she will be motivational. I think she is the right Surgeon General at the right time at this point in American history.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. COATS. Mr. President, I will be happy to yield to the Senator from Kansas.

Mrs. KASSEBAUM. Mr. President, I think the chairman and I, the Senator from Massachusetts, would just like to discuss for a moment that the Senator from Indiana and the Senator from Oklahoma wish to speak briefly, I think tonight, and there are many of us who wish to speak tomorrow, if that is satisfactory with the chairman of the committee. Can we reach an agreement there just be a few comments tonight, and the rest of the time tomorrow will be taken for a number of us who do wish to speak? Many have already gone home this evening.

Mr. KENNEDY. I had further remarks myself. I plan to be here for a period of time. I know my colleague from Pennsylvania, Senator WOFFORD, does as well.

I think all of us understand we are in sort of the final time of the Senate. I think most of us—myself included, up to about 45 minutes ago—thought that on the supplemental there were six more amendments that would take us well into the night. Some of the Members are here, and I will be glad to stay here as long as any of our colleagues, members of the committee or others, are interested in making whatever comments they want to. I will be glad to engage them in any discussion or further examination of the issues.

I know there are Members who wish to speak. I intend to be here. I will be glad to enter the discussion, debate, and do the best we can to respond to some of the questions, and proceed in any way. I have some additional remarks, but I welcome accommodating the other Senators with whatever comments they have.

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Indiana.

Mr. COATS. Madam President, I appreciate the remarks of the Senator from Massachusetts. I know there are a number of Members on the Republican side who wish to speak to this nomination, many of whom were somewhat caught by surprise, as we all were, when the emergency flood relief bill moved more quickly than we had anticipated when the remaining amendments were either dropped or accepted.

Therefore, a number of Members have expressed the fact that they were not prepared to come to the floor this evening but wanted to make sure they reserved the right to do that tomorrow. I assume, from the remarks by the Senator from Kansas and the Senator from Massachusetts, we can assure them they will have ample opportunity to speak to the issue tomorrow.

I personally do not intend to take a great deal of time this evening. There are a number of areas I would like to discuss, questions and issues I would like to raise regarding this confirmation. I will reserve most of those until tomorrow.

I do, however, want to address the question relative to the delays of this nomination. The nomination was not sent to the Senate, or sent to the committee, in December. While the President stated his intention to nominate Dr. Elders to the position of Surgeon General in December, he clearly indicated that he would not be sending that nomination to the Senate until late spring or early summer.

In fact, the nomination was sent to the Senate on July 1, just prior to the time of the Senate's Fourth of July recess. So on returning from that recess, well into the second week of July, we have had only 3 weeks of time expire since then.

In that 3-week period of time, the Senate Labor and Human Resources Committee has moved, I think, with more speed than it normally moves on these types of issues. It has been remarkable in terms of how quickly we have moved on a nomination of an individual who has generated as much controversy as has Dr. Elders.

I would simply point out to my colleagues that a former Surgeon General nominee, Dr. Everett Koop, was delayed for 9 months in this Senate before he was confirmed to his position as Surgeon General. So compared to Dr. Koop, the timeframe for Dr. Elders is lightening quick.

Here we now are in the last week of the Senate's session before the August recess on a Wednesday evening at 10 p.m. with the majority leader suddenly moving at 9:20 or 9:25, or so, to this nomination, having debated the important issue of emergency flood relief, which has just passed this body, and in the middle of the biggest issue that this President and that this administration has faced in its 7 months of tenure, and that is the budget reconciliation bill or, as we call it on our side, President Clinton's tax bill. This has captured the attention of the media, of the Nation. All of the focus is on what the Senate and what the House are going to do on this bill.

We have yet to see the bill. We have yet to discuss the details of the bill. The Nation has focused its attention on it this week. The common knowledge here is when that is disposed of, we will break for the August recess. I do not really understand what the necessity is to insert this nomination at 10 p.m. on a Wednesday evening into this process and rush to judgment on this particular nominee.

Some have said that there has been an attempt on the Republican side to use procedural devices, whatever procedural devices are necessary, to block this nomination. I know of no Member on the Republican side or, in fact, in this United States Senate, that is intent on filibustering the nomination of Dr. Elders.

I know of several who feel that given Dr. Elders' experience as public health official for the State of Arkansas, given her statements that have raised considerable questions in a number of people's minds relative to her positions on a number of issues, given questions that have been raised regarding her family's and her own personal financial dealings and her financial dealings as a director of an Arkansas bank, given her performance as Public Health Director of the State of Arkansas, I know a number of Senators who have said there are a number of questions that ought to be raised and a number of questions that ought to be answered and we ought to take a thorough look at this nominee, as we do with every nominee.

I serve on the Armed Services Committee, and we have been attempting to confirm individuals, names submitted by the Department of Defense and by the President for months. While we have been attempting to expedite that, it is not outside the realm of the usual in terms of the way the Senate moves on these nominations.

For some reason, which I cannot fully explain, there is a rush to get Dr. Elders nominated. Some suspect the lapse of time between tonight and when the Senate again resumes its business in the second week of September, will shed light on Dr. Elders' activities that perhaps might jeopardize her nomination. I have no knowledge of that. I have no knowledge of any information out there that would do that. But it is somewhat of a mystery to me, to this Senator, that we have to rush this nomination through. I think it is incumbent on us to raise the issues, address the questions, attempt to seek the answers to many of the very serious concerns that have been raised by this.

This is not a matter of passing interest to my constituents. In my 4½ years in the U.S. Senate, I have never seen the kind of opposition and the ratio of opposition to any issue or to any nomination as to this particular nomination. Our phones are flooded with calls from constituents from Indiana in a ratio of 100 to 1—out of 100 calls, 99 oppose the nomination of Dr. Elders and 1 supports it.

I have never had an issue that has come close to that. We have never had a nomination before us—and we have had some controversial nominations before us in this body since my time in the Senate—that have even come close to this. It is of great interest to the people I represent.

I think it is my duty as their Senator to ask the questions that they are asking and to seek the answers that they are seeking, because we are nominating here an individual who speaks for the Nation on public health concerns; that is, in my opinion, an individual who ought to attempt to form a consensus, a person who ought to attempt to educate, a person who ought to attempt to bring us together as a people in acknowledgment of serious public health concerns and devise a strategy to address those concerns.

To put it mildly, Dr. Elders' tenure as public health officer of the State of Arkansas has been fraught with considerable controversy.

This woman has much to be commended for in terms of her background, in terms of her overcoming difficult obstacles in her life, and I admire her efforts in doing so. But in her tenure as public health officer for the State of Arkansas, she has said and done a number of things that have raised some very serious questions in the minds of my constituents, in this Senator's mind, and I think it is important that we spend a considerable amount of time addressing those. This is an important position. It is one that I think is important to this Nation, and I think we would be shirking our duty if we did not carry that type of importance.

Madam President, I will be addressing a number of those issues as we move forward with this nomination. I look forward to the debate we will engage in and, hopefully, we can get the answers to some of the questions we have. With that, I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, I will take just a very brief moment to respond, because others want to speak.

As was mentioned in the presentation, and in other earlier comments, Dr. Elders' nomination was effectively announced some 6 months ago. Since that time, as the institution proceeds, individuals have been gathering information about the nominee. So there has been plenty of information or time to develop it.

I just remind my good friend—and he is my good friend—we received the nomination of Judge Ginsburg on June 26, effectively 1 week before we had this nomination. She was reported out of the Judiciary Committee 1 day before we reported out the nomination of Dr. Elders. At that time we announced that we expected to have a final resolution of it, and we approved her yesterday. In that amount of time we had a

Supreme Court nominee, which is probably one of the most important decisions made by any President.

We would welcome the opportunity to agree to the same amount of time that this institution spent in considering an outstanding candidate for the Supreme Court, Judge Ginsburg, to debate the Surgeon General, the President's Surgeon General, who is going to deal with public health issues.

I did not hear any of our colleagues saying we were rushing Judge Ginsburg. With all the importance of her nomination, the Senate was able to consider a wide variety of positions that she had and her views about the Constitution and make a judgment. I certainly do not question that Dr. Elders has made statements and comments that people will agree with, and people will differ with. She has taken public health policy decisions that people will agree with and differ with. But we do feel that there should be time for consideration of her nomination. I know there are differences on that issue.

I yield the floor.

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. NICKLES. Madam President, I rise to make a few comments tonight. One, I was not aware this was going to come up tonight. A lot has been said about delay. I will make a couple of comments because some have stated that I am partially responsible for some of those delays and, indeed, I am and for different reasons.

I will tell my friend and colleague from Massachusetts, if Judge Ginsburg had made some of the same statements that Dr. Elders has made, she would not yet be confirmed for the Supreme Court. If she had taken similar radical positions as Dr. Elders, I can tell the Senator from Massachusetts that Judge Ginsburg would not yet be confirmed. We would be here for a long time. I will also tell my friend from Massachusetts, and I heard part of his opening statement when he recited many of the achievements that Dr. Elders has made and her family background, her rising from poverty, I congratulate her for that rise. I congratulate her for her history. I am proud of what she has been able to accomplish. It is exciting to see that kind of success and to see that mobility. So I compliment her for that.

That is not the reason why I oppose her nomination.

I will go into length tomorrow and probably speak for some time tomorrow about why I oppose her nomination. Have we sought undue delay? I would say no.

As both the Senator from Kansas and the Senator from Indiana have stated, this nomination did not come to the Senate until July 1.

I have heard some people say, well, wait a minute. Someone objected to the committee even having a hearing on her while the Senate was in session.

Let me just talk about that for a second. A week earlier I had requested that the committee postpone the hearing on Dr. Elders, and the committee did postpone the hearing on Dr. Elders because the Senator from Massachusetts and the Senator from Kansas wanted to have additional information. There were allegations raised concerning impropriety dealing with banking laws and so on, and they sought and solicited—and correctly so, in my opinion—additional information. And so they postponed the hearing. I think they were right.

I might also mention that there were serious allegations made, or at least some statements made in the paper concerning distribution of defective condoms just a couple of days before the hearing that was actually held.

We did not have answers. I requested information. I requested information from the FDA. We did not have that. As a matter of fact, I requested that FDA information on July 6, and I still do not have all the information from FDA. We are getting it day by day now. But certainly we did not have it prior to that hearing, and this Senator, for one, thought we should. We also did not have an FBI report. The FBI did conduct intensive investigations but there was not a summary report. It was not available to Senators, and, frankly, it should be prior to congressional hearings so individuals can ask questions if they feel that information is pertinent to the nominee.

I also will tell my colleagues I had stated I had no objection to the committee meeting that day as long as they would agree to come back and meet at a later date if additional issues were raised from some of the investigation. The Senator from Massachusetts certainly had the right not to agree to that second day, but, likewise, I had a right to postpone the hearing.

Madam President, I will just make a couple comments. Some people might say, well, why would you oppose a person who has risen from poverty in a neighboring State of mine.

I will just say it is not a pleasurable thing, and I will certainly tell my colleagues it is not because I am a Republican or because I am chairman of the Policy Committee or any of the above. It happens to be that I happen to be very opposed to some of the statements that she has made, and I think her statements are disqualifying.

Maybe I am wrong. I may be in the minority. But I happen to be a father. I happen to be a parent. I happen to have four kids. And when I read some of the statements that Dr. Elders has made—and some of the statements I will go into at length tomorrow—I find them quite offensive, quite offensive to people who oppose abortion who have been characterized as—this is Dr. Elders' quote, not DON NICKLES' quote—"nonChristians with slave master mentalities."

That is a very offensive statement. We will talk about that tomorrow. I am offended by the fact that when she was talking about prolifers, "Well, they need to get over their love affair with the fetus." Well, we will talk about that tomorrow.

As a parent, I am bothered by the fact that she would make a statement that teenage girls should not go out on a date unless they carry a condom.

I still have two teenagers. I have two kids that are in their twenties. But that is not the kind of advice I want my kids to receive from anyone and certainly not the Surgeon General using the bully pulpit for that type of advice to teenagers.

Or comments such as, "Hey, we teach our kids what to do in the front seat. Now we need to teach them what to do in the back seat."

No, thank you. That is not the kind of advice that I want my teenagers to receive from the Surgeon General.

Or when Dr. Elders, on June 19 made some kind of comments, talking about how do you help crack-addicted prostitutes, she said, "I would hope that we would provide them Norplant so they can still use sex if they must to buy their drugs."

I do not see that as being a responsible statement by a Surgeon General nominee either, and we will discuss that tomorrow. And that does not even go into some of the improprieties that have been alleged, which I have been trying to get some information about—not trying to get information through the press but just trying to get information, about the distribution and lack of public notification of defective condoms. We are still trying to get some information on that.

So when I have told people I do not really see how we can complete this nomination by the end of this week, I am being very sincere. I am not saying I wish to filibuster it. I have no desire to filibuster it. I do have a desire to get the information, to find out the facts, to find out if in some cases were laws broken and if so, were the laws broken with her knowledge.

So I think we need to get some answers, and I do not have all the answers yet. I do not know that we are going to have all the answers by tomorrow. I do know that we have one of the largest tax increases, if not the largest tax increase, in the history of our country before us. I think we need to talk about that. I think we need to talk about what is in that package, how it is comprised. I know that the President of the United States said it had more spending cuts than tax increases.

I do not think that is the case. I do not believe that is the fact. I think we need to get the facts out on that package before we vote on it—probably the

most important vote we will be casting this year, maybe this Congress, maybe for several years.

And so I personally would like to spend more time on the tax bill. I would like for the American people to know what is in the tax bill, and what it is comprised of and what kind of special deals were made and not made and so on. So I would like to spend most of my time on that tomorrow and Friday, frankly.

The majority leader has pulled this nomination up, and I will just tell the majority leader and my friends and colleagues that we have extensive comments and questions that will be raised, that need to be discussed, that the American people need to know about before we vote on this confirmation.

I will also tell my colleagues that there are a lot of Senators who wish to speak on this nomination. It is not just the Senator from Oklahoma, the Senator from Indiana, or the Senator from Kansas. But I think there are significant questions and comments that will be made on this nomination, and I really do not see how it would be possible to complete this nomination by this week's end.

Madam President, I yield the floor.

Mr. KENNEDY. Madam President, I do not intend to speak long.

We went into those matters that were raised by the Senator from Oklahoma in the course of the hearings. Many of those matters were raised both in the course of the hearing and as written questions, and they have been responded to. I think it is important in terms of the full record that any of those comments be put in the context in which they were used and the circumstances in which they were used.

I am informed by staff that the remaining information that has not been completed in response to the Senators requests has been—specific information that has been requested of U.S. attorneys. We are inquiring now whether that is appropriate for release. And in terms of the sales information dealing with one of the condoms, which we understand from the FDA is a trade secret, we are glad to share that with the Members. I am more than glad to stipulate the number of defective condoms and get back to the debate on the issue of the health policies that were involved in that question, if that is of help.

Let me just say finally, one of the frustrating aspects of this business has been the questions that are being asked—and I will just mention some very quickly here.

Here we have Senator COATS on the question of Norplant for prostitutes during a program called "Talk Live."

You were asked what you would do with crack-addicted prostitutes who get pregnant. Your response:

"I would hope that they would provide them Norplant so they could still use sex if they must to buy their drugs and not have unplanned babies."

Would you recommend we use Federal funds for this purpose?

It goes into a long description of exactly what her position is. That is a quote on July 29.

Senator NICKLES on August 3: "Would you recommend use of Federal funds for the purpose of providing Norplant to prostitutes?"

Here is Senator COATS on July 29:

Since you have on occasion stated you oppose restricting a woman's access to abortion for reasons other than "medical necessity" would you support a woman's right to terminate her pregnancy simply because the child was the wrong sex? Do you consider this a legitimate form of family planning?

She responds: "I have never considered abortion as a means of family planning."

Continuing, here is Senator NICKLES on August 3:

Do you believe the principles set forth in Roe v. Wade support a woman's right to terminate a pregnancy simply because the child was the wrong sex?

That is virtually an identical question.

Coats on July 29: "You also testified on Friday that you and other directors had voted yourselves an unsecured $230,000 line of credit."

Senator NICKLES on August 3:

1"Did you have an unsecured $230,000 line of credit"?

She goes into the full explanation. They are identical questions.

I just do not think that the nominee should have to answer the same question over and over—I think we are glad to get into each and every one of those issues. It is important that we do get into every one of those and have the full facts out. Every Member of this body should examine the record and how she responded because, as a result of her response to each and every one of the statements of the Senators from Oklahoma and her response in talking about the context in which they were used, and explaining her public policy positions. She was reported 13 to 4 out of that committee, with Republicans as well Democrats.

So all we would like to be able to do is to bring this before the Senate, so that Members do have an opportunity to review that record, and to review the testimony. We believe, quite frankly, that there will be strong bipartisan support. We are glad to get into it.

We have heard repetition of statements and comments that are, as we know, hot button issues and questions that are used out of context and continually repeated out of context. We welcome a full opportunity to have them put in context, and for the Members to effectively read her statement, and to hear her works. Leaving those out there for a period of 4 to 5 weeks is really a disservice to that individual. But we will look forward to the chance to go into those in some detail.

I see my friend from Pennsylvania is prepared to speak. I yield the floor.

Mr. WOFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. WOFFORD. Madam President, I support the nomination of Dr. Jocelyn Elders to be Surgeon General of the United States.

As the Senator from Massachusetts and the Presiding Officer, the Senator from Maryland, have stated in detail and so vividly, Dr. Elders comes before us well qualified to serve as Surgeon General. She is recognized by her peers as one of our Nation's most effective public health officials.

Dr. Elders' list of supporters for this nomination include medical and public health professionals and associations that include former Surgeon General C. Everett Koop, the American Medical Association, the National Medical Association, the American Nurses Association, the American Academy of Pediatrics, and the Philadelphia-based American College of Physicians. At last count, there were over 340 organizations supporting this nomination.

Some—and we just heard a preview from my friend, the Senator from Oklahoma—we criticized Dr. Elders for statements she has made and positions she has taken as the director of Arkansas Health Department. I do not agree with all of Dr. Elders' positions or statements, but I find this to be the case very often with people who are straight-talking and independent-minded.

Remember Dr. Koop. Dr. Koop was another straight-talking, independent-minded nominee. A lot of controversy swirled around that nomination. I did not agree with everything Dr. Koop said. But I hope we would all agree looking back now that he proved to be an extraordinarily good Surgeon General. I hope also we will agree in due course looking back that Joycelyn Elders had that same potential and became an extraordinarily good Surgeon General. In hope we all agree that the delay of many months in confirming Dr. Koop should not be repeated today.

We have had plenty of criticism, indeed, of important positions in this Government not being filled. Here is one that we can fill now. It should be no surprise that we should move forward to do so after the thorough hearing we held in which we went into, as I heard it, every single one of the items brought up by my friend, the Senator from Oklahoma.

I particularly welcome among the things that I like about Dr. Elders, her commitment, to prevention, and her statements before the Labor and Human Resources Committee that if confirmed she will make her "utmost goal the education of our people, all our people, on how to stay healthy."

She recognized that it is not enough to just reform the health care system. She added "We will never have a large enough budget to address all the health care needs of our citizens if we do not start thinking prevention and taking personal responsibility for our health."

Certainly there have been questions raised about Dr. Elders that have ranged from her financial dealings to decisions she made as the director of the Department of Health in Arkansas. But I believe she has responded with the forthrightness and honesty that are a good measure of her character. I was satisfied with her answers. She put the items we have heard into true context.

She noted when she thought she had made a mistake, and her determination to persuade and to shake people up and to stir them up and wake them up. She may not have had exactly the bedside manner that the Senator from Kansas has recommended she develop further, but she earned our respect. By a vote of 13 to 4, with a number of our Republican colleagues voting for her the Committee sent her name to this body, to this floor for action. I hope that we soon move forward to take that action.

I was satisfied with her answers. And I believe we should now move forward to vote to confirm her and end this 11th hour effort at character assassination and caricature.

As one who is working and fighting for health care reform, I believe we need a Surgeon General who will forcefully and passionately carry the message of good health to this Nation. From what I have seen of Dr. Elders and from what I know of her background and achievement, I believe she will be such a Surgeon General.

Madam President, I would like to read from, and by unanimous consent insert into the RECORD, following my remarks, several letters that I have received that illustrate the support of Pennsylvanians for the confirmation of Dr. Elders.

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

(See exhibit 1.)

Mr. WOFFORD. I might add Pennsylvania has an old tie to a controversial Surgeon General. The first Surgeon General, Ben Waterhouse, was a Pennsylvanian appointed by Thomas Jefferson. Dr. Waterhouse was quite controversial in his day.

First, let me read from a telegram from Dr. Leon Sullivan who writes:

I know her personally and professionally and have always been impressed by her commitment to the highest principles and standards. She would be a tremendous asset to the Nation in that position.

The second letter is from Alan S. Noonan, Governor Casey's Secretary of the Department of Health in Pennsylvania. He writes:

As the State Health Official for Pennsylvania, I strongly support the confirmation of M. Joycelyn Elders, M.D. as U.S. Surgeon General.

Her confirmation will help ensure that improved health status of all Americans becomes a priority of this Nation. I encourage you to support her confirmation strongly.

And from Dr. David V. Evans, a recent graduate of the University of Pittsburgh School of Medicine, these words:

As a young physician, Dr. Elders inspires me. With so many of us being trained in schools that do not teach prevention and primary care, Dr. Elders would be a role model for many students and residents to serve the people as a doctor should. I hope that I can be as strong, courageous, and influential as a public advocate.

Madam President, let us move forward and end this debate so that we can resume the important business of our Nation—passing the President's deficit reduction plan and immediately taking up the issue of health care reform when we return in September.

It is significant to me that it was a bipartisan group of Senators on the Labor Committee who voted in favor of Dr. Elders' confirmation. I again thank my colleagues, Senators KASSEBAUM, DURENBERGER, and JEFFORDS of the Labor Committee who, after listening to tough questions posed to Dr. Elders and her responses, cast their votes in favor of her confirmation. I know that a vote on this floor, on this nomination will continue that bipartisan effort. Let us not delay any longer. Let us vote to confirm the nomination of Dr. Joycelyn Elders to be Surgeon General of the United States.

EXHIBIT 1

[Western Union Telegram, July 28, 1993]

Senator HARRIS WOFFORD,
Senate Committee on Labor and Human Resources, Washington, DC.

DEAR SENATOR WOFFORD: I am writing to offer my unqualified support for Dr. Jocelyn Elders as Surgeon General of the United States. I know her personally and professionally and have always been impressed by her commitment to the highest principles and standards. She would be a tremendous asset to the nation in that position. Her primary interest has always been and continues to be the health and well being of all Americans, particularly, our youth and disadvantaged citizens. If I can offer any additional information or support in this regard, please let me know.

Sincerely,

REV. LEON SULLIVAN.

DEPARTMENT OF HEALTH,
Harrisburg, PA, July 9, 1993.

Hon. HARRIS L. WOFFORD, Jr.,
U.S. Senate, Russell Building, Washington, DC.

DEAR SENATOR WOFFORD: As the State Health Official for Pennsylvania, I strongly support the confirmation of M. Joycelyn Elders, M.D. as U.S. Surgeon General. Dr. Elders is a board-certified pediatric endocrinologist. As a professor at the University of Arkansas Medical School and researcher, she authored more than 150 scholastic articles for medical publications.

Dr. Elders tackles tough issues head on. As Surgeon General, she will refocus debate on the health care system towards prevention, which will simultaneously lower health care costs and improve the health of the nation. One of her major goals will be improving the health and well-being of all Americans, those at highest risk of illness.

As director of the Arkansas State Health Department, she has helped raise the immunization rates of pre-school children in the state and has been instrumental in attracting more health professionals to practice in underserved rural areas.

Among numerous distinctions, she has received the American Medical Association's Award for Outstanding Public Health Professional, the National Governors' Association Distinguished Service Award, and the National Education Association's Award for Creative Leadership in Women's Rights.

She currently serves on the boards of a dozen councils and commissions in the public and private sectors, including the National Institute of Medicine's Health Promotion Disease Prevention Committee and the Council on Government Affairs for the Academy of Pediatrics. As a pediatrician, a public health professional and a superb advocate for children, Dr. Elders has the determination and the ability to persuade Americans to take better care of their health.

Her confirmation will help ensure that improved health status of all Americans becomes a priority of this nation. I encourage you to support her confirmation strongly.

Sincerely,

ALLAN S. NOONAN, M.D., M.P.H.

DAVID V. EVANS,
Pittsburgh, PA, July 12, 1993.

Hon. HARRIS WOFFORD,
U.S. Senate, Washington, DC.

DEAR SENATOR WOFFORD: I am writing to you as a constituent to urge your support of the confirmation of Jocelyn Elders, M.D. for Surgeon General of the United States.

As a recent graduate of the University of Pittsburgh School of Medicine and a future family physician, I have seen, first-hand, the importance that prevention and public health play in our society. In Pittsburgh we have one of the highest infant mortality rates among black babies in the country despite an abundance of hospitals and physicians. The death of these babies is due, in part, to teen pregnancy and poor prenatal care.

Dr. Elders has dedicated her professional life to the public through her practice of medicine. She is a well known pediatrician and public health advocate. She is outspoken and strong in this advocacy. The medical community also supports her prior activities as a practicing physician and as the Director of the Arkansas State Health Department.

As a young physician, Dr. Elders inspires me. With so many of us being trained in schools that do not teach prevention and primary care, Dr. Elders would be a role model for many students and residents to serve the people as a doctor should. I hope that I can be as strong, courageous, and influential as a public health advocate.

I urge you, Senator Wofford, to enthusiastically support Jocelyn Elders as the next Surgeon General of the United States. This country needs her.

Sincerely,

DAVID V. EVANS, M.D.

The PRESIDING OFFICER. The Senator from Illinois.

Ms. MOSELEY-BRAUN. Madam President, this week the Senate has an ambitious schedule of activities to complete prior to adjourning for August recess.

In addition to considering legislation on supplemental funding for flooded

areas, appropriations for several Cabinet departments, and completing action on national service, we have on our agenda the consideration of several nominees. Many of those nominees have already come before this body.

I am here today to encourage my colleagues to work diligently to ensure that the consideration of another nominee, Dr. Joycelyn Elders, is not left behind in the flurry of activity.

I will not spend my few minutes here this evening discussing in detail Dr. Elders' accomplishments as a physician, administrator, and pioneer in the health field. I did that when I spoke in support of her nomination at this very spot on July 20.

Nor am I here to tell you what her nomination means to me and to this Nation as a candidate whose candor, knowledge, commitment, and compassion will enable her to advance the notion of prevention and healthy living to the citizens of this Nation. I did that when I introduced Dr. Elders to the Labor and Human Resources Committee on July 23.

I am here tonight to bring to the attention of this body and the American people, the tactics some of my colleagues are using to attempt to delay a vote on the nomination of Dr. Joycelyn Elders until September.

I will do my best not to have that occur, particularly when the reasons for delaying her vote are unwarranted.

Some of my colleagues assert that she is too controversial and thus wish to use the recess to generate increased opposition.

In fact, that is the whole purpose of the delay, to delay the nomination beyond this Friday or beyond the beginning of the August recess so as to have time to organize politically an opposition to Dr. Elders' nomination.

I might remind some of my colleagues that Dr. Elders was nominated by the President in December—8 months ago. Eight months is a long time to dig up dirt, if there is any to be found, and to consolidate support.

The fact is that 8 months has not been enough and they want to continue into and beyond the recess in order to consolidate support in behalf of a very narrow and, I daresay, unfair, unwarranted, and unprecedented agenda.

The bottom line is, the hearing is over, the Labor Committee voted 13–4, a large and bipartisan majority, in favor of her nomination. That committee has done its job in advising the full Senate. Issues relevant to Dr. Elders' nomination have been addressed in depth, not only at the committee hearing but also through 200 questions submitted to her on July 20 and another 30 questions submitted this week. And, Madam President, she has answered them all.

Dr. Elders has served a large portion of her life in public service—she is not an unknown. Her views have been widely publicized and she has been very forthcoming in response to all questions.

It is time now, not to begin the review of her record again, but evaluate the record that is before us and vote our conscience.

Unwarranted delays do the Congress—not to mention Dr. Elders, but also do this body—a great disservice. In this case, the relevant and appropriate information concerning Dr. Elders' qualifications have been presented and are available to anyone who would like to take a closer look.

There are some things that Dr. Elders may have said that some of my colleagues do not agree with; that is absolutely fine.

But this vote is not about whether one agrees with every single word that Dr. Elders has uttered in the many years of her career, but whether, on balance, based on her total record, one believes that she will or will not be a good Surgeon General for the citizens of this country. And that is what this vote is about, and that is what the vote ought to be about.

The problem, of course, is getting to a vote. And I believe we have an obligation to vote on Dr. Elders' nomination and to conclude this matter so that our country will have a Surgeon General.

I believe that Dr. Elders has demonstrated, throughout her career, sound judgment, integrity, and a firm dedication to improving the health of the citizens that she served, and particularly in the State of Arkansas.

I also believe that most of my colleagues in this body believe, as I do, that she would make a superb Surgeon General and are ready to cast a vote so that she may begin the important work of that position.

While I am also certain that if we were to wait until September to take a vote, her nomination would prevail, that is not the point. The point is that the Senate should not be deterred from the business at hand because some Members, a few Members, a radical minority, I would add, want to take some additional time to gather information that they hope will help consolidate a political opposition to her nomination. And that is the whole point of this debate today.

We cannot allow this to happen. The scrutiny that nominees to public office presently undergo is already painful and intrusive for the nominee and his or her family. How long should we prolong that process?

We are supposed to, I might add, Madam President, we are supposed to perform the function as the Constitution has given us to advise and consent in nominations, which means we take a proactive as well as a reactive position with regard to looking at the qualifications and evaluating a nominee to see if that person has the credentials, the qualifications, the integrity, and the heart to fulfill the post for which they are nominated.

Advise and consent though, Madam President, does not mean an inquisition. I daresay this process, the way that Dr. Elders is being treated and the way, quite frankly, the advice and consent has been perverted, in my opinion, turns it into an inquisition. And that demeans not only the nominees, but it also demeans this Congress as a body and demeans our Nation.

Dr. Elders has already weathered the examination. Her record has been on display for all to evaluate for some time now. I believe the time has come to consider her nomination and I call upon my colleagues to review Dr. Elders' record and to vote on her nomination this week. We must stand together to reject any delay—any further delay—in the consideration of this nomination.

I am willing to stay here as long as it takes. On that point, I am not alone.

In closing, Madam President, I say about this nomination, we are to go in recess at the end of this week. I believe it is altogether appropriate and we can find the time; we certainly find the time to take up matters that are important to the work of this body, that are important to the work of this country. Dr. Elders' nomination is not less than that.

This country needs a Surgeon General. We need to have the direction from that office that she can provide, and she is anxious to provide.

I join her in support of moving this nomination along, having a vote conclude this week, and having her confirmed to be the next Surgeon General of the United States.

NOMINATION OF DR. JOYCELYN ELDERS FOR SURGEON GENERAL OF THE UNITED STATES

Mr. PACKWOOD. Madam President, I rise today to express my support for the nomination of Dr. Joycelyn Elders to be the next Surgeon General of the United States.

Dr. Elders' professional qualifications are remarkable. Although work on her family's farm kept her from attending school full time, she graduated from high school as valedictorian at the age of 15.

After attending college on a full scholarship, she graduated magna cum laude and then went off to the Army so she could attend medical school on the GI bill.

A pediatric endocrinologist, Dr. Elders has experience in every phase of the medical field: She has been a professor of medicine, a medical researcher, a practicing physician, and the director of the Arkansas Department of Health.

Her additional civic and professional activities are too numerous to mention.

In spite of her remarkable personal story, perhaps an even more important qualifying factor for Dr. Elders' fitness as Surgeon General is her demonstrated willingness to take strong positions in favor of public health policies which she believes to be correct.

Her first priority has always been the practice of preventative medicine.

Her courageous initiative against teen pregnancy in Arkansas includes school-based clinics and a public information compaign.

She is a tireless advocate for availability of family planning and prevention of sexually transmitted diseases.

Her expertise in pediatrics served Arkansas well when she moved aggressively to wage a campaign for healthy babies and availability of preventative health services for young children.

Dr. Elders has exercised courage and vision in tackling tough and controversial health problems.

I am pleased to join the American Medical Association; Dr. Michael Skeels, administrator of the Oregon Health Division; President Peter Kohler of the Oregon Health Sciences University, and the other dozens of medical organizations and experts who support her.

She has the kind of leadership we need in health care at this very critical time, and I strongly urge my colleagues to support the nomination of Dr. Joycelyn Elders as our next Surgeon General.

Madam President, I ask unanimous consent to have printed in the RECORD a letter from Dr. Michael Skeels of the Oregon Health Division, which strongly endorses Dr. Elders.

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

OREGON DEPARTMENT OF
HUMAN RESOURCES,
Portland, OR, July 7, 1993.

Hon. BOB PACKWOOD,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR PACKWOOD: I am writing on behalf of the Department of Human Resources, Oregon Health Division, to express my strong support for Joycelyn Elders, MD, for US Surgeon General. As a pediatrician, a public health professional, and a superb advocate for children, Dr. Elders has the determination and the ability to persuade Americans to take better care of their health.

Dr. Elders tackles tough issues head on. As Surgeon General, she will refocus debate on the health care system towards prevention, which will simultaneously lower health care costs and improve the health of the nation. One of her major goals will be improving the health and well being of all Americans, especially adolescents. She will address infectious diseases such as tuberculosis and measles, as well as nutrition, tobacco and alcohol use, and preventing injury and violence. We urgently need her leadership nationwide.

In the five-and-half years since she became director of Arkansas State Health Department, she has helped raise the immunization rates of pre-school children in the state and has been instrumental in attracting more health professionals to practice in undeserved rural areas.

Dr. Elders is a board-certified pediatric endocrinologist. As a professor at the University of Arkansas Medical School and researcher, she authored more than 150 scholastic articles for medical publications.

Among numerous distinctions, she has received the American Medical Association Awards for Outstanding Efforts on Behalf of American Youth and for Outstanding Public Health Professional, the National Governor's Association Distinguished Service Award, and the National Education Association's Award for Creative Leadership in Women's Rights.

She currently serves on the boards of a dozen councils and commissions in the public and private sectors, including the National Institute of Medicine's Health Promotion Disease Prevention Committee and the Council on Governmental Affairs for the Academy of Pediatrics.

Her confirmation will help ensure that improved health status for all Americans becomes a priority of this nation. I encourage you to strongly support her confirmation.

Sincerely,

MICHAEL R. SKEELS, PhD, MPH,
Administrator, Health Division.

Mr. KENNEDY. Madam President, we will have a better opportunity tomorrow to get into the quality and the breadth of support for Dr. Elders. But I do want to mention at this time the excellent support she has from the American Medical Association, not considered to be a flaming liberal organization; the American Cancer Society, because of the great work that she has done in the area of cancer prevention; the American Hospital Association, another very distinguished group that is generally considered to be a conservative organization; the National PTA, parents and teachers, the organization that reflects the parents. I think, again, having the strong endorsement of parents of the various schools where she has brought her skills, whether it has been in immunization, or childhood health screening, or in the other preventive health care areas, to have the parents involvement and their strong support, is a very clear message about the deep respect she has among those groups.

Madam President, I am notified that one of our colleagues will be here momentarily and desires to speak briefly to the Senate. So at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll.

Mr. KENNEDY. 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. KENNEDY. Madam President, I will include in the RECORD a really superb record of endorsements from our colleagues from Arkansas [Senator PRYOR and Senator BUMPERS], two highly regarded and respected Members of this body who wrote to our colleagues and gave a very clear indication of their own strong support for the nominee, based on their extensive experience.

I am mindful as well of the excellent statements that were made by our colleague from Oklahoma [Senator BOREN] and Senator HATFIELD's statement introducing her to the committee was enormously important. She has also received strong support from other members of the delegation including Congresswoman LAMBERT, from Arkansas, who made an absolutely superb presentation. Congresspersons come and appear regularly before the committee on endorsements, but her detailed knowledge of Dr. Elder's involvement in various health clinics and her description of the various programs that have been initiated under Dr. Elders' leadership in her district was enormously impressive. I think it was a very clear indication of someone who knows Dr. Elders the best, like many of those who support her. That has been very indicative persuasive and powerful to many of us, that the people who have worked with her, whether in academic medicine, or people out in the community, small villages and towns of Arkansas, parents, school administrators, school teachers, school boards, professional public health personnel; the people that really knew her best have been her strongest allies and finest supporters.

They have reflected a wide and diverse political background and experience, primarily based upon very thorough respect for her detailed professional qualifications and abilities, her powerful integrity, her enormous sense of decency and caring and compassion.

We will take some time during the debate tomorrow to use some real illustration, some anecdotes that I think are enormously powerful and telling in terms of the real quality of this absolutely superb individual.

So, Madam President, we look forward to the debate tomorrow. We are going to be here at the time designated by the majority leader. We hope our colleagues will speak to these issues. We are going to be prepared to respond to any of the questions which are raised. And on those two items I mentioned earlier we will, hopefully, have either additional information or responses to those matters as well. We look forward to the debate and, hopefully, a resolution of this nomination.

I believe when the roll is called, Dr. Elders will be approved overwhelmingly.

APPOINTMENTS BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 93–29, as amended by Public Laws 98–459 and 102–375, appoints the following individuals to the Federal Council on the Aging:

Randolph Cleghorn of Oklahoma, reappointed to a 1-year term;

Stephen M. Farnham of Maine, reappointed to a 1-year term; and

Romaine M. Turyn of Maine, appointed to a 3-year term.

APPOINTMENTS BY THE MAJORITY LEADER

The PRESIDING OFFICER. The Chair announces on behalf of the majority leader the appointment of the Senator from Alabama [Mr. HEFLIN] as chairman of the Senate delegation to the British-American Parliamentary Group meeting during the 1st session of the 103d Congress, to be held in Edinburgh, Scotland, September 1–5, 1993.

The Chair announces on behalf of the Majority leader the appointment of the following Senators as members of the senate delegation to the British-American Parliamentary Group meeting during the 1st session of the 103d Congress, to be held in Edinburgh, Scotland, September 1–5, 1993:

The Senator from South Carolina [Mr. HOLLINGS.]

The Senator from Tennessee [Mr. MATHEWS.]

Madam 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. KENNEDY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

LEGISLATIVE SESSION

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. KENNEDY. Madam President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein for up to 5 minutes each.

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

IRRESPONSIBLE CONGRESS—HERE IS TODAY'S BOXSCORE

Mr. HELMS. Madam President, as of the close of business on Monday, August 2, the Federal debt stood at $4,360,010,907,754.76; this means that, on a per capita basis, every man, woman, and child in America owes $16,976.34 as his or her share of the Federal debt. There may be some Americans who will want to check on the big-spending record of their two Senators and their Congressman.

TRIBUTE TO BRIG. GEN. DONALD G. COOK

Mr. SPECTER. Madam President. Today I congratulate Brig. Gen. Donald G. Cook, the Chief of the Air Force Senate Liaison Office, for his recent promotion to the rank of general officer, and to recognize his distinguished service to the Senate, the U.S. Air Force, and to our Nation.

In the past year, I have had the personal experience of working with General Cook and have found him to be highly competent. In his work with the Senate, General Cook demonstrated the highest standards of professionalism and integrity we should expect from our senior military leaders. His entire military career is impressive.

General Cook was born August 13, 1946, at Fort Benning, GA, and graduated from Andover High School in Baltimore, MD, in 1965. He received a bachelor of science degree in business administration from Michigan State University in 1969, and masters of business administration from Southern Illinois University in 1976.

After earning his commission as a second lieutenant through ROTC in 1969, he entered undergraduate pilot training at Williams Air Force Base, AZ. His first assignment took him to Webb Air Force Base, TX in 1971 as an instructor pilot in T–37's. In 1972, he moved to Moody Air Force Base, GA, also as a T–37 instructor pilot. General Cook completed B–52 training at Castle Air Force Base, CA, in 1974. In June 1974 he was assigned to March Air Force Base, CA.

In June 1978, General Cook was assigned to Headquarters, AFMPC, Randolph Air Force Base, TX, where he served as a resources manager in the colonel assignments and as chief of the special actions division. Upon completion of Armed Forces Staff College in 1982, he was assigned to Headquarters, Strategic Air Command, Offutt Air Force Base, NE, until assigned to Fairchild Air Force Base, WA in 1984 as a bomb squadron commander.

In 1986, General Cook attended the Air War College and moved to Headquarters USAF at the Pentagon as chief of the special activities division in programs and resources. He moved to Capitol Hill, Washington, DC, as the Air Force representative to the House Armed Services Committee in 1987. He arrived at Carswell Air Force Base, TX, in November 1988 as the deputy commander for operations and became vice commander for the 7th Bombardment Wing in July 1989. General Cook was assigned as the commander of the 3415th Air Base Group, Lowry Air Force Base, CO, in June 1990. Most recently he commanded the 47th flying training wing, Laughlin Air Force Base, TX from July 1991 to July 1992. The wing conducts undergraduate pilot training for the U.S. Air Force and allied nations. He assumed his position as chief of the Air Force's Senate Liaison Office in August 1992.

General Cook has more than 3,300 flying hours in the B–52's and the T–37B and T–38A aircraft. His military awards and decorations include the Legion of Merit with one oak leaf cluster; Meritorious Service Medal with two oak leaf clusters, the Air Force Commendation Medal with one oak leaf cluster, Air Force Outstanding Unit Award, the Combat Readiness Medal, and the National Defense Service Medal with Bronze Service Star.

I wish Don continued success in his new assignment as commander of the 21st space wing in Colorado Springs and fully expect to see his advancement to more senior positions in Air Force leadership.

STATEMENT ON THE NOMINATION OF ELANOR D. ACHESON

Mr. GRASSLEY. Madam President, earlier this week, the Senate voted to confirm Elanor Dean Acheson for Assistant Attorney General for Policy Development. I wanted to comment upon the issue that has been raised in the context of her nomination—that is the issue of membership in exclusive country clubs.

Ms. Acheson is a distinguished lawyer in Boston and has belonged to several athletic and country clubs in the Boston area. At least one of the clubs, the Country Club of Brookline, has no minority members, although one is currently on the waiting list. Unlike previous Republican nominees, this nominee never faced public questioning, about the policy and practices of her club. At her hearing, none of my Democrat colleagues raised the issue of whether her club engaged in intentional discrimination or whether she made any efforts to make the club accessible to nonwhite individuals.

It took the diligence of a new member to the committee, Senator PRESSLER, to raise the issue before the committee. He was rightfully confused in view of the fact that, in 1990, the Judiciary Committee passed a resolution on this subject. And he properly wondered whether there was a double standard being applied—one for previous Republican nominees who were sharply rebuked for club memberships, and one for current Democrat nominees, whose club membership has been generally overlooked.

I am not of the view that membership in an exclusive club—one with no members from minority groups—should disqualify an individual from public service. As Judge Ginsburg demonstrated from her record—numbers alone don't indicate discrimination. In her 13 years on the bench, she hired 57 law clerks and not a one was African-American. This certainly does not mean Judge Ginsburg discriminated. Nor does membership in a club with no

minority members mean that a particular member of such a club discriminates.

Our committee resolution reflects such a view as well. The resolution does, however, give Senators discretion to consider an individual's membership in a club that has a policy or practice of intentional discrimination. Such membership should be considered by Senators, in conjunction with other factors reflecting on the nominee's fitness and ability. That is what our resolution provides.

The current issue, as I see it, is not whether Ms. Acheson should be blocked because she belonged to an exclusive club until March of this year, when she knew she would be getting a Government position. The issue is the committee's handling of the club matter. Republican nominees have been extensively questioned by the Committee; but for Senator PRESSLER'S diligence, Ms. Acheson would have escaped a single question on her club's policies and practices. The committee must do better. There must be consistency in the way this issue is handled.

Appearances and perceptions are an important part of the work that happens here inside the beltway. All segments of the American public must feel confident that our work is fair and consistent. The Judiciary Committee, which often finds itself in the middle of controversy, must take care to treat nominees of either party the same. I would hope that in the future, especially as we start reviewing candidates for the 129 judicial vacancies, the club matter is examined consistent with our committee resolution. Nominees who belong to clubs with no minority members or policies of a secondary membership category for women must be asked about those clubs. The nominee's record on bringing minorities and women to the club as guests and members should also be examined. After all, the Judiciary Committee can not be seen as treating Republican nominees more rigorously than Democrat nominees. That would be a form of discrimination.

CONTRACTOR LOBBYING ON THE SUPERCONDUCTING SUPER COLLIDER

Mr. PRYOR. Madam President, I rise today to bring an issue to the attention of my colleagues as they prepare to go home for the August recess. As we all know, during visits to our home States we are often lobbied on matters that will come before the Senate. This is usually an appropriate and informative activity.

However, I want to alert my colleagues that they will likely be subject to a coordinated lobbying campaign on the superconducting super collider. Who is paying for this lobbying effort? It appears the taxpayers. Let me repeat that point. This lobbying campaign is apparently being paid for by tax dollars. If true, this is illegal and reprehensible.

This project has been controversial since its inception. However, that does not change the fact that it is illegal to use tax dollars to seek to keep it alive and keep the money flowing to the thousands of contractors involved in the project.

Madam President, I have received copies of memos and computer messages which outline a coordinated campaign to continue funding for the superconducting super collider. One memo states "It is particularly important to reach your U.S. Senators before they return to Washington * * *".

The contractors have also developed a detailed vote tally to predict how the House and Senate will vote on the super collider funding. The document lists each Member's past votes on the issue, their probable 1993 vote and the amount of contract money awarded in each district. The document is so detailed that it can track $30 in one congressional district in Illinois and $38 in a Michigan district.

Let me quote from one of the computer messages originating from the superconducting super collider laboratory:

Basic Research is in Grave Danger. Your Urgent Help is Needed Immediately* * *It is our duty to educate the public about basic research. We are imploring you to send today telegrams and faxes to all or some of these organizations* * *

I have written to both the Department of Energy inspector general and to the General Accounting Office to request that they investigate this matter. I have provided each of them with documents that clearly indicate that a coordinated lobbying effort is underway. I hope the investigation will focus on these issues: Whether Federal funds are paying for these lobbying activities; that contractors are involved in this effort; whether the Byrd prohibition on using Federal funds to lobby for a grant or contract is being violated; and whether any employees in the Department of Energy are aware of or involved in this lobbying.

Madam President, the stakes involved in this issue are high. The Department of Energy has virtually turned over this entire program to a network of contractors. Estimates of the total cost for this program range from $8 to $13 billion. With this many dollars involved, and with private contractors running the program, I am not surprised that when the program is criticized that a lobbying campaign is launched. It is no wonder they are nervous after one IG audit found that of $508 million spent on contracts from 1989 to 1992, a full 40 percent, $216 million, were unnecessary or excessive costs.

The reason I brought this to the floor, is that I want my colleagues to be aware of the genesis of this lobbying campaign on this issue. The most recent computer message I have received is dated Monday, August 2, 1993, and contains the latest likely count on the Senate vote on super collider funding. This makes it clear to me that this project is not about science but about politics. And, most importantly, the taxpayers may be paying the bill.

Madam President, I ask unanimous consent that my letters to the Department of Energy inspector general and the General Accounting Office and the Universities Research Association, Inc., memo be included in the RECORD after my statement.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, August 3, 1993.

Hon. CHARLES A. BOWSHER,
Comptroller General,
General Accounting Office, Washington, DC.

DEAR MR. BOWSHER: As you know, I have spent years reviewing the use of contractors by the Department of Energy. During this review, I have looked at the Superconducting Super Collider (SSC) and found a largely contractor bureaucracy that has operated with far too little oversight. I am forwarding some materials that I have received that outline the startling practices that some contractors on the Superconducting Super Collider have undertaken to protect their pipeline of federal dollars. Specifically, I request that you investigate lobbying efforts to determine whether any criminal or civil statutes or federal regulations were violated.

While I am also writing to the Department of Energy Inspector General on this matter, I am interested in your particular review of this situation to determine if this is a violation of the Byrd rule that prohibits the use of federal funds to lobby to obtain grants or contracts.

Your office has been an effective watchdog on this project and your efforts have uncovered numerous instances of inappropriate spending. It is my belief that this possibly illegal lobbying campaign is being waged to attempt to save this program that has proven to be so poorly managed. Unfortunately, when the federal government gives such large sums of money to private contractors and does not exercise adequate oversight, these are the very types of problems which can arise.

Thank you for your prompt attention to this request. If you have any questions, please contact my subcommittee staff at 224–2254.

Sincerely,

DAVID PRYOR.

COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, August 3, 1993.

Hon. JOHN LAYTON,
Inspector General, Department of Energy, Washington, DC.

DEAR MR. LAYTON: As you know, I have spent years reviewing the use of contractors by the Department of Energy. During this review, I have looked at the Superconducting Super Collider (SSC) and found a largely contractor bureaucracy that has operated with far too little oversight. I am forwarding for your review some materials that outline the startling practices that some Superconducting Super Collider contractors have

undertaken to protect their access to federal dollars. Specifically, I would like your office to investigate this lobbying effort to determine whether any criminal or civil statutes or federal regulations were violated.

In your investigation of this activity, I request that you determine the following: Have SSC contractors lobbied Congress? What particular activities (i.e. letters, meetings, phone calls) did these individuals engage in to carry out this campaign? Which Department of Energy contractors or federal employees were involved? Were the DOE officials monitoring the SSC aware of this lobbying campaign?

Your office has been an effective watchdog on this project and your efforts have uncovered numerous instances of inappropriate spending. It is my belief that this possibly illegal lobbying campaign is being waged to attempt to save this program that has proven to be poorly managed and perpetuate the same types of wasteful practices you have uncovered. Unfortunately, when the federal government gives such large sums of money to private contractors and does not exercise adequate oversight, these are the very types of problems which can arise.

Thank you for your prompt attention to this request. If you have any questions, please contact my subcommittee staff at 224–2254.

Sincerely,

DAVID PRYOR.

UNIVERSITIES RESEARCH ASSOCIATION, INC.,
Washington, DC, July 1, 1992.

To: Presidents and Chancellors of URA Universities.

From: John Toll.

Subject: Now Is the Time To Speak Out on the SSC.

As I mentioned to you in my memorandum of June 23, it is extremely important that you bring your views concerning the SSC to the attention of Members of Congress with whom you have to contact. It is particularly important to reach your U.S. Senators before they return to Washington about July 20. If you write either letters or summaries of meetings, I hope that you will send copies to the URA office at the address above.

For your information, I include some letters that have recently been written about the SSC. The first is signed by many Nobel Laureates and other scientific leaders, and additional signatures are being added daily. Also included are some letters giving industrial viewpoints. A detailed letter from W.K.H. Panofsky, answering some questions of Senatorial staff, is also included.

On June 30th the largest hearing room of the Senate Office Buildings was filled with a distinguished crowd of scientists, industry representatives, and government officials. The joint hearing of the Senate Committee on Energy and Natural Resources and the Senate Appropriations Subcommittee on Energy and Water Development met to debate and to hear testimony on the SSC by Leon Lederman, George Smoot, Roy Schwitters and Bob Galvin. Some of the scientists at the hearing (e.g., Nobel Laureates Val Fitch, Jerome Friedman, Henry Kendall, Leon Lederman and Steve Weinberg) were invited to meet with President Bush to discuss the SSC. Copies of testimony will be forwarded to you as they become available.

Also enclosed is a copy of a letter published yesterday in The Washington Post. I encourage each of you to publish in local newspapers your own views on the SSC, and to invite your faculty to submit "Op Ed" articles and "Letters to the Editor."

I hope you will share these materials and your point of view on the SSC and its importance to science and to your university with your Federal Relations officials. Please also ask them to work with the URA office in Washington and, in particular, to attend the meeting on the SSC, sponsored by AAU and NASULGC, which will be held on Wednesday, July 8, at 1:00 P.M. in the Kellogg Room at 1 Dupont Circle, N.W., Washington, D.C.

IRISH-AMERICAN HERITAGE MONTH

Mr. KENNEDY. Madam President, yesterday, 25 of my colleagues joined me in introducing Senate Joint Resolution 119, a joint resolution to designate the month of March 1994 as "Irish American Heritage Month." I ask unanimous consent that its text may be printed in the RECORD.

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

S. J. RES. 119

Whereas the first Irish emigrants arrived in America as early as 1621;

Whereas 9 of the generals who served in the Continental Army during the American Revolution were Irish born;

Whereas Commodore John Barry of County Wexford, Ireland, served brilliantly in the Continental Navy and is widely regarded as the father of the American Navy;

Whereas James Smith, George Taylor, Matthew Thornton, and Charles Thomson, 4 of the individuals who signed the Declaration of Independence, were Irish born and 9 other signers were of Irish ancestry;

Whereas the contributions of the Irish to America's victory in the American Revolution led Lord Mountjoy to exclaim in the British Parliament that "America was lost by the Irish emigrants";

Whereas beginning at the time of the potato blight and famine in Ireland in 1845, over 700,000 Irish immigrants came to the United States during the 1840's, 900,000 during the 1850's, and over 300,000 in each decade through 1910;

Whereas Irish Americans participated heavily in the industrial and economic development of America during the nineteenth century, building our cities and canals and the railroads that expanded the Nation to the West;

Whereas even today, it is said that under every railroad tie an Irishman is buried;

Whereas the Irish contributed greatly to the development of the labor movement in the United States, including the establishment of the American Miners Association in 1861;

Whereas nearly 150,000 natives of Ireland served in the Union forces during the Civil War;

Whereas more than 500 members of the Irish Brigade were killed while fighting for the Union in the Battle of Antietam on September 17, 1862, a date that has been called the bloodiest day in American history;

Whereas the Irish Brigade fought courageously in several other Civil War battles including Fredericksburg, Chancellorsville, Yorktown, Fair Oaks, Gaines Mill, Allen's Farm, Savage Station, White Oak Bridge, Glendale, Malvern Hill, Gettysburg, and Bristow Station;

Whereas in 1892, Annie Moore from County Cork, Ireland, at age 15 became the first immigrant to pass through Ellis Island;

Whereas Irish Americans have made numerous contributions to the arts and to sports, as exemplified by the achievements of F. Scott Fitzgerald, Eugene O'Neill, Helen Hayes, Georgia O'Keefe, John L. Sullivan, and Connie Mack;

Whereas the first woman to serve as the organizer of the American Federation of Labor was Mary Kennedy O'Sullivan;

Whereas at the beginning of the twentieth century, many of the school teachers in America's largest cities were Irish American women;

Whereas President John F. Kennedy was the first American President to visit Ireland during his term in office;

Whereas Irish Americans, including Kathryn Sullivan, the first American woman to walk in space, and Christa Corrigan McAuliffe, America's first school teacher in space, who perished on the Challenger mission, have bravely served as America's pioneers in space;

Whereas more than 200 Irish Americans have been awarded the Congressional Medal of Honor;

Whereas President William Jefferson Clinton is the nineteenth American President of Irish ancestry;

Whereas 37 United States governors and mayors designated March 1993 as "Irish-American Heritage Month"; and

Whereas 44 million Americans are of Irish ancestry: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of March 1994 is designated as "Irish-American Heritage Month". The President is authorized and requested to issue a proclamation calling upon the people of the United States to observe this month with appropriate ceremonies and activities.

IN MEMORY OF RUSSEL G. SCHWANDT

Mr. DURENBERGER. Madam President, I rise today to honor the memory of Russel G. Schwandt, a former Minnesota Commissioner of Agriculture, who passed from this life last week.

Russ Schwandt embodied the principle that is the underlying philosophy of public involvement in my State: He said so frequently, "Our politics are not Republican or Democrat or any other party. Our politics are agriculture." To some in Minnesota, politics are education; to some, politics are health, and to others politics are natural resources or trade or environment. But Russ's politics were agriculture and he served agriculture well.

He began his career with the Minnesota Farmers Union, then with the Grain Terminal Association where he managed elevators in Minnesota, North Dakota, and Montana. In 1963 he was appointed by Democratic Governor Karl Rolvaag to be his Commissioner of Agriculture. And from 1967 he served in the same position under Governor Harold LeVander, a Republican. It is there that I came to know, admire, and love Russ Schwandt as I do to this day.

Russ later founded the Minnesota Agri-Growth Council, and chaired the Seaway Port Authority of Duluth.

It was Russ Schwandt who taught us that agriculture is not only a farmer

and his or her land. He keenly made Minnesotans aware that agriculture is in everyone's very best interest because one of every three people in Minnesota works in an agricultural-related job: restaurants, farm implement dealers, grocers, bankers, elevator managers, the great Port of Duluth, the chemical and fertilizer industry, the rail and barge system are all part of agriculture and we are part of it. This lesson becomes more and more important during this year of rain-related crop disasters in 35 Minnesota's finest agricultural counties.

Russ Schwandt died in the same farmhouse in Red County where he was born 73 years ago. He is survived by his wife Lotus, his son Jim and daughter-in-law Kathy, and grandchildren Kirsten, Piper and Dallas.

Minnesota agriculture—all of us involved in that circle—will miss him dearly.

STATEMENT ON THE NOMINATION OF JIM BLANCHARD

Mr. GORTON. Madam President, last week the nomination of Jim Blanchard to be United States Ambassador to Canada came before the Senate for consideration. Jim Blanchard is a former Governor and Member of Congress from the State of Michigan. And because of Michigan's proximity to Canada, Governor Blanchard is familiar with the Canadian form of government and has the benefit of previously working with Canada on issues of importance during his tenure as Governor and Member of Congress.

I had the opportunity to meet with Governor Blanchard to discuss an issue of environmental significance to Washington State, the Canadian Province of British Columbia, and the United States. The issue is this: each day the city of Victoria, British Columbia dumps millions of gallons of raw, untreated sewage into the Strait of Juan de Fuca. A scant 17 miles across the Strait sits the city of Port Angeles, WA. Needless to say the citizens of Washington State, in cities and towns throughout the Puget Sound region, are furious with their Canadian neighbors for polluting the marine environment we are working so hard to protect.

To add insult to injury, Canadian provincial and regional governments continue to insist that dumping raw sewage into the Strait does not harm the marine environment. Mr. President, Washington State residents are crying foul. Each day the city of Victoria continues to dump raw sewage into the Strait all but nullifies the efforts of Washington State citizens to preserve and protect the Puget Sound and surrounding areas with the construction of costly—but necessary—sewage treatment facilities.

As a former border State Governor, Blanchard is practiced at dealing with Canada over many environmental issues. The Governor impressed me with his knowledge of the sewage dumping issue, and his willingness to put this issue on the top of his environmental agenda to discuss with his Canadian counterparts is precisely what Washingtonians have long been waiting to hear.

I continue to be impressed with the willingness of the State Department, staff and officers, to assist this Senator and his constituents in their efforts to convince Victoria decision makers to discontinue the practice of sewage dumping. The commitment of Governor Blanchard to make this one of his top environmental priorities is a step in the right direction. As a consequence, for the first time, in a little less than a year in which I have been working to convince B.C. regional decision makers to put an end to this terrible practice, I think this issue has a chance of being resolved.

Madam President, after meeting with Governor Blanchard it is clear to this Senator that, because of his background and willingness to tackle difficult issues, he will do a fine job as United States Ambassador to Canada. For these reasons I am delighted that the Senate voted to confirm Jim Blanchard to be the next United States Ambassador to Canada.

TRIBUTE TO A LEADER: IN REMEMBRANCE OF DANIEL X. FREEDMAN, M.D.

Mr. DOMENICI. Madam President, earlier this summer, individuals and families whose lives have been affected by severe mental illnesses lost a very gifted and caring friend in the passing of Dr. Daniel Freedman, the Judson Braun Professor of Psychiatry and Pharmacology at the University of California at Los Angeles [UCLA]. In the many capacities that Dr. Freedman served throughout his distinguished career, he is recognized as one of the most important psychiatrists in our Nation through this half century. The treatment of mental illnesses has undergone radical transformation in the past 25 years and Dr. Freedman had the courage and foresight to help lead the way.

Born in 1921, Dr. Freedman was raised in Crawfordsville, IN. He spent 3 years at Harvard before joining the Army, serving first in the infantry and then as a clinical psychologist. In 1945, Dr. Freedman and Mary Neidigh, an artist, were married. He returned to Harvard to complete his degree in Social Relations, obtained his medical degree and completed an internship in pediatrics and a residency in psychiatry at Yale.

Dr. Freedman continued on at Yale where, in 1955, he began his career in academia as an instructor, followed by his quick ascension to the position of chief of the biological sciences section of the department of psychiatry. His excellent work at Yale led to his obtaining one of the first Career Investigator Awards granted by the National Institute of Mental Health [NIMH].

While at Yale, Dr. Freedman developed an extraordinary collaboration with the late Prof. Nicholas J. Giarman, of the department of pharmacology, which resulted in an interdepartmental effort that continues to this day. The uniqueness of this program came from the way it combined the biological sciences and psychiatry. In fact, there may be no program that has influenced more future scholars in these areas.

Dr. Freedman became the chair of the department of psychiatry at the University of Chicago in 1966. In this capacity, he coordinated an outstanding group of scholars and developed leaders in fields ranging from community psychiatry to the biology of severe mental illnesses and substance abuse. In 1983, the west coast beckoned and Dr. Freedman moved to UCLA where he became executive vice chair of the department of psychiatry and biobehavioral sciences.

The aspect of his career in which he may have touched the most lives, however, was through his position as chief editor of the Archives of General Psychiatry. Dr. Freedman influenced and helped raise the standards of psychiatric research from this position for 23 years. He took his role of nurturing and molding scientists and researchers seriously and was always willing to speak on behalf of psychiatric research and the care of patients.

Under Dr. Freedman's leadership, the Archives of General Psychiatry became the standard by which all psychiatric journals and psychiatric information are measured. If it is an article suitable for Archives, then it must have provided sufficient, substantial and novel research data.

Throughout his career, Dr. Freedman was always a leader with tremendous foresight. For this reason, when President Carter formed his Commission on Mental Health to examine the inadequacies of our Nation's delivery of mental health services with the hopes of providing a new direction he called upon Dr. Freedman. Dr. Freedman provided the necessary insight to reflect upon advances in the delivery of care and then focus attention upon our underserved populations in an effort to incorporate previous advances into a flexible system of care. His ability to understand the implications and consequences of executive and legislative activities and help provide policy addressing the needs of those with mental disorders is legendary.

More importantly, Dr. Freedman recognized the need for people not involved with the field of psychiatry to

understand and appreciate the impact of mental illness in our nation. He understood the lack of knowledge among the populous regarding these dreaded diseases and he utilized Archives to fill this void. Upon the completion of the NIMH Epidemiologic Catchment Area Study [ECA], one of the largest mental health surveys in history, Dr. Freedman began to publish this landmark information.

From my standpoint, Dr. Freedman made his most significant contribution in his combining the biological sciences with psychiatry. For too many years severe mental illnesses were viewed as something other than physical diseases. Through Dr. Freedman's focus and direction it became more widely accepted that severe mental illnesses were biological in origin and should be treated in a fashion similar to any other physical illness.

Because of Dr. Freedman's groundbreaking efforts it is now much easier for Congress and the President to consider providing health care benefits for persons with severe mental illnesses that is commensurate to that received by persons with other physical illnesses. This will ultimately make a direct positive impact on the lives of the more than 5 million Americans who suffer from the likes of schizophrenia, bipolar disorder, and major depression.

Fortunately, Dr. Freedman did not limit his leadership to solely professional endeavors. Over the years, Dr. Freedman was the president of the American Psychiatric Association, the American College of Neuropsychopharmacology, Society of Biological Psychiatry, American Association of Chairmen of Departments of Psychiatry, and the Association for Research in Nervous and Mental Disorders. He was Founding Chair of the Academic Psychiatry Consortium of the Center for Advancement of the Behavioral Sciences. Finally, he was elected to membership in the Institute of Medicine of the National Academy of Sciences.

My wife, Nancy, and I had the great fortune to know Dr. Freedman on both a personal and professional level. He provided us critical information and insight into the impact of mental illnesses on the individual and nation. His knowledge and understanding of how federal policy influenced the delivery services for persons with mental illnesses provided me with the tools to begin to address some of the unmet needs for this neglected population—for this I am deeply grateful.

Persons suffering from severe mental illnesses have been neglected, ignored, and discriminated against for centuries. Through the efforts of Dr. Freedman we have begun to eliminate some of the stigma and discrimination and provide hope for the millions of Americans whose lives are impacted by these diseases. The world is truly a better place for his having lived and we will all miss him.

FEDERAL STUDENT FINANCIAL ASSISTANCE PROGRAMS

Mr. NUNN. Madam President, Senate and House conferees recently agreed to a major reform of Federal student financial assistance programs. Known as direct lending, the program requires the Federal Government to loan funds directly to students through their schools. This type of reform will vastly expand the current role of the Department of Education in the lending process, while eventually eliminating the need for certin private financial entities, including banks, secondary markets, and guaranty agencies.

Proponents of direct lending have argued that it will save the Federal Government—and the taxpayers—anywhere from $3.2 to $6.7 billion over a 5-year period. Like those who proposed direct lending, I, too, am skeptical of the large profits now being made by some private players in the current system. Like those who proposed direct lending I, too, doubt whether some of those players—guaranty agencies for example—are really essential and cost effective in the system. And finally, like those who proposed direct lending, I, too, am all for saving the Federal Government billions of dollars, though I doubt some of the more optimistic projections.

I do, however, have some very serious concerns about the current student assistant programs that I believe need to be taken into account by the Congress and the administration as direct lending is implemented. In my mind, the single most critical issue in the debate on direct lending is the ability of the Department of Education to competently and effectively carry out a vastly expanded role in these programs. Can the Department, given its track record as well as budget and resource limitations, produce the kind of hand-on management and intense oversight that direct lending will no doubt require? If not, can we afford to open the door further to the type of fraud and abuse that has so plagued Federal student assistance programs for far too many years?

I raise those questions as the result of the very detailed examination of the Federal student financial assistance programs that has been conducted by the Senate's Permanent Subcommittee on Investigations over the years. As a member and now chairman of that subcommittee, I have had the opportunity to oversee, in 1975 and in 1990, two investigations of the student loan program and, currently, an ongoing investigation of the Federal Pell Grant Program.

These investigations raise serious warning flags about the ability of the Department of Education to effectively oversee current assistance programs, as well as added questions about the direct loan program which will necessitate greater and more intense scrutiny by the Department.

In 1975, our subcommittee examined what was then the Office of Education's management of the Student Loan Program, the loan default issue, and the unscrupulous practices of some trade schools. The testimony revealed a program which, in the absence of adequate oversight, had been repeatedly victimized by fraud and abuse.

Fifteen years later, in 1990, I directed a subsequent investigation by our subcommittee which found that, unfortunately, little had changed in the program's vulnerability to fraud and abuse. If anything, as loan and dollar amounts skyrocketed, abuse became more widespread and far more profitable for con artists and the like.

In the 19 years that I have served on the subcommittee, I have conducted numerous oversight reviews of Government Programs. Frankly, the findings of our 1990 review of the Student Loan Programs were perhaps the most discouraging of any of our investigations on the issue of Government performance. The staff report left little, if any, room for optimism:

* * * to date we have not found one area that we have examined in federal student aid programs that is operating efficiently or effectively. We were told, time and again, that the result of this inefficiency and ineffectiveness is a tremendous waste of taxpayers' money. During our investigation, we have engaged in what can only be termed frank and honest discussions with the people involved in the oversight of these programs. Every individual we have spoken to, without exception, has told us that despite recent changes in program administration, the system is severely broken and that major changes must be made immediately to save the taxpayer's money.

In its final report, issued in May 1991, the subcommittee found that "plagued by fraud and abuse at every level and lacking meaningful oversight and management controls, the [student loan] program has become inefficient, ineffective and far too costly." As to the Department, the subcommittee found "through gross mismanagement, ineptitude, and neglect in carrying out its regulatory and oversight functions, the Department of Education had all but abdicated its responsibility to the student it is supposed to service and the taxpayers whose interests it is charged with protecting."

Madam President, as Congress and the Clinton administration add to the Department's current administrative burdens, we had better make sure that the Department has the competency and the resources necessary to tackle the job. It is incumbent on all of us to make sure we give the Department the resources to accomplish the task and to make sure the Department not only has a commitment to improve, but can

demonstrate the results of their efforts.

I want to make clear that I am not condemning with a broad brush the efforts of all of those who today staff the Department of Education. I understand that these problems are not solely the fault of the Department. Some of them, but clearly not all, can be attributed to the complexity of the Higher Education Act, a lack of funds and resources to adequately do the job, as well as the tendency of Congress to add more education programs to be administered while reducing the Department's staff. Moreover, I recognize the fact that the problems we have identified go back many, many years and that those who are leading the Department on behalf of this administration have clearly inherited, by all accounts, a bureaucratic disaster.

I have great confidence in Secretary Dick Riley, Deputy Secretary Madeleine Kunin, and Assistant Secretary David Longanecker, and I believe that they will give this area high priority and provide the Department of Education with the strong management and leadership so clearly required. They have made the commitment to vastly improve the Department and these programs. The question is how rapidly they can do this job and how quickly the Department's role can be increased, as they, at the same time, straighten out long existing problems.

I recognize and appreciate the fact that our new leaders in the Department of Education candidly acknowledge the problems they face. To their credit, they are taking some steps to put the Department back on the right track. Those positive steps include:

Realignment of the office of Student Financial Assistance to better coordinate efforts on certification and eligibility, program review, and audit resolution;

Efforts to move more rapidly on implementing regulations for the 1992 Amendments to the Higher Education Act, in contrast to the Department's history of chronic delays in this area; and

Negotiations with many States to contract with State governments for school monitoring, as authorized by the 1992 Amendments.

Many of the recommendations contained in our subcommittee's 1991 report were incorporated by Congress in the 1992 amendments to the Higher Education Act. For example, the new legislation strengthens the Department's ability to handle program compliance and eligibility issues at the lender, loan servicer, guarantor agency, accrediting, correspondence school, and institutional levels.

The Higher Education Act is very complex, and has been amended several times. The resulting regulatory changes have often led to confusion in all sectors involved. I expect Secretary Riley to identify the legislative problems he faces, so that they may be addressed in the Congress.

All of these steps are, in my view, progress in the right direction. But, given the magnitude of the program's problems, the Department still has a long way to go to gain the kind of capabilities that will be essential to properly manage existing programs and the direct lending program.

My view in that regard has been reinforced by the subcommittee's ongoing review, assisted by the Office of Special Investigations of the General Accounting Office, of the Department's handling of the Pell Grant Program. In the 1991–92 academic year the Pell Grant Program awarded over $6.7 billion to approximately 3.8 million students. While our investigation is not yet complete, our review thus far strongly suggests that many of the same problems which the Department has had in the Student Loan Program are today hampering its ability to effectively administer the Pell Grant Program. And, as with the Student Loan Program, the Department's administrative and oversight failures have apparently left the door open for fraud and abuse within the Pell Grant Program.

I want to stress that I appreciate the noble purpose of the Pell Grant Program. I applaud the original intentions of Senator PELL and others in starting this program as a way to help low income young people develop their talents and abilities to the fullest. In carrying out this purpose we have to recognize that every dollar of Pell grant funds that is spent on bogus, fraudulent, wasteful, or otherwise unworthy applicants further cuts the amount that can be offered to truly deserving students.

Our preliminary investigation indicates that the checks and balances which were designed in theory to protect the Pell Grant Program, the student, and ultimately the taxpayer, too often appear in practice to be ineffective, or in some cases nonexistent. In particular, the subcommittee staff has identified serious weaknesses in the following areas:

The program's gate-keeping functions, designed to prevent ineligible institutions from gaining access to the program are not working. In some instances schools have been allowed to participate in the program despite the fact that they are not licensed in the State in which they operate. Moreover, experience shows that licensing, accreditation, and certification have not been effective in identifying and prohibiting problem schools from participating in the program;

The Department of Education's program review process, designed to ensure statutory and regulatory compliance by institutions once they have gained access to the program, is ineffective at detecting abuse because of inadequate manpower, resources, and training. Despite the strong recommendation of our subcommittee in 1991, program review personnel in the Department of Education still receive no formal training, either in their areas of substantive responsibility or in fraud detection. It is ironic that the Department entrusted with the task of ensuring quality education and training for America's youth has been historically incapable of adequately training its own personnel; and

Procedures to audit the financial aid records of institutions which have left the program, designed to identify possible abuse or fraud and lay the foundation for actions to recoup money owed to the Government, are largely ineffective.

These weaknesses apparently encourage unscrupulous individuals and institutions to exploit the Pell Grant Program, thereby creating a situation where the Federal Government may be spending tens of millions of dollars in unwarranted or improper payments. In fact, our preliminary investigation so far has found indications that such exploitation is not only taking place, but may be longstanding. Surely most of the 6,300 schools participating in the Pell Grant Program are doing so honestly and with integrity, but our review has uncovered evidence of what may be widespread abuse.

For example, the examination by the subcommittee and GAO has to date uncovered, among other things, evidence suggesting:

The use of false documentation, including false high school diplomas, false statements of employment, false W–2 forms, false academic records, and false school admission applications to satisfy the eligibility requirements for Pell grants;

The award of Pell grant money to high school students;

Apparent kickbacks of Pell grant money by schools to students to encourage the students' cooperation in applying for Pell grants;

The selling of student biographical information by brokers to schools for use in submitting false Pell grant applications; and

Individuals who have received numerous Pell grants over a number of years with apparently no intention to eventually attain a degree or other educational certificate.

In addition to fraud and abuse, our investigation has also highlighted certain policy decisions affecting the Pell Grant Program that Congress may want to review, given our current deficit and budget problems. I have requested the Department to provide the subcommittee with the following information:

The number of students who have received Pell grants for more than 5 years in a row and the amount of their awards;

The number of students who have received Pell grants for more than 10 years in a row and the amount of their awards;

The numbers and dollar amount of Pell grants awarded for study abroad in the last 5 years; and

The number of schools which have been declared exempt from the State licensing requirement for the Pell Grant Program in the last 5 years.

As I understand it, current law and/or policy allows participation in the Pell Grant Program for students and/or schools covered by the above categories. Those policy choices may have been valid and supportable at the time they were made. They may still be valid, but given our current budget environment, I believe that we need to review these and other policy choices after getting the financial information from the Department of Education.

All of this is relevant, in my mind, to the question of how the Government, and more specifically, the Department of Education, has managed the student financial assistance programs over the years—ranging from the task of enforcing compliance and preventing fraud and abuse to the responsibility for statutory interpretation and policymaking. Success in the direct lending program will require exceptional competence and diligence by the Department of Education.

I urge my colleagues, as we call upon the Department to undertake the burden of direct lending, to also recognize the systemic problems I have tried to point out this morning. The Department plans to phase out the existing program as it phases in the new system, and we must support the Secretary and his staff as they do so.

To have any reasonable chance of working, the Department must be provided adequate resources to do the job. The worst possible outcome would be to shift the direct loan program to the Department and the schools without giving them the resources necessary to assure success. Leadership, commitment, resources, skill, and personnel are essential to protect the taxpayer and to give students the access to education they need. The Department must also exercise vigorous leadership in addressing the longstanding problems identified by our subcommittee and by other consistent reports. These are, in my mind, critical weaknesses that have to be addressed and corrected by both the administration and the Congress if we are ever to have a truly effective student financial aid program in the future.

TRIBUTE TO EWING M. KAUFFMAN

Mrs. KASSEBAUM. Madam, President, I rise today to pay tribute to Ewing M. Kauffman, the chairman emeritus of Marion Merrell Dow Inc. and the owner of the Kansas City Royals who died over the weekend at his home in Mission Hills, KS.

When Ewing Kauffman founded Marion Laboratories in his home in 1950, it was a one-man firm, By 1989, when Marion combined with Merrell Dow Pharmaceuticals to form Marion Merrell Dow Inc., it was a publicly traded company with sales approaching $1 billion. Throughout this period of phenomenal growth, Marion Laboratories benefited from Ewing Kauffman's vision, values, and character.

In 1969, in order to bring major league baseball back to Kansas City, Ewing Kauffman purchased an American League expansion franchise that was to become the Kansas City Royals Baseball Club. In the club's relatively short history, it has won six American League Western Division titles, two American League pennants, and a World Series championship. The Royals have also served as a model organization for other major league teams and provided millions of people throughout the midwest entertainment, pleasure, and a common bond.

Given Ewing Kauffman's commitment to people, perhaps his most fitting legacy is the Kauffman Foundation which creates and operates programs designed to meet human development needs. Since its inception in 1986, the Foundation has sought to demonstrate breakthrough solutions that will have a lasting impact, particularly in helping at-risk young people and stimulating the growth of entrepreneurship.

Madam President, Ewing Kauffman was indeed a special person, who along with his wife Muriel, touched the lives of many. The State of Kansas and the entire Nation will miss him.

TRIBUTE TO WYLAND

Mr. INOUYE. Madam President, media reports indicate that much attention is being paid again to the plight of the largest animal ever to roam the earth, the whale. In the August 2 issue of Time magazine, an article entitled "The Hunt, The Furor" tells us that the cry of "Save The Whales" is being heard again around the world. There is the furor stemming from Norway's insistence to continue whaling. The Norwegians press on, despite threats of sanctions and boycotts against their products and next year's winter Olympics in Lillehammer. There is also the furor springing from the media itself: The movie "Free Willie" has raised questions about the captivity of these creatures and has generated thousands of inquiries on how to join in the effort to save the whales.

Against this backdrop of controversy is the quiet effort of one man whose mission has been to raise the public's consciousness about the need to acquaint ourselves with, and respect, whales and other marine life. Wyland is a young man who calls Hawaii his home. He is considered by many to be the finest environmental artist in the world. Wyland is best known for his gigantic "Whaling Walls," one of which stands in Honolulu. For the past several weeks, he has worked to paint a "Whaling Wall" in each State along the Eastern Seaboard of our country, on what is being billed as the biggest art tour in history.

Wyland began this series of murals on June 1st in Portland, ME. He is expected to take his tour, and his technique of combining public art with an education on the environment, to New Hampshire. Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, North Carolina, South Carolina, Georgia, and Florida. He is now in Washington, DC, the 11th stop in his tour. For the next few days, he will be seen near the entrance to the National Zoo, where he will paint yet another mural depicting lifesize of whales and other marine life in their natural habitat.

I hope my colleagues will join me in welcoming Wyland to our Nation's Capital and to take to heart his message. He has made a commitment to join with others to preserve and protect a species that many hold in awe and in wonder. His works have helped to draw international attention to the plight of the whales.

Last year, in an attempt to preserve our natural legacy in Hawaii, the President signed into law my measure to develop a humpback whale sanctuary in waters adjacent to the Hawaiian Islands. This measure, together with Wyland's unique "17 Cities in 17 weeks" tour of the Eastern Seaboard, proves that in the struggle to preserve this endangered species, people working together can make a difference. Wyland is an inspiration to us all.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Zaroff, 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.)

MESSAGES FROM THE HOUSE

At 1:58 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 bills:

H.R. 572. An act for the relief of Melissa Johnson.

H.R. 856. An act to improve education in the United States by promoting excellence in research, development, and the dissemination of information.

H.R. 2339. An act to revise and extend the programs of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, and for other purposes.

H.R. 2766. An act to amend the 7(a) Loan Program, and for other purposes.

The message also announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1273. An act to enhance the availability of credit in disaster areas by reducing the regulatory burden imposed upon insured depository institutions to the extent such action is consistent with the safety and soundness of the institutions.

ENROLLED BILLS SIGNED

At 6:15 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 bills:

H.R. 416. An act to extend the period during which chapter 12 of title II of the United States Code remains in effect, and for other purposes.

H.R. 798. An act to amend title 38, United States Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992.

S. 1295. An act to amend the Rehabilitation Act of 1973 and the Education of the Deaf Act of 1986 to make technical and conforming amendments to the Act, and for other purposes.

At 8:16 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House disagrees to the amendment of the Senate to the bill (H.R. 2010) to amend the National and Community Service Act of 1990 to establish a Corporation for National Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such service, and for other purposes; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following as the managers of the conference on the part of the House:

From the Committee on Education and Labor: Mr. FORD of Michigan, Mr. MURPHY, Mr. KILDEE, Mr. MARTINEZ, Mr. OWENS, Mr. GOODLING, Mrs. ROUKEMA, and Mr. GUNDERSON.

From the Committee on Government Operations: Mr. CONYERS, Mrs. COLLINS of Illinois, Mr. WAXMAN, Mr. CLINGER, and Mr. MCCANDLESS.

From the Committee on the Judiciary: Mr. BROOKS, Mr. BRYANT, Mr. SCOTT, Mr. FISH, and Mr. MOORHEAD.

From the Committee on Natural Resources: Mr. MILLER of California, Mr. VENTO, and Mr. YOUNG of Alaska.

From the Committee on Post Office and Civil Service: Mr. CLAY, Mrs. SCHROEDER, Mr. MCCLOSKEY, Mr. MYERS of Indiana, and Mrs. MORELLA.

From the Committee on Public Works and Transportation: Mr. MINETA, Mr. RAHALL, Mr. TRAFICANT, Mr. SHUSTER, and Mr. PETRI.

MEASURES REFERRED

The following measures were read the first and second times by unanimous consent, and referred as indicated:

H.R. 572. An act for the relief of Melissa Johnson; to the Committee on the Judiciary.

H.R. 856. An act to improve education in the United States by promoting excellence in research, development, and the dissemination of information; to the Committee on Labor and Human Resources.

H.R. 2766. An act to amend the 7(a) Loan Program, and for other purposes; to the Committee on Small Business.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2339. An act to revise and extend the programs of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, and for other purposes.

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–1343. A communication from the Sacramento Farm Credit Employee's Retirement Plan, transmitting, pursuant to law, the annual pension report for the period January 1, 1992 through December 31, 1992; to the Committee on Governmental Affairs.

EC–1344. A communication from the Assistant Vice President (Human Resources), Western Farm Credit Bank, transmitting, pursuant to law, the annual report and audited financial statement for the eleventh farm credit district employees' retirement plan for calendar years 1991 and 1992; to the Committee on Governmental Affairs.

EC–1345. A communication from the Administrator of the General Services Administration, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1992; to the Committee on the Judiciary.

EC–1346. A communication from the General Counsel of the Federal Mediation and Conciliation Service, transmitting, pursuant to law, the annual report under the Freedom of Information Act for calendar year 1991; to the Committee on the Judiciary.

EC–1347. A communication from the Chairman of the National Commission on Judicial Discipline and Removal, transmitting, pursuant to law, a final report; to the Committee on the Judiciary.

EC–1348. A communication from the Chairman of the National Transportation Safety Board, transmitting, a draft of proposed legislation entitled "Independent Safety Board Act Amendments of 1993"; to the Committee on Commerce, Science and Transportation.

EC–1349. A communication from the Assistant Secretary (Legislative Affairs), Department of State, transmitting, pursuant to law, a draft of proposed legislation entitled "Iraq Claims Act of 1993"; to the Committee on Foreign Relations.

EC–1350. A communication from the Acting Director of the Peace Corps, transmitting, pursuant to law, a report under the Inspector General Act of 1978 as amended; to the Committee on Governmental Affairs.

EC–1351. A communication from the Chairman of the Advisory Commission on Intergovernmental Relations, transmitting, pursuant to law, the annual report for calendar year 1992; to the Committee on Governmental Affairs.

EC–1352. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–61 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1353. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–62 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1354. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–63 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1355. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–64 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1356. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–65 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1357. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–66 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1358. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–67 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1359. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–68 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1360. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–69 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1361. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–70 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1362. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law,

copies of D.C. Act 10–71 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1363. A communication from the Acting Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 10–74 adopted by the Council on July 13, 1993; to the Committee on Governmental Affairs.

EC–1364. A communication from the Commissioner of the Office of Educational Research and Improvement (National Center For Education Statistics), Department of Education, transmitting, pursuant to law, the annual statistical report for the calendar year 1992; to the Committee on Labor and Human Resources.

EC–1365. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report of proposed regulations governing multicandidate political committees; to the Committee on Rules and Administration.

EC–1366. A communication from the Chairman of the Federal Election Commission, transmitting, pursuant to law, a report relative to forms on governing multicandidate committee status; to the Committee on Rules and Administration.

EC–1367. A communication from the Administrator of the Small Business Administration, transmitting, pursuant to law, a report on minority small business and capital ownership development for fiscal year 1992; to the Committee on Small Business.

EC–1368. A communication from the Secretary of Veterans' Affairs, transmitting, a draft of proposed legislation to restore the statutory eligibility for burial in national cemeteries of spouses who predecease individuals eligible for such burial; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. JOHNSTON from the Committee on Energy and Natural Resources:

Report to accompany the bill (H.R. 631) to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and for other purposes (Rpt. 103–123).

EXCUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. RIEGLE, from the Committee on Banking, Housing and Urban Affairs:

Gordon J. Linton, of Pennsylvania, to be Federal transit Administrator.

Nelson A. Diaz, of Pennsylvania, to be General Counsel of the Department of Housing and Urban Development.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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. INOUYE (for himself, Mr. DODD, Mr. STEVENS, Mr. AKAKA, Mr. GORTON, Mr. MURKOWSKI, and Mr. SIMON):

S. 1350. A bill to amend the Earthquake Hazards Reduction Act of 1977 to provide for an expanded Federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. REID:

S. 1351. A bill to curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 1352. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin; to the Committee on Environment and Public Works.

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1353. A bill to amend title 23, United States Code, to permit the use of funds under the highway bridge replacement and rehabilitation program for seismic retrofit of bridges, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. KASSEBAUM (for herself, Mr. JEFFORDS, Mr. COCHRAN, and Mr. PRESSLER):

S. 1354. A bill to amend the Fair Labor Standards Act of 1938 relating to the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. HEFLIN:

S. 1355. A bill to amend chapter 91 of title 28, United States Code, to provide that the United States Court of Federal Claims may have jurisdiction over certain pending claims, and for other purposes; to the Committee on the Judiciary.

By Mr. DOLE (for himself, Mr. HATCH, Mr. THURMOND, Mr. GRAMM, Mr. MACK, Mr. SIMPSON, Mr. COCHRAN, Mrs. KASSEBAUM, Mr. HELMS, Mr. D'AMATO, Mr. STEVENS, Mr. LOTT, Mr. GRASSLEY, Mr. DOMENICI, Mr. BROWN, Mr. NICKLES, and Mr. WALLOP):

S. 1356. A bill to restore order, deter crime, and make our neighborhoods and communities safer and more secure places in which to live and work; to the Committee on the Judiciary.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1357. A bill to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes; to the Committee on Indian Affairs.

By Mr. JOHNSTON:

S. 1358. A bill to amend the Immigration and Nationality Act to improve immigration enforcement and anti-smuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service; to the Committee on the Judiciary.

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. SIMON, Ms. MOSELEY-BRAUN, Mr. WOFFORD, Mr. PRYOR, Mr. KERREY, Mr. BAUCUS, and Mr. JOHNSTON):

S. 1359. A bill to amend the Food Stamp Act of 1977 to require the domestic production of food stamp coupons; to the Committee on Agriculture, Nutrition, and Forestry.

By Mrs. MURRAY:

S. 1360. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to exempt from preemption under such title certain provisions of the law of the State of Washington relating to health plans; to the Committee on Labor and Human Resources.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. BENNETT, Mr. FAIRCLOTH, Mr. GREGG, Mr. KEMPTHORNE, Mr. CRAIG, Mr. WALLOP, Mr. THURMOND, Mr. HELMS, Mr. LOTT, Mr. MCCAIN, and Mr. SMITH):

S.J. Res. 120. A joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

By Mr. RIEGLE (for himself, Mr. D'AMATO, Ms. MIKULSKI, Mr. DURENBERGER, Mr. LUGAR, Mr. INOUYE, Mr. MOYNIHAN, Mr. GLENN, Mr. COATS, Mr. SPECTER, Mr. LAUTENBERG, Mr. LEVIN, Mr. COCHRAN, Mr. DECONCINI, Mr. SARBANES, Mr. SIMON, Mr. THURMOND, Mr. DOLE, Mr. JEFFORDS, Mr. DODD, Mr. HELMS, Mr. WARNER, Mr. CONRAD, Mr. DASCHLE, Mr. HOLLINGS, Mr. BROWN, Mr. ROTH, Mr. WOFFORD, Mr. PRESSLER, Mr. GRAHAM, Mr. BRADLEY, Mr. FEINGOLD, Mr. HEFLIN, Mr. BRYAN, Mr. WALLOP, Mr. JOHNSTON, Mr. METZENBAUM, Mr. GRASSLEY, Mr. BURNS, Mr. DORGAN, Mr. SASSER, Mr. DANFORTH, Mrs. KASSEBAUM, Mr. EXON, Mr. MURKOWSKI, Mr. SHELBY, Mr. MACK, Mr. CHAFEE, Mr. ROBB, Mr. KOHL, Mr. BREAUX, Ms. MOSELEY-BRAUN, Mr. AKAKA, Mr. KERRY, and Mr. PELL):

S.J. Res. 121. A bill to designate October 6, 1993 and 1994, as "German-American Day"; considered and passed.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. PELL (for himself and Mr. BIDEN):

S. Res. 138. A resolution authorizing the printing of the publication "To Stand Agression: Milosevic, the Bosnian Republic, and the Conscience of the West"; considered and agreed to.

By Mr. MITCHELL (for himself and Mr. DOLE):

S. Res. 139. A resolution to establish procedures relating to the settlement of complaints filed with the Office of Senate Fair Employment Practices, and for other purposes; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. INOUYE (for himself, Mr. DODD, Mr. STEVENS, Mr. AKAKA, Mr. GORTON, Mr. MURKOWSKI, and Mr. SIMON):

S. 1350. A bill to amend the Earthquake Hazards Reduction Act of 1977 to

provide for an expanded Federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions, and for other purposes; to the Committee on Commerce, Science, and Transportation.

NATURAL DISASTER PROTECTION ACT OF 1993

Mr. INOUYE. Mr. President, today, I rise to introduce the Natural Disaster Protection Act of 1993. I am joined by Senators STEVENS, AKAKA, DODD, GORTON, MURKOWSKI, and SIMON as original cosponsors of my bill.

I wish to commend the National Disaster Coalition for their efforts and assistance in crafting this legislation. This measure is the product of many months of intense dialog, drafting, and hard work. The Coalition is a task force comprised of the insurance industry, realtors, lenders, State emergency managers, firefighters, and homeowners' groups dedicated to reducing property losses and injuries from natural disasters.

This legislation responds to the unprecedented losses caused by recent catastrophic natural disasters. Last year's devastation from Hurricanes Andrew and Iniki, and now the current floods in the Midwest underscores the seriousness and vulnerability of homeowners to natural disasters.

According to experts, natural disasters are becoming more frequent and more costly. New studies project that a class 5 hurricane striking Miami would cost $53 billion, while a catastrophic earthquake striking the New Madrid zone of the Mississippi River Valley could cause insured damage of up to $60 billion. Insured losses could have reached $30 billion had Hurricane Iniki struck the island of Oahu.

The magnitude of such losses far exceed the resources of any insurance company or State and local government. Insured losses alone from Hurricanes Andrew and Iniki exceeded $18.2 billion. Many insurance companies continue to reassess their risks and exposure to loss thus affecting the availability of insurance.

As a result of Hurricane Iniki, approximately 30 percent of Hawaii's homeowners insurance market is impaired. While many Hawaii residents have found alternative sources of insurance, coverage is expensive and limited. There are only two sources of insurance available in Hawaii, and applications are not taken freely. The annual homeowner's insurance premiums collected in the State are simply insufficient to cover losses from future catastrophic disasters. Consequently, the Hawaii State Legislature recently established a hurricane pool sufficient enough to cover losses of up to $1.6 billion. However, this pool is insufficient should losses from a future catastrophic disaster exceed $1.6 billion.

Presently, in the absence of an adequate system for insuring against catastrophic losses disaster victims must rely upon various forms of Federal Government disaster assistance. Unfortunately, there are several widely recognized problems plaguing disaster assistance programs. For example, they are costly to the Federal Government and taxpayers, and they do not provide adequate assistance to all victims.

While future disasters are unavoidable, preventive measures can be taken to reduce the loss of life, property, and the economic consequences of a catastrophic disaster. The Natural Disaster Protection Act of 1993 establishes three interrelated programs that will not require any taxpayer subsidies and will reduce the Nation's reliance on federally funded disaster assistance. First, the act establishes a mitigation program with a strong emphasis on building code enforcement and enhanced emergency planning. Funding for these purposes are provided entirely by private sector revenues. Second, the act establishes a primary insurance program which provides affordable comprehensive disaster protection for homes. Third, the act establishes a national reinsurance program which would provide a source of insurance which insurers could purchase to better manage the risk from highly infrequent, but extremely costly disasters. The reinsurance program would be financed by the insurance industry, and would help to prevent a homeowner's insurance availability crisis currently experienced in Hawaii, Florida, and other coastal States.

The act addresses flood-related disasters in four ways. First, the bill supports the improvement of mitigation and disaster preparedness efforts in disaster prone regions. Second, the legislation provides a new source of funding for these activities. Third, the bill addresses the inadequate participation of those at-risk of flooding in the National Flood Insurance Program by augmenting responsibility for enforcement with greater involvement by the insurance industry. Fourth, the bill directs the Federal Emergency Management Agency [FEMA] to study the possible integration of the Flood Insurance Program into the two new programs established under this legislation and provide its recommendations to Congress within 6 months.

The following summarizes the provisions of the National Disaster Protection Act of 1993.

MITIGATION PROGRAM

The mitigation program provides incentives to State and local governments to enhance their disaster planning and mitigation efforts in coordination with the FEMA. States would be eligible for grants from a Federal Disaster Mitigation Fund, which would be financed by a 5–10 percent set-aside of funds collected under the primary insurance and national reinsurance programs of the bill. To be eligible for such grants, States would be required to adopt stronger building and safety codes designed to make new construction less vulnerable to hurricanes, earthquakes, and other natural perils. In addition, States will be required to submit a comprehensive disaster plan to FEMA that includes detailed steps for identifying at-risk structures and methods to improve building code enforcement, emergency response, and overall disaster preparedness. Further, States must comply with the building codes and implement new mitigation plans within 5 years. States not in compliance would be ineligible for these funds and could be denied access to certain types of Federal disaster relief.

The legislation establishes an advisory committee to assist FEMA in its efforts to encourage improved disaster training, research, technology transfer, and education.

PRIMARY INSURANCE PROGRAM

The Natural Disaster Protection Act provides a more comprehensive homeowners' policy that includes standard coverage for earthquakes, volcanic eruptions, and other perils not currently included in basic coverage. Rates for this coverage would be risked-based so that homeowners in areas prone to such hazards would not be subsidized by residents from low-risk areas. In addition, homeowners would still have a choice of deductibles, type of coverage, and additional endorsements. The premiums and deductibles for these expanded lines of coverage would be set by FEMA. Insurance companies would collect the premiums and remit them to a Federal trust fund which would be used to pay claims.

REINSURANCE PROGRAM

The Natural Disaster Protection Act addresses the homeowners' insurance availability problems which have occurred in the wake of recent disasters and helps to avoid even greater availability problems in the aftermath of a future catastrophe. It also reduces the potential for insurance company insolvencies from exceptionally large disasters.

This would be accomplished through the creation of a new Federal disaster reinsurance fund that would be financed by the insurance industry. The reinsurance fund would provide a source of insurance which insurers could purchase to better manage the risk from highly infrequent, but extremely costly disasters.

Premiums for the reinsurance program would be set by FEMA, with companies making payments into a national reinsurance fund. Over time, the fund will accumulate considerable reserves to be used when a large disaster strikes. If such an event occurs before a sufficient reserve has accumulated, the Treasury would be authorized to borrow additional funds to cover the

shortfall and then charge insurers, with interest, to rebuild the fund.

Participating insurers would only be eligible to make claims against the fund if a natural disaster, or series of disasters occurring in a 12-month period, exceeds 15 percent of the industry's surplus, currently estimated at $24.5 billion. If, for example, a catastrophic earthquake causes $28 billion in insured losses, insurance companies would pay the first $24.5 billion and could only make reinsurance claims for $3.5 billion. Individual companies could also make claims if they experience a 20-percent reduction in their surplus as a result of a single disaster.

States would be eligible to participate in the reinsurance program if they create insurance pools or other State-sponsored programs to provide insurance for homeowners who are unable to secure coverage on their own.

Mr. President, I ask unanimous consent that a section-by-section analysis of the legislation be printed in the RECORD.

There being on objection, the material was ordered to be printed in the RECORD, as follows.

SECTION-BY-SECTION ANALYSIS OF THE NATURAL DISASTER PROTECTION ACT OF 1993—S. 1350

This legislation amends the Earthquake Hazards Reduction Act of 1977 to provide for an expanded federal program of hazard mitigation and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes, and volcanic eruptions.

Section 1. Title. This section entitles the bill the "Natural Disaster Protection Act of 1993".

Section 2. Findings. This section adds 11 new congressional findings to the Earthquake Hazard Reduction Act (EHRA) that outline the policy rationale for this bill. The findings, for instance, state that: the major natural disasters (e.g., hurricanes, earthquakes and volcanic eruptions) will inflict substantial long-term consequences on the country; hazard reduction measures, such as building codes, are not in place and not adequately enforced; improved first responder and emergency management capabilities will lessen the impact of future disasters; and millions of Americans do not have adequate natural disaster insurance coverage.

Section 3. Purpose. This section adds 10 new purposes to the EHRA that explain the objectives of the legislation. The purposes, for instance, include: building safer structures; enhancing emergency management and first response capability; creating a self-sustaining funding mechanism to help states pay for hazard mitigation programs; providing adequate insurance coverage for natural disaster perils; involving the insurance industry to speed recovery following a catastrophic disaster; reducing reliance on government disaster assistance.

Section 4. Definitions. This section adds 29 new definitions to the EHRA that define important terms used in this bill.

Section 5. Conforming Amendments. This section makes several conforming changes to the EHRA, primarily renumbering section numbers.

Section 6. Multihazard Mitigation Program. This section adds a new title II to the EHRA that creates a comprehensive multihazard mitigation program.

Section 201. Identification and Designation of Disaster-Prone States. This new EHRA section requires the FEMA Director within 1 year of enactment to identify states (defined to include territories) that are prone to damages from hurricanes, windstorms (e.g., tornadoes), earthquakes, volcanic eruptions, and flooding. Six months after being notified as a state prone to one or more of these disaster perils, the disaster-prone designations become final. Any state disagreeing with its disaster-prone designation has a right to appeal to a local federal district court.

Section 202. Building and Safety Standards. This section requires each hurricane-prone, windstorm-prone, or earthquake-prone state to either adopt one of the three recognized model building codes (and the national consensus fire safety codes) or certify that the local communities within the state have adopted and are enforcing these codes for all new construction or additions which increase the value of the structure by at least 50 percent. Likewise, each flood-prone state must either adopt the relevant flood minimum performance standards under the National Flood Insurance Act or certify that the flood-prone local communities within the state have adopted and are enforcing these standards for new construction or additions which increase the value of the structure by at least 50 percent.

Section 203. State Mitigation Plans. This section requires each disaster-prone state to develop and submit to FEMA within two years a mitigation plan or designate an existing mitigation plan. The mitigation plan must include processes for: verifying compliance with building and safety codes as well as any federal multihazard mitigation standards; identifying areas within states, types of structures, and hazard mitigation measures that should be prioritized; improving the emergency response to natural disasters, including better training for first responders; and expediting the rebuilding of lifelines and recovery by individuals and businesses.

Section 204. Compliance by States. This section gives disaster-prone states five years following enactment to substantially comply with the building standards and state mitigation plan requirements outlined above. The compliance mechanism would be self-certification subject to review by FEMA which would renew compliance certifications every two years. The following penalties would be imposed on states failing to certify compliance: loss of funds from the self-sustaining mitigation fund (discussed in section 206); higher premiums and deductibles for the federal multihazard insurance coverage (discussed below); and loss of assistance for any new federal building or new federally-leased, assisted, or regulated building. In addition, local communities which fail, within five years of enactment, to comply with the building standards outlined above would also be denied Stafford Act public disaster assistance funds.

Section 205. Federal Hazard Mitigation Authorities. This section requires FEMA to develop programs that carry out multihazard and emergency management initiatives such as: model building code development; training and licensing of code inspectors and other relevant professionals; expanded research of safer building technologies and technology transfer; additional postdisaster aid; and public education. This section also requires all new buildings owned or leased by any federal agency or receiving federal assistance to meet the newest edition of the relevant building code requirements.

Section 206. Self-Sustaining Mitigation Fund. This section requires a percentage of the premiums collected from both the primary and reinsurance programs described below to be deposited into a self-sustaining mitigation fund. The FEMA Director would set the actual percentage which must be between five and ten percent, unless the amounts in the two insurance funds are sufficient to cover losses for any probable maximum natural disaster. The mitigation funds would be allocated to disaster-prone states based on the primary program insurance premiums collected in that state. States could use the funds as they see fit, provided they are used for hazard mitigation activities (subject to FEMA audits) and a portion of the money flows through the affected local communities. Finally, FEMA could allocate a portion of the mitigation fund to support the federal hazard mitigation initiatives described above.

Section 207. Natural Disaster Mitigation and Planning Advisory Committee. This section establishes a 20-member independent advisory committee to advise FEMA on hazard mitigation and disaster planning, particularly the programs authorized by this legislation. The FEMA Director would appoint the members who would represent various interests, including: fire fighters and chiefs; emergency medical, search, rescue, and law enforcement personnel; state and local emergency managers and building code officials; architects, builders, and engineers; members of organized labor; wind and seismic mitigation experts; consumers; and insurers.

Section 7. Federal Insurance Programs. This section adds a new title III to the EHRA that creates two federal insurance programs.

SUBTITLE A CREATES THE PRIMARY INSURANCE PROGRAM

Section 301. Basic Authority and Program Operations. This section directs FEMA to establish a national multihazard insurance program to provide insurance against "shake" losses resulting from earthquakes and related seismic perils. FEMA would also conduct a study to determine whether the existing federal flood insurance program should be integrated into the multihazard insurance program and report any recommendations to Congress within one year. Insurance agents and companies participating in the federal flood insurance program would also be required to notify FEMA of policyholders living in flood plains and required to have flood insurance who refuse to purchase the coverage. FEMA would then have six months to take necessary and appropriate steps to ensure these non-compliant policyholders purchase the coverage. The FEMA Director, moreover, would submit a report to Congress within six months of any additional sanctions needed to improve participation in the federal insurance program.

Section 302. Program Scope. This section makes the multihazard coverage available only for residential properties (defined as one-to-four family structures and personal properly of those living in apartments and condominiums). Upon a finding that insurance coverage is unavailable in the private sector, the FEMA Director may recommend to Congress that additional types of properties qualify for the multihazard coverage.

Section 303. Terms and Limitations of Insurance Coverage. This section authorizes FEMA to establish the terms and conditions of insurability, including: the type, location, and specific insurability definitions of residential properties; damages covered by the insurance; and premiums rates, loss-deductible, coverage limits, and minimum coverage amounts. The insurance would cover losses (including debris removal, additional living

expenses, and ordinance and law coverage) proximately caused by: earthquakes, except for fires caused by earthquakes (which are already covered in homeowners' policies); volcanic eruptions, including fires caused by volcanic lava flows; and tsunamis. Any private insurer can participate in this program by providing to all of its homeowner policyholders living in earthquake and volcanic eruption-prone states either the federal coverage or the identical coverage on its own paper at the same rate. Finally, private insurers electing not to participate in this program must notify all of the homeowner policyholders in at-risk states of their nonparticipation and of the absence of insurance protection for earthquakes and related seismic perils.

Section 304. Actuarially Sound Rates. This section requires FEMA to establish riskbased rates for the multihazard coverage by considering the following factors: the severity and frequency of earthquakes, volcanic eruptions, and tsunamis in specified rating zones; the value, age, construction type, and architectural type of the residential structures; and whether hazard mitigation measures have been followed in the constitution or subsequent retrofitting of the residential structures. The rates must be actuarial so that, over an extended period of time, expected losses do not exceed premiums collected. The rates established, moreover, must minimize cross-subsidization by reasonably reflecting the risk of losses for each subclassification of policyholder. The rate classification system developed by FEMA must also be cost-effective, simple, and easy to understand by agents and policyholders. Finally, any premiums collected cannot be used to establish highly specific microzonation maps for the covered seismic perils.

Section 305. Primary Insurance Program Fund. This section creates within the U.S. Treasury the primary insurance program fund which would be exempt from all tax (except for state insurance premium taxes). Participating insurers would remit to this fund on a quarterly basis all the premiums they collect (including any interest earned) from their homeowner policyholders who purchase the multihazard coverage. Following an earthquake, volcanic eruption, or tsunami, insurers would pay the damage claims filed by their homeowners. The insurers would then be reimbursed within 30 days from amounts in the primary insurance program fund for the claims paid plus any loss adjustment expenses. The fund would also pay for the agents' commissions in selling and serving the coverage and for all of the program's administrative and operating expenses. The full faith and credit of the United States would be pledged for full payment of claims.

Section 306. Borrowing from Treasury. This section authorizes FEMA, subject to the availability of congressional appropriations, to borrow from the Treasury to cover any shortfalls that may result in paying the multihazard coverage claims and expenses. Amounts borrowed would be deposited in the primary insurance program fund and must be repaid, with interest, from future premiums collected.

Section 307. Insurance Mitigation Incentives. This section requires FEMA to provide the following insurance mitigation incentives: lower premiums or deductibles for residential structures in earthquake-prone states which meet seismic building standards or pass a seismic safety inspection; and lower premiums or deductibles for new residential structures not constructed in highrisk volcanic zones.

SUBTITLE B CREATES THE REINSURANCE PROGRAM

Section 311. Basic Authority and Program Operation. This section directs FEMA to make excess reinsurance coverage available to the following entities for losses arising from catastrophic hurricanes, earthquakes, volcanic eruptions, and tsunamis: private insurers participating in the primary insurance program described above; private reinsurers that reinsure private insurers participating in the primary program; and state insurance programs such as workers' compensation funds and state residual insurance pooling programs.

Section 312. Levels of Retained Losses. This section establishes the amount of insured losses that must be borne by eligible entities before they can qualify or receive reinsurance claims.

Industry-wide Retained Losses. Reinsurance would be available to companies if the property-casualty industry as a whole is likely to incur gross losses (i.e., losses prior to deducting any anticipated private reinsurance payments) from catastrophic natural disasters occurring during any 12 month period that exceed 15 percent of the industry's consolidated surplus, except that only separate events which cause at least $1.5 billion in losses (adjusted for inflation) would be counted. Once the industry has sustained this magnitude of loss (currently estimated to be about $25 billion), reinsurance would pay 95 percent of a company's losses which exceed 15 percent of that particular company's consolidated surplus.

Individual Company Retained Losses. If the industry-wide retained losses level is not reached, individual companies could receive reinsurance if a single natural disaster resulted in losses that exceed 20 percent of that company's consolidated surplus. At this point, reinsurance would pay 95 percent of the company's losses which exceed 20 per cent of the company's consolidated surplus up to a limit of 200 percent of the company's surplus.

State Insurance Programs. Reinsurance would be available to eligible state insurance programs if the Insurance industry is likely to incur gross losses in that state arising from natural disaster's occurring during any 12 month period that exceed the lesser of 10 times the premiums earned in that state or $10 billion (adjusted for inflation). This lesser amount, however , must equal at least $500 million (adjusted for inflation). Once this level of losses has been reached, reinsurance would pay to state insurance programs 95 percent of the losses which exceed the lesser amount described above.

The federal reinsurance claims paid to these eligible entities would be reduced by any reinsurance recovered from private sources. The full faith and credit of the United States would be pledged for full payment of reinsurance claims.

Section 313. Lines of Insurance. This section directs FEMA to provide excess reinsurance coverage for 16 lines of insurance, including fire, multiple peril, workers' compensation, and general liability. Other lines of coverage could be added by the Director of FEMA in consultation with the insurance advisory committee described in section 322.

Section 314. Actuarially Sound Rates. This section requires FEMA to establish riskbased rates for the excess reinsurance coverage so that, over an extended period of time, expected losses do not exceed premiums collected. The rates must also minimize the degree of cross-subsidization among classes of reinsured and the following rating factors must be considered: the premium rate volume of reinsureds and the total expected reinsurance payments by line of insurance; the adequacy of private reinsurance purchased; the payback of losses sustained by the reinsurance fund; and the reinsured's ratio of premiums written to consolidated surplus. Any rate classification system established by FEMA cannot impose disproportionate administrative costs.

Section 315. Reinsurance Fund. This section creates within the U.S. Treasury the reinsurance fund which would be exempt from all tax. Companies and state insurance programs participating in the reinsurance program would pay to this fund quarterly premiums where they would accumulate and be available to pay reinsurance claims.

Section 316. Borrowing from Treasury. This section authorizes FEMA, subject to the availability of congressional appropriations, to borrow from the Treasury to cover any shortfalls that may result in paying the excess reinsurance claims and expenses. Amounts borrowed would be deposited in the reinsurance fund and must be repaid, with interest, from future premiums collected from companies.

SUBTITLE C DESCRIBES THE ADMINISTRATION FOR THE INSURANCE PROGRAMS

Section 321. Plan of Operation. This section requires the FEMA Director to develop a plan of operation for the administration of the two federal insurance programs. Within one year of enactment, the Director would submit the draft plan of operation to the insurance advisory committee (described in the next section) for review and comment. The Director must consider all recommendations of the advisory committee and must publish in the Federal Register, with an accompanying explanation, any instances in which the Director fails to adopt an advisory committee recommendation. The final plan of operation would be issued as federal regulations within 18 months of enactment. Any lawsuits filed against the Director in connection with the insurance programs must be brought in the relevant federal district court (which would be the D.C. federal district court for actions brought by insurers).

Section 322. Federal Insurance and Reinsurance Advisory Committee. This section establishes a seven-member independent advisory committee to advise FEMA on the operations of the two insurance programs. The members would be appointed by the FEMA Director and must include: a state emergency planner; a state insurance commissioner, a professional actuary; and representatives of consumers, insurers, reinsurers, and insurance agents.

Mr. DODD. Mr. President, I am pleased to cosponsor the Natural Disaster Protection Act of 1993 with my distinguished colleague, Senator INOUYE.

The reactive nature of the current system of disaster relief is a major problem. A hurricane or earthquake strikes, and the Federal Government scrambles to find the money to repair the damage. This usually requires the Federal Government to borrow more money and increase the deficit.

The Natural Disaster Protection Act would change that approach. It would help communities plan for disasters and provide an insurance fund that would cover damages. With this reform in place, the disaster relief costs paid

by taxpayers would decrease. Additionally, the bill would assure the continued availability of homeowner's insurance both before and after a major disaster.

In recent years, the Nation has been hit with a series of devastating and expensive natural disasters. The rampaging waters flooding the Midwest are the most recent tragedy. Dozens of lives have been lost, millions of acres of crops have been destroyed, and countless businesses have been forced to close. The most recent estimates put losses at $10 billion.

Last year, Hurricane Andrew swept through Florida leaving a path of destruction in its wake. The final costs from that storm are still not known, but they may exceed $17 billion. Similarly, Hurricane Iniki left 8,000 people homeless and caused more than $1.5 billion in damages. Although it was not as severe as the tropical storms, my home State of Connecticut also experienced a natural disaster last winter when a northeaster smashed into the coast.

These disasters will cost the American taxpayers an enormous amount of money. This year, President Clinton has requested $4.3 billion to help the victims of the flooding in the Midwest. That is on top of the $156 million paid earlier this year to help victims of flooding in California. In 1992, taxpayers paid $2.1 billion to assist the victims of Hurricane Andrew and $362 million to repair the damage caused by Hurricane Iniki. All told, Federal Government outlays for disaster relief exceeded $75 per taxpayer for the year.

Although the last 2 years have been particularly difficult, we also paid $702 million for costs associated with the Loma Prieta Earthquake in California, and $1.5 billion for Hurricane Hugo in 1989.

Of course, private insurers pay for most of the costs associated with natural disasters. Insured losses from Hurricanes Andrew and Iniki exceeded $18 billion. These enormous losses have hurt the industry and homeowners. Eight insurers, responsible for 15,000 homeowners' policies, failed as a result of Hurricane Andrew. Forty percent of homeowners in Hawaii are either currently without homeowner's insurance, or will not have their policies renewed as a result of insurance company insolvencies. Furthermore, many Americans do not have adequate coverage for natural disasters.

The high cost paid by taxpayers, and the difficulties faced by private insurers, suggests that there should be a better way to deal with disaster relief. The Natural Disaster Protection Act offers a new approach that would reduce the Nation's reliance on federally-funded disaster assistance.

Under this legislation, the Federal Emergency Management [FEMA] would work with State and local governments and private insurers to improve the Federal disaster relief system. The bill has three main components: First, a hazard mitigation program that would require States in disaster-prone areas to develop a plan for dealing with natural disasters and certify that building and safety codes are being complied with; second, a national insurance program that would provide comprehensive disaster protection for homes; and third, a reinsurance program, financed by the insurance industry, to help prevent an insurance availability crisis.

The National Insurance Program is a key part of the bill. FEMA would begin the process by designating disaster-prone States. Working with a committee whose members would represent the interests of consumers, State emergency planners, and insurers; FEMA would also establish the terms and limitations of the insurance coverage. Most important, the premiums would be actuarially based so that the cost reflects the risk faced by individual homeowners. Insurance companies would collect the premiums and foward them to a Federal insurance fund which would be used to pay claims.

With this fund in place, the Nation would have a cushion to soften the costs associated with natural disasters. This should reduce the amount of direct Federal expenditures after a disaster. Additionally, the government could invest part of the fund to help build up the reserve.

Up to 10 percent of the fund would also be used for grants to help State mitigation efforts. To qualify for the grants, States would have to: First, submit a comprehensive disaster plan to FEMA which would identify ways to improve building code enforcement, emergency response, and overall disaster preparedness; and second, certify that local communities are complying with federally approved building codes.

Finally, the bill would establish a Federal reinsurance fund. Premiums would be set by FEMA, and paid by insurance companies. Essentially, the reinsurance fund would provide insurance for insurers, so that they could better manage the risk from extremely costly disasters. This will help reduce the potential for insurance company insolvencies after major disasters.

With the Natural Disaster Protection Act in place, the Nation will be better equipped to deal with natural disasters. As a result of mitigation efforts, and the establishment of Federal insurance funds, the costs paid by taxpayers would be substantially reduced. The development of the reinsurance program would also protect against insurance companies going out of business and leaving homeowners stranded. Not surprisingly, a wide range of organizations have voiced their support for this bill including the National Emergency Management Association, the American Insurance Association, the National Consumers League, the National Association of Realtors, the International Association of Fire Fighters [AFL–CIO], the United Homeowners of America, and the National Council of Senior Citizens.

Of course, some modifications to this bill may be necessary as the legislative process moves forward. One issue that I am concerned about is the way in which the new disaster insurance fund is coordinated with other Federal insurance programs, including the National Flood Insurance Program. But this legislation serves as a starting point, and I look forward to working with my colleagues to reform our system of Federal disaster relief.

Mr. AKAKA. Mr. President, today I join Senators INOUYE, STEVENS, DODD, MURKOWKSI, SIMON, and GORTON in introducing legislation to lessen the economic consequences of a catastrophic disaster. Our bill provides a workable solution to reducing the loss of life and property and lessens the need for massive Federal disaster assistance.

Last September, the garden island of Kauai took a direct hit from Hurricane Iniki, with slamming winds of up to 165 miles per hour. Damage to the island totaled over $1.4 billion. It is important to remember that Hurricane Iniki occurred shortly after the Nation's most costly natural disaster, Hurricane Andrew, and preceded the great flood of 1993 by less than a year.

To those Americans displaced both physically and emotionally from their homes and livelihoods by natural disasters, the Federal Government offers a variety of emergency disaster services. For many disaster victims, the shock of losing one's home or business is compounded by the realization that the Federal Government can only do so much. Moreover, many affected by these disasters find that their insurance policies are often inadequate to cover losses.

The legislation we introduce today offers a multipronged approach to responding to future disasters. Encompassed in the bill are a hazard mitigation program—which will result in the construction of safer buildings and improved State and local emergency management capabilities; a primary insurance program to provide affordable, comprehensive disaster protection for homes; and a national reinsurance program financed by the insurance industry. Only through a comprehensive catastrophic disaster insurance program will be encourage those living in flood-prone, hurricane-prone, and earthquake-prone areas to purchase insurance. The central concept of this legislation is a cooperative effort that lessens the impact of a disaster through shared responsibilities among property owners, insurers, and government at all levels.

The Hazard Mitigation Program provides grants to State and local governments to strengthen their disaster planning and mitigation effort, in coordination with FEMA, through a Federal disaster mitigation fund. States meeting specified criteria would be eligible for these grants, which would be financed through amounts collected from other programs in the act. States not in compliance would be ineligible for these funds and could be denied access to certain types of Federal disaster relief.

This legislation does not intend to micromanage the jurisdictional structure or the actual mitigation steps to be followed, but rather, establish a framework within which the appropriate Federal agencies can deliver assistance effectively. Each State designated to be prone to specified disasters will be required to carry out certain mitigation efforts to address each of these types of disasters.

One of the most important features of this bill is the establishment of a reinsurance program to address the problem of homeowners' insurance availability. It would also reduce the potential for insurance company insolvencies from exceptionally large disasters, like Hurricanes Iniki and Andrew, and now the Midwest flood.

I might add that I sincerely hope that the residents of the Midwest do not meet the same problems encountered by the citizens in Hawaii after Hurricane Iniki, when the State's third largest insurer declared bankruptcy after claims became too great. This prompted most insurance companies doing business in the State to stop writing new policies and refusing to renew existing ones. Because many homeowners, and eventually many businesses, were without property insurance after Iniki, the Hawaii State Legislature adopted a bill to establish a new public corporation to provide hurricane coverage.

Another point in favor of Federal disaster insurance is that even when the Hawaii insurance pool is fully funded, it could never cover losses should a hurricane the force of Iniki hit the State's most populated island of Oahu. It is estimated that such a direct hit would result in estimated losses of $35 billion. Mr. President, this is where a reinsurance program becomes advantageous to everyone.

An important feature of the reinsurance fund is that it would be financed by the insurance industry. The fund would provide a source of insurance which insurersse high could purchase to better manage the risk from highly infrequent, but extremely costly disasters. States would also be eligible to participate in the reinsurance program if they create insurance pools, like Hawaii's hurricane relief fund, or other State-sponsored programs to provide insurance for homeowners who are unable to secure coverage on their own.

This bill is intended to lessen the damage suffered through injuries or loss of life, as well as lessen physical damage to insured structures. By lowering the amount of claims that insurance companies are forced to pay out, we will lessen their risk to a level where they feel that they can participate in high-risk markets.

Mr. President, I wish to reemphasize that our bill is aimed at long range effectiveness. In searching for an equitable and effective means of addressing the financing of disasters, we must be willing to try new approaches. Although we cannot avert most disasters, we can take a proactive stand to lessen the impact of these unpredictable acts of nature.

The Natural Disaster Protection Act of 1993 provides a road map for dealing with the impact of serious, catastrophic disasters which appear to be striking with more frequency and intensity by shifting the emphasis from taxpayer dollars to private dollars as a means of funding disaster recovery.

Mr. MURKOWSKI. Mr. President, I rise today to join with my good friends Senator INOUYE and Senator STEVENS in introducing this important legislation.

As has already been explained, this bill will both strengthen existing building codes to prevent damage from natural disasters and vastly increase the availability of insurance to people in States at risk for such disasters.

I would just like to comment specifically on three items.

First, I would like to thank Senator INOUYE for including at my suggestion, language insuring that potential victims of tsunami damage are also covered by this bill as well as those victims of earthquakes or volcanic eruptions.

In the last great earthquake in my State, the Good Friday earthquake of 1964, a great proportion of the damage was done by tsunami, and this bill will insure that should that happen again that damage would be covered.

Second, this bill anticipates future difficulties. Too often, we here in Congress are accused of waiting until after the horse is gone to shut the gate; of waiting until after the disaster has occurred and then throwing money at the ruins. This bill is different. This bill attacks the risk of catastrophic damage when it should be attacked, before the disaster occurs, before a single life is lost or a single building destroyed. I commend the Senator from Hawaii for this foresight.

Finally, this bill will vastly broaden the availability of disaster insurance for millions of Americans at no cost to the Federal Government. We here in the Congress have to understand that the Federal Government simply does not have the financial resources to address each and every problem in this Nation. This bill recognizes that fact. This bill's innovative self-funding mechanisms are the wave of the future, and I am pleased to be associated with this effort.

I look forward to working with my colleagues to insure passage of this important legislation.

By Mr. REID:

S. 1351. A bill to curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States; to the Committee on the Judiciary.

IMMIGRATION STABILIZATION ACT OF 1993

Mr. REID. Mr. President, it is truly dazzling to think about the contributions immigrants have made to this great Nation. Names like Einstein, Baryshnikov, and Greta Garbo spring immediately to mind. One of our recent Poet Laureates of the United States was the Russian immigrant, Joseph Brodsky.

And there have been so many more famous and unknown immigrants that have made America great. In the past, our immigration has been mostly European. But we have a new immigration in America today. People from Latin America and the Far East are now making their own mark on our society.

Students from the Far East are class valedictorians all across the country. Korean and Chinese small businesses proliferate and are successful, reminiscent of An Wang's great success as an inventor and businessman.

Latin Americans have made great contributions to the arts, theatre, politics, and many other areas. The Spanish language has become a part of our everyday experience. I, myself, have three sons fluent in this language.

This is what makes America America. The diversity of our public consciousness and the unity of our purpose has made us strong.

As many of us here, I and my children are from immigrant stock. My grandmother emigrated from England, and my father-in-law was from Russia. Like many of our recent immigrants, they came here, worked hard, and improved their lives.

Mr. President, today I am introducing comprehensive legislation aimed at overhauling our Nation's immigration laws. Immigration is rapidly becoming one of the most critical issues on the national agenda and one which the American people believe requires the urgent attention of Congress. The legislation which I am introducing today is aimed at addressing the growing concern on the part of the American people that our immigration laws lack a purpose and a sense of direction.

In 1958, Senator John F. Kennedy published a pamphlet entitled, "A Nation of Immigrants." Since that time

the description, "a nation of immigrants" has become almost a national badge of honor. Perhaps as no other nation before ours, we have taken people from many different cultures, religions, and races and melded them into a cohesive unit—a nation. Moreover, the United States has succeeded in creating this feat in a remarkably brief period of time.

In effect, we may have become victims of our own success. Like so many things, we have begun to take for granted the ability of the United States to absorb and assimilate large numbers of newcomers into the mainstream of American life. In recent years, we have lost sight of the fact that being a nation of immigrants is an ideal that requires effort and planning. President Kennedy's lofty ideal is in danger of becoming an empty cliché.

Thirty-five years after the publication of "A Nation of Immigrants" it is fair to say that the United States lacks an immigration policy. Webster's defines the term policy as "prudence or wisdom in the management of affairs." Policy also implies an overriding objective and a common understanding of what national good is being served. Yet in 1993, the United States admits a population roughly equivalent to the population of my home State of Nevada every year, and will continue to do so every year for the foreseeable future, without any clear idea of what it is we hope to achieve.

Every public policy generates differences of opinion, but those differences generally center on how best to achieve a given objective. As the Nation wrestles with the difficult issue of health care reform we will witness passionate and protracted debates from all segments of society. But at least we all agree that the objective ought to be to provide the best possible health care for the greatest number of people within the limits of our resources. The same could be said for virtually every other difficult issue that the Nation, and by extension those of us here in Congress, must deal with.

When it comes to immigration we have not even taken the first step of debating and establishing our goals. Immigration to the United States is governed by an inchoate and often incomprehensible hodgepodge of statutes, regulations, and procedures. Cobbled together over the last 100 years in the true spirit of ad hocracy, America's immigration laws utterly lack the support and confidence of the people of the United States. The time has come to move beyond the myths, shibboleths, and clichés and open a national debate on an issue that Attorney General Janet Reno has aptly described as "one of the most critical issues that we face this decade."

There is no better place to begin than by taking a clearheaded look at exactly what America's immigration tradition has been. For years, those who have promoted expanded immigration levels and who have urged us to wink at massive illegal immigration and abuse of our political asylum laws, have argued that we must be true to America's immigration tradition. But what exactly is that tradition? Upon closer scrutiny, immigration to the United States today is anything but traditional.

From 1820 until 1965—a period that encompasses most of our history as a nation—the United States admitted an average of less than 300,000 immigrants a year. During that 145-year period we settled the frontier, fought a civil war, created an industrial revolution, engaged in two world wars, endured a great depression and ultimately emerged as the world's greatest military and economic superpower. There were ebbs and flows in immigration over this period, but taken together 300,000 immigrants a year is our true immigration tradition. And, with the exception of one relatively short period at the beginning of the 20th century, these levels rarely varied.

Contrast those levels of immigration with the numbers we are seeing today. Depending on estimates of illegal immigration, we are now resettling between 1.2 million and 1.5 million newcomers every year. There is nothing traditional, or rational for that matter about attempting to absorb the population of Nevada every year, year in and year out. When history is written, the decade of the 1980's will be remembered as a decade of wretched excess and, true to form, immigration was taken to excess as well. As we focus on reining in many of the other excesses of the preceding decade, we must not overlook immigration.

Unless serious reforms are undertaken, 15 million newcomers will settle in the United States during the 1990's. Yet we continue to act as though immigration exists in a vacuum. Not a whit of thought has been devoted to how we will meet the needs of that population. There has not been a single debate in Congress about how we will provide a first class education to all these new children, provide quality health care to the sick, secure adequate and affordable housing, ensure that there will be sufficient jobs, improve and expand infrastructure, cope with environmental degradation, or ensure domestic tranquility. In short, we are admitting unprecedented numbers of new immigrants without even a modicum of planning. We are taking a leap of faith hoping that somehow everything will work out tomorrow.

Over the past 15 years, Congress and successive administrations have acted on immigration like they have acted on the national debt. As a result, our immigration laws are in the same mess as our financial situation. The American people are angry about both the budget deficit and immigration. Nobody has asked them if they want to foot the bill for what is happening. Nobody has consulted with them about whether they want to see the social and cultural makeup of their nation radically altered. Nobody has ever asked the American people if they want to see the population of the United States grow by more than 50 percent within the lifetimes of their children and grandchildren.

In a democracy, the people have a right to be consulted on issues of vital importance to their future. Every public opinion poll done in the past 15 years indicates that the American people—of very race, religion, ethnic group, and region of the country—want to see legal immigration reduced to more traditional levels and illegal immigration brought under control. Several weeks ago, Jim Hoagland wrote in the Washington Post that immigration would soon become topic A in all the industrialized democracies. It is time, therefore, that Congress began to address this issue and the concerns of the people seriously.

It is for these reasons that I am introducing comprehensive legislation aimed at establishing an immigration policy for the United States. I wish to note that while many piecemeal immigration proposals have been introduced to deal with particular problem areas—such as asylum abuse—no other Senator or Congressman has introduced a comprehensive reform bill.

Comprehensive reform is essential for effectively addressing this critical issue. The problems with our immigration system have grown too large to be dealt with by tinkering with the margins. The troubles with our immigration process cannot be solved with a few more dollars, or a few more border guards, or by tightening up on asylum regulations. The problem is the system itself and that is why I am proposing that it be reformed top to bottom. It is time to reexamine all aspects of the issue: Controlling illegal immigration, ending abuse of our political asylum process and establishing, for a change, some guiding principles by which we can administer a legal immigration policy that is fair, rational, and which serves the interests of the United States.

Under the legislation I am proposing, we would begin to restore immigration to its more traditional and manageable levels of about 300,000 annually.

Annual levels of 300,000 would restore immigration to more traditional levels. To put the excesses of our current immigration numbers in perspective, even if we were to enact this decrease of more than 50 percent, the United States would still have the most open and generous immigration policy in the world.

Paring back immigration to more manageable levels would necessitate

some long overdue changes in the way immigrants are selected. The ever-growing pressure to expand immigration levels is a byproduct of a system that grants immigration preferences to extended family members. Each time we admit a new immigrant, we expand the pool of people eligible to join the queue of those who would like to immigrate in the future. Thus, under the current system, the more immigrants we admit, the greater the pressure becomes to admit relatives who feel they have entitlement to come to America. We now have an astounding backlog of 3.4 million such people—roughly equivalent to the population of the city of Los Angeles.

What is more, people who immigrate under one of the family reunification provisions do not have to meet any objective criteria which measure whether they are likely to become contributing members of our society. Of the more than 1 million people who settle here each year, not more than about 50,000 are selected based on what they can do for the United States. We have lost sight of the fact that immigration is a public policy and like all public policies it is supposed to serve the best interests of the United States.

To both serve the national interest and reduce the pressure for ever-expanding immigration quotas, we must eliminate immigration preferences for extended family members. The nuclear family is the bedrock of our social structure and when an immigrant is selected he or she should be entitled to bring a spouse and unmarried minor children, but the United States must make it clear that there is no implicit or explicit promise that other family members will be permitted to immigrate as a result. Like other immigrant-receiving countries, the United States has a duty to set limits on the number of people who can come and fill those quotas based on an objective assessment of our own national interests.

Events in recent months, such as the hideous bombing in New York, have demonstrated that one of our most important national interests has been grossly neglected, with tragic results. Illegal immigration has become not only one of our most costly problems, but a threat to our national security. For decades, we have pretended not to see the problem of illegal immigration. The time has come to begin treating this matter seriously through a combination of enforcement and deterrence.

Twice in the past 7 years Congress has authorized increases in Border Patrol manpower and, in both instances, failed to appropriate the necessary funds. With an estimated 3 million people illegally crossing our borders every year, Congress must significantly increase the size of the Border Patrol to ensure our borders are secure. This will require roughly twice the number of Border Patrol officers we now have—an increase to 9,900 personnel. Inadequate manpower is penny-wise and pound-foolish. The Constitution requires that we provide for the defense of the Nation. As long as anyone can enter this country, at any time, for any reason, we are failing to meet this most basic of our constitutional obligations—the security of the people.

In addition to adequate manpower, we must also provide those who guard our borders with the necessary equipment to do their jobs. It is a waste of the taxpayers' money to pay Border Patrol agents' wages when their vehicles are often in such a state of disrepair that they are unable to guard our borders. How can we expect aliens to take seriously our commitment to securing our Nation's borders when Border Patrol vehicles often sit idle for lack of gasoline?

Given the other events that are taking place here in Congress this week; namely, producing a budget that makes significant reductions in the Federal deficit, the legislation I am introducing today contains a plan for paying for the increased border security I am proposing. My colleague, Senator DIANNE FEINSTEIN of California has already suggested the institution of a border crossing fee to cover the costs of these needed improvements. Her idea has been incorporated into this bill. A $3 fee would raise approximately $1 billion a year to fund efforts to combat illegal immigration and expedite travel for the hundreds of millions of people who cross our land borders for legitimate reasons.

As important as improving security along the border is, however, the cornerstone of our policy to control illegal immigration must be effective deterrence. We will never be able to stop all the people attempting to enter the United States illegally as long as they believe they will be able to live and work in this country if they can successfully elude the Border Patrol.

In 1986, Congress made a deal with the American people. In exchange for granting amnesty to 3.1 million people who had violated our immigration laws, Congress promised to institute effective deterrents to further illegal immigration in the form of employer sanctions. These sanctions penalize employers who hire illegal aliens instead of citizens and legal residents. Congress also promised to establish an effective and nondiscriminatory way for employers to verify whether each newly hired worker was eligible to work in the United States.

Instead, the Federal Government has sat by idly as the deterrence factor of employer sanctions has been eroded by rampant document fraud. We have allowed ourselves to be paralyzed by specious claims that tamper-resistant, verifiable documents pose a threat to privacy and are likely to be abused. As a result a multimillion-dollar criminal enterprise in forged documents has sprung up and undermined our ability to enforce the laws we have enacted.

I am, therefore, proposing that we adopt the recommendations of the General Accounting Office and begin issuing a fraud-resistant, verifiable Social Security card. Every person legally in the United States over the age of 2 is already required to have a Social Security card. There is no reason why, in 1993, a Social Security card cannot be as easily verified as a credit card or an ATM card. In a society increasingly dependent on technology, it is simply unrealistic not to employ technological means to ensure that only those people who are legally entitled to work and collect benefits in the United States actually do.

The most humane and effective means of controlling large-scale illegal immigration is deterrence. If people around the world become convinced that the United States is serious about enforcing its immigration laws and that stealing into this country will not be rewarded, many potential illegal immigrants will make the very rational decision not to try to come to the United States by illegal means. This will increase the capability of the Border Patrol to apprehend those who attempt to come here illegally anyway. Reducing the ratio of illegal border crossers to Border Patrol agents would enhance the probability of apprehension. That, in itself, would provide one more layer of deterrence.

Finally, the legislation I am introducing would take strong measures to deal with the abuse of this country's humanitarianism. The past several months have presented numerous and vivid illustrations of how our political asylum laws are being blatantly abused by people seeking to evade our immigration laws and even by organized criminals seeking to steal, cheat, and intimidate. Perhaps no other abuse of our immigration policy has raised the hackles of the American public like those blatant abuses of our immigration standards.

The abuse must be ended. At its best, political asylum today has been turned into a means by which a small number of people can jump ahead of 18 million refugees worldwide to enter the United States.

The bill I am introducing would eliminate the incentives to abuse our Nation's political asylum process by ensuring the quick and certain exclusion of those filing patently bogus claims of political asylum. The current system has simply been overwhelmed. Some 275,000 cases are backlogged and the backlog is growing at a rate of 100,000 a year. It has become such an inviting target for abuse that more than half of all applicants never even bother to appear for their scheduled hearings. Even the generous spirit of

the American people can be strained to the breaking point when they realize that they are being played for suckers.

In summation, it is time for the United States to adopt an immigration policy. It is no wonder that from the cover of this week's issue of Newsweek, to the pages of every major newspaper and magazine, to the Nation's airwaves we are hearing reports of growing dissatisfaction with the way immigration is being handled. It's time to listen to what the American people are saying about immigration.

The comprehensive proposal I am submitting calls for an overall set of objectives and a plan for achieving them. It is an opportunity to open a national debate on what is becoming increasingly acknowledged as one of the most critical issues ever to face our country. Patches on the blanket won't do anymore. What we need is a new blanket.

In the coming weeks and months I will be addressing specific aspects of the immigration issues in more detail on the floor of the Senate. It is an issue that will affect virtually every aspect of life in the United States and every aspect of business conducted here in Congress. One thing seems certain: We cannot go on indefinitely adding the equivalent of the population of the State of Nevada every year to our national population base. The time has come for the United States to have an immigration policy.

Mr. President, I ask unanimous consent that a copy of my bill and a section-by-section analysis of its provisions be printed in the RECORD.

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

S. 1351

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 "Immigration Stabilization Act of 1993".

SEC. 2. TABLE OF TITLES.

Title I. Admission of immigrants.
Title II. Admission of refugees.
Title III. Asylum reform.
Title IV. Criminal aliens.
Title V. Financial responsibility.
Title VI. Employer sanctions.
Title VII. Border security.
Title VIII. Alien smuggling.
Title IX. Local cooperation.
Title X. Citizenship.

SEC. 3. EFFECTIVE DATE.

Except where otherwise specifically provided, the provisions of this Act are effective for fiscal years after fiscal year 1993.

TITLE I—ADMISSION OF IMMIGRANTS

SEC. 101. WORLDWIDE LEVELS OF IMMIGRATION.

Section 201 of the immigration and Nationality Act (8 U.S.C. 1151) is amended—

(a) By striking subsection (c) and inserting:

"(c) The worldwide level of family-sponsored immigrants is—

(i) 300,000, minus

(ii) the sum of—

(A) the number of refugees admitted under section 207 in the preceding fiscal year, and

(B) the number of aliens described in sections 201(b)(2) and 203(b) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year;

(b) By striking subsection (d) and inserting:

"(d) The worldwide level of employment-based immigrants is 40,000"; and

(c) By striking "55,000" from subsection (e) and inserting "zero".

SEC. 102. ALLOTMENT OF VISAS.

Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by—

(a) Adding the following paragraph to subsection (a):

"(5) If the worldwide level of family-sponsored immigrants for any fiscal year is less than 226,000, then the maximum number of visas that can be allotted to any class of family-sponsored immigrants under this subsection shall be proportionately reduced for that fiscal year;

(b) Striking subsection (b) and inserting:

"(b) ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Visas shall be made available in a number not to exceed the worldwide level of employment-based immigrants to qualified immigrants who are aliens described in any of the following paragraphs (1) through (3):

(1) ALIENS WITH EXTRAORDINARY ABILITY.—An alien is described in this paragraph if—

(A) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(B) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(C) the alien's entry into the United States will substantially benefit prospectively the United States

(2) OUTSTANDING PROFESSORS AND RESEARCHERS.—An alien is described in this paragraph if—

(A) the alien is recognized internationally as outstanding in a specific academic area.

(B) the alien has at least 3 years of experience in teaching or research in the academic area, and

(C) the alien seeks to enter the United States—

(i) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,

(ii) for a comparable position with a university or institution of higher education to conduct research in the area, or

(iii) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(3) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.—An alien is described in this paragraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this paragraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive."

(c) Striking subsection (c) and inserting:

"(c) Visas shall be made available to employment-related immigrants in the order in which a petition on behalf of each such immigrant is filed with the Attorney General and waiting lists of applicants for visas shall be maintained in accordance with regulations prescribed by the Secretary of State."

(d) Striking "(a), (b), or (c)" from subsections (d), (f), and (g) and inserting "(a) or (b)".

(e) Striking subsection (e).

(f) Renumbering subsections (f) and (g) as (e) and (f), respectively.

SEC. 103. APPROVAL OF PETITIONS.

Section 204 of the Immigration and Nationality Act (8 U.S.C. §1154) is amended by—

(a) Striking from subsection (a)(1)(A) "the classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or";

(b) Striking from subsection (a)(1) subparagraphs (B), (C), (D), (E), (F), (G), and inserting:

"(B) Any alien desiring to be classified under section 203(b), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.";

(c) Striking from subsection (e) "as an immigrant under subsection (a), (b), or (c) of section 203 or";

(d) Striking from subsection (f)(1) ", 203(a)(i), or 203(a)(3), as appropriate"; and

(e) Adding:

"(h) Notwithstanding any other provision of this section, the Attorney General shall not approve after September 30, 1993, any petitions other than for immediate relative status under section 201(b)(2) or classification by reason of a relationship described in section 203(b)."

SEC. 104. CONFORMING AMENDMENTS.

The Immigration and Nationality Act is amended by—

(a) Striking from section 201(b)(2)(A)(i) "the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age" and inserting "children and spouses of a citizen of the United States".

(b) Striking from section 203(a)(1) "UNMARRIED SONS OR DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States" and inserting "PARENTS OF ADULT U.S. CITIZENS.—Qualified immigrants who are the parents of citizens of the United States who are at least 21 years of age".

(c) Striking "MARRIED" and "married" from section 203(a)(3).

TITLE II—ADMISSION OF REFUGEES

SEC. 201. NUMBER OF ADMISSIONS.

Section 207 of the Immigration and Nationality Act, 8 U.S.C. §1157, is amended by striking subsection (a) and inserting:

"(a) Except as provided in subsection (b), the number of refugees who may be admitted under this section in any fiscal year may not exceed 50,000. Admissions under this subsection shall be allocated by the President among refugees of special humanitarian concern to the United States."

SEC. 202. NONDISCRIMINATION IN REFUGEE ADMISSIONS.

(a) Public Law Number 89-732, as amended by Public Law Number 94-571, is repealed.

(b) Section 207 of the Immigration and Nationality Act (8 U.S.C. §1157) is amended by adding after subsection (e) thereof:

"(f) Determinations of the allocation of admissions under subsections (a) and (b), determinations of admissions under subsection

(c), and procedures for the determination of refugee status shall not discriminate in favor of or against any alien on the basis of the alien's race, religion, nationality, membership in a particular social group, or political opinion.

TITLE III—ASYLUM REFORM

SEC. 301. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) INSPECTION OF ALIENS.—Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

(2)(A) If the examining immigration officer determines that an alien seeking entry—

(i) does not present the documentation required (if any) to obtain legal entry to the United States; and

(ii) does not indicate either an intention to apply for asylum (under section 208) or a fear of persecution, the officer shall order the alien excluded from the United States without further hearing or review.

(B) The examining immigration officer shall refer for immediate inspection at a port of entry by an asylum officer under subparagraph (C) any alien who has indicated an intention to apply for asylum or a fear of persecution.

(C)(i) If an asylum officer determines that an alien has a credible fear of persecution, the alien shall be entitled to apply for asylum under section 208.

(ii) If an asylum officer determines that an alien does not have a credible fear of persecution the officer shall order the alien excluded from the United States without further hearing or review.

(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

(B) The provisions of subparagraph (A) shall not apply—

(i) to an alien crewman,

(ii) to an alien described in paragraph (2)(A) or 2(C)(ii)(I), or

(iii) if the conditions described in section 273(d) exist.

(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.

(5)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer shall be deemed to have entered the United States without inspection.

(6) INTERIOR REPATRIATION.—The Secretary of State shall undertake to enter into, on behalf of the United States, arrangements with the governments of countries contiguous to the United States that any excludable or deportable alien who is to depart the United States to such country under an order of deportation, under a grant of voluntary departure with safeguards, or at a time when the alien is in federal custody shall be transported to a point in the contiguous country that, to the extent practicable, is not less than 500 kilometers from the border of the United States.

(b) GROUNDS FOR EXCLUSION.—Section 212(a)(6) of the Immigration and Nationality Act is amended by adding the following paragraphs:

"(G)(i) Any alien who, in seeking entry to the United States or boarding a common carrier for the purpose of coming to the United States, presents any document which is forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document, or otherwise contains a misrepresentation of a material fact, shall be excluded.

(ii) Subparagraph (ii) shall not apply to an alien if, in the determination of the asylum officer, the document or documents to which that subparagraph refers were presented by the alien solely to enable the alien to depart directly from—

(A) a country in which the alien had a credible fear of persecution; or

(B) a country in which there was a significant danger that the alien would be returned to a country in which the alien would have a credible fear of persecution.

(iii) For the purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of his or her claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer that the alien could establish eligibility for asylum under section 208.

(H) Any alien who, in boarding a common carrier for the purpose of coming to the United States, presents a document that relates or purports to relate to the alien's eligibility to enter the United States, and fails to present such document to an immigration officer upon arrival at a port of entry into the United States, shall be excluded."

(b) CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 302. ASYLUM.

(a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is amended to read as follows:

"SEC. 208 (a) ASYLUM.—

(1) RIGHT TO APPLY.—An alien physically present in the United States or at a land border or port of entry may apply for asylum in accordance with this section.

(2) CONDITIONS FOR GRANTING.—

(A) GRANTS BY ATTORNEY GENERAL.—The Attorney General may grant asylum to an alien if the alien applies for asylum in accordance with the requirements of this section and establishes that it is more probable than not that in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) such alien would be arrested and incarcerated or such alien's life would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien if the Attorney General determines that—

(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(v) a country willing to accept the alien has been identified (other than the country described in subparagraph (A)) to which the alien can be deported or returned and the alien does not establish that it is more likely than not that the alien would be incarcerated or the alien's life would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of clause (ii), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. The Attorney General shall promulgate regulations that specify additional crimes that will be considered to be a crime described in clause (ii) or clause (iii).

(3) ASYLUM STATUS.—In the case of any alien granted asylum under paragraph (2), the Attorney General, in accordance with this section—

(A) shall not deport or return the alien to the country described under paragraph (2)(A);

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit; and

(C) may allow the alien to travel abroad with the prior consist of the Attorney General, except that such travel may not be authorized to the country from which the alien claimed to be fleeing persecution.

(4) TERMINATION.—Asylum granted under paragraph (2) shall be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that—

(A) the alien no longer meets the conditions described in paragraph (2) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided;

(B) the alien meets a condition described in paragraph (2); or

(C) a country willing to accept the alien has been identified (other than the country described in paragraph (2)) to which the alien can be deported or returned and the alien cannot establish that it is more likely than not that the alien would be arrested or incarcerated or the alien's life would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion; or

(D) the alien returns to the country from which the alien claimed to be fleeing persecution or makes application with the Attorney General to return to the country from which the alien claimed to fleeing persecution.

(5) ACCEPTANCE BY ANOTHER COUNTRY.—In the case of an alien described in paragraph (2)(C)(v) or paragraph (4)(C), the alien's deportation or return shall be directed by the Attorney General in the sole discretion of the Attorney General, to any country which

is willing to accept the alien into its territory (other than the country described in paragraph (2)).

(b) ASYLUM PROCEDURE.—

(1) APPLICATIONS.—

(A) IN GENERAL.—

(i) DEADLINE.—Subject to clause (ii), an alien's application for asylum shall not be considered under this section unless—

(I) the alien has filed, not later than 30 days after entering or coming to the United States, notice of intention to file such an application, and

(II) such application is actually filed not later than 45 days after entering or coming to the United States.

(ii) EXCEPTION.—An application for temporary asylum may be considered, notwithstanding that the requirements of clause (i) have not been met, only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality (or in the case of an alien with no nationality, in the country where the alien last habitually resided) affecting eligibility for asylum.

(B) REQUIREMENTS.—An application for temporary asylum shall not be considered unless the alien submits to the taking of fingerprints and a photograph in a manner determined by the Attorney General.

(C) FEES.—The Attorney General may provide for a reasonable fee for the consideration of an application for asylum or for any employment authorization under subsection (a)(3)(B).

(D) NOTICE OF PRIVILEGE OF COUNSEL AND CONSEQUENCES OF FRIVOLOUS APPLICATION.—At the time of filing a notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose and of the consequences, under subsection (d), of filing a frivolous application for temporary asylum.

(2) CONSIDERATION OF APPLICATIONS; HEARINGS.—

(A) ASYLUM OFFICERS.—Applications for temporary asylum shall be considered by officers of the Service (referred to in this Act as 'asylum officers') who are specially designated by the Service as having special training and knowledge of international conditions and human rights records of foreign countries. Pending the designation of such officers, individuals who as of the date of the enactment of the Immigration Stabilization Act of 1993 are authorized to perform duties as asylum officers shall be deemed to be qualified to be asylum officers for purposes of this Act.

(B) SCHEDULING OF HEARINGS.—

(i) IN GENERAL.—Upon the filing of an application for asylum, an asylum officer, at the earliest practicable time and after consultation with the attorney for the Government and the attorney (if any) for the applicant, shall set the application for hearing on a day certain or list it on a weekly or other short-term calendar, so as to assure a speedy hearing.

(ii) DEADLINE.—Unless the applicant (or an attorney for the applicant) consents in writing to the contrary, the hearing on the asylum application shall commence not later than 45 days after the date the application was filed.

(C) PUBLIC HEARINGS.—A hearing on a temporary asylum application shall be open to the public unless the applicant requests that it be closed to the public.

(D) RIGHTS IN HEARINGS.—The officer shall, to the extent practicable, conduct the hearing in a nonadversarial manner. During such hearing, the applicant shall have the privilege of the assistance and participation of counsel (as provided under paragraph (1)(D)) and both the government and the applicant shall be entitled to present evidence and witnesses, to examine and object to evidence, and to cross-examine all witnesses.

(E) COUNTRY CONDITIONS.—An officer may request opinions regarding country conditions from the Secretary of State, but shall not request or consider recommendations from the Secretary of State as to whether a particular named individual should or should not be granted temporary asylum.

(F) TRANSCRIPT OF HEARINGS.—A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General and the Service shall provide that a transcript of a hearing held under this section is made available not later than 10 days after the date of completion of the hearing.

(G) DEADLINE FOR DETERMINATIONS ON APPLICATIONS.—The officer shall render a determination on the application not later than 30 days after the date of completion of the hearing. The determination of the officer shall be based only on the officer's knowledge of international conditions and human rights records of foreign countries, and evidence produced at the hearing.

(H) RESOURCE ALLOCATION.—The Attorney General shall allocate sufficient resources so as to assure that applications for asylum are heard and determined on a timely basis. However, nothing in this paragraph relating to scheduling or deadlines shall be construed as creating any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

(I) SANCTIONS FOR FAILURE TO APPEAR.—

(i) Subject to clause (ii), the application for asylum of an alien does not appear for a hearing on such application shall be summarily dismissed unless the alien can show exceptional circumstances (as defined in section 242B(f)(2)) as determined by the asylum officer.

(ii) Clause (i) shall not apply if written and oral notice were not provided as required by section 242B(e)(4)(B).

(iii) Except in exceptional circumstances (as defined in section 242B(f)(2)), an application summarily dismissed in accordance with Clause (i) shall not be reopened or reconsidered nor shall a new application for asylum be entertained by the Attorney General at any time.

(J) FINALITY OF DETERMINATIONS.—

(i) IN GENERAL.—The decision of the asylum officer shall be the final administrative determination of a claim for asylum.

(ii) TREATMENT OF CASES IN EXCLUSION OR DEPORTATION.—If proceedings are instituted against an alien under section 235 or 242 of this Act and the alien files an application for asylum based on circumstances described in subsection (b)(1)(A)(ii), the asylum officer shall render, on an expedited basis, a decision on the application.

(c) ASYLUM STATUS ADJUSTMENTS.—

(1) ADJUSTMENT OF STATUS.—Under such regulations as the Attorney General may prescribe, the Attorney General shall adjust to the status of an alien granted asylum the status of any alien granted asylum under subsection (a)(2)(A) who—

(A) applies for such adjustment;

(B) has been physically present in the United States for at least 3 years after being granted asylum;

(C) continues to be eligible for asylum under this section; and

(D) is admissible under this Act at the time of examination for adjustment of status under this subsection.

(2) TREATMENT OF SPOUSE AND CHILDREN.—A spouse or child (as defined in section 101(b)(A), (B), (C), (D), or (E)) of an alien whose status is adjusted to that of an alien granted asylum under paragraph (a)(2) may be granted the same status as the alien if accompanying, or following to join, such alien.

(3) APPLICATION FEES.—The Attorney General may impose a reasonable fee for the filing of an application for asylum under this subsection.

(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIVOLOUS APPLICATIONS.

(1) IN GENERAL.—If the asylum officer determines that an alien has made a frivolous application for asylum under this section and the alien has received the notice under subsection (b)(1)(D)(i), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

(2) TREATMENT OF FRAUDULENT OR MATERIAL MISREPRESENTATIONS.—For purposes of this subsection, an application considered to be 'frivolous' includes, but is not limited to, an application which is fraudulent or otherwise contains a willful misrepresentation or concealment of a material fact."

SEC. 303. FAILURE TO APPEAR FOR ASYLUM HEARING.

Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is amended in subparagraph (A), by striking all after clause (iii) and inserting "shall not be eligible for any benefits under this Act.".

SEC. 304. JUDICIAL REVIEW.

(a) Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended by adding at the end thereof:

"(d) Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to Titles I or II of this Act. In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (I) is an alien, and (II) was ordered excluded from the United States pursuant to the provisions of this Act. Regardless of the nature of the suit or claim, no court shall have jurisdiction except as provided in this paragraph to consider the validity of any adjudication or determination of exclusion, to certify a class in an action challenging the exclusion provisions of this Act or any portion or implementation thereof, or to provide declaratory or injunctive relief with respect to the exclusion of any alien.

(e) In any action brought for the assessment of penalties for improper entry or reentry of an alien under sections 275, 276, 277 or 278 of the Immigration and Nationality Act, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, or deportation entered under sections 235, 236, or 242 of that Act."

SEC. 305. CONFORMING AMENDMENTS.

(a) LIMITATION ON DEPORTATION.—Section 243 (8 U.S.C. 1253) is amended by striking subsection (h).

(b) ADJUSTMENT OF STATUS.—Section 209(b) of the Immigration and Nationality Act (8 U.S.C. 1159(b)) is amended—

(1) in paragraph (2) by striking "one year" and inserting "5 years"; and

(2) by amending paragraph (3) to read as follows:

"(3) continues to be eligible for asylum under section 208,".

(c) ALIENS INELIGIBLE FOR TEMPORARY PROTECTED STATUS.—Section 244A(c)(2)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1254a(c)(2)(B)(ii)) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C)".

(d) ELIGIBILITY FOR NATURALIZATION.—Section 316(f)(1) of the Immigration and Nationality Act (8 U.S.C. 1427(f)(1)) is amended by striking "subparagraphs (A) through (D) of paragraph 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C).".

(e) FAMILY UNITY.—Section 301(e) of the Immigration Act of 1990 (P.L. 101-649) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(C).".

SEC. 306. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by this title shall not apply to applications for asylum or withholding of deportation made before the first day of the first month that begins more than 180 days after the date of the enactment of this Act and no application for asylum under section 208 of the Immigration and Nationality Act (as amended by section 201 of this Act) shall be considered before such first day.

(2) In applying section 208(b)(1)(A) of the Immigration and Nationality Act (as amended by this title) in the case of an alien who has entered or came to the United States before the first day described in paragraph (1), notwithstanding the deadlines specified in such section—

(A) the deadline for the filing of a notice of intention to file an application for asylum is 30 days after such first day, and

(B) the deadline for the filing of the application for asylum is 45 days after the date of filing such notice.

(3) The amendments made by section 305(b) (relating to adjustment of status) shall not apply to aliens granted asylum under section 208 of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

TITLE IV—CRIMINAL ALIENS

SEC. 401. EXPANSION IN DEFINITION OF "AGGRAVATED FELONY".

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

(A) murder;

(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

(D) any offense described in (i) section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or (ii) section 1957 of such title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the value of the funds exceeded $100,000;

(E) any offense described in—

(i) subsections (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

(F) any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years imprisonment or more may be imposed;

(H) any offense described in section 875, section 876, section 877, or section 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

(I) any offense described in section 2251, section 2251A or section 2252 of title 18, United States Code (relating to child pornography);

(J) any offense described in—

(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or

(ii) section 1084 (if it is a second or subsequent offense) or section 1955 of such title (relating to gambling offenses), where a sentence of 5 years imprisonment or more may be imposed;

(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years imprisonment or more may be imposed;

(L) any offense—

(i) described in section 2421, section 2422, or section 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage, or

(ii) described in section 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years imprisonment or more may be imposed;

(N) any offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

(O) any offense—

(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

(ii) described in section 7201 of title 26, United States Code (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

(P) any offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

(Q) any violation of section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage; or

(R) Any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed; or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years.

(S) Any felony committed by an alien on or after the date that alien had received a waiver of deportation under section 212 or 241 of this Act (8 U.S.C. 1182 or 1251) after commission of a prior felony."

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 402. DEPORTATION PROCEDURES.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 24(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

(2) An alien is described in this paragraph if the alien—

(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

(4) No alien described in this section shall be eligible for—

(A) any relief from deportation that the Attorney General may grant in his discretion, or

(B) relief under section 243(h).

(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

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

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AND CONFORMING CHANGES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended as follows:

(1) In subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting "(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) In subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) By striking out subsection (c);

(4) In subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any";

(C) by striking "(2)" and inserting "(B)";

(5) In subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)".

(6) By inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(7) The heading of such section is amended to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 403. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

(1) AUTHORITY.—In any criminal case subject to the jurisdiction of any court of the United States or of any State, such court may enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of a felony).

(2) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a)."

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 404. DEFENSES TO DEPORTATION.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, provided that the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by—

(1) striking out the final sentence and inserting in lieu thereof the following new subparagraph:

"(E) the alien has been convicted of a felony."; and

(2) striking out the "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 405. ENHANCED PENALTIES FOR REENTRY OR FAILURE TO DEPART.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking out "paragraph (2), (3), or 4 of" the first time it appears, and

(2) by striking out "shall be imprisoned not more than ten years" and inserting in lieu thereof, "shall be imprisoned not more than two years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (2), (3), or (4) of section 241(a)".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1), by (A) inserting after "commission of" the following: "two or more misdemeanors or", and (B) striking out "5" and inserting in lieu thereof "10",

(2) in paragraph (2), by striking out "15" and inserting in lieu thereof "20", and

(3) by adding at the end the following sentence:

"For the purposes of this subsection, the term 'deportation' shall include any agreement where an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by inserting after subsection (b) the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b).

SEC. 406. DEPORTATION OF IMPRISONED ALIENS.

Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

(2) The Attorney General may deport an alien prior to the completion of a sentence of imprisonment—

(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that the alien has been adequately punished and that such deportation of the alien is appropriate; or

(B) in the case of an alien in the custody of a State, if the chief State official exercising authority with respect to the incarceration of the alien determines (i) that the alien has been adequately punished and that such deportation is appropriate, and (ii) submits a written request to the Attorney General that such alien be so deported."

SEC. 407. JUDICIAL ORDER OF DEPORTATION.

(a) IN GENERAL.—Subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following:

"§3560. Order of Deportation for certain aliens.

"The court, upon sentencing an individual who is an alien for an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act, shall include in a sentencing order a declaration that the individual is deportable. Any presentence report required under the Rules of Criminal Procedure with respect to the sentencing of any individual for such a felony shall include whether or not such individual is an alien".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3560. Order of deportation for certain aliens".

(c) DEPORTATION PROCEDURES.—Section 242A of the Immigration and Nationality Act (18 U.S.C. 1252a) is amended by adding at the end the following:

"(f) DEPORTATION PURSUANT TO A JUDICIAL ORDER.—An alien subject to a judicial order of deportation under section 3560 of title 18, United States Code, shall be deported consistent with section 242(h)".

SEC. 408. FEDERAL INCARCERATION.

(a) FEDERAL INCARCERATION.—Section 242 of the Immigration and Nationality Act (18 U.S.C. 1252) is amended by adding at the end the following:

"(j)(1) The Attorney General shall take into the custody of the Federal Government, and shall incarcerate for a determined sentence of imprisonment, a criminal alien described in paragraph (3) if—

(A) the chief State official exercising authority with respect to the incarceration of the undocumented criminal alien submits a written request to the secretary;

(B) the undocumented criminal alien is sentenced to a determined term of imprisonment;

(C) the State in which the official described in paragraph A exercises authority cooperates, and requires local governments or agencies in such State to cooperate, with federal immigration authorities with respect to the identification, location, arrest, prosecution, detention, and deportation of aliens who are not lawfully present in the United States; and

(D) adequate federal facilities are available for the incarceration of the criminal alien.

(2) Criminal aliens taken into custody of the Attorney General under paragraph (1) may be deported under subsection (h)(2)(A).

(3) An alien is described in this paragraph if the alien—

(A) has been convicted of a felony and sentenced to a term of imprisonment, and

(B)(i) had entered the United States without inspection or at any time or place other than as designated by the Attorney General, or

(ii) was the subject to exclusion or deportation proceedings at the time he or she was taken into custody by the State."

SEC. 409. INCREASED PENALTY FOR VISA FRAUD.

(a) FALSE STATEMENT.—Section 1542 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(b) FORGERY.—Section 1543 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(c) MISUSE OF PASSPORT.—Section 1544 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(d) SAFE CONDUCT VIOLATION.—Section 1545 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than three years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(e) FRAUD AND MISUSE OF VISAS.—Section 1546(a) of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five year, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

SEC. 410. NOTIFICATION OF ALIEN ARREST.

Whenever a State or local law enforcement agency arrests an immigrant or non-immigrant alien for the commission of a felony, that State or local law enforcement agency shall provide the District Director of the Immigration and Naturalization Service for the district in which the State or local law enforcement agency has jurisdiction the following information within seventy-two hours of the arrest: the name of the alien; the alien's place of birth; the alien's date of birth; the alien's alien registration number, if any; the nature of the offense for which the alien was arrested; and any available information on bond, future hearings and proceedings.

SEC. 411. EXCLUDABILITY OF UNLAWFUL ENTRANTS.

Section 204(c) of the Immigration and Nationality Act is amended by adding a comma after the word "laws" the first time it appears, striking the work "or" prior to "(2)" and inserting the following before the period:

"or (3) the petition was submitted by or on behalf of any alien who entered or attempted to enter the United States unlawfully, who entered or attempted to enter with fraudulent, forged or stolen documents, who failed to present the immigration officer any document produced when the alien boarded a common carrier for travel to the United States, or who entered the United States lawfully as a non-immigrant but violated the terms of his or her non-immigrant visa".

SEC. 412. EXCLUSION OF IMMIGRATION LAW VIOLATORS.

(a) EXCLUSION OF CRIMINAL ALIEN.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended by striking "or" at the end of subparagraph (I) and inserting the following new subparagraph prior to the phrase "is excludable":

"or (III) any violation of any immigration law or any violation of any federal or State statute prohibiting fraud, including any statutes prohibiting income tax evasion".

(b) EXCLUSION REFORM.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking paragraph (c) and inserting the following as new paragraph (c):

"(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation shall not be admitted if that alien is excludable under paragraph (a)".

SEC. 413. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), shall be construed to create any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

TITLE V—FINANCIAL RESPONSIBILITY

SEC. 501. PUBLIC CHARGE DEFINED.

Section 212(a) of the Immigration and Nationality Act (8 U.S.C. §1182(a)(4), is amended by striking paragraph (4) and inserting:

"(4) PUBLIC CHARGE.—Any alien who cannot demonstrate to the consular officer at the time of application for a visa, or to the Attorney General at the time of application for admission or adjustment of status, that, taking into account the alien's age and medical condition, he or she has assets, education, skills, or a combination thereof that make it very unlikely that he or she will become eligible for means-tested public assistance of any kind (including, but not limited to, medical care or food and housing assistance) or will otherwise become a public charge is excludable."

SEC. 502. GUARANTEE OF FINANCIAL RESPONSIBILITY.

The Immigration and Nationality Act is amended by striking section 213 (8 U.S.C. §1183) and inserting:

"SEC. 213. FINANCIAL RESPONSIBILITY OF SPONSORS.

(a) An alien excludable under paragraph 4 of Section 212(a) may, if otherwise admissible, be admitted in the discretion of the Attorney General upon the giving of a suitable and proper bond and a guarantee of financial responsibility by an individual (hereinafter in this section referred to as the alien's "sponsor") who is not less than twenty-one nor more than 60 years of age, is of good moral character, has never been convicted of a felony, has never filed for bankruptcy or been adjudicated a bankrupt, and is a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The guarantee of financial responsibility in subsection (a) must provide (1) that the sponsor, and the sponsor's spouse if the sponsor is married, agree in the case of an alien under twenty-one years of age, to assume legal custody for the alien after the alien's departure to the United States and until the alien becomes twenty-one years of age, in accordance with the law of the State where the sponsor resides, and (2) that the sponsor agrees to furnish, during the five-year period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien's acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to prevent the alien's becoming a public charge.

(c) A guarantee of financial responsibility given under subsection (a) may be enforced with respect to an alien by a civil suit against his sponsor by the Attorney General or by any federal or state agency that has provided the alien means-tested public assistance of any kind, including but not limited to medical, food, and housing assistance.

(d) Civil suits under subsection (c) shall be brought in the United States district court for the district in which the defendant resides and may be brought at any time on or before the date that is five years after the date on which the sponsor's period of financial responsibility under subsection (a) expired.

(e) The bond required of an alien's sponsor by subsection (a) shall be in favor of the United States and all States, territories, countries, towns, municipalities, and districts within the United States and shall hold them harmless against the alien's becoming a public charge. The bond shall be in such amount and shall contain such conditions as the Attorney General may prescribe. The bond shall terminate upon (1) the alien's permanent departure from the United States, (2) the death of the alien, or (3) the expiration of the period of financial responsibility described in subsection (b), whichever occurs first, and any sums or other security held to secure performance thereof, except to the extent forfeited for violation of the terms thereof, shall be returned to the person by whom furnished, or to his legal representative.

SEC. 503. LIMITED BENEFITS FOR ILLEGAL ALIENS.

(a) DIRECT FEDERAL FINANCIAL BENEFITS.—Notwithstanding any other provision of law, no direct Federal financial benefit or social insurance benefit may be paid, conferred, or otherwise given, on or after the date of enactment of this Act, to any alien not lawfully admitted to the United States as a permanent resident or a refugee except pursuant to a provision of the Immigration and Nationality Act, provided, however, that Federal reimbursement of emergency medical care provided to such an alien may be provided under such regulations as the Secretary of Health and Human Services may in his or her discretion prescribe.

(b) UNEMPLOYMENT BENEFITS.—No alien who has not been granted employment authorization pursuant to Federal law shall be eligible for unemployment compensation under an unemployment compensation law of a State or the United States.

TITLE VI—EMPLOYER SANCTIONS

SEC. 601. IMPLEMENTATION OF GAO RECOMMENDATIONS.

(a) WORK ELIGIBILITY DOCUMENTS.—Effective January 1, 1995, Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by striking subparagraphs (A) through (D) of subsection (b)(1) and inserting:

"(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by—

(i) examining the document described in (B) in the case of an individual claiming to be a U.S. citizen, U.S. national,

(ii) examining the document described in paragraph (C) in the case of an individual not claiming to be a U.S. citizen, a U.S. national, or a permanent resident alien, and

(iii) reporting the individual's Social Security account number to the Social Security Administration through the telephone verification system established pursuant to section 602 of the Immigration Stabilization Act of 1993.

(B) DOCUMENTS OF CITIZENS AND NATIONALS.—The document described in this paragraph is an individual's Social Security account number card issued pursuant to section 601(c) of the Immigration Stabilization Act of 1993.

(C) DOCUMENTS OF ALIENS.—The document described in this paragraph is an alien's identification card issued by the Immigration and Naturalization Service pursuant to section 601(b) of the Immigration Stabilization Act of 1993."

(b) IMPROVEMENT OF ALIEN IDENTITY CARDS.—

(1) PERMANENT RESIDENT ALIENS.—The Attorney General shall cause to be issued to every alien acquiring lawful permanent residence in the United States after June 30, 1994, and, upon application, to any alien who acquired lawful permanent residence before July 1, 1994, an alien identification card that shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the name, sex, date of birth, and such other identifying information as the Attorney General shall determine, and

(E) incorporate a machine-readable encoding of the information displayed on the card.

(2) OTHER ALIENS.—The Attorney General shall cause to be issued to every alien who becomes authorized to work in the United States after June 30, 1994 other than by reason of lawful admission for permanent residence, and shall cause to be issued, upon application, to any other alien who is authorized to work in the United States other than by reason of lawful admission for permanent residence an alien identification care that shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the alien's name, sex, date of birth, and such other identifying information as the Attorney General shall determine,

(E) show an expiration date that shall be determined in accordance with regulations issued by the Attorney General, but shall not in any case be later than three calendar years after the date of issuance, and

(F) incorporate a machine-readable encoding of the information displayed on the card.

(c) IMPROVEMENT OF SOCIAL SECURITY CARDS.—

(1) IMPROVED CARD FOR CITIZENS.—The Secretary shall cause to be issued improved Social Security account number cards to United States citizens and United States nationals upon application, proof of identity, proof of citizenship or nationality, and payment of a reasonable fee.

(2) IMPROVED CARD FOR ALIENS.—The Secretary shall cause to be issued improved Social Security account number cards to aliens lawfully admitted for permanent residence upon application, proof of identity, verification of status by the Immigration and Naturalization Service, and payment of a reasonable fee.

(3) REQUIREMENTS.—The cards described in paragraphs (1) and (2) shall—

(A) be uniform in appearance,

(B) be as tamper-proof and counterfeit-resistant as practicable,

(C) contain a photograph and fingerprint,

(D) display the name, sex, date of birth, place of birth, and Social Security account number of the issue, and such other identifying information as the Secretary shall determine, and

(E) incorporate a machine-readable encoding of the information displayed on the card.

(4) SECRETARY DEFINED.—For purposes of this subsection, Secretary means the Secretary of Health and Human Services.

(d) REASONABLE FEE.—The amount of the fee that is to be charged under subsections (b) and (c) shall be the amount (rounded to the nearest whole dollar), not exceeding $50.00, required to cover the costs of issuing the card.

(e) NO OTHER CARDS.—No Social Security account number card or alien identification card shall be issued after June 30, 1994, whether as an original card or as a replacement, that does not satisfy the requirements of this section.

(f) DEFINITIONS.—For purposes of this section,

(1) "State" means one of the United States, the District of Columbia, or Puerto Rico, and

(2) "Place of birth" means, for an individual—

(A) born in a State, the two-letter symbol used by the United States Post Office to identify that State, or

(B) not born in a State, such two-letter symbol as the Secretary shall determine by regulations.

SEC. 602. VERIFICATION BY TELEPHONE.

(a) SOCIAL SECURITY DATABASE.—By September 30, 1994, the Secretary of Health and Human Services shall make such modifications to the Social Security account number data base (NUMIDENT) as are practicable and as enable confirmation through the telephone verification system described in subsection (d) that a Social Security account number has been issued to an individual identified by last name, sex, year of birth, and place of birth and that such individual is not known to the Secretary of Health and Human Services to be an alien not authorized to work in the United States. At a minimum the data base shall be modified to enable confirmation that a Social Security account number is not assigned to an individual authorized to work in the United States because the number—

(1) has not been issued,

(2) was issued to an individual known by the Secretary of Health and Human Services as not authorized to work,

(3) was issued to a person that is deceased and has not been reissued, or

(4) was issued to an alien that any data base of the Immigration and Naturalization Service shows is not authorized to work in the United States.

The Attorney General shall provide such assistance as the Secretary of Health and Human Services may require to merge or otherwise make use of any data base of the Immigration and Naturalization Service for the purposes of this section.

(b) EXCHANGE OF INFORMATION.—The Attorney General shall notify the Secretary of Health and Human Services of the expiration of an alien's authorization to work in the United States not later than 14 calendar days after the date of expiration. The Secretary of Health and Human Services shall furnish the Attorney General with a list of any aliens for whom confirmation of work eligibility has been requested not later than 5 calendar days after such request. Such list shall include the telephone number from which the request was made and the employer identification number of the requester.

(c) ADULT APPLICANTS.—The Secretary of Health and Human Services shall furnish to the Attorney General a copy of any application (including supporting documentation) for a Social Security account number by an alien or by an individual over 16 years of age who claims to be a United States citizen or national and shall not issue a number before the earlier of the following dates:

(1) the date on which the Attorney General confirms in writing that his records do not show that the applicant is an alien unauthorized to work in the United States, or

(2) 60 days after a copy of the application and supporting documentation has been delivered to the Attorney General.

(d) TELEPHONE VERIFICATION SYSTEM.—Before January 1, 1995, the Secretary of Health and Human Services shall test and place in operation a system whereby an employer can report by touch-tone telephone his employer identification number and the Social Security account number, last name, sex, year of birth, and place of birth of any individual who is to be employed and can receive immediate confirmation that the number was issued to the individual having that identity and that such person is not identified within the Social Security account number data base as an individual who is not a United States citizen, a United States national, or an alien authorized to work in the United States. The charge for each call will be sufficient to cover the costs of operating the system, except that it shall not exceed $2.00 plus any line charges payable to the telephone carrier. The system shall provide for access to a live operator if an entry is not accepted or confirmed, shall provide a verification code to the caller, shall create and maintain a record of each inquiry (including the telephone number of the requester) and its verification code for not less than two years, and shall accommodate devices that read the magnetic strip incorporated by a card issued under section 601.

(e) ABUSE OF SYSTEM.—The use of the telephone verification system established by subsection (d) by a person other than

(1) an employer acting pursuant to Section 274A(b)(1) of the Immigration and Nationality Act, or

(2) an officer or employee of an agency of the United States or of any State acting in the performance of official duties,

shall be punishable by a fine of not more than $1,000 per occurrence.

SEC. 603. UNIFORM VITAL STATISTICS.

The Secretary of Health and Human Services shall consult with the State agencies responsible for registration and certification of births and deaths and, within two years of the date of enactment of this Act, shall establish a national electronic network linking the vital statistics records of such States. The network shall provide, where practical, for the matching of deaths with births and shall enable the confirmation of births and deaths of citizens of the United States, or of aliens within the United States, by any federal or State agency or official in the performance of official duties. The Secretary shall institute measures to achieve uniform and accurate reporting of vital statistics into the national network, to protect the integrity of the registration and certification process, and to prevent fraud against the government and other persons through the use of false birth or death certificates.

TITLE VII—BORDER SECURITY

SEC. 701. BORDER PATROL PERSONNEL.

The number of full-time officer positions in the border patrol of the Immigration and Naturalization Service shall be increased to 5,900 in fiscal year 1994, 6,900 in fiscal year 1995, 7,900 in fiscal year 1996, 8,900 in fiscal year 1997, and 9,900 in fiscal year 1998.

SEC. 702. BORDER CROSSING FEE.

The Commissioner shall collect a user fee for each entry into the Unites States by land or by sea after December 31, 1993. The fee shall be $3.00 for each person entering other

than by private automobile, van, or truck and $5.00 for each private automobile, van, or truck. The Commissioner by regulation may establish a reduced fee or a multiple-crossing fee for frequent border crossers.

SEC. 703. BORDER CONTROL TRUST FUND.

There is established a Border Control Trust Fund ("Fund") under the control of the Commissioner. The fees collected under section 702 shall be deposited into the Fund. Amounts deposited into the Fund and the earnings thereon shall be expended by the Commissioner exclusively on (1) measures, personnel, structures, and devices to deter and prevent illegal entry of persons and contraband into the United States by land or by sea, (2) construction and operation of facilities to expedite lawful border traffic and reduce, where practical, extensive delays in the time required for lawful entry of goods and persons, and (3) financial and other assistance to State and local law enforcement agencies that have entered into cooperative arrangements with the Immigration and Naturalization Service. Not less than 80 percent of the sum of (a) amounts deposited into the Fund during a fiscal year and (b) the earnings of the Fund during that fiscal year shall be expended during that or the subsequent fiscal year.

SEC. 704. RESPONSIBILITY OF INTERNATIONAL CARRIERS.

(a) IN GENERAL.—Section 273 of the Immigration and Nationality Act (8 U.S.C. 1323) is amended—

(1) in subsection (a), by striking "other than from foreign contiguous territory)";

(2) by redesignating subsections (c) and (d) as subsections (e) and (f), respectively;

(3) by inserting after subsection (b) the following:

"(c) RECORDS.—The Attorney General shall maintain a record of each undocumented alien arriving on or after the date of enactment of this subsection at a United States port of entry and of the carrier which brought such alien to that port of entry.";

(4) by inserting after subsection (c) (as added by paragraph (4)), the following:

"(d) REPEAT OFFENSES.—(1) If the Attorney General determines that, during the preceding calendar year, any carrier has delivered an average of more than 0.5 undocumented aliens per arrival at United States ports of entry then, for the next calendar year, in lieu of the penalty of $3,000 specified in subsection (b), such carrier shall pay to the Attorney General a penalty of $10,000 for each alien brought in violation of subsection (a) or, alternatively, such carrier may choose to participate in a one-year pilot program intended to reduce the number of undocumented aliens arriving at United States ports of entry via international carriers. If such international carrier chooses to participate in the one-year pilot program, that carrier will be subject to the penalty levels prescribed in subsection (b), rather than the increased penalty levels specified in this subsection, for each alien brought in violation of subsection (a). The one-year pilot program, which can be extended for multiple years at the discretion of the Attorney General, shall consist of a program whereby the international carrier collects the travel documents necessary for entry into the United States from all passengers upon their entry to the carrier and physically returns them to the passengers on an individual basis only at the actual point of inspection at the United States port of entry by U.S. immigration officials.

"(2) If the Attorney General determines that, during the preceding calendar year, any carrier has delivered an average of more than 1.5 undocumented aliens per arrival at United States ports of entry, then, for the next calendar year, in lieu of the penalties specified in subsection (b) and in paragraph (1) of this subsection, such carrier shall pay to the Attorney General a penalty of $20,000 for each alien brought in violation of subsection (a).

"(3) If the Attorney General determines that, in the preceding calendar year, any carrier has delivered an average of more than 2 undocumented aliens per arrival at United States ports of entry, then such carrier shall forfeit all landing rights in the United States for the next calendar year.";

(5) subsection (e) (as redesignated) is amended—

(A) by inserting after "refunded." the following: "Unless the alien transported is granted political asylum status in the United States or"; and

(B) by inserting before the period at the end thereof "or that the visa or other immigration documentation presented to the carrier was forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document".

(b) EFFECTIVE DATE.—The amendment made by subsection (a)(4) shall take effect on January 1 of the second calendar year following the date of enactment of this Act.

TITLE VIII—ALIEN SMUGGLING

SEC. 801. COOPERATIVE ARRANGEMENTS.

The Secretary of State shall undertake to enter into, on behalf of the United States, cooperative arrangements with appropriate foreign governments for the purpose of preventing the unlawful entry of aliens by land, air, or sea.

SEC. 802. COAST GUARD INSTRUCTIONS.

The Secretary of Defense, in consultation, when appropriate, with the Attorney General and the Secretary of State, shall instruct the Coast Guard to deter and prevent the unlawful entry of aliens into the United States by sea. Such instructions shall include directives providing for stopping and boarding vessels, making inquiries of persons and inspecting documents and property on board such vessels, and returning a vessel to the country from which it came or to another country. In the case of vessels outside the territorial sea of the United States, such instructions shall be limited to vessels of the United States, vessels without nationality, vessels assimilated to vessels without nationality, and vessels of foreign nations with which the United States has arrangements authorizing the United States to stop and board such vessels. Except as otherwise provided in the preceding sentence, actions pursuant to this section are authorized to be undertaken both within and beyond the territorial sea of the United States.

SEC. 803. APPLICATION OF RICO.

Section 1961(1) of title 18 of the United States Code is amended by striking "or" immediately prior to "(E)", and by adding:

"or (F) any act which is indictable under any of the following provisions of title 8, United States Code: Section 1324(a)(i) (relating to prohibitions on bringing in or harboring certain aliens), Section 1325 (relating to illegal entry, marriage fraud, or establishing a commercial enterprise for the purpose of evading the immigration laws), Section 1327 (relating to aiding or assisting certain aliens to enter the United States), or Section 1328 (relating to the importation of aliens for immoral purpose)."

SEC. 804. INCREASED PENALTIES FOR ALIEN SMUGGLING.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating, or conspiring to violate section 1324(a) of title 8, United States Code, shall be assigned not less than offense level 25 under section 2L1.1 of the United States Sentencing Guidelines if any of the following factors exist—

(1) If the offense involved five or more aliens in a single scheme or otherwise;

(2) If the offense involved other criminal activity including, but not limited to violations of the Controlled Substances Act, prostitution, importation of aliens for immoral purposes, trafficking in firearms, money laundering, illegal gang activities, kidnapping or ransom demands, fraudulent documents, or extortion;

(3) If the offense involves smuggling of persons under the age of 18 years for the purposes of illegal adoption or of sexual or commercial exploitation;

(4) If the offense involves the smuggling of known or suspected terrorists or persons involved in organized crime;

(5) If the offense involves dangerous or inhumane treatment of the persons smuggled; or

(6) If death or serious bodily harm occurs to persons smuggled.

Otherwise, the base offense level shall be 13, except for an offense described in section 1324(a)(2)(A) of title 8, United States Code.

SEC. 805. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING.

Subsection 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) Any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of subsection (a) or of sections 274A(a)(1) or 274A(a)(2), or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection (a), shall be subject to seizure and forfeiture, except that—

"(A) no property, used by any person as a common carrier if the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such property was a consenting party or privy to the illegal act;

"(B) no property shall be forfeited under the provisions of this section by reason of any act of omission established by the owner thereof to have been committed or omitted by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State; and

"(C) no property shall be forfeited under this paragraph to the extent of an interest of any owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner, unless such action or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2) which was commited by the owner or which intended to further the business interests of the owner, or to confer any other benefit upon the owner.".

(2) by striking from paragraph (2)—

(A) "conveyance" both places it appears and inserting in lieu thereofff "property"; and

(B) "is being used in" and inserting in lieu thereof "is being used in, is facilitating, has facilitated, or was intended to facilitate";

(3) by striking from paragraphs (4) and (5) "a conveyance" and "conveyance" each place such phrase or word appears and inserting in lieu thereof "property"; and

(4) by striking from paragraph (4)—

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

(B) the period at the end of subparagraph (D) and inserting "; or "; and

(5) by adding after paragraph (4)(E):

"(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to the Tariff Act of 1930, as amended (19 U.S.C. 1616a(c)).".

SEC. 806. WIRETAP AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

(a) Section 2516(1) of title 18, United States Code, is amended

(1) in paragraph (c) by inserting after "weapons)," the following: "or a felony violation of section 1028 (relating to production of false identifciation documentation), section 1546 (relating to fraud and misuse of visas, permits, and other documents),";

(2) by striking "or" after paragraph (l) and redesignating paragraphs (m), (n) and (o) as paragraphs (n), (o) and (p), respectively;

(3) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to alien smuggling), of section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) (relating to the smuggling of aliens convicted of aggravated felonies or of aliens subject to exclusion on grounds of national security), or of section 278 of the Immigration and Nationality Act (8 U.S.C. 1328) (relating to smuggling of aliens for the purpose of prostitution or other immoral purpose);"; and

(4) by striking "or any Deputy Assistant Attorney General in the Criminal Division specially designated by the Attorney General" and inserting "or any Deputy Assistant Attorney General or acting Deputy Assistant Attorney General in, or one other officer or employee of, the Criminal Division specially designated by the Attorney General";

(b) Section 2518(5) of Title 18, United States Code, is amended by inserting "(including personnel of a foreign government or of a State or subdivision of a State)" after "Government personnel"; and

(c) Section 2510(7) of title 18, United States Code, is amended by inserting before the semicolon "and additionally, for purposes of section 2517(1)–(2), any person authorized to perform investigative, law enforcement, or prosecutorial functions by a foreign government".

TITLE IX—LOCAL COOPERATION

SEC. 901. SAVE SYSTEM MANDATED.

Notwithstanding any other provision of law, no Federal financial assistance shall be paid to a State or local government or agency for the aid to families with dependent children program under subchapter IV of Title 42 United States Code, the medicaid program under subchapter XIX of Title 42 United States Code, the unemployment compensation program under section 3304 of Title 26 of United States Code, the food stamp program under the Food Stamp Act of 1977, or the financial assistance programs under the United States Housing Act of 1937, Section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965 if such government or agency does not verify the immigration status of aliens applying for benefits under these programs through use of the automated SAVE system established under section 12 of the Immigration Reform and Control Act of 1986 (Pub. L. No. 99–603).

TITLE X—CITIZENSHIP

SEC. 1001. BASIS OF CITIZENSHIP CLARIFIED.

In the exercise of its powers under section 5 of the Fourteenth Article of Amendment to the Constitution of the United States, the Congress has determined and hereby declares that any person born after the date of enactment of this title to a mother who is neither a citizen of the United States nor admitted to the United States as a lawful permanent resident, and which person is a national or citizen of another country of which either of his or her natural parents is a national or citizen, or is entitled upon application to become a national or citizen of such country, shall be considered as born subject to the jurisdiction of that foreign country and not subject to the jurisdiction of the United States within the meaning of section 1 of such Article and shall therefore not be a citizen of the United States or of any State solely by reason of physical presence within the United States at the moment of birth.

SEC. 1002. VOTING LIMITED TO CITIZENS.

In the exercise of its powers under section 5 of the Fourteenth Article of Amendment to the Constitution of the United States to enforce the prohibition of section 1 of such Article against the making or enforcing of any law that shall abridge the privileges or immunities of citizens of the United States, the Congress determines that the right of citizens to vote is a privilege of citizens of the United States and that voting in elections of the United States or of any State by persons who are not citizens of the United States is an abridgement of that privilege. It shall be unlawful, and a felony punishable by a fine of not more than $10,000 and/or imprisonment of not more than one year for each unlawful vote, for any person who is not a citizen of the United States to vote in any election to which the provisions of the Fifteenth, Nineteenth, Twenty-Fourth, or Twenty-Sixth Article of Amendment to the Constitution applies or in any other election, referendum, ballot, or other procedure of the United States or of any State in which votes are token. Any vote that is cast in violation of this section shall be null, void, and of no effect and shall not be counted.

TITLE-BY-TITLE ANALYSIS OF THE IMMIGRATION STABILIZATION ACT OF 1993 INTRODUCED BY SENATOR REID

The Act may be cited as the Immigration Stabilization Act of 1993. Except where otherwise provided, the provisions of the Act take effect on October 1, 1993.

TITLE I. ADMISSION OF IMMIGRANTS

This title reduces annual legal immigration levels from more than 800,000 admissions per year to approximately 300,000 admissions per year. As under current law, spouses and children of U.S. citizens are admitted without limit. However, parents of U.S. citizens and other relatives of citizens and permanent resident aliens will be admitted only if they are already on immigration waiting lists when the Act takes effect and only to the extent their admission does not raise annual immigration above 300,000. As under current law, up to 40,000 "priority workers" and their families are admissible each year. The 100,000 immigrant visas available to non-priority workers and million-dollar investors under current law, and the 55,000 immigrant visas available to "diversity" immigrants under current law, are eliminated.

TITLE II. ADMISSION OF REFUGEES

This title operates to de-politicize and discipline the refugee program. Section 201 reimposes the 50,000-per-year ceiling on refugee admissions that applied during the first three years (1980–1982) of the current-law refugee program, but preserves the President's authority to exceed this ceiling in emergency situations. Section 202 forbids racial, religious, and other forms of discrimination in the selection of refugees for admission.

TITLE III. ASYLUM REFORM

The provisions of this title operate to deter aliens from entering the U.S. illegally to pursue asylum claims when they have failed to gain lawful admission through the refugee program. Under section 301, each alien seeking entry to the U.S. shall be inspected by an INS officer. If an alien does not present the required documentation for entry, the alien will be excluded unless the alien indicates a fear of persecution or an intent to claim asylum. An undocumented alien who indicates a fear of persecution or claims asylum will be referred immediately to a trained asylum officer who will interview the alien to determine whether the alien has a credible fear of persecution. The asylum officer's decision is subject to review by another asylum officer. Judicial review is limited to habeas corpus petitions.

Section 302 rewrites the asylum provisions in immigration law to establish a new, streamlined process under which an alien may apply for provisional asylum. Within 30 days of entering the U.S. an alien must file a notice of intent to file an asylum application. The alien then must file the actual application for asylum within 45 days of entry. An alien who does not apply within the required time period may not apply for asylum unless he or she can establish that changed circumstances in his or her home country are the basis for his or her claim of fear of persecution. An alien who files a frivolous application for provisional asylum or who fails to appear for his or her provisional asylum hearing will be ineligible for any benefits under the immigration law.

TITLE IV. CRIMINAL ALIENS

Section 401 of this title expands the list of serious felonies that are considered "aggravated" felonies and requires the exclusion and deportation of criminal aliens who have committed such felonies. Section 402 eliminates the administrative deportation hearing and review process for those aliens convicted of such felonies who are not permanent residents and limits *habeas corpus* proceedings to a determination of whether the deportee is a criminal alien. Section 403 authorizes courts to order the deportation of criminal aliens at the time of sentencing if the alien's criminal conviction causes such alien to be deportable. Section 404 makes imposition of a five-year prison sentence grounds for denying reentry into the U.S. to aliens lawfully admitted for permanent residence even if the sentence has not been served. Section 405 increases the penalties for failing to depart or reentering the U.S. after a final order of deportation and limits the collateral attacks an alien can make against an otherwise final deportation order. Sections 406 and 407 authorize under certain circumstances the deportation of criminal aliens prior to the commencement or completion of their imprisonment. Section 408 authorizes the federal incarceration of undocumented aliens convicted under state law. Section 409 increases the maximum penalties for visa fraud from five years imprisonment to ten years.

Section 410 requires State and local law enforcement agencies to provide their local INS district office with certain information whenever they arrest an alien. Section 411 prohibits those who have violated U.S. immigration laws previously to file a petition for immigrant status on behalf of themselves or another. Section 412 clarifies that aliens who previously have violated U.S. immigration laws are excludable and eliminates the Attorney General's discretion under Section 212(c) of the INA to waive the grounds of excludability for an alien applicant.

TITLE V. FINANCIAL RESPONSIBILITY

This title erects safeguards against (a) the admission of aliens who are likely to be dependent on public services and (b) the use of such services by illegal aliens. Section 501 clarifies that aliens who cannot demonstrably support themselves without public or private assistance are excludable. Section 502 extends to the sponsor of any family-sponsored immigrant who is not demonstrably self-supporting the same degree of financial accountability that current law requires for the sponsors of Amerasian immigrants. (Under current law, a U.S. sponsor's affidavit of support is treated as evidence that the sponsored alien will not become a public charge, but the affidavit is not enforceable in the courts.) Section 503 limits federally funded benefits, other than emergency medical care, to aliens who are lawfully admitted for permanent residence or as refugees.

TITLE VI. EMPLOYER SANCTIONS

This title simplifies and strengthens the provisions of current law that prohibit the knowing employment of illegal aliens. Section 601 implements recommendations of the General Accounting Office to improve current law. It provides for the issuance of improved social security cards to citizens and permanent resident aliens and improved alien identification cards to other aliens. The cards are to be machine-readable and resistant to tampering and counterfeiting. Section 602 establishes a telephone verification system by which a prospective employee's eligibility for employment can be promptly and reliably confirmed. Because the validity of a social security card depends upon the validity of the documents presented by the applicant to demonstrate citizenship, Section 603 provides for a uniform national network of state vital statistic records.

TITLE VII. BORDER SECURITY

This title operates to deter and prevent the unlawful entry of persons and contraband across U.S. borders. Section 701 authorizes an increase over the years to 9,900 in the number of full-time officer positions in the U.S. Border Patrol. Section 702 imposes a schedule of fees for persons or vehicles crossing a U.S. land or sea border. (The fees are lower than the $10 fee charged to persons entering the U.S. by air, and may be reduced for frequent crossers.) Section 703 provides that the border-crossing fees will fund measures to deter and prevent illegal entry of persons and contraband into the United States, expedite lawful traffic by the construction and improvement of border infrastructure and provide financial assistance to local law enforcement authorities that provide assistance or otherwise cooperate with immigration officials in the performance of their duties. Section 704 increases the fines imposed against international carriers that consistently transport undocumented aliens to the United States and authorizes a voluntary pilot program by which an international carrier may establish safeguards to minimize the risk of an alien passenger destroying his or her travel documents prior to inspection by U.S. immigration officials.

TITLE VIII. ALIEN SMUGGLING

This title operates to curtail organized alien smuggling. Sections 801 and 802 codify Executive Order No. 12,807, 57 Fed. Reg. 23,133, authorizing interdiction and repatriation of aliens seeking to enter the U.S. unlawfully by sea, the legality of which was affirmed by the U.S. Supreme Court on June 21, 1993, in *Sale* v. *Haitian Centers Council, Inc.* Section 803 adds "alien smuggling" to the list of crimes subject to sanctions under the Racketeer Influenced and Corrupt Organizations (RICO) Act. Section 804 increases the penalties for alien smuggling under the United States Sentencing Guidelines. Section 805 expands the categories of property that are forfeited when used to facilitate the smuggling or harboring of illegal aliens. Section 806 provides federal wiretap authority to aid in the criminal investigation of alien smuggling and of fraud related to the misuse of visas, permits and other travel documents.

TITLE IX. LOCAL COOPERATION

This title prohibits Federal financial assistance to any State or State agency that does not verify the immigration status of aliens applying for benefits through use of the automated System For Alien Verification of Eligibility (SAVE).

TITLE X. CITIZENSHIP

Section 1001 of this title clarifies that a person physically born within the United States to an alien mother who is not a lawful permanent resident is not a U.S. citizen unless the person would otherwise have no citizenship or nationality, thereby eliminating the incentive for pregnant alien women to enter the United States illegally, often at risk to the health of both mother and child, for the purpose of acquiring citizenship for the child and accompanying federal financial benefits. Section 1002 prohibits voting by aliens in State and Federal elections.

By Mrs. FEINSTEIN:

S. 1352. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin; to the Committee on Environment and Public Works.

THE SAN GABRIEL DEMONSTRATION PROJECT ACT

• Mrs. FEINSTEIN. Mr. President, I rise to introduce the San Gabriel Basin Demonstration Project Act, legislation to address one of the most urgent and serious ground water contamination problems in the State of California and the Nation. I'm pleased to say that Congressman ESTEBAN TORRES is introducing an identical bill in the House of Representatives today.

The San Gabriel Valley is a 195-square-mile area just northeast of downtown Los Angeles. Over 1 million people live in the San Gabriel Valley and 85 percent of them rely on the ground water of the San Gabriel basin as their drinking water supply. The ground water basin also is an important water source for commercial activity in the San Gabriel Valley and can serve as a huge reservoir to store water imported during wet seasons for later use. Thus, it is vital that the San Gabriel basin continue to be a reliable source of clean water for southern California.

Unfortunately, the San Gabriel basin is one of the most heavily contaminated potable ground water basins in the United States. While contamination levels vary throughout the valley, the ground water contains toxic volatile organic compounds such as trichloroethylene, perchloroethylene, and carbon tetrachloride.

In 1984 the Environmental Protection Agency listed four areas of ground water contamination in the San Gabriel Valley on the Superfund National Priority List. The four areas are now treated as one Superfund site. Cleanup has been complicated because 45 different water purveyors take water from the basin and their unregulated pumping affects the movement of contaminants. Additionally, because the ground water lies under many different facilities and communities, identifying the entities responsible for the contamination and apportioning responsibility for cleanup has been complicated.

In sum, the San Gabriel basin presents a unique set of environmental problems.

Under Superfund, EPA must identify those responsible for the contamination and the responsible parties are made to pay for cleanup of the Superfund site. Superfund does not consider whether the discharge or dumping was legal at the time it occurred. Also under Superfund a current property owner can be held liable for contamination which occurred under a prior owner. Once EPA identifies the responsible parties, the agency attempts to negotiate settlements, but often lawsuits ensue. Moreover, entities identified as responsible parties have a strong incentive to identify and sue others in order to reduce their own share of the cleanup costs. This entire legal process can take years, while very little cleanup work occurs. As of March 1991, EPA had identified 318 companies as potentially liable for cleanup in one or more areas of the San Gabriel basin.

I am very concerned about getting the San Gabriel basin cleaned up as soon as possible. And I question our ability to accomplish this cleanup expeditiously under the Superfund Program. The San Gabriel basin is a unique site. The legislation I am introducing today is intended to solve this difficult problem through an innovative public-private partnership.

Here are the basic provisions of the legislation.

The bill directs the Environmental Protection Agency in contracts with the San Gabriel Basin Water Quality Authority, to conduct water treatment

activities to remove the volatile organic compounds from the San Gabriel ground water basin.

The bill directs EPA and the San Gabriel Basin Water Quality Authority to cooperate with local water agencies, such as the Water Replenishment District of Southern California, the Central Basin Municipal Water District, and the Metropolitan Water District of Southern California.

The bill provides that the water treatment activities undertaken shall be consistent with the April 17, 1990, draft Basinwide Technical Plan for the San Gabriel Ground Water Basin prepared by EPA.

The bill directs EPA to identify potentially responsible parties within 6 months. Those identified would have 90 days to respond to the offer to participate in the project.

The bill provides that if 65 percent of the eligible facilities—representing at least 50 percent of the total costs of the project—agree to participate, the project would commence.

The bill establishes a procedure and specifies criteria for EPA to use in allocating costs among parties participating in the project. The allocation formula would be based on the industrial code, proximity to known contaminated wells, ability to pay, and the gross revenue of the facility.

The bill requires anyone participating in the project to conduct an audit to ensure that current industrial practices are in compliance with the law and that soil remediation has occurred.

The bill suspends Superfund liability for any party which contracts with EPA to participate in the San Gabriel basin demonstration project and fulfills its obligation under the contract. Anyone choosing not to participate in the project would still be liable under Superfund.

The bill prohibits any participating facility from trying to recover cleanup costs from any other parties.

The bill provides that the Federal Government pay 20 percent of the cleanup costs and authorizes appropriations for this purpose.

Mr. President, I ask unanimous consent that the text 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. 1352

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 "San Gabriel Basin Demonstration Project Act".

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The San Gabriel Basin presents a unique set of environmental problems.

(2) The San Gabriel Valley is an area of 195 square miles located approximately 10 to 20 miles northeast of downtown Los Angeles in Los Angeles County. It is the home of 1,000,000 to 1,500,000 people who rely on the groundwater of the San Gabriel Basin for their primary drinking water.

(3) The San Gabriel Basin is the most heavily contaminated potable groundwater basin in the United States.

(4) The groundwater in the San Gabriel Basin is heavily contaminated with toxic volatile organic compounds (VOCs) including trichloroethylene (TCE), perchloroethylene (PCE), and carbon tetrachloride (CTC). The contamination levels vary throughout the Valley.

(5) Four separate areas of contamination in the San Gabriel Basin are listed on the National Priority List (NPL) of Superfund. The areas where the VOC contamination exceeds drinking water standards covers approximately 30 to 40 square miles.

(6) The VOCs in the San Gabriel Basin have been generated by hundreds of commercial and industrial facilities scattered throughout the San Gabriel Valley, over a period of more than 30 years.

(7) The San Gabriel Basin is also heavily contaminated with nitrates as a result of hundreds of years of agriculture and ranching in the Valley as well as from industrial and residential septic systems.

(8) Once contaminated, groundwater is very difficult to clean up.

(9) A plume of polluted groundwater will migrate and spread contaminants wherever it flows. The many areas of groundwater contamination throughout the San Gabriel Basin move at different rates and in different directions, depending on the density of the contaminants, the character of the aquifer, and the local flow patterns. In the San Gabriel Basin, flow patterns may be changing directions due to fluctuating pumping rates throughout the Basin and other factors.

(10) Complicating the cleanup in the San Gabriel Basin is the fact that 45 different water purveyors take water from the basin.

(11) Because the groundwater flows under hundreds of different facilities, apportioning responsibility could be very complicated and could ultimately be a very litigious process.

(12) There are approximately 275 public water supply wells in the San Gabriel Basin. Eighty wells have contamination levels exceeding current Federal drinking water standards. Some of these wells have been abandoned and replaced with new wells in clean areas. In other contaminated wells, pumping continues but the groundwater is blended with clean water so that distributed water meets the drinking water standards.

(13) The San Gabriel Basin presents a unique opportunity for the community to solve a difficult problem, by working together with the Federal Government in a public-private partnership.

SEC. 3. SAN GABRIEL BASIN DEMONSTRATION PROJECT.

Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund) is amended by adding at the end the following new section:

"SEC. 127. SAN GABRIEL BASIN DEMONSTRATION PROJECT.

"(a) TREATMENT OF WATER.—(1) As promptly as practicable after the date of enactment of this section but not later than 6 months after such date, the Administrator shall enter into one or more cooperative agreements or contracts with the San Gabriel Basin Water Quality Authority; or a successor public agency, (hereinafter in this Act referred to as the 'Authority') to provide water treatment to remove volatile organic compounds from the groundwater in the San Gabriel Basin. In the case of the projects described in paragraph (3)(B), the contracts or cooperative agreements shall also include the Water Replenishment District of Southern California and the Central Basin Municipal Water District. Implementation of such contracts or cooperative agreements shall be contingent upon a determination by the Administrator that the preconditions of subsection (b) have been met.

"(2) The Authority may contract with other public agencies to provide water treatment services or facilities or related services and facilities, subject to approval by the Administrator and pursuant to the decision rendered in Los Angeles Super Court Case #924128, Upper San Gabriel Valley Municipal Water District v. City of Alhambra, et al.

"(3) Contracts or cooperative agreements under this subsection shall be consistent, insofar as possible, with the April 17, 1990 draft Basin-Wide Technical Plan prepared by the Administrator, and shall include but not be limited to the following elements:

"(A) BALDWIN PARK.—Proposed capital expenditures in the vicinity of Baldwin Park over the next 10 years, including $4,500,000 for monitoring wells, $14,500,000 for up to 7 wellhead treatment plants, and $136,000,000 for a conjunctive-use plant designed to clean up the Basin and at the same time allow utilization of the basin as a storage facility which will increase reliability of water supplies in Southern California. Such expenditures shall include a water supply component jointly funded by the Metropolitan Water District of Southern California and the Bureau of Reclamation (as authorized by Public Law 102–579), and a VOC clean-up component funded by the Project. Proposed operating costs for these projects will increase gradually to about $32,000,000 per year at the end of the 10-year period.

"(B) WHITTIER NARROWS.—Proposed capital expenditures, including $1,000,000 for engineering assessment, $3,000,000 for monitoring wells, $11,500,000 for wellhead projects, and $20,000,000 for regional treatment plants to prevent contaminated groundwater from moving from the San Gabriel Basin toward the Central Basin through the Whittier Narrows and proposed operating costs for such projects which at the end of the 10-year period equal approximately $3,000,000 per year.

"(C) PUENTE BASIN AREA.—Proposed capital expenditures which include $2,000,000 for engineering assessments, $3,000,000 for monitoring wells, and $10,000,000 for regional plants in the Puente Valley area to extract and treat highly contaminated groundwater to meet water supply needs and proposed operating costs for such projects which, at the end of the 10-year period will equal approximately $2,000,000 per year.

"(D) ARCADIA, EL MONTE, MONROVIA, GLENDORA.—Proposed capital expenditures in these areas, including $3,000,000 for monitoring wells and $7,500,000 for up to 5 wellhead treatment plants and proposed operating costs for such projects which will equal about $2,000,000 per year at the end of the 10-year period.

Federal funds made available under provisions of law other than this section or other provisions of this Act for any expenditure referred to in subparagraphs (A), (B), (C), or (D) shall not be treated as costs of remedial action recoverable under section 107(a)(4)(A) of this Act.

"(4) Contracts or cooperative agreements under this subsection shall provide for consultation with—

"(A) the Upper San Gabriel Valley Municipal Water District,

"(B) the Main San Gabriel Basin Watermaster,

"(C) the San Gabriel Valley Municipal Water District,

"(D) the Three Valleys Municipal Water District,

"(E) the Central Basin Municipal Water District,

"(F) the Water Replenishment District of Southern California,

"(G) the San Gabriel Valley Protective Association,

"(H) the San Gabriel River Watermaster,

"(I) the Metropolitan Water District of Southern California,

"(J) the California State Water Resources Control Board, and

"(K) the California Regional Water Quality Control Board, Los Angeles Region.

"(5) If the Basin-Wide Technical Plan is published in final form after the date on which any contract or cooperative agreement under this subsection is entered into, the contract or cooperative agreement shall be modified by the parties to the extent necessary to be consistent with the plan. Pursuant to such contract or cooperative agreement, the Authority shall provide treatment for water withdrawn from the Basin by qualified public water systems unless otherwise provided by the Metropolitan Water District of Southern California.

"(6) No contract or cooperative agreement entered into under this subsection shall take effect unless the Administrator determines that all preconditions for implementing the treatment project under this subsection have been met, as provided in subsection (b), before the date 30 months after the enactment of this section.

"(7) In providing water treatment under this subsection and apportioning costs under this section, the Administrator and the Authority shall give credit for costs incurred in the design, construction, and operation of any previously approved project undertaken with respect to the Basin and shall take appropriate steps to ensure continuity.

"(b) PRECONDITIONS FOR IMPLEMENTATION OF TREATMENT PROJECT.—(1) No water treatment shall be provided pursuant to any contract or cooperative agreement under subsection (a) until the Administrator, in consultation with the Authority, finds that—

"(A) a sufficient number (at least 65%) of the persons notified by the Administrator under this Act prior to the date 6 months after the enactment of this section that they may be potentially responsible parties have entered into long-term cost-sharing contracts with the Administrator under this subsection; and

"(B) those contracts are sufficient to provide annual payment for at least 50 percent of the total costs incurred by the Administrator after the date of the enactment of this section in carrying out water treatment under subsection (a).

"(2) The contracts with participating parties under this subsection shall also require that each participating party entering into such a contract will—

"(A) conduct an environmental site assessment in accordance with subsection (i) of the property owned or operated by that party by reason of which such party has been designated as a potentially responsible party, and

"(B) carry out all removal and remedial action required with respect to hazardous substances in the soil above the water table on such property, to the extent necessary to comply with the standards under section 121.

"(3) Any person, including potentially responsible parties identified by the Administrator after the date 6 months after the enactment of this section, as well as all local government entities within the San Gabriel Basin, who submits a request to the Administrator to participate in the project under this section shall be offered the opportunity to enter into cost sharing contracts under this section and those who enter into such contracts shall be treated as a participating party for purposes of this section.

"(4) Each person desiring to participate under this section shall enter into a contract under this section within 90 days after the date on which the contract is offered by the Administrator to such party.

"(5) The annual payment by each participating party shall be made in accordance with an appropriate schedule of periodic payments established by the Administrator and the Authority to coincide with the funding necessary to carry out this section. Each participating party shall be given the opportunity to fund its periodic payment liability on a present value basis by entering into a structured settlement arrangement. If a participating party funds its periodic payment liability through a structured settlement arrangement, the Authority shall be named as the owner and payee of the funding instrument at the time of the purchase of the instrument. Any such arrangement is subject to the approval of the Administrator and the Authority, particularly as to the schedule of payments and the licensed insurance company utilized for these purposes. A participating party may enter into a structured settlement arrangement as a single entity, or may enter into such an arrangement with other participating parties. Except as provided in subsection (c)(5), if a structured settlement arrangement is established pursuant to the provisions of this section, the participating party to whom the settlement relates shall be released from any and all further liability with respect to the settlement.

"(6) No court shall have jurisdiction to review any challenge to the removal or remedial action selected in any contract or cooperative agreement under this section.

"(c) COST SHARING.—(1) Six months after the enactment of this section, the Administrator shall notify each potentially responsible party and each other person who has submitted notice to the Administrator under subsection (b)(4) of the Administrator's intention to allocate the total costs incurred by the Administrator for water treatment under subsection (a). Within 60 days after the Administrator notifies such potentially responsible parties and other persons, any such parties and other persons desiring to become participating parties shall so notify the Administrator and agree to provide the Administrator with such information as the Administrator deems necessary to allocate costs among participating parties under this subsection. If the Administrator deems the information provided by any such person to be insufficient to permit the Administrator to make cost allocations under this subsection, the Administrator designate such person as ineligible to be a participating party. If the parties and other persons notified by the Administrator agree on an allocation of costs among themselves within 180 days after the expiration of such 60-day period, the Administrator shall allocate costs in accordance with such agreement. If such parties fail to reach an agreement for cost allocation within such 180-day period, within 30 days after the expiration of such 180-day period the Administrator shall allocate costs in accordance with paragraphs (2) and (3).

"(2) In allocating costs to each participating party as provided in paragraph (1), the Administrator shall make 2 allocations. The first allocation shall allocate only those costs associated with the specific zone of contamination located in proximity to the participating party. The allocation shall be made among all participating parties located in proximity to such zone, pursuant to the formula established by the Administrator under paragraph (3). The second allocation shall allocate those costs not associated with specific zones of contamination. The allocation shall be made among all participating parties, pursuant to the formula established by the Administrator under paragraph (3).

"(3) When no agreement has been reached pursuant to paragraph (1), the Administrator shall established a formula for allocating costs under this subsection. The formula shall require that the share of the total costs to be paid by a participating party shall be based upon the following factors:

"(A) The Standard Industrial Code Number (as determined by the Secretary of Commerce) of the participating party and the Administrator's estimate of the likelihood that industrial operations having that SIC Number contributed to contamination of the Basin.

"(B) The revenues attributable to the participating party's facility in the San Gabriel Valley in a baseline year established by the Administrator.

"(C) The ability of the participating party to pay.

"(D) Prior expenditures made by the participating party for groundwater mediation in the Basin (not including any costs of litigation or other attorney's fees).

"(4) In allocating costs under this subsection the Administrator shall also allocate a share of the total costs of carrying out the water treatment project under subsection (a) to potentially responsible parties who do not agree to become participating parties under this section. The Administrator shall recover cost from such nonparticipating parties pursuant to other provisions of this Act. The total of all shares contributed by participating parties under this subsection shall not be more than 80 percent of the total costs of carrying out the water treatment project authorized under subsection (a), except as provided in paragraph (5).

"(5) At the time the Administrator enters into a contract or cooperative agreement with the Authority under subsection (a), the Administrator shall estimate the total costs expected to be incurred by the Administrator under subsection (a). Each contract with a participating party under this section shall provide that the maximum obligation of that participating party under such contract shall not exceed 200 percent of that participating party's share of such estimated total costs.

"(6) Amounts received from participating parties shall be paid to the Authority and deposited in an interest bearing account which shall be available only for purposes of the water treatment project carried out under subsection (a).

"(d) LEVEL OF TREATMENT.—The water treatment provided pursuant to contracts and cooperative agreements under this section shall be adequate to insure that the treated water will comply with the most stringent standards applicable to drinking water under title XIV of the Public Health Service Act (the Safe Drinking Water Act) or under any provision of State law governing drinking water quality.

"(e) RECOVERY OF FEDERAL SHARE OF COST.—There are authorized to be appropriated to the Administrator such sums as

may be necessary to cover 20 percent of the total cost of carrying out the water treatment project carried out under subsection (a). For purposes of section 107, the Federal share of costs made available pursuant to this subsection shall be included as costs of remedial action within the meaning of section 107(a)(4)(A) which are recoverable by the United States Government in an action under section 107 against potentially responsible parties who are not participating parties. For purposes of section 107 all actions taken by the Administrator and the Authority in conformity with this section shall be deemed to have been taken in conformity with the National Contingency Plan.

"(f) EXEMPTION FROM OTHER LIABILITY.—No participating party making contributions pursuant to an agreement under this section and complying with subsection (b)(2) shall be liable, under any other provision of this Act or the Solid Waste Disposal Act or under any State statutory laws or rules of common law, for the costs of any removal or remediation with respect to hazardous substances released into the San Gabriel Basin, or for costs or damages to natural resources associated with such Basin, to the extent such release occurred before the enactment of this section and is identified in a site assessment, and no participating party shall be required to abate any such prior release of any hazardous substances into the Basin (except to the extent required by subsection (b)(2)(B)). The exemption provided by the preceding sentence for any participating party shall cease to apply to such participating party upon a determination by the Administrator that such participating party—

"(1) has failed or refused to make any portion of the contribution required of such party pursuant to an agreement under this section,

"(2) has failed or refused to carry out the activities required under subsection (b)(2), or

"(3) has filed a suit against another person for contribution of costs as described in subsection (f).

"(g) CONTRIBUTION.—No participating party may bring an action against any other person to require such other person to contribute any part of the costs required to be paid to the Administrator by such participating party under this section.

"(h) RELATIONSHIP TO OTHER LAWS.—Except as provided in subsection (f), nothing in this section shall be construed to affect the liability of any person under any other provision of this Act or under any other provision of law with respect to hazardous substances, pollutants, or contaminants in the San Gabriel Basin. Nothing in this section shall be construed to affect the authority of the Administrator to carry out removal or remedial action or any other response action with respect to such hazardous substances, pollutants, or contaminants in addition to the demonstration project authorized by this section.

"(i) LIABILITY EXEMPTION FOR PUBLIC WATER SYSTEMS.—Neither the owner or operator of a qualified public water system shall be liable under any provision of Federal statutory or common law affording rights of contribution for costs or damages in any suit for recovery of costs for a removal or remedial action with respect to hazardous substances in the San Gabriel Basin if such a suit is brought by a potentially responsible party that is not a participating party under this section.

"(j) COMPREHENSIVE ENVIRONMENTAL COMPLIANCE PROGRAM.—

"(1) GENERAL REQUIREMENTS.—To qualify as a participating party under this section, a potentially responsible party must establish a Comprehensive Environmental Compliance Program and agree to conduct an Environmental Site Assessment.

"(2) REGISTERED ENVIRONMENTAL ASSESSORS.—The Comprehensive Environmental Compliance Program and Environmental Site Assessment shall be prepared, signed, and dated by a registered civil engineer or registered geologist In accordance with State law, and the Program shall be certified by a person who is capable of committing the financial resources necessary to implement the Program, such as the owner, operator, or responsible corporate officer, or in the case of a government agency, a principal executive official or a ranking elected official.

"(3) CONTENT OF ENVIRONMENTAL SITE ASSESSMENT.—The Environmental Site Assessment required under this section shall contain—

"(A) an evaluation of practices and procedures established by the current owner or operator of the facility for which the assessment is conducted to—

"(i) ensure continuing compliance with applicable environmental requirements; and

"(ii) identify and implement hazardous waste reduction opportunities for the facility.

"(B) the results of Level I Preliminary Assessment (noninvasive investigation and regulatory search), and if site conditions warrant, the Level II Assessment (invasive sampling for suspected hazardous materials and preparation of remedial design specifications) and the Level III Assessment (on-site remediation); and

"(C) demonstration of compliance with all applicable State and Federal laws, such as, but not limited to the 'Community Right-to-Know Act' and 'California Hazardous Waste Reduction Act and Management Review' (SB 14);

"(4) COPIES.—Copies of each environmental site assessment shall be provided to the Administrator and the appropriate State official.

"(k) DEFINITIONS.—As used in this section—

"(1) QUALIFIED PUBLIC WATER SYSTEM.—The term 'qualified public water system' means a 'public water system', as defined in title XIV of the Public Health Service Act (the Safe Drinking Water Act), which is entitled, as of May 15, 1991, to withdraw water from or store water in the San Gabriel Valley Groundwater Basin, as determined under State law.

"(2) BASIN.—The terms 'San Gabriel Basin' and 'the Basin' means the San Gabriel Valley Groundwater Basin underlying the San Gabriel Valley in Los Angeles County, California.

"(3) POTENTIALLY RESPONSIBLE PARTY.—The term 'potentially responsible party' means a person who is identified by the Administrator as a person who may be liable under section 107, or under any provision of State law, for any amount with respect to cleanup of hazardous substances in the San Gabriel Basin.

"(4) PARTICIPATING PARTY.—The term 'participating party' means a person who has requested to participate as provided in subsection (b)(4) and who has entered into a contract with the Administrator under subsection (b).

"(5) STRUCTURED SETTLEMENT ARRANGEMENT.—The term "structured settlement arrangement" means an arrangement where the Authority owns—

"(A) a settlement annuity or similar instrument issued by a company licensed to do business as an insurance company under the laws of any State which has a financial stability rating from a nationally recognized insurance company rating organization which rating is satisfactory to the Administrator or

"(B) any obligation of the United States,

that has a defined schedule of periodic payments which coincides with the schedule of periodic payments determined to be appropriate for the Basin cleanup.".●

By Mrs. BOXER (for herself and Mrs. FEINSTEIN):

S. 1353. A bill to amend title 23, United States Code, to permit the use of funds under the Highway Bridge Replacement and Rehabilitation Program for seismic retrofit of bridges, and for other purposes; to the Committee on Environment and Public Works.

THE SEISMIC RETROFIT ACT

● Mrs. BOXER. Mr. President, one of many progressive elements of the Intermodal Surface Transportation and Efficiency Act of 1991 [ISTEA] was the provision including seismic repairs as an eligible activity under the Federal Highway Bridge Rehabilitation and Replacement Program [HBRR]. Unfortunately, since passage of that landmark legislation the Federal Highways Administration [FHWA] interpreted that provision in a way that restricts these funds, when used for seismic retrofit, to those bridges that are otherwise listed as structurally deficient.

However, for many States, particularly my State of California, although a bridge may not be considered structurally deficient under the FHWA standard, it is deficient in terms of its ability to withstand an earthquake. That is why today Senator FEINSTEIN and I are introducing legislation to correct this misinterpretation of the law.

Our bill would simply insert language that says, "a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section".

The Loma Prieta earthquake of 1989 demonstrated the vulnerability of our infrastructure to earthquakes. Both the Cypress Viaduct and the San Francisco Bay Bridge suffered severe damage in that incident. Two-thirds of the 63 people who died in the earthquake perished when the viaduct collapsed. California has more than 9,770 bridges constructed before the higher earthquake building code was established. In addition, no bridges in the Eastern United States has been built with seismic safety in mind, yet experts predict there is a 40- to 60-percent chance of an earthquake of at least a magnitude of 6.0 in the Eastern United States by the year 2020.

There are 24,000 bridges in my state of California. The State Department of Transportation has determined that about 1,500 will need seismic retrofit, and of those, about 300 are not otherwise structurally deficient. California

needs as much as $1.5 billion to correct seismic deficiencies on its bridges, excluding the Golden Gate Bridge which is a special case. California receives about $127 million a year from the Highway Bridge Rehabilitation and Repair Program.

However, under this interpretation by the FHWA, California cannot spend even the $20 to $25 million a year from HBRR funds that it would like to on any of those 300 bridges which need to be strengthened to withstand the periodic earthquakes in my State. One of those bridges is the 5-mile-long section of Interstate 10 in Los Angeles known as the Santa Monica Viaduct. That stretch of Federal highway carries more than 200,000 vehicles a day—hundreds of thousands of people—but the Federal Highways Administration said that Federal funds cannot be spent to protect them from a possible earthquake while they are traveling. No one who ever saw the pictures of those cars tumbling off the Bay Bridge during the 1989 earthquake could understand why the Federal Government cannot permit funds to be used solely for seismic protection of bridges.

You cannot see a seismic problem in a structure like you can see rust. When rust or a scouring problem appears on a bridge and its supports, you have time to correct the deficiency. A seismic problem is beneath the surface, but it is a deficiency nonetheless. This bill will make sure that FHWA will consider seismic retrofit as much a safety factor as any other kind of deficiency. Passage of this legislation will enable States to better protect their motorists and infrastructure by providing seismic retrofit. California will be able to protect about 12 to 20 bridges a year, depending on the bridge. Mr. President, all we have to do is look at the flood devastation in the Midwest to see why public works projects need to be protected by the best engineering possible to withstand natural disasters. It is a small cost to pay now compared to the financial—and human—costs we could face in the future.

Mr. President, I ask unanimous consent that the text 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. 1353

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

SECTION 1. HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM.

(a) ELIGIBILITY OF SEISMIC RETROFIT PROJECTS.—Section 144(d) of title 23, United States Code, is amended by inserting before the period at the end of the third sentence the following: ", except that a State may carry out a project for seismic retrofit of a bridge under this section without regard to whether the bridge is eligible for replacement or rehabilitation under this section".

(b) APPORTIONMENT FACTOR ADJUSTMENT.—Section 144(e) of such title is amended by inserting before the period at the end of the fourth sentence the following: "and by the total cost of all projects carried out under this section in the State for seismic retrofit of highway bridges not eligible for replacement or rehabilitation under this section".●

By Mrs. KASSEBAUM (for herself, Mr. JEFFORDS, Mr. COCHRAN, and Mr. PRESSLER):

S. 1354. A bill to amend the Fair Labor Standards Act of 1938 relating to the minimum wage and overtime exemption for employees subject to certain leave policies, and for other purposes; to the Committee on Labor and Human Resources.

THE WORKPLACE LEAVE FAIRNESS ACT

Mrs. KASSEBAUM. Mr. President, I am pleased to introduce today, along with my colleagues Senator COCHRAN, Senator JEFFORDS, and Senator PRESSLER, the Workplace Leave Fairness Act. This bill would eliminate a Department of Labor rule prohibiting employers from providing salaried employees with partrial-day unpaid leave. Similar legislation has been introduced in the House by Representatives ROBERT ANDREWS and THOMAS PETRI.

The Department of Labor's regulations in this area are complex, allowing deductions from pay for some reasons and not for others. While the regulations are not clear on their face, the Department and several courts have prohibited employers from allowing salaried employees to take a partial day's leave without pay. If an employer does grant such leave—or even if it merely has a policy which permits it—salaried employees lose their exempt status under the Fair Labor Standards Act.

This means that all salaried employees would be automatically converted to hourly employees who are then owed overtime, even if they a six-figure income and are employed at the highest levels of the organization. The employer will owe them back pay for any overtime worked as far back as the statute of limitations—2 years or, in cases of willful violations, 3 years.

The 1991 appeals court decision in Lynn Martin, Secretary of Labor versus Malcolm Pirnie, Inc., illustrates the severity of the problem. Malcolm Pirnie, a 900-employee, privately held engineering company docked less than $3,300 in pay from 24 salaried employees over 19 months. Most of the pay reductions resulted from employees voluntarily taking leave without pay.

When the company learned that its pay deductions were illegal, it immediately took steps to reimburse all 24 workers and to change the company's pay policy. But the Department of Labor took the company to court and won an appeals court decision stating that, because the company's written policy permitted pay deductions from salaried employees for partial-day absences, such workers are considered hourly employers. If forced to pay damages, Malcolm Pirnie will owe nearly $750,000 in overtime pay and accrued interest to employees whose annual pay ranges from $40,000 to $70,000.

The result of the Department of Labor's policy and the court decisions has been to confront small and large businesses and State and local governments with billions of dollars in liability for back-pay owed to employees who themselves thought they were exempt from overtime pay requirements. According to a recent study by the Employment Policy Foundation, the potential damages for private sector employers alone approaches $20 billion per year. In the public sector, the scenario is just as grim. The Governor of California, for example, has stated that the liability facing his State alone exceeds $3 billion.

Earlier this May, the Governors of the following States asked Secretary of Labor Robert Reich for relief: California, Iowa, Maryland, Nevada, New York, Nebraska, Oklahoma, Texas, New Jersey, and Wisconsin. The issue was also raised recently by Labor Department wage and hour compliance officers in an arbitration decision, since the Federal Government has a policy of allowing unpaid partial day leave. The potential liability, facing not only the Department of Labor but other Federal agencies as well, is enormous, enough, for example, to swallow the Department of Labor's job training budget in one bite.

Like a number of other States, Kansas is currently involved in litigation seeking back overtime pay. The payment of such unforeseen liabilities, not including the years of expensive litigation contesting these claims, seriously threatens the fiscal integrity of State and local treasuries. In this time of extreme budgetary pressure, State and local governments simply cannot afford this waste of their precious public resources. Moreover, the diversion of scarce resources to provide windfalls to a small segment of highly paid, white collar employees does not constitute wise public policy. These funds could be better used to create jobs and spur economic growth.

The Family and Medical Leave Act [FMLA], which will take effect tomorrow, recognized this problem by specifically providing that salaried employees of businesses with 50 or more employees will be able to take partial-day unpaid leave to handle their family and medical needs. Yet this is only the narrowest of possible solutions. There are many situations not covered by this legislation. For example, salaried employees of businesses with less than 50 employees will not be eligible for unpaid leave of less than a day. Additionally, leave not covered under the FMLA, including more generous leave requirements mandated by State or local laws, would still result in salaried employees losing their salaried status.

Certainly, these situations are no less deserving of protection than those expressly covered by the act.

The Workplace Leave Fairness Act will eliminate the Department of Labor's pay docking rule, thereby allowing public and private sector employers to provide flexible leave policies for their salaried workers. This legislation also addresses parallel issues, such as tracking time of salaried employees for purposes of billing clients, creating standard work hours for firms, and disciplinary suspensions without pay so that none of these practices result in salaried employees being converted into hourly workers.

Additionally, the Workplace Leave Fairness Act would apply retroactively to relieve public and private employers from liability for back pay who have had flexible leave policies, but have been unaware of these Department of Labor rules.

Mr. President, this problem requires prompt congressional action. The House Subcommittee on Labor Standards already held a hearing on this issue last month. I know the chairman of the Senate Committee on Labor and Human Resources is aware of this issue, and has, on more than one occasion, indicated his willingness to hold hearings in the Senate. As the ranking Republican member on the Senate Committee on Labor and Human Resources, I hope that we can hold hearings on this issue early this fall and take congressional action to solve the problem this year. The Workplace Leave Fairness Act would do just that, and I urge my colleagues to join with me in supporting this legislation.

Mr. PRESSLER. Mr. President, I am pleased to join with the distinguished ranking member of the Senate Labor Committee as an original cosponsor of the Workplace Leave Fairness Act. This vital legislation is needed to reverse bad public policy and ensure flexibility and productivity in the American workplace.

Specifically, the bill we are introducing today would reverse how the courts and a Government bureaucracy—the Department of Labor—have interpreted how workplace is covered under the Fair Labor Standards Act, of FLSA. Now, at first glance, the issue of workplace leave can be somewhat complicated. The FLSA and its progeny of technical regulations are not known to be the most exciting of subjects. However, for State and local governments, and the private sector, these subjects are serious business.

As my colleagues well know, employers can opt to pay their workers hourly wages or a yearly salary. The FLSA was crafted in 1938 by then Senator Hugo Black to protect the rights of hourly wage earners, particularly with respect to work hours and overtime pay.

Employees paid an annual salary generally are on the higher end of the pay scale. Traditionally, salaried workers have been exempted from the FLSA. I say traditionally, Mr. President, because that is not the case now. A Department of Labor interpretation has altered the exempt status, entitling salaried employees to overtime, back pay, and other benefits.

Rather than get mired in complex legalisms, let me explain the issue in question by way of some everyday, commonplace examples. Many employers provide their workers the option of taking a partial day off for personal reasons. In today's world of single parents, or two working parent families, this flexibility is needed. In fact, it's good common sense. Some workers may need a few hours away from work to take their children to a doctor, or pick them up from school or day care. Others may need a partial day off for physical exams or preventive health care. In many of these cases, this partial day, or flexible leave, is provided on an unpaid basis.

Clearly, flexible leave policies are designed for convenience. Labor management experts see flexible leave as an effective measure to improve productivity and employer/employee relations. However, a few Federal courts and the Department of Labor see flexible leave as a way to circumvent the FLSA. According to a Department of Labor regulation known as the pay docking rule, providing flexible leave to salaried employees eliminates their exemption from the overtime requirements of the FLSA. The Labor Department argues that flexible leave treats salaried employees as hourly workers. As a result, employers who offer flexible leave may be forced to pay overtime liability awards to all their salaried employees. This liability could be up to 3 years of back pay for any overtime hours worked at the overtime pay rates. Let me emphasize that these awards can be made to salaried employees regardless of whether they utilize the employer's leave policy. The mere existence of such a policy exposes an employer to liability under the pay docking rule.

If this sounds farfetched, it is. Even the bureaucrats in the Department of Labor who dreamed up the pay docking rule know it is bad policy. They were quick to exempt themselves and all Federal employees from the pay docking rule. However, the Department of Labor is enforcing the pay docking rule on everyone else. A Dayton, OH, firm was ordered by the Department to pay overtime back pay to its 14 salaried employees because the firm allowed these workers to take unpaid partial-day leave. An engineering firm with 400 salaried employees also was sued by the Department for having a similar policy. Though only 24 employees took unpaid leave totaling $3,300 under this policy, the Department ordered the firm to distribute $875,000 in back pay to all 400 employees.

Of course, employers could stop providing flexible leave to salaried workers, but that doesn't make them immediately immune from liability. Federal law exposes an employer to liability for policies in place as far back as 2 years ago. In fact, the Employment Policy Foundation estimates that current liability among private businesses with flexible leave could be as high as $39 billion.

The pay docking rule also has been applied with vigor to State and local governments. A number of State and local governments already face enormous penalties for providing their salaried work force flexible unpaid leave. The State of California, for example, faces liabilities totaling more than $3 billion.

Mr. President, the pay docking rule is yet another example of why the people who live and work beyond the Washington beltway think those inside it are out of touch. The rule has wreaked havoc on State and local governments struggling to balance their budgets. The rule is proving to be a boon for labor lawyers, and a bust for businesses. The rule is a slap in the face on employers trying to provide flexibility to a segment of their work force. The rule is a serious inconvenience to salaried employees, who now must take a full day of unpaid leave even if personal obligations only require a few hours away from work. And ironically, the rule is being used as a windfall for salaried employees—those professionals usually on the higher end of the pay scale.

Well, I have good news and bad news. The good news is that the Department of Labor is learning the errors of its ways. Unfortunately, the bad news is that the Federal Government is slow in correcting its mistakes. Last September, the Department eliminated the pay docking rule for State and local governments. However, State and local governments still remain vulnerable to past liability. Relief was made available to some segments of the private sector earlier this year. The new Family and Medical Leave Act exempts from the pay docking rule any leave taken under the act. However, this relief does not help employers not covered under the Family and Medical Leave Act, and does not address all situations where employees need to take flexible leave. The act also does not solve the problem of past liability.

Mr. President, this patchwork quilt of half-hearted solutions just adds to business frustration. The pay docking rule is bad public policy. The time for a real solution is long overdue. In fact, earlier this year, I attempted to offer an amendment to the Family and Medical Leave Act that would have enabled all employers to offer flexible family leave. However, I withdrew my amendment when I received the assurance of Senator DODD that the Senate Labor

Committee would hold hearings and work to achieve a solution before the end of this year.

I remain hopeful the Labor Committee will demonstrate leadership on this issue. They, and the full Senate, can fix this problem very quickly by passing the Workplace Leave Fairness Act, which the Senator from Kansas and I are introducing today.

Specifically, the Workplace Leave Fairness Act would eliminate the Department of Labor pay docking rule. In addition, this bill would be applied retroactively so that the private sector and State and local governments need not fear past liability.

Mr. President, we hear plenty of talk about change and new directions. Permit me to offer a possible new direction for this Congress. Let's quickly fix unintended consequences of Federal laws that punish employer flexibility and undermine employee productivity. We cannot expect State and local governments to fulfill their missions if they are forced to spend scarce taxpayer dollars because of bad policies made here in Washington. We cannot expect the private sector to lift itself from economic sluggishness if misguided Federal policies force it to pad the pockets of higher paid workers and labor lawyers. And we cannot expect all employers to have faith in the Federal Government when we're slow to correct our own mistakes.

We can restore faith, productivity, and flexibility in the American work force by passing the Workplace Leave Fairness Act. I urge my colleagues to join with me and the Senator from Kansas to support this needed reform measure.

By Mr. HEFLIN:

S. 1355. A bill to amend chapter 91 of title 28, United States Code, to provide that the U.S. Court of Federal Claims may have jurisdiction over certain pending claims, and for other purposes; to the Committee on the Judiciary.

COURT OF FEDERAL CLAIMS JURISDICTION MODIFICATION

Mr. HEFLIN. Mr. President, I rise today to introduce legislation to amend title 28 of the United States Code to improve the Federal claims litigation process before the U.S. Court of Federal claims and to assist the court in providing better and more efficient service to its litigants.

The Court of Federal Claims is the Nation's primary forum for monetary claims against the Federal Government. The court has jurisdiction to entertain suits for money against the United States that are founded upon the Constitution, an act of Congress, an Executive order, a regulation of an executive department, or contract with the United States and that do not sound in tort. The court hears major patent cases, Government contract suits, tax refund suits, fifth amendment takings cases and Indian claims, among many other types of lawsuits. The court has national jurisdiction, and the judges hear cases around the country at locations that are most convenient to the litigants and the witnesses.

The legislation that I am introducing today will repeal 28 U.S.C. 1500, which has heretofore denied Court of Federal Claims jurisdicton over any claim with respect to which the plaintiff has pending a suit in any other court. Although, on its face, section 1500 may appear to prevent wasteful duplication, in practice it has had precisely the opposite effect. Elimination of this jurisdictional bar to suits related to cases in other courts will eliminate much wasteful litigation over nonmerits issues and will leave the court free to deal with potential duplication through the discretionary means of staying arguable duplicative litigation, if the matter is being addressed in another forum, or of proceeding with the case, if the matter appears to be stalled in the other forum.

As currently construed section 1500 does not permit duplication of suits even if the Court of Federal Claims action was filed first and has received concentrated attention over a number of years. This situation can result in a major waste of resources by litigants and the court. The bill would also allow the plaintiff to protect itself against the running of the statute of limitations by the wrong initial choice in this confusing area.

In this day of electronic communication, computer tracking of cases and centralized docket control by the Justice Department, the Government will always know if a related claim is pending in two different courts and can request exercise of discretion by one or both courts to prevent duplicative litigation. Repeal of section 1500 would save untold wasted effort litigating over such marginal issues as whether a claim in the district court really is the same as one in the Court of Federal Claims.

I urge my colleagues to support this legislation, which I believe will promote efficiency and fairness. This change will assist the court of Federal Claims in providing improved service to litigants and to the entire country.

By Mr. DOLE (for himself, Mr. HATCH, Mr. THURMOND, Mr. GRAMM, Mr. MACK, Mr. SIMPSON, Mr. COCHRAN, Mrs. KASSEBAUM, Mr. HELMS, Mr. D'AMATO, Mr. STEVENS, Mr. LOTT, Mr. GRASSLEY, Mr. DOMENICI, Mr. BROWN, Mr. NICKLES, and Mr. WALLOP):

S. 1356. A bill to restore order, deter crime, and make our neighborhoods and communities safer and more secure places in which to live and work; to the Committee on the Judiciary.

NEIGHBORHOOD SECURITY ACT OF 1993

Mr. DOLE. Mr. President, "We have nothing to fear but fear itself." Those words, spoken by Franklin Roosevelt over 60 years ago, inspired America in a time of crisis.

Today, America faces another crisis. It's a crisis caused by the fact that Roosevelt's words no longer are true. For across the Nation—be it on the streets of our major cities, our suburbs, and even our rural communities—there is something to fear besides fear.

It is the fear that causes us to lock our doors at all times. It is the fear that makes parents worry when they send their children off to school. It is the fear that like so many of our friends and neighbors, we, too, will be the victims of violent crime.

It is a fear that each and every day becomes a reality for many Americans, and that this past February became a reality for Timothy Riley.

A 33-year-old husband and father of two young children, Timothy Riley was kidnaped outside his home in Topeka, and forced at gunpoint into the trunk of his own car.

Shortly after the kidnaping, Mr. Riley was shot to death, his lifeless body dumped on the side of a highway, just south of Topeka. Two teenagers, both with prior criminal records, have been arrested in connection with the carjacking and murder.

The murder of Timothy Riley, like all murders, is a tragedy. And another sad tragedy is the fact that the story of what befell Timothy Riley probably does not shock anyone here today.

Americans have become used to crime. We have become used to the fact that two teenagers would brutally take a man's life simply because they could do it.

Instead of outrage, far too many Americans now react with a shrug, with an attitude that random murder is normal or routine.

As a result, the war against crime must now be fought on two fronts. First, we must do all we can to give our law enforcement community the laws and the tools they need. And second, we must convince our citizens that crime is not a price we have to pay for living in a free society—that the carnage can be stopped.

For 4 years, Congress has debated anticrime legislation. Unfortunately, that's all we've done. In fact, we've all but debated ourselves to the point of irrelevancy.

WINDOW OF OPPORTUNITY

I believe, however, this is a window of opportunity—a small sliver of hope that Americans still hold. Hope that Government can restore the most basic civil right—the right to be safe and secure in our homes, on our streets, and in our communities.

Clearly, the Federal Government cannot provide all the answers. Some must come from the States, and from

ourselves. And clearly we cannot given our present budget deficit, provide all the money.

But we can do a great deal. We can take the lead. We can let Americans know that if there is a true emergency in America, it is crime.

Today, I will be joining with my Republican colleagues in introducing a legislative package which I believe will begin to restore some sanity to our streets. It is tough. It contains some ideas that are tried and true. And it contains some ideas that have never been tried before.

Yes, the legislation I am introducing today is expensive. But, unlike other crime bills, it is fully paid for—first, by cutting overhead across-the-board in the Federal Government by 5 percent and second, by modestly reducing overhead payments for Federally funded university research.

And, Mr. President, rather than asking "Can we afford it?," we should be asking "Can we afford not to do it?"

I believe the package can and should earn bipartisan support. Crime does not discriminate by politically party. A criminal does not ask whether you're Republican or Democrat before he robs you or shoots you.

Mr. President, this package—the Neighborhood Security Act of 1993—is the first installment of a two-pronged approach to crime—one short-term and one long-term.

THE SHORT-TERM SOLUTION: POLICE, PRISONS, AND PROSECUTORS

The short-term solution recognizes that one of the strongest deterrents to crime is more police on the streets. We can talk all we want about the causes of crime, but talk can't catch a thief or prevent a murder.

The first obligation of Government is to restore order, and there is no better prescription for order and less crime than a larger and more visible police presence.

For a new generation of police officers, America can look to its military, where a pool of skilled manpower waits to be tapped as defense cuts force thousands into civilian life. Our fighting men and women have discipline and weapons training—two key skills necessary for effective law enforcement. They are up to the challenge.

As a result, my legislation proposes an American safe streets program giving our fighting men and women the opportunity to continue their contribution by serving instead on State and local police forces.

Under this program, the Federal Government will help pick up the tab for members of the Armed Services who are hired by State and local police forces to perform neighborhood patrol duties. For the first 3 years of police service, the Federal Government will pay up to the full annual salary of the new police officer. During the subsequent 3 years, the Federal share will be up to 50 percent of the annual salary, with the State or local police force picking up the remaining 50 percent.

My package will also provide Federal assistance to community policing—the cop-on-the-beat approach to law enforcement that has proven so successful on the local level. And it endorses the Police Corps, a program I have supported for many years now.

Sounds expensive? Perhaps. But we should ask ourselves "Can we afford to waste the talents and energies of our young vets whose biggest challenge is suddenly not the firing line, but the unemployment line? And can we truly afford to fight a real war on crime without using all the weapons at our disposal?"

Mr. President, if we increase the number of police on the front end of the criminal justice system, we must have an adequate supply of prison space on the back end—and we must put the prison space to use.

During the 1960's, parole and rehabilitation grew in popularity and the crime rate soared. In the late 1970's and throughout the 1980's, the trend shifted back to incarceration. As a result, the growth in the overall crime rate slowed considerably and the rate of some violent crimes actually decreased.

In too many States, however, prison overcrowding has forced the early release of some of our most dangerous criminals. These predators now stalk our neighborhoods—simply because government has failed to devote the resources necessary to protect its citizens. This must stop.

My legislation authorizes $2 billion for the construction of 10 new Federal prisons for violent criminals and for illegal aliens who have been convicted of a violent crime.

States with prison overcrowding problems will be able to send their prisoners to these new prisons, if they adopt tough, anticrime measures, such as truth-in-sentencing and pretrial detention. To get access to these new Federal prisons, States must also impose mandatory minimum sentences for gun offenders, violent criminals, and child abuse offenders.

In addition, the Neighborhood Security Act sets aside another $1 billion in Federal money to assist the States in their own efforts to construct and operate new prisons. To be eligible for the Federal grants, these new State prisons must be principally dedicated to housing repeat violent criminals.

Mr. President, if we want the security, we must pay for it. It is not cheap. But can we afford anything less?

Unfortunately, the Clinton administration has proposed to cut back—not expand—funding for Federal prison construction, at the very time President Clinton himself has called for 100,000 more police on the streets. This approach, focusing on the front-end but ignoring the back-end of the criminal justice system—prisons—is unwise and, ultimately, at war with itself.

By increasing prison space, and by providing incentives for States to put that space to use, the American criminal justice system can return to its basic objective of protecting the innocent and punishing the guilty.

FEDERAL SAFE SCHOOL DISTRICTS

Mr. President, another objective of Government is to teach the youth of our country.

Unfortunately, learning and teaching are becoming increasingly more difficult, and increasingly more dangerous, in America's all-too-violent schools.

Years ago, gum chewing and talking in class were the main school discipline problems. Today, gun possession, drug use, and gang-related violence top the discipline-problem list.

Although statistics are not officially compiled on school violence, State and Federal officials estimate that at least 30 people were murdered last year in our Nation's schools.

Hundreds of other students and teachers have been injured, some seriously, by gun-related violence.

As the first step in taking back our schools, the Neighborhood Security Act would allow any local school district to elect to qualify as a Federal safe school district.

In a Federal safe school district, any juvenile 16 years of age, or older, who uses or carries a gun, in or near a school, would be prosecuted as an adult. No exceptions. If convicted of a gun-related crime, certain tough, new penalties would apply. Again, no exceptions.

To enhance security within the schools, $500 million in Federal grants would be available for metal detectors, closed-circuit cameras, increased police patrols in and around schools, gun hotlines, and mailings to parents warning them that their children must not carry a gun or weapon on school grounds.

School districts throughout the country are eager to purchase the latest in school-security technology, but fiscal constraints often get in the way.

By offering Federal funding for security equipment, the Neighborhood Security Act would help ensure that going to school is not an occupational hazard.

No doubt about it, it is a sad day when metal detectors and closed-circuit cameras take the place of books and writing pads as the most important purchases a school administrator can make. But let's face it: If we are to turn things around in our Nation's schools, we must adopt a zero-tolerance policy on school violence.

THE LONG-TERM SOLUTION: RESTORING THE AMERICAN FAMILY

Now, Mr. President, I have outlined the short-term solution to the crime epidemic, which is the focus of the Neighborhood Security Act.

The long-term solution is much more complex and much less amenable to Government solution. It recognizes that the most effective deterrents to crime are not necessarily police, prosecutors, and prisons—the three p's, as I like to call them—but strong families and the set of values that strong families transmit to their children.

This is where it all starts. This is the deepest root cause of them all.

Unfortunately, the American family today is in tatters. Since 1960, illegitimate births have increased by more than 400 percent. In 1990, a staggering two-thirds of all black children, and 25 percent of all white children, entered the world without the benefit of a resident father and mother. These illegitimacy rates continue to rise.

Not only is there a clear link between family structure and poverty, as my distinguished colleague from New York, Senator MOYNIHAN, pointed out 25 years ago, but there is also a link between family structure and crime. It is no wonder that 70 percent of the juveniles in State reformatories today come from homes without fathers.

Government is not the Nation's nanny. It cannot, and should not, be responsible for raising our Nation's children. No Government agency can implant personal morality, nor can a congressional committee build character. But Government can take certain steps that will discourage illegitimacy and encourage fathers to take their parental responsibilities seriously. This can only help to strengthen families and reduce crime as a result.

A real crime bill builds not only prisons, but tries to build families as well.

Later this year, I will be introducing the second installment of a two-pronged approach to the crime problem.

This second installment will offer a set of legislative ideas aimed at achieving the long-term goal of strengthening and nurturing America's families.

My goal is not to renew the debate over family values, but rather to emphasize the need to start valuing the family, an essential ingredient of any serious approach to the crime epidemic.

AMERICA: TIRED OF BEING THE HOSTAGE OF FEAR

Mr. President, America breathed a collective sigh of relief when Los Angeles remained calm after the second Rodney King jury verdict. But this calm should not lull us into forgetting the orgy of lawlessness that took place last year.

No one can deny the economic realities that bred, and still breed, this violence.

When a person has no stake in a community, he will often flout the conventions of that community.

But the community plays a dangerous game when it tells that same citizen he is not personally responsible for his own actions, that he is merely a hapless victim of the forces of supply and demand, and that his feelings of rage are legitimate and can be expressed through violence.

With an attitude of acceptance, the community invites death, destruction, and yes, more poverty.

As my colleague in the House, JOHN LEWIS, once explained:

It is not only poverty that has caused crime. In a very real sense, it is crime that has caused poverty, and crime is the most powerful cause of poverty in America today.

So, Mr. President, crime causes poverty. It also causes fear—a fear so great that we have become hostages in our homes, on our own streets, in our own neighborhoods.

F.D.R. may have been right 60 years ago when he said, "We have nothing to fear but fear itself." But, today, sadly, the greatest danger is not the fear itself, but our complacency and silent acceptance of that fear.

Mr. President, I ask unanimous consent that the full text of the Neighborhood Security Act of 1993 and an executive summary of the bill be inserted in the RECORD immediately after my remarks.

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

S. 1356

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Neighborhood Security Act of 1993".

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

Sec. 1. Short title and table of contents.

TITLE I—SAFE STREETS

Subtitle A—Police

CHAPTER 1—DEFENSE CONVERSION

Sec. 101. Definition.
Sec. 102. America's Safe Streets Program.

CHAPTER 2—COPS ON THE STREET

Sec. 111. Short title.
Sec. 112.- Enhanced local law enforcement.

CHAPTER 3—POLICE CORPS PROGRAM

Sec. 121. Purposes.
Sec. 122. Definitions.
Sec. 123. Establishment of Office of the Police Corps and Law Enforcement Education.
Sec. 124. Designation of lead agency and submission of State plan.
Sec. 125. Scholarship assistance.
Sec. 126. Selection of participants.
Sec. 127. Service obligation.
Sec. 128. State plan requirements.
Sec. 129. Reports to Congress.
Sec. 130. Authorization of appropriations.

CHAPTER 4—COMMUNITY POLICING GRANTS

Sec. 141. Community policing grants.

CHAPTER 5—IMPROVED TRAINING AND TECHNICAL AUTOMATION

Sec. 151. Grants.
Sec. 152. Training courses.
Sec. 153. Authorization of appropriations.

Subtitle B—Prisons

CHAPTER 1—REGIONAL PRISONS FOR VIOLENT CRIMINALS AND VIOLENT CRIMINAL ALIENS

Sec. 161. Definitions.
Sec. 162. Construction of prisons.
Sec. 163. Acceptance of prisoners.
Sec. 164. Qualifying State.
Sec. 165. Authorization of appropriations.

CHAPTER 2—FEDERAL GRANTS FOR STATE PRISON CONSTRUCTION AND OPERATION

Sec. 171. Definition.
Sec. 172. Grants.
Sec. 173. Construction grants.
Sec. 174. Operating grants.
Sec. 175. Canceling grants.
Sec. 176. Distribution of grants.
Sec. 177. Authorization of appropriations.

CHAPTER 3—JUDICIAL REMEDIES FOR PRISON CROWDING

Sec. 181. Purpose.
Sec. 182. Findings.
Sec. 183. Appropriate remedies.

CHAPTER 4—SENTENCES TO ACCOUNT FOR COSTS TO THE GOVERNMENT OF IMPRISONMENT, RELEASE, AND PROBATION

Sec. 191. Imposition of sentence.
Sec. 192. Duties of the sentencing commission.

TITLE II—SAFE SCHOOLS

Sec. 201. Definition.
Sec. 202. America's Safe Schools Program.
Sec. 203. Federal safe school districts.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A—Deportation of Criminal Aliens

Sec. 301. Deportation procedures for certain criminal aliens who are not permanent residents.
Sec. 302. Judicial deportation.
Sec. 303. Restricting defenses to deportation for certain criminal aliens.
Sec. 304. Enhancing penalties for failing to depart, or reentering, after final order of deportation.
Sec. 305. Miscellaneous and technical changes.

Subtitle B—Prevention and Punishment of Alien Smuggling

Sec. 311. Increased penalties for alien smuggling.
Sec. 312. Smuggling aliens for commission of crimes.
Sec. 313. Addition of alien smuggling to RICO.
Sec. 314. Expanded forfeiture for smuggling or harboring illegal aliens.
Sec. 315. Expansion of definition of aggravated felony.
Sec. 316. Amendment of sentencing guidelines.
Sec. 317. Increased penalty for Visa fraud.
Sec. 318. Training of airline personnel in detection of fraudulent documents.

Subtitle C—Border Patrol

Sec. 321. Border Patrol agents.
Sec. 322. Immigration and Naturalization Service criminal investigators.
Sec. 323. Criminal alien tracking center.

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

Sec. 401. Short title.

Subtitle A—Criminal Youth Gangs

Sec. 411. Criminal street gangs offenses.
Sec. 412. Crimes involving the use of minors as RICO predicates.
Sec. 413. Serious juvenile drug offenses as Armed Career Criminal Act predicates.
Sec. 414. Adult prosecution of serious juvenile offenders.
Sec. 415. Increased penalties for employing children to distribute drugs near schools and playgrounds.

Sec. 416. Increased penalties for drug trafficking near public housing.
Sec. 417. Increased penalties for Travel Act crimes involving violence and conspiracy to commit contract killings.
Sec. 418. Amendments concerning records of crimes committed by juveniles.
Sec. 419. Addition of anti-gang Byrne Grant funding objective.

Subtitle B—Gang Prosecution

Sec. 431. Additional prosecutors.
Sec. 432. Gang investigation coordination and information collection.
Sec. 433. Continuation of Federal-State funding formula.
Sec. 434. Grants for multijurisdictional drug task forces.

TITLE V—DRUG CONTROL AND RURAL CRIME

Subtitle A—Drug Trafficking in Rural Areas

Sec. 501. Authorizations for rural law enforcement agencies.
Sec. 502. Rural crime and drug enforcement task forces.
Sec. 503. Cross-designation of Federal officers.
Sec. 504. Rural drug enforcement training.

Subtitle B—Rural Drug Prevention and Treatment

Sec. 511. Rural substance abuse treatment and education grants.

Subtitle C—Rural Areas Enhancement

Sec. 521. Asset forfeiture.
Sec. 522. Prosecution of clandestine laboratory operators.

Subtitle D—Chemical Control

Sec. 531. Short title.
Sec. 532. Definition amendments.
Sec. 533. Registration requirements.
Sec. 534. Reporting of listed chemical manufacturing.
Sec. 535. Reports by brokers and traders; criminal penalties.
Sec. 536. Exemption authority; additional penalties.
Sec. 537. Amendments to list I.
Sec. 538. Elimination of regular supplier status and creation of regular importer status.
Sec. 539. Administrative inspections and authority.
Sec. 540. Threshold amounts.
Sec. 541. Management of listed chemicals.
Sec. 542. Forfeiture expansion.
Sec. 543. Attorney General access to the national practitioner data bank.
Sec. 544. Regulations and effective date.

Subtitle E—Personnel

Sec. 551. More agents for the Drug Enforcement Administration.
Sec. 552. Adequate staffing of the Office of National Drug Policy.

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A—Death Penalty

Sec. 601. Short title.
Sec. 602. Death penalty procedures.
Sec. 603. Conforming amendment relating to destruction of aircraft or aircraft facilities.
Sec. 604. Conforming amendment relating to espionage.
Sec. 605. Conforming amendment relating to transporting explosives.
Sec. 606. Conforming amendment relating to malicious destruction of Federal property by explosives.
Sec. 607. Conforming amendment relating to malicious destruction of interstate property by explosives.
Sec. 608. Conforming amendment relating to murder.
Sec. 609. Conforming amendment relating to killing official guests or internationally protected persons.
Sec. 610. Murder by Federal prisoner.
Sec. 611. Conforming amendment relating to kidnapping.
Sec. 612. Conforming amendment relating to hostage taking.
Sec. 613. Conforming amendment relating to mailability of injurious articles.
Sec. 614. Conforming amendment relating to Presidential assassination.
Sec. 615. Conforming amendment relating to murder for hire.
Sec. 616. Conforming amendment relating to violent crimes in aid of racketeering activity.
Sec. 617. Conforming amendment relating to wrecking trains.
Sec. 618. Conforming amendment relating to bank robbery.
Sec. 619. Conforming amendment relating to terrorist acts.
Sec. 620. Conforming amendment relating to aircraft hijacking.
Sec. 621. Conforming amendment to Controlled Substances Act.
Sec. 622. Conforming amendment relating to genocide.
Sec. 623. Protection of court officers and jurors.
Sec. 624. Prohibition of retaliatory killings of witnesses, victims, and informants.
Sec. 625. Death penalty for murder of Federal law enforcement officers.
Sec. 626. Death penalty for murder of State or local law enforcement officers assisting Federal law enforcement officers.
Sec. 627. Implementation of the 1988 protocol for the suppression of unlawful acts of violence at airports serving international civil aviation.
Sec. 628. Amendment to Federal Aviation Act.
Sec. 629. Offenses of violence against maritime navigation or fixed platforms.
Sec. 630. Torture.
Sec. 631. Weapons of mass destruction.
Sec. 632. Homicides and attempted homicides involving firearms in Federal facilities.
Sec. 633. Death penalty for civil rights murders.
Sec. 634. Death penalty for murder of Federal witnesses.
Sec. 635. Drive-by shootings.
Sec. 636. Death penalty for gun murders during Federal crimes of violence and drug trafficking crimes.
Sec. 637. Death penalty for rape and child molestation murders.
Sec. 638. Protection of jurors and witnesses in capital cases.
Sec. 639. Inapplicability to Uniform Code of Military Justice.
Sec. 640. Death penalty for causing death in the sexual exploitation of children.
Sec. 641. Murder by escaped prisoners.
Sec. 642. Death penalty for murders in the District of Columbia.

Subtitle B—Equal Justice Act

Sec. 651. Short title.
Sec. 652. Prohibition of racially discriminatory policies concerning capital punishment or other penalties.
Sec. 653. General safeguards against racial prejudice or bias in the tribunal.
Sec. 654. Federal capital cases.
Sec. 655. Extension of protection of civil rights statutes.

Subtitle C—Enhanced Penalties for Criminal Use of Firearms and Explosives

Sec. 661. Smuggling firearms in aid of drug trafficking.
Sec. 662. Prohibition against theft of firearms or explosives.
Sec. 663. Increased penalty for knowingly false, material statement in connection with the acquisition of a firearm from a licensed dealer.
Sec. 664. Summary destruction of explosives subject to forfeiture.
Sec. 665. Elimination of outmoded language relating to parole.
Sec. 666. Receipt of firearms by nonresident.
Sec. 667. Prohibition of theft of firearms or explosives from licensee.
Sec. 668. Increased penalty for interstate gun trafficking.
Sec. 669. Prohibition of transactions involving stolen firearms which have moved in interstate or foreign commerce.
Sec. 670. Possession of explosives by felons and others.
Sec. 671. Disposition of forfeited firearms.
Sec. 672. Definition of burglary under the armed career criminal statute.

Subtitle D—Exclusionary Rule

Sec. 681. Admissibility of certain evidence.

Subtitle E—Pre-Trial Interrogation

Sec. 691. Pre-trial interrogation.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

Subtitle A—General Habeas Corpus Reform

Sec. 701. Short title.
Sec. 702. Period of limitation.
Sec. 703. Appeal.
Sec. 704. Amendment of Federal rules of appellate procedure.
Sec. 705. Section 2254 amendments.
Sec. 706. Section 2255 amendments.

Subtitle B—Death Penalty Litigation Procedures

Sec. 711. Short title.
Sec. 712. Death penalty litigation procedures.

Subtitle C—Equalization of Capital Habeas Corpus Litigation Funding

Sec. 721. Funding for death penalty prosecutions.

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A—Penalties and Offenses

Sec. 801. Providing material support to terrorism.
Sec. 802. Enhanced penalties for certain offenses.
Sec. 803. Sentencing guidelines increase for terrorist crimes.
Sec. 804. Extension of the statute of limitations for certain terrorism offenses.
Sec. 805. Forfeiture of assets used to support terrorists.
Sec. 806. Alien witness cooperation.
Sec. 807. Territorial sea extending to 12 miles included in special maritime and territorial jurisdiction.
Sec. 808. Assimilated crimes in extended territorial sea.
Sec. 809. Jurisdiction over crimes against United States nationals on certain foreign ships.
Sec. 810. Penalties for international terrorist acts.

Sec. 811. Authorization of appropriations.
Sec. 812. International parental kidnapping.
Sec. 813. Foreign murder of United States nationals.
Sec. 814. Extradition.
Sec. 815. FBI access to telephone subscriber information.
Subtitle B—Removal of Alien Terrorists
Sec. 821. Removal of alien terrorists.
Subtitle C—Enhanced Entry Controls
Sec. 831. Admissions fraud.
Sec. 832. Inspection and exclusion by immigration officers.
Sec. 833. Judicial review.
Sec. 834. Conforming amendments.
Sec. 835. Effective date.
TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE
Subtitle A—Victims' Rights
Sec. 901. Restitution amendments.
Sec. 902. Right of the victim to an impartial jury.
Sec. 903. Mandatory restitution and other provisions.
Subtitle B—National Child Protection Act
Sec. 911. Short title.
Sec. 912. Findings and purposes.
Sec. 913. Definitions.
Sec. 914. Reporting by the States.
Sec. 915. Background checks.
Sec. 916. Funding for improvement of child abuse crime information.
Subtitle C—Jacob Wetterling Crimes Against Children Registration Act
Sec. 921. Short title.
Sec. 922. Establishment of program.
Sec. 923. State compliance.
TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT
Subtitle A—Violent Crimes
Sec. 1001. Addition of attempted robbery, kidnapping, smuggling, and property damage offenses to eliminate inconsistencies and gaps in coverage.
Sec. 1002. Increase in maximum penalty for assault.
Sec. 1003. Increased maximum penalty for manslaughter.
Sec. 1004. Increased penalty for Travel Act violations.
Sec. 1005. Increased penalty for conspiracy to commit murder for hire.
Sec. 1006. Federal penalties for carjacking.
Sec. 1007. Increased mandatory minimum sentences for criminals using firearms.
Sec. 1008. Life imprisonment without release for criminals convicted a third time.
Subtitle B—National Commission to Support Law Enforcement
Sec. 1021. Short title.
Sec. 1022. Findings.
Sec. 1023. Establishment of Commission.
Sec. 1024. Duties.
Sec. 1025. Membership.
Sec. 1026. Experts and consultants.
Sec. 1027. Powers of Commission.
Sec. 1028. Report.
Sec. 1029. Termination.
Sec. 1030. Authorization of appropriations.
Sec. 1031. Repeals.
TITLE XI—CIVIL RIGHTS OFFENSES
Sec. 1101. Increased maximum penalties for civil rights violations.
TITLE XII—PUBLIC CORRUPTION
Sec. 1201. Short title.
Sec. 1202. Public corruption.
Sec. 1203. Interstate commerce.
Sec. 1204. Narcotics-related public corruption.
TITLE XIII—FUNDING
Sec. 1301. Reduction in overhead costs incurred in federally sponsored research.
Sec. 1302. Overhead expense reduction.
Sec. 1303. Funding of programs authorized by this Act.

TITLE I—SAFE STREETS

Subtitle A—Police

CHAPTER 1—DEFENSE CONVERSION

SEC. 101. DEFINITION.

In this chapter, "former member of the Armed Forces" means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

SEC. 102. AMERICA'S SAFE STREETS PROGRAM.

(a) PROGRAM ESTABLISHMENT.—

(1) AMERICA'S SAFE STREETS PROGRAM.—The program established by this section shall be referred to as "America's Safe Streets Program".

(2) AGREEMENTS.—The Attorney General, in consultation with the Secretary of Defense, may enter into an agreement with a State or local law enforcement agency to pay, and may pay, for a period of 6 years, including any required periods of training, the salaries of former members of the Armed Forces who are hired within 5 years after the date of enactment of this Act as police officers assigned to neighborhood patrol duties.

(b) AMOUNT.—

(1) MAXIMUM.—(A) The maximum Federal share of an annual salary for the first 3 years that a police officer may be paid under an agreement described in subsection (a) is the annual salary earned by the officer during his or her last year as a member of the Armed Forces.

(B) The maximum Federal share of an annual salary for the 4th through 6th years that a police officer may be paid under an agreement described in subsection (a) is 50 percent of the annual salary earned by the officer during his or her last year as a member of the Armed Forces.

(2) ENTRY LEVEL.—To the extent that it is practicable to do so, a State or local law enforcement agency shall hire a former member of the Armed Forces whose salary is to be paid under an agreement described in subsection (a) at a level of seniority, in consideration of the former member's years of service and training as a member of the Armed Forces, that will permit the former member to be paid at least the maximum amount of annual salary under paragraph (1).

(3) PRIORITY.—In making awards under this section, the Attorney General may give priority to agencies located in communities that are adversely affected by the recent closing of a military base or facility.

(4) FORMULA.—In making awards under this section, the Attorney General shall insure that no State receives less than .50 percent of the funds appropriated under this section.

(c) ENLARGEMENT OF POLICE FORCE.—It shall be a condition to payment of salaries under an agreement described in subsection (a) that the number of police officers assigned to neighborhood patrol duties (not including any officers whose salaries in whole or in part are paid under this title), and the size of the law enforcement agency's staff overall, shall not be diminished during the term of the agreement.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section—

(1) $100,000,000 for fiscal year 1994;
(2) $125,000,000 for fiscal year 1995;
(3) $175,000,000 for fiscal year 1996;
(4) $200,000,000 for fiscal year 1997; and
(5) $200,000,000 for fiscal year 1998.

CHAPTER 2—COPS ON THE STREET

SEC. 111. SHORT TITLE.

This chapter may be cited as the "Cops on the Street Act of 1993".

SEC. 112. ENHANCED LOCAL LAW ENFORCEMENT.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended—

(1) by redesignating part Q as part R;

(2) by redesignating section 1701 as section 1801; and

(3) by inserting after part P the following:

"PART Q—COPS ON THE STREET GRANTS

"SEC. 1701. GRANT AUTHORIZATION.

"The Director of the Bureau of Justice Assistance may make not less than 50, but not more than 100 grants to units of local government for the purposes of increasing police presence in the community. The Director shall take steps to ensure, to the extent practicable, that each State receives at least 1 grant.

"SEC. 1702. APPLICATION.

"(a) IN GENERAL.—To be eligible to receive a grant under this part, a chief executive of a unit of local government, shall submit an application to the Director. The application shall contain the information required under subsection (b) and be in such form and contain such other information as the Director may reasonably require.

"(b) GENERAL CONTENTS.—Each application under subsection (a) shall include—

"(1) a request for funds available under this part for the purposes described in section 1701;

"(2) a description of the areas and populations to be served by the grant and a description of the crime problems within the areas targeted for assistance;

"(3) information required to be considered by the Director under section 1704;

"(4) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part;

"(5) detailed accounts of expenditures for law enforcement for the preceding 5-year period prior to receiving a grant under this part;

"(6) detailed accounts of local expenditures for law enforcement during any prior years in which grants were received under this part; and

"(7) a description of how a portion of the grant would be used to ensure the safety of public and private elementary and secondary schools.

"SEC. 1703. ADMINISTRATIVE COSTS; GRANT RENEWAL.

"(a) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(b) RENEWAL OF GRANTS.—A grant under this part may be renewed, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and the requirements of this part.

"SEC. 1704. SELECTION OF RECIPIENTS.

"In awarding grants to units of local government under this part, the Director shall consider—

"(1) the crime rate per capita in the unit of local government for violent crime, including murder, rape, robbery, assault with a weapon, and kidnapping; and

"(2) the rate of increase of violent crime in such unit of local government over the most recent 3-year period for which statistics are available.

"SEC. 1705. REPORTS.

"(a) REPORT TO DIRECTOR.—Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1702(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year that shall contain a detailed statement regarding grant awards, activities of grant recipients, and an evaluation of projects established under this part.

"SEC. 1706. DEFINITION.

"For the purposes of this part, the term 'Director' means the Director of the Bureau of Justice Assistance.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by striking the matter relating to part Q and inserting the following:

"PART Q—COPS ON THE STREET GRANTS

"Sec. 1701. Grant authorization.
"Sec. 1702. Application.
"Sec. 1703. Allocation of funds; limitation on grants.
"Sec. 1704. Award of grants.
"Sec. 1705. Reports.
"Sec. 1706. Definition.

"PART R—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1801. Continuation of rules, authorities, and proceedings.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793) is amended—

(1) in paragraph (3) by striking "and O" and inserting "O, P, and Q"; and

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

"(11) There are authorized to be appropriated to carry out projects under part Q—

"(A) $100,000,000 for fiscal year 1994;
"(B) $100,000,000 for fiscal year 1995;
"(C) $150,000,000 for fiscal year 1996;
"(D) $150,000,000 for fiscal year 1997; and
"(E) $150,000,000 for fiscal year 1998.".

CHAPTER 3—POLICE CORPS PROGRAM

SEC. 121. PURPOSES.

The purposes of this chapter are to—

(1) address violent crime in urban and rural areas by increasing the number of police with advanced education and training on community patrol; and

(2) provide educational assistance to law enforcement personnel and to students who possess a sincere interest in public service in the form of law enforcement.

SEC. 122. DEFINITIONS.

In this chapter—

"academic year" means a traditional academic year beginning in August or September and ending in the following May or June.

"dependent child" means a natural or adopted child or stepchild of a law enforcement officer who at the time of the officer's death—

(1) was no more than 21 years old; or

(2) if older than 21 years, was in fact dependent on the child's parents for at least one-half of the child's support (excluding educational expenses), as determined by the Director.

"Director" means the Director of the Office of the Police Corps and Law Enforcement Education appointed under section 123.

"educational expenses" means expenses that are directly attributable to—

(1) a course of education leading to the award of the baccalaureate degree in legal or criminal justice-related studies; or

(2) a course of graduate study legal or criminal justice studies following award of a baccalaureate degree,

including the cost of tuition, fees, books, supplies, transportation, room and board and miscellaneous expenses.

"institution of higher education" has the meaning stated in the first sentence of section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"participant" means a participant in the Police Corps program selected pursuant to section 126.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

"State Police Corps program" means a State police corps program approved under section 138.

SEC. 123. ESTABLISHMENT OF OFFICE OF THE POLICE CORPS AND LAW ENFORCEMENT EDUCATION.

(a) ESTABLISHMENT.—There is established in the Department of Justice, under the general authority of the Attorney General, an Office of the Police Corps.

(b) APPOINTMENT OF DIRECTOR.—The Office of the Police Corps and Law Enforcement Education shall be headed by a Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(c) RESPONSIBILITIES OF DIRECTOR.—The Director shall be responsible for the administration of the Police Corps program established in this chapter and shall have authority to promulgate regulations to implement this chapter.

SEC. 124. DESIGNATION OF LEAD AGENCY AND SUBMISSION OF STATE PLAN.

(a) LEAD AGENCY.—A State that desires to participate in the Police Corps program shall designate a lead agency that will be responsible for—

(1) submitting to the Director a State plan described in subsection (b); and

(2) administering the program in the State.

(b) STATE PLANS.—A State plan shall—

(1) contain assurances that the lead agency shall work in cooperation with the local law enforcement liaisons, representatives of police management organizations, and other appropriate State and local agencies to develop and implement interagency agreements designed to carry out the program;

(2) contain assurances that the State shall advertise the assistance available under this chapter;

(3) contain assurances that the State shall screen and select law enforcement personnel for participation in the program;

(4) if the State desires to participate in the Police Corps program, meet the requirements of section 128; and

(5) demonstrate that the State has the capacity to employ the participants in the Police Corps program from that State.

SEC. 125. SCHOLARSHIP ASSISTANCE.

(a) SCHOLARSHIPS AUTHORIZED.—(1) The Director may award scholarships to participants who agree to work in a State or local police force in accordance with agreements entered into pursuant to subsection (d).

(2)(A) Except as provided in subparagraph (B) each scholarship payment made under this section for each academic year shall not exceed the lesser of—

(i) $7,500; or

(ii) the cost of the educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $10,000.

(C) The total amount of scholarship assistance received by any 1 student under this section shall not exceed $30,000.

(3) Recipients of scholarship assistance under this section shall continue to receive such scholarship payments only during such periods as the Director finds that the recipient is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending.

(4)(A) The Director shall make scholarship payments under this section directly to the institution of higher education that the student is attending.

(B) Each institution of higher education receiving a payment on behalf of a participant pursuant to subparagraph (A) shall remit to such student any funds in excess of the costs of tuition, fees, and room and board payable to the institution.

(b) REIMBURSEMENT AUTHORIZED.—(1) The Director may make payments to a participant to reimburse such participant for the costs of educational expenses if such student agrees to work in a State or local police force in accordance with the agreement entered into pursuant to subsection (d).

(2)(A) Each payment made pursuant to paragraph (1) for each academic year of study shall not exceed—

(i) $7,500; or

(ii) the cost of educational expenses related to attending an institution of higher education.

(B) In the case of a participant who is pursuing a course of educational study during substantially an entire calendar year, the amount of scholarship payments made during such year shall not exceed $10,000.

(C) The total amount of payments made pursuant to subparagraph (A) to any 1 student shall not exceed $30,000.

(c) USE OF SCHOLARSHIP.—Scholarships awarded under this subsection shall only be used to pay educational expenses incurred while in attendance at an institution of higher education—

(1) in a course of education leading to the award of a baccalaureate degree in the area of legal or criminal justice related studies, including attendance at such an institution that does not itself award such a degree if the courses taken there are acceptable for credit toward a degree at an institution that does award such a degree, and including, in the discretion of the Director, such expenses incurred prior to enrollment in the Police Corps program; and

(2) for graduate and professional study.

(d) AGREEMENT.—(1) Each participant receiving a scholarship or a payment under this section shall enter into an agreement with the Director. Each such agreement shall contain assurances that the participant shall—

(A) after successful completion of a baccalaureate program, work for 4 years in a State or local police force without there having arisen sufficient cause for the participant's dismissal under the rules applicable to members of the police force of which the participant is a member;

(B) complete satisfactorily an educational course of study and receipt of a baccalaureate degree (in the case of undergraduate study) or the reward of credit to the participant for having completed one or more graduate courses (in the case of graduate study); and

(C) repay all of the scholarship or payment received plus interest at the rate of 10 percent in the event that the conditions of subparagraphs (A) and (B) are not complied with.

(2)(A) A recipient of a scholarship or payment under this section shall not be considered in violation of the agreement entered into pursuant to paragraph (1) if the recipient—

(i) dies; or

(ii) becomes permanently and totally disabled as established by the sworn affidavit of a qualified physician.

(B) The Director shall expeditiously seek repayment from participants who violate the agreement described in paragraph (1).

(e) DEPENDENT CHILD.—A dependent child of a law enforcement officer—

(1) who is a member of a State or local police force or is a Federal criminal investigator or uniformed police officer,

(2) who is not a participant in the Police Corps program, but

(3) who serves in a State for which the Director has approved a Police Corps plan, and

(4) who is killed in the course of performing police duties,

shall be entitled to the scholarship assistance authorized in this section for any course of study in any institution of higher education. Such dependent child shall not incur any repayment obligation in exchange for the scholarship assistance provided in this section.

(f) GROSS INCOME.—For purposes of section 61 of the Internal Revenue Code of 1986, a participant's or dependent child's gross income shall not include any amount paid as scholarship assistance under this section.

(g) APPLICATION.—Each participant desiring a scholarship or payment under this section shall submit an application as prescribed by the Director in such manner and accompanied by such information as the Director may reasonably require.

SEC. 126. SELECTION OF PARTICIPANTS.

(a) IN GENERAL.—Participants in State Police Corps programs shall be selected on a competitive basis by each State under regulations prescribed by the Director. A State may only select as many participants as State police or local law enforcement agencies are willing to accept and are capable of accepting. A State shall certify that for each participant selected, a State police or local law enforcement agency has agreed to accept a participant.

(b) SELECTION CRITERIA AND QUALIFICATIONS.—(1) In order to participate in a State Police Corps program, a participant shall—

(A) be a citizen of the United States;

(B) meet the requirements for admission as a trainee of the State or local police force to which the participant will be assigned pursuant to the State Police Corps plan, including achievement of satisfactory scores on any applicable examination, except that failure to meet the age requirement for a trainee of the State or local police shall not disqualify the applicant if the applicant will be of sufficient age upon completing an undergraduate course of study;

(C) possess the necessary mental and physical capabilities and emotional characteristics to discharge effectively the duties of a law enforcement officer;

(D) be of good character and demonstrate sincere motivation and dedication to law enforcement and public service;

(E) in the case of an undergraduate, agree in writing that the participant will complete an educational course of study leading to the award of a baccalaureate degree in law- or criminal justice-related studies and will then accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State;

(F) in the case of a participant desiring to undertake or continue graduate study in law- or criminal justice-related studies, agree in writing that the participant will accept an appointment and complete 4 years of service as an officer in the State police or in a local police department within the State before undertaking or continuing graduate study;

(G) contract, with the consent of the participant's parent or guardian if the participant is a minor, to serve for 4 years as an officer in the State police or in a local police department, if an appointment is offered; and

(H) except as provided in paragraph (2), be without previous law enforcement experience; and

(2)(A) Until the date that is 5 years after the date of enactment of this Act, up to 10 percent of the applicants accepted into the Police Corps program may be persons who—

(i) have had some law enforcement experience; and

(ii) have demonstrated special leadership potential and dedication to law enforcement.

(B)(i) The prior period of law enforcement of a participant selected pursuant to subparagraph (A) shall not be counted toward satisfaction of the participant's 4-year service obligation under section 127, and such a participant shall be subject to the same benefits and obligations under this subtitle as other participants, including those stated in paragraph (1) (E) and (F).

(ii) Clause (i) shall not be construed to preclude counting a participant's previous period of law enforcement experience for purposes other than satisfaction of the requirements of section 127, such as for purposes of determining such a participant's pay and other benefits, rank, and tenure.

(3) It is the intent of this chapter that there shall be no more than 20,000 participants in each graduating class. The Director shall approve State plans providing in the aggregate for such enrollment of applicants as shall ensure, as nearly as possible, that there will be annual graduating classes of 20,000. Each State shall be entitled to at least 250 participants. In a year in which applications are received in a number greater than that which will produce, in the judgment of the Director, a graduating class of more than 20,000, the Director shall, in deciding which applications to grant, give preference to those who will be participating in State plans that provide law enforcement personnel to urban and rural areas of greatest need.

(c) RECRUITMENT OF MINORITIES.—Each State participating in the Police Corps program shall make special efforts to seek and recruit qualified applicants from among members of all racial, ethnic or gender groups. This subsection does not authorize an exception from the competitive standards for admission established pursuant to subsections (a) and (b).

(d) ENROLLMENT OF APPLICANT.—(1) An applicant shall be accepted into a State Police Corps program on the condition that the applicant will be matriculated in, or accepted for admission at, an institution of higher education—

(A) as a full-time student in an undergraduate program leading to the award of a baccalaureate degree; or

(B) for purposes of taking a graduate or professional course.

(2) If the applicant is not matriculated or accepted as set forth in paragraph (1), the applicant's acceptance in the program shall be revoked.

(e) LEAVE OF ABSENCE.—(1) A participant in a State Police Corps program who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) due to temporary physical or emotional disability shall be granted such leave of absence by the State.

(2) A participant who requests a leave of absence from educational study, training or service for a period not to exceed 1 year (or 18 months in the aggregate in the event of multiple requests) for any reason other than those listed in paragraph (1) may be granted such leave of absence by the State.

(3) A participant who requests a leave of absence from educational study or training for a period not to exceed 30 months to serve on an official church mission may be granted such leave of absence.

(f) ADMISSION OF APPLICANTS.—An applicant may be admitted into a State Police Corps program either before commencement of or during the applicant's course of educational study.

SEC. 127. SERVICE OBLIGATION.

(a) SWEARING IN.—Upon completing satisfactorily the participant's course of education and meeting the requirements of the police force to which the participant is assigned, a participant shall be sworn in as a member of the police force to which the participant is assigned pursuant to the State Police Corps plan, and shall serve for 4 years as a member of that police force.

(b) RIGHTS AND RESPONSIBILITIES.—A participant shall have all of the rights and responsibilities of and shall be subject to all rules and regulations applicable to other members of the police force of which the participant is a member, including those contained in applicable agreements with labor organizations and those provided by State and local law.

(c) DISCIPLINE.—If the police force of which the participant is a member subjects the participant to discipline such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 125, the Director may, upon a showing of good cause, permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 125(d)(1)(C) shall not apply.

(d) LAYOFFS.—If the police force of which the participant is a member lays off the participant such as would preclude the participant's completing 4 years of service, and result in denial of educational assistance under section 125, the Director may permit the participant to complete the service obligation in an equivalent alternative law enforcement service and, if such service is satisfactorily completed, section 125(d)(1)(C) shall not apply.

SEC. 128. STATE PLAN REQUIREMENTS.

A State Police Corps plan shall—

(1) provide for the screening and selection of participants in accordance with the criteria set out in section 126;

(2) state procedures governing the assignment of participants in the Police Corps program to State and local police forces (no more than 10 percent of all the participants assigned in each year by each State to be assigned to a statewide police force or forces);

(3) provide that participants shall be assigned to those geographic areas in which—

(A) there is the greatest need for additional law enforcement personnel; and

(B) the participants will be used most effectively;

(4) provide that to the extent consistent with paragraph (3), a participant shall be assigned to an area near the participant's home or such other place as the participant may request;

(5) provide that to the extent feasible, a participant's assignment shall be made at the time the participant is accepted into the program, subject to change—

(A) prior to commencement of a participant's fourth year of undergraduate study, under such circumstances as the plan may specify; and

(B) from commencement of a participant's fourth year of undergraduate study until completion of 4 years of police service by participant, only for compelling reasons or to meet the needs of the State Police Corps program and only with the consent of the participant;

(6) provide that no participant shall be assigned to serve with a local police force—

(A) the size of which has declined by more than 5 percent during the preceding year; or

(B) which has members who have been laid off but not retired;

(7) provide that participants shall be placed and to the extent feasible kept on community and preventive patrol;

(8) assure that participants will receive effective training and leadership;

(9) provide that the State may decline to offer a participant an appointment or may remove a participant from the Police Corps program at any time, only for good cause (including failure to make satisfactory progress in a course of educational study) and after following reasonable review procedures stated in the plan;

(10) provide for the direct involvement of law enforcement officials in determining the number of participants and their assignments; and

(11) provide that a participant shall, while serving as a member of a police force, be compensated at the same rate of pay and benefits and enjoy the same rights under applicable agreements with labor organizations and under State and local law as other police officers of the same rank and tenure in the police force of which the participant is a member.

SEC. 129. REPORTS TO CONGRESS.

(a) ANNUAL REPORTS.—(1) Not later than April 1 of each year, the Director shall submit a report to the Attorney General, the President, the Speaker of the House of Representatives, and the President pro tempore of the Senate.

(2) The report described in paragraph (1) shall—

(A) state the number of current and past participants in the Police Corps program, categorized according to the levels of educational study in which they are engaged and years of service they have served on police forces (including service following completion of the 4-year service obligation); and

(B) describe the geographic dispersion of participants in the Police Corps program.

SEC. 130. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Justice to carry out this chapter—

(1) $50,000,000 for fiscal year 1994;

(2) $100,000,000 for fiscal year 1995; and

(3) $100,000,000 for fiscal year 1996.

CHAPTER 4—COMMUNITY POLICING GRANTS

SEC. 141. COMMUNITY POLICING GRANTS.

(a) IN GENERAL.—Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 112(a), is amended—

(1) by redesignating part R as part S;

(2) by redesignating section 1801 as section 1901; and

(3) by inserting after part Q the following new part:

"PART R—COMMUNITY POLICING GRANTS

"SEC. 1801. GRANT AUTHORIZATION.

"(a) GRANT PROJECTS.—The Director of the Bureau of Justice Assistance may make grants to units of local government and to community groups to establish or expand cooperative efforts between police and a community for the purposes of increasing police presence in the community, including—

"(1) developing innovative neighborhood-oriented policing programs;

"(2) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community;

"(3) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems;

"(4) developing policies that reorient police emphasis from reacting to crime to preventing crime;

"(5) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level;

"(6) providing training and problem solving for community crime problems;

"(7) providing training in cultural differences for law enforcement officials;

"(8) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness programs;

"(9) developing crime prevention programs in communities that have experienced a recent increase in gang-related violence; and

"(10) developing projects following the model under subsection (b).

"(b) MODEL PROJECT.—The Director shall develop a written model that informs community members regarding—

"(1) how to identify the existence of a drug or gang house;

"(2) what civil remedies, such as public nuisance violations and civil suits in small claims court, are available; and

"(3) what mediation techniques are available between community members and individuals who have established a drug or gang house in the community.

"SEC. 1802. APPLICATION.

"(a) IN GENERAL.—(1) To be eligible to receive a grant under this part, a chief executive of a unit of local government, a duly authorized representative of a combination of local governments within a geographic region, or a community group shall submit an application to the Director in such form and containing such information as the Director may reasonably require.

"(2) In an application under paragraph (1), a single office, or agency (public, private, or nonprofit) shall be designated as responsible for the coordination, implementation, administration, accounting, and evaluation of services described in the application.

"(b) GENERAL CONTENTS.—Each application under subsection (a) shall include—

"(1) a request for funds available under this part for the purposes described in section 1801;

"(2) a description of the areas and populations to be served by the grant; and

"(3) assurances that Federal funds received under this part shall be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this part.

"(c) COMPREHENSIVE PLAN.—Each application shall include a comprehensive plan that contains—

"(1) a description of the crime problems within the areas targeted for assistance;

"(2) a description of the projects to be developed;

"(3) a description of the resources available in the community to implement the plan together with a description of the gaps in the plan that cannot be filled with existing resources;

"(4) an explanation of how the requested grant shall be used to fill those gaps;

"(5) a description of the system the applicant shall establish to prevent and reduce crime problems; and

"(6) an evaluation component, including performance standards and quantifiable goals the applicant shall use to determine project progress, and the data the applicant shall collect to measure progress toward meeting project goals.

"SEC. 1803. ALLOCATION OF FUNDS; LIMITATIONS ON GRANTS.

"(a) ALLOCATION.—The Director shall allocate not less than 75 percent of the funds available under this part to units of local government or combinations of such units and not more than 20 percent of the funds available under this part to community groups. Each State shall receive at least .50 percent of the funds available under this part.

"(b) ADMINISTRATIVE COST LIMITATION.—The Director shall use not more than 5 percent of the funds available under this part for the purposes of administration, technical assistance, and evaluation.

"(c) RENEWAL OF GRANTS.—A grant under this part may be renewed for up to 2 additional years after the first fiscal year during which the recipient receives its initial grant, subject to the availability of funds, if the Director determines that the funds made available to the recipient during the previous year were used in a manner required under the approved application and if the recipient can demonstrate significant progress toward achieving the goals of the plan required under section 1802(c).

"(d) FEDERAL SHARE.—The Federal share of a grant made under this part may not exceed 75 percent of the total costs of the projects described in the application submitted under section 1802 for the fiscal year for which the projects receive assistance under this part.

"SEC. 1804. AWARD OF GRANTS.

"The Director shall consider the following factors in awarding grants to units of local government or combinations of such units under this part:

"(1) NEED AND ABILITY.—Demonstrated need and evidence of the ability to provide the services described in the plan required under section 1802(c).

"(2) COMMUNITY-WIDE RESPONSE.—Evidence of the ability to coordinate community-wide response to crime.

"(3) MAINTAIN PROGRAM.—The ability to maintain a program to control and prevent crime after funding under this part is no longer available.

"SEC. 1805. REPORTS.

"(a) REPORT TO DIRECTOR.—Recipients who receive funds under this part shall submit to the Director not later than March 1 of each year a report that describes progress achieved in carrying out the plan required under section 1802(c).

"(b) REPORT TO CONGRESS.—The Director shall submit to the Congress a report by October 1 of each year containing—

"(1) a detailed statement regarding grant awards and activities of grant recipients; and

"(2) an evaluation of projects established under this part.

"SEC. 1806. DEFINITIONS.

"In this part—

"'community group' means a community-based nonprofit organization that has a primary purpose of crime prevention.

"'Director' means the Director of the Bureau of Justice Assistance.".

(b) TECHNICAL AMENDMENT.—The table of contents of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.), as amended by section 112(b), is amended by striking the matter relating to part R and inserting the following:

"PART R—COMMUNITY POLICING GRANTS

"Sec. 1801. Grant authorization.
"Sec. 1802. Application.
"Sec. 1803. Allocation of funds; limitations on grants.
"Sec. 1804. Award of grants.
"Sec. 1805. Reports.
"Sec. 1806. Definitions.

"PART S—TRANSITION; EFFECTIVE DATE; REPEALER

"Sec. 1901. Continuation of rules, authorities, and proceedings.".

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3793(a)), as amended by section 112(c), is amended—

(1) in paragraph (3) by striking "and Q" and inserting "Q and R"; and

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

"(12) There are authorized to be appropriated to carry out projects under part R $60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.".

CHAPTER 5—IMPROVED TRAINING AND TECHNICAL AUTOMATION

SEC. 151. GRANTS.

(a) IN GENERAL.—The Attorney General shall make grants to units of State and local law enforcement for the purposes of improving law enforcement agency efficiency through computerized automation and technological improvements.

(b) TYPES OF PROGRAMS.—Grants under this section may include programs to—

(1) increase use of mobile digital terminals;

(2) improve communications systems;

(3) accomplish paper-flow reduction;

(4) establish or improve ballistics identification programs; and

(5) increase the application of automated fingerprint identification systems and their communications on an interstate and intrastate basis.

SEC. 152. TRAINING COURSES.

(a) IN GENERAL.—The Attorney General shall expand and improve investigative and managerial training courses for State and local law enforcement agencies.

(b) IMPROVEMENT OF FACILITIES.—The improvement described in subsection (a) shall include improvements of the training facilities of the Federal Bureau of Investigation Academy at Quantico, Virginia.

SEC. 153. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this chapter $100,000,000 for fiscal year 1994.

Subtitle B—Prisons

CHAPTER 1—REGIONAL PRISONS FOR VIOLENT CRIMINALS AND VIOLENT CRIMINAL ALIENS

SEC. 161. DEFINITIONS.

In this chapter—

"child abuse offense" means an offense under Federal or State law that constitutes sexual exploitation of children or selling or buying of children within the meaning of chapter 110 of title 18, United States Code.

"firearm offense" means an offense under Federal or State law committed while the offender is in possession of a firearm or while an accomplice of the offender, to the knowledge of the offender, is in possession of a firearm.

"crime of violence" means a felony offense under Federal or State law that is a crime of violence within the meaning of section 16 of title 18, United States Code.

"qualifying prisoner" means—

(A) an alien who is in this country illegally or unlawfully and who has been convicted of a crime of violence (as defined in section 924(c)(3) of title 18, United States Code) or a serious drug offense (as defined in section 924(e)(2)(A) of title 18, United States Code); and

(B) a violent criminal.

"sex offense" means an offense under Federal or State law that constitutes aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward, or abusive sexual contact within the meaning of chapter 109A of title 18, United States Code.

"violent criminal"—

(A) means a person convicted under Federal law of an offense described in, under the circumstances described in, the provisions of section 924 (c) or (e) of title 18 or section 994(h) of title 28, United States Code, or under State law for the same or a similar offense; and

(B) insofar as any of the circumstances described in an offense described in subparagraph (A) is the prior conviction of an offense, includes a person who had been adjudicated as a juvenile delinquent by reason of the commission of an act that, if committed by an adult, would constitute such an offense.

SEC. 162. CONSTRUCTION OF PRISONS.

The Attorney General shall construct a minimum of 10 regional prisons, situated throughout the United States, each containing space for at least 2,500 inmates. At least 50 percent of the overall capacity of such prisons in the aggregate shall be dedicated to qualifying prisoners from qualifying States.

SEC. 163. ACCEPTANCE OF PRISONERS.

Any qualifying State may apply to the Attorney General to accept any qualifying prisoner. If, in the Attorney General's judgment there are likely to be more qualifying prisoners than there is space available, then to the extent that the Attorney General deems it practicable, the Attorney General should seek to allocate space among qualifying States in a proportion similar to the number of qualifying prisoners held by that State in relation to the total number of qualifying prisoners from qualifying States.

SEC. 164. QUALIFYING STATE.

(a) IN GENERAL.—The Attorney General shall not certify a State as a qualifying State under this chapter unless the State is providing—

(1) truth in sentencing with respect to any crime of violence that is consistent with that provided in the Federal system in chapter 229 of title 18, United States Code, which provides that defendants will serve at least 85 percent of the sentence ordered and which provides for a binding sentencing guideline system in which sentencing judges' discretion is limited to ensure greater uniformity in sentencing;

(2) pretrial detention similar to that provided in the Federal system under section 3142 of title 18, United States Code;

(3) sentences for firearm offenders, violent criminals, sex offenders, and child abuse offenders that, after application of relevant sentencing guidelines, result in the imposition of sentences that are at least as long as those imposed under Federal law (after application of relevant sentencing guidelines); and

(4) suitable recognition for the rights of victims, including consideration of the victim's perspective at all appropriate stages of criminal proceedings.

(b) DISQUALIFICATION.—The Attorney General shall withdraw a State's status as a qualifying State if the Attorney General finds that the State no longer appropriately provides for the matters described in subsection (a) or has ceased making substantial progress toward attaining them, in which event the State shall no longer be entitled to the benefits of this chapter, except to the extent the Attorney General otherwise directs.

(c) WAIVER.—The Attorney General may waive any of the requirements of this section with respect to a particular State if the Attorney General certifies that, in the Attorney General's judgment, there are compelling law enforcement reasons for doing so. Any State granted any such waiver shall be treated as a qualifying State for all purposes of this chapter, unless the Attorney General otherwise directs.

SEC. 165. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this chapter—

(1) $200,000,000 for fiscal year 1994;
(2) $400,000,000 for fiscal year 1995;
(3) $400,000,000 for fiscal year 1996;
(4) $500,000,000 for fiscal year 1997; and
(5) $500,000,000 for fiscal year 1998.

CHAPTER 2—FEDERAL GRANTS FOR STATE PRISON CONSTRUCTION AND OPERATION

SEC. 171. DEFINITION.

In this chapter, "new prison" means—

(1) a prison or city or county detention facility, including an addition to an existing prison or city or county detention facility, certified by the State, and approved by the Attorney General, as providing additional prison capacity beyond that which the State previously had available or had already planned to construct; and

(2) a prison that is principally dedicated, as determined by the Attorney General, to housing repeat violent offenders and sex offenders.

SEC. 172. GRANTS.

The Attorney General may enter into agreements with any qualifying State to provide construction grants or operating grants for new prisons.

SEC. 173. CONSTRUCTION GRANTS.

The Attorney General may make construction grants for up to 50 percent of the construction costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

SEC. 174. OPERATING GRANTS.

The Attorney General may make operating grants for up to 50 percent of the operating costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

SEC. 175. CANCELING GRANTS.

The Attorney General may, in the Attorney General's sole discretion, cancel any construction grant or operating grant if the Attorney General finds that a State is using those funds to substitute for existing funds or to provide prison space that substitutes for existing prison space.

SEC. 176. DISTRIBUTION OF GRANTS.

The Attorney General shall ensure that each State receives no less than .50 percent of the funds made available under this chapter.

SEC. 177. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this chapter $200,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, of which 50 percent shall be used for construction grants and 50 percent shall be used for operating grants, except that the Attorney General may alter those allocations if the Attorney General certifies that there are compelling law enforcement reasons for doing so.

CHAPTER 3—JUDICIAL REMEDIES FOR PRISON CROWDING

SEC. 181. PURPOSE.

The purpose of this chapter is to provide for reasonable and proper enforcement of the eighth amendment.

SEC. 182. FINDINGS.

The Congress finds that—

(1) the Federal courts are unreasonably endangering the community by issuing sweeping prison and jail cap orders as a remedy for detention conditions that they hold are in conflict with the eighth amendment; and

(2) eighth amendment holdings frequently are unjustified because of the absence of a plaintiff inmate who has proven that detention conditions inflict cruel and unusual punishment of that inmate.

SEC. 183. APPROPRIATE REMEDIES.

(a) AMENDMENT OF TITLE 18, UNITED STATES CODE.—Subchapter C of chapter 229 of part 2 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3626. Appropriate remedies with respect to prison crowding

"(a) REQUIREMENT OF SHOWING WITH RESPECT TO THE PLAINTIFF IN PARTICULAR.—

"(1) HOLDING.—A Federal court shall not hold prison or jail crowding unconstitutional under the eighth amendment except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment of that inmate.

"(2) RELIEF.—The relief in a case described in paragraph (1) shall extend no further than necessary to remove the conditions that are causing the cruel and unusual punishment of the plaintiff inmate.

"(b) INMATE POPULATION CEILINGS.—

"(1) REQUIREMENT OF SHOWING WITH RESPECT TO PARTICULAR PRISONERS.—A Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the eighth amendment unless crowding is inflicting cruel and unusual punishment on particular identified prisoners.

"(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to have any effect on Federal judicial power to issue equitable relief other than that described in paragraph (1), including the requirement of improved medical or health care and the imposition of civil contempt fines or damages, where such relief is appropriate.

"(c) PERIODIC REOPENING.—Each Federal court order seeking to remedy an eighth amendment violation shall be reopened at the behest of a defendant for recommended modification at a minimum of 2-year intervals.".

(b) APPLICATION OF AMENDMENT.—Section 3626 of title 18, United States Code, as added by paragraph (1), shall apply to all outstanding court orders on the date of enactment of this Act. Any State or municipality shall be entitled to seek modification of any outstanding eighth amendment decree pursuant to that section.

(c) TECHNICAL AMENDMENT.—The subchapter analysis for subchapter C of chapter 229 of title 18, United States Code, is amended by adding at the end the following new item:

"3626. Appropriate remedies with respect to prison crowding.".

(d) SUNSET PROVISION.—This chapter and the amendments made by this chapter are repealed effective as of the date that is 5 years after the date of enactment of this Act.

CHAPTER 4—SENTENCES TO ACCOUNT FOR COSTS TO THE GOVERNMENT OF IMPRISONMENT, RELEASE, AND PROBATION

SEC. 191. IMPOSITION OF SENTENCE.

Section 3572(a) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following new paragraph:

"(6) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;".

SEC. 192. DUTIES OF THE SENTENCING COMMISSION.

Section 994 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.".

TITLE II—SAFE SCHOOLS

SEC. 201. DEFINITION.

In this title, "former member of the Armed Forces" means a member of the Armed Forces of the United States who is involuntarily separated from the Armed Forces within the meaning of section 1141 of title 10, United States Code.

SEC. 202. AMERICA'S SAFE SCHOOLS PROGRAM.

(a) PROGRAM ESTABLISHMENT.—

(1) AMERICA'S SAFE SCHOOLS PROGRAM.—The program established by this section shall be referred to as "America's Safe Schools Program".

(2) AGREEMENTS.—The Secretary of Education, in consultation with the Secretary of Defense, may enter into an agreement with a local educational agency to pay, and may pay, for a period of 6 years, including any required periods of training, the salaries of former members of the Armed Forces who are hired within 5 years after the date of enactment of this Act as teachers assigned to public elementary and secondary schools.

(b) AMOUNT.—

(1) MAXIMUM.—(A) The maximum Federal share of an annual salary for the first 3 years that a teacher may be paid under an agreement described in subsection (a) is the annual salary earned by the teacher during his or her last year as a member of the Armed Forces.

(B) The maximum Federal share of an annual salary for the 4th through 6th years that a teacher may be paid under an agreement described in subsection (a) is 50 percent of the annual salary earned by the teacher during his or her last year as a member of the Armed Forces.

(2) ENTRY LEVEL.—To the extent that it is practicable to do so, a local educational agency shall hire a former member of the Armed Forces whose salary is to be paid under an agreement described in subsection (a) at a level of seniority, in consideration of the former member's years of service and training as a member of the Armed Forces, that will permit the former member to be paid at least the maximum amount of annual salary under paragraph (1).

(3) PRIORITY.—In making awards under this section the Attorney General may give priority to agencies located in communities that are adversely affected by the recent closing of a military base or facility.

(4) FORMULA.—The Attorney General shall ensure that each State receives no less than .50 percent of the funds made available under this title.

(c) ENLARGEMENT OF TEACHING STAFF.—It shall be a condition to payment of salaries under an agreement described in subsection (a) that the number of teachers in the public elementary and secondary schools in the school district served by the local educational agency (not including teachers whose salaries are paid in whole or in part under this title) shall not be diminished during the term of the agreement.

(d) PRIORITY FOR SAFE SCHOOL DISTRICTS.—The Secretary of Education shall give priority to school districts that have qualified as a safe school district under section 104 in entering into agreements under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 203. FEDERAL SAFE SCHOOL DISTRICTS.

(a) ELECTION TO QUALIFY.—

(1) IN GENERAL.—By decision of a local educational agency or by referendum of the voters in a school district served by a local educational agency, a school district may elect to qualify as a Federal safe school district under this section.

(2) DEFINITION.—In this section, "local educational agency" has the meaning stated in section 1471 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891).

(b) FUNDING FOR ENHANCED SCHOOL SECURITY.—

(1) IN GENERAL.—The Attorney General may make a grant to a local educational agency serving a Federal safe school district or to a local law enforcement agency with jurisdiction over the school district, as appropriate, to pay for enhanced school security measures.

(2) ENHANCED SCHOOL SECURITY MEASURES.—The measures that may be funded by a grant under paragraph (1) include—

(A) equipping schools with metal detectors, fences, closed circuit cameras, and other physical security measures;

(B) providing increased police patrols in and around schools, including police hired pursuant to this title;

(C) mailings to parents at the beginning of the school year stating that the possession of a gun or other weapon in school will not be tolerated by school authorities;

(D) signs on each school indicating that the school is part of a Federal Safe School District; and

(E) gun hotlines.

(c) ENHANCED MANDATORY PENALTIES FOR DRUG TRAFFICKING AND WEAPONS OFFENSES.—

(1) APPLICATION OF FEDERAL LAW.—Notwithstanding any other provision of law, in a Federal safe school district—

(A) the offenses enacted by paragraph (2) shall apply;

(B) the United States attorney for the judicial district in which the school district is located shall prosecute as an adult any juvenile 16 years of age or older who uses or carries a firearm in or within 1,000 feet of a public or private elementary or secondary school.

(2) OFFENSES.—(A) Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(s) It shall be unlawful for—

"(1) a person who is less than 18 years of age; or

"(2) a person who is 18 years of age or older who does not have lawful authority to do so, to carry a firearm or otherwise cause a firearm to be transported into a public or private elementary or secondary school, or to possess a firearm within such a school, that is located within a school district that has elected to qualify as a Federal safe school district under section 203 of the Neighborhood Security Act of 1993.".

(B) Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i)(1) A person who knowingly violates section 922(s) shall be fined under this title, imprisoned not more than 5 years, or both.

"(2) A person who knowingly violates section 922(s) by using a firearm shall be imprisoned for not more than 10 years.".

(C) The United States Sentencing Commission shall review and amend its sentencing guidelines to assign an offense level of at least 26 to a first offense under section 924(i)(2) of title 18, United States Code, as added by subparagraph (B).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the program authorized by this section $100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A—Deportation of Criminal Aliens

SEC. 301. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

"(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

"(4) No alien described in this section shall be eligible for—

"(A) any relief from deportation that the Attorney General may grant in his discretion, or

"(B) relief under section 243(h).

"(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

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

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AMENDMENTS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended—

(1) in subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting the following:

"(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—

"(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) in subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) by striking subsection (c);

(4) in subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) in subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)";

(6) by inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States."; and

(7) by amending the heading to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 302. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—

"(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order or deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation

shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AMENDMENT.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking "The" and inserting "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 303. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN CRIMINAL ALIENS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking "has served for such felony or felonies" and all that follows through the period and inserting "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, if the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended—

(1) by striking the final sentence and inserting the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(2) by striking "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 304. ENHANCING PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking "paragraph (2), (3), or 4 of" the first time it appears; and

(2) by striking "shall be imprisoned not more than ten years" and inserting "shall be imprisoned not more than four years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (1)(E), (2), (3), or (4) of section 241(a).".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1)—

(A) by inserting after "commission of" the following: "three or more misdemeanors or"; and

(B) by striking "5" and inserting "10";

(2) in paragraph (2), by striking "15" and inserting "20"; and

(3) by adding at the end the following sentence:

"For the purposes of this subsection, the term 'deportation' includes any agreement in which an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by adding after subsection (b) the following new subsection:

"(c) In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates that—

"(1) the alien exhausted any administrative remedies that may have been available to seek relief against the order;

"(2) the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.".

SEC. 305. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)) shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Subtitle B—Prevention and Punishment of Alien Smuggling

SEC. 311. INCREASED PENALTIES FOR ALIEN SMUGGLING.

Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in paragraph (1)—

(A) by striking "or" at the end of subparagraph (C);

(B) by striking the comma at the end of subparagraph (D) and all that follows through the period and inserting "; or"; and

(C) by adding at the end the following:

"(E) engages in any conspiracy to commit any of the preceding acts, or aids or abets the commission of any of the preceding acts, shall be fined under title 18, United States Code, and shall be imprisoned not more than 10 years, for each alien with respect to whom any violation of this paragraph occurs."; and

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

"(3) Any person who commits an act described in paragraph (1) who willfully subjects any alien to a substantial risk of death or serious bodily harm shall be subject to a term of imprisonment of not more than 10 years in addition to any term of imprisonment imposed under that paragraph.

"(4) Any person who in the perpetration of, or in the attempt to perpetrate, any violation of paragraph (1), causes the death of an alien shall be subject to the penalty of death, or life imprisonment, subject to appropriate procedures under chapter 228 of title 18, United States Code.

"(5) Any person who hires for employment an alien—

"(A) knowing that the alien is an unauthorized alien (as defined in section 274A(h)(3)); and

"(B) knowing that the alien has been brought into the United States in violation of this subsection,

shall be fined under title 18, United States Code, and shall be imprisoned for not more than 5 years.".

SEC. 312. SMUGGLING ALIENS FOR COMMISSION OF CRIMES.

Section 274(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(2)) is amended—

(1) in subparagraph (B)—

(A) by striking "or" at the end of clause (ii);

(B) by redesignating clause (iii) as clause (iv); and

(C) by inserting after clause (ii) the following:

"(iii) an offense committed with the intent that the alien unlawfully brought into the United States will commit an offense against the United States punishable for more than 1 year, including violations of or attempted violations of or aiding and abetting violations of or conspiring to violate the Controlled Substances Act (21 U.S.C. 802) or laws against prostitution, importation of aliens for immoral purposes, trafficking in firearms, money laundering, gang activities, kidnapping or ransom demands, fraudulent documents, or extortion, the smuggling of known or suspected terrorists or persons involved in organized crime,"; and

(2) at the end by striking "be fined" and all that follows through the period and inserting the following: "be fined under title 18, United States Code, and shall be imprisoned not more than 10 years.".

SEC. 313. ADDITION OF ALIEN SMUGGLING TO RICO.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" after "law of the United States,";

(2) by inserting "or" at the end of subparagraph (E); and

(3) by adding at the end the following:

"(F) any act in violation of section 274 of the Immigration and Nationality Act.".

SEC. 314. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING ILLEGAL ALIENS.

Subsection 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended—

(1) by striking "(b)(1) Any conveyance" and all that follows through "of any State." and inserting the following:

"(b) SEIZURE AND FORFEITURE.—(1) Any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of subsection (a) or of sections 274A(a)(1) or 274A(a)(2), or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection (a), shall be subject to seizure and forfeiture, except that—

"(A) no property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this paragraph unless it appears that the owner or other person in charge of the property was a consenting party or privy to the illegal act;

"(B) no property shall be forfeited under this paragraph by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than the owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State; and

"(C) no property shall be forfeited under this paragraph to the extent of an interest of any owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner, unless the action or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2) which was committed by the owner or which intended to further

the business interests of the owner, or to confer any other benefit upon the owner.";

(2) in paragraph (2)—

(A) by striking "conveyance" both places it appears and inserting "property"; and

(B) by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, or was intended to facilitate";

(3) in paragraphs (4) and (5) by striking "a conveyance" and "conveyance" each place either of them appears and inserting "property"; and

(4) in paragraph (4)—

(A) by striking "or" at the end of subparagraph (C);

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

(C) by inserting at the end the following new subparagraph:

"(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to the Tariff Act of 1930 (19 U.S.C. 1616a(c)).".

SEC. 315. EXPANSION OF DEFINITION OF AGGRAVATED FELONY.

(a) EXPANSION OF DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $100,000;

"(E) an offense described in—

"(i) section 842 (h) or (i) of title 18, United States Code, or section 844 (d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

"(ii) section 922(g) (1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924 (b) or (h) of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of imprisonment) is at least 5 years;

"(G) a theft offense (including receipt of stolen property) or burglary offense for which a sentence of 5 years' imprisonment or more may be imposed;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense described in section 2251, 2251A, or 2252 of title 18, United States Code (relating to child pornography);

"(J) an offense described in—

"(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations); or

"(ii) section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses),

for which a sentence of 5 years' imprisonment or more may be imposed;

"(K) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which a sentence of 5 years' imprisonment or more may be imposed;

"(L) an offense that—

"(i) relates to the owning, controlling, managing or supervising of a prostitution business;

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage; or

"(iii) is described in section 1581, 1582, 1583, 1584, 1585, or 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) an offense relating to perjury or subornation of perjury for which a sentence of 5 years' imprisonment or more may be imposed;

"(N) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code; or

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(O) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $200,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $200,000;

"(P) an offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) an offense described in section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage;

"(R) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

"(S) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to convictions entered before, on, or after the date of enactment of this Act.

SEC. 316. AMENDMENT OF SENTENCING GUIDELINES.

The United States Sentencing Commission shall review and, amend its sentencing guidelines to assign an offense level of at least 19 to a first offense under—

(1) section 274(a)(1) of the Immigration and Nationality Act, as amended by section 311(1);

(2) section 274(a) (3) and (5) of the Immigration and Nationality Act, as added by section 311(2); and

(3) section 274(a)(2) of the Immigration and Nationality Act, as amended by section 312.

SEC. 317. INCREASED PENALTY FOR VISA FRAUD.

(a) FALSE STATEMENT.—Section 1542 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(b) FORGERY.—Section 1543 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(c) MISUSE OF PASSPORT.—Section 1544 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(d) SAFE CONDUCT VIOLATION.—Section 1545 of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than three years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(e) FRAUD AND MISUSE OF VISAS.—Section 1546(a) of title 18, United States Code, is amended by striking "fined not more than $2,000, imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

SEC. 318. TRAINING OF AIRLINE PERSONNEL IN DETECTION OF FRAUDULENT DOCUMENTS.

(a) USE OF FUNDS.—Section 286(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(h)(2)) is amended—

(1) in subparagraph (A)(iv), by inserting ", including training of, and technical assistance to, commercial airline personnel on such detection" after "United States", and

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

"(C) The Attorney General shall provide for expenditures for training and assistance described in subparagraph (A)(iv) in an amount for any fiscal year that is not less than 5 percent of the total of the amounts that are required to be refunded under subparagraph (A) for that fiscal year.".

(b) COMPLIANCE WITH DETECTION REGULATIONS.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

"(o) Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to expenses incurred during or after fiscal year 1994.

(2) The Attorney General shall first issue, in proposed form, regulations referred to in section 212(o) of the Immigration and Nationality Act, as added by subsection (b), by not later than the date that is 90 days after the date of enactment of this Act.

Subtitle C—Border Patrol

SEC. 321. BORDER PATROL AGENTS.

There is authorized to be appropriated $60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998 for the hiring of 1,000 additional Border Patrol agents.

SEC. 322. IMMIGRATION AND NATURALIZATION SERVICE CRIMINAL INVESTIGATORS.

There is to be authorized $77,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998 for the hiring of 1,000 additional Immigration and Naturalization Service criminal inspectors.

SEC. 323. CRIMINAL ALIEN TRACKING CENTER.

(a) OPERATION.—The Commissioner of Immigration and Naturalization, with the cooperation of the Director of the Federal Bureau of Investigation and the heads of other agencies, shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

(b) PURPOSE.—The criminal alien tracking center shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1994 and $2,000,000 for each of fiscal years 1995, 1996, 1997, and 1998.

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

SEC. 401. SHORT TITLE.

This title may be cited as the "Anti-Gang and Youth Protection Act of 1993".

Subtitle A—Criminal Youth Gangs

SEC. 411. CRIMINAL STREET GANGS OFFENSES.

(a) OFFENSE.—Title 18, United States Code, is amended by inserting after chapter 93 the following new chapter:

"CHAPTER 94—PROHIBITED PARTICIPATION IN CRIMINAL STREET GANGS AND GANG CRIME

"Sec.
"1930. Crimes in furtherance of gangs.
"1931. Prohibited activity.
"1932. Penalties.
"1933. Investigative authority.

"§ 1930. Crimes in furtherance of gangs

"(a) FINDINGS.—The Congress makes the following findings:

"(1) Criminal street gangs have become increasing prevalent and entrenched in our society in the last several decades. In many areas of the country, these gangs exert considerable control over other members of their community, particularly through the use of violence and drugs. Criminal street gangs have also become more national in scope, extending their influence beyond the urban areas in which they originated.

"(2) The major activities of criminal street gangs are crimes of violence and the distribution and use of illegal drugs. It is through these activities that criminal street gangs directly affect interstate and foreign commerce, even when their particular activities, viewed in isolation, appear to be purely intrastate in character.

"(b) BASIS FOR CHAPTER.—On the basis of the findings stated in subsection (a), the Congress determines that the provisions of this chapter are necessary and proper for the purpose of carrying into execution the powers of Congress to regulate commerce and to establish criminal law.

"§ 1931. Prohibited activity

"(a) DEFINITIONS.—In this chapter—

"'criminal street gang' means an organization or group of 5 or more persons, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with a purpose that any of those persons alone, or in any combination, commit or will commit, 2 or more predicate gang crimes, 1 of which must occur after the date of enactment of this chapter and the last of which occurred within 10 years (excluding any period of imprisonment) after the commission of a prior predicate gang crime.

"'participate in a criminal street gang' means to act in concert with a criminal street gang with intent to commit, or with the intent that any other person associated with the criminal street gang will commit, 1 or more predicate gang crimes.

"'predicate gang crime' means—

"(A) any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, assault, kidnapping, robbery, extortion, burglary, arson, property damage or destruction, obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or manufacturing, importing, receiving, concealing, purchasing, selling, possessing, or otherwise dealing in a controlled substance or controlled substance analogue (as those terms are defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

"(B) any act punishable by imprisonment for more than 1 year under section 922 or 924 (a)(2), (b), (c), (g), or (h) (relating to receipt, possession, and transfer of firearms), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of criminal investigations), section 1512 (relating to tampering with a witness, victim, or informant), or section 1513 (relating to retaliating against a witness, victim, or informant); or

"(C) any act punishable under subsection (b)(5).

"'State' means a State, the District of Columbia, and any commonwealth, territory, or possession of the United States.

"(b) UNLAWFUL ACTS.—It shall be unlawful—

"(1) to commit, or to attempt to commit, a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang;

"(2) to participate, or attempt to participate, in a criminal street gang, or conspire to do so;

"(3) to command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang;

"(4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime, with intent to promote the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang; or

"(5) to use any communication facility, as defined in section 403(b) of the Controlled Substances Act (21 U.S.C. 843(b)), in causing or facilitating the commission, or attempted commission, of a predicate gang crime with intent to promote or further the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such a gang. Each separate use of a communication facility shall be a separate offense under this subsection.

"§ 1932. Penalties

"(a) PENALTIES OF UP TO 20 YEARS OR LIFE IMPRISONMENT.—A person who violates section 1931(b) (1) or (2) shall be punished by imprisonment for not more than 20 years, or by imprisonment for any term of years or for life if the violation is based on a predicate gang crime for which the maximum penalty includes life imprisonment, and if a person commits such a violation after 1 or more prior convictions for such a predicate gang crime, that is not part of the instant violation, such person shall be sentenced to a term of imprisonment which shall not be less than 10 years and which may be for any term of years exceeding 10 years or for life.

"(b) PENALTIES BETWEEN 5 AND 10 YEARS.—A person who violates section 1931(b) (3) or (4) shall be sentenced to imprisonment for not less than 5 nor more than 10 years, and if a person who was the subject of the act was less than 18 years of age, to imprisonment for 10 years. A term of imprisonment under this subsection shall run consecutively to any other term of imprisonment, including that imposed for any other violation of this chapter.

"(c) PENALTIES OF UP TO 5 YEARS.—A person who violates section 1931(b)(5) shall be punished by imprisonment for not more than 5 years.

"(d) ADDITIONAL PENALTIES.—

"(1) IN GENERAL.—In addition to the other penalties authorized by this section—

"(A) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves murder or conspiracy to commit murder which results in the taking of a life, and who commits, counsels, commands, induces, procures, or causes that murder, shall be punished by death or by imprisonment for life;

"(B) a person who violates section 1931(b)(1) or (2), 1 of whose predicate gang crimes involves attempted murder or conspiracy to commit murder, shall be sentenced to a term of imprisonment which shall not be less than 20 years and which may be for any term of years exceeding 20 years or for life; and

"(C) a person who violates section 1931(b)(1) or (2), and who at the time of the offense occupied a position of organizer or supervisor, or other position of management in that street gang, shall be sentenced to a term of imprisonment which shall not be less than 15 years and which may be for any term of years exceeding 15 years or for life.

"(2) PRESUMPTION.—For purposes of paragraph (1)(C), if it is shown that the defendant counseled, commanded, induced, or procured 5 or more individuals to participate in a street gang, there shall be a rebuttable presumption that the defendant occupied a position of organizer, supervisor, or other position of management in the gang.

"(e) FORFEITURE.—

"(1) IN GENERAL.—A person who violates section 1931(b) (1) or (2) shall, in addition to any other penalty and irrespective of any provision of State law, forfeit to the United States—

"(A) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as a result of the violation; and

"(B) any property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, the violation.

"(2) APPLICATION OF CONTROLLED SUBSTANCES ACT.—Section 413 (b), (c), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p) of the Controlled Substances Act (21 U.S.C. 853 (b), (c), and (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), and (p)) shall apply to a forfeiture under this section.

"§ 1933. Investigative authority

"The Attorney General and the Secretary of the Treasury may investigate offenses under this chapter in accordance with an agreement that shall be entered into by the Attorney General and the Secretary of the Treasury.".

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item for chapter 93 the following new item:

"94. Prohibited participation in criminal street gangs and gang crimes 1930".

(c) SENTENCING GUIDELINES INCREASE FOR GANG CRIMES.—The United States Sentencing Commission shall at the earliest opportunity amend the sentencing guidelines to increase by at least 4 levels the base offense level for any felony committed for the purpose of gaining entrance into, or maintaining or increasing position in, a criminal street gang. For purposes of this subsection, "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with the intent that any of those individuals alone, or in any combination, commit or will commit, 2 or more acts punishable under State or Federal law by imprisonment for more than 1 year.

SEC. 412. CRIMES INVOLVING THE USE OF MINORS AS RICO PREDICATES.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E)"; and

(2) by inserting before the semicolon at the end of the paragraph the following: ", or (F) any offense against the United States that is punishable by imprisonment for more than 1 year and that involved the use of a person below the age of 18 years in the commission of the offense".

SEC. 413. SERIOUS JUVENILE DRUG OFFENSES AS ARMED CAREER CRIMINAL ACT PREDICATES.

Section 924(e)(2)(A) of title 18, United States Code, is amended—

(1) by striking "or" at the end of clause (i);

(2) by striking "and" at the end of clause (ii) and inserting "or"; and

(3) by adding at the end the following:

"(iii) any act of juvenile delinquency that if committed by an adult would be a serious drug offense described in this paragraph; and".

SEC. 414. ADULT PROSECUTION OF SERIOUS JUVENILE OFFENDERS.

Section 5032 of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), (3))," and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1003, 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 955, 959, 960(b)(1), (2), or (3), or 963),"; and

(B) by striking "922(p)" and inserting "924(b), (g), or (h)";

(2) in the fourth undesignated paragraph—

(A) by striking "an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959)" and inserting "an offense (or a conspiracy or attempt to commit an offense) described in section 401, or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841, 844, or 846), section 1002(a), 1005, 1009, 1010(b)(1), (2), or (3), of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, 959, 960(b)(1), (2), or (3), or 963), or section 924(b), (g), or (h) of this title,"; and

(B) by striking "subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), (3))" and inserting "or an offense (or conspiracy or attempt to commit an offense) described in section 401(b)(1)(A), (B), or (C), (d), or (e), or 404 (insofar as the violation involves more than 5 grams of a mixture or substance which contains cocaine base), of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), (B), or (C), (d), or (e), 844, or 846) or section 1002(a), 1003, 1009, 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 953, 959, 960(b)(1), (2), or (3), or 963)"; and

(3) in the fifth undesignated paragraph by adding at the end the following: "In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh heavily in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.".

SEC. 415. INCREASED PENALTIES FOR EMPLOYING CHILDREN TO DISTRIBUTE DRUGS NEAR SCHOOLS AND PLAYGROUNDS.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) by redesignating subsections (c) and (d) as subsections (d) and (e), respectively; and

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

"(c) Notwithstanding any other law, any person at least 18 years of age who knowingly and intentionally—

"(1) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

"(2) employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401.".

SEC. 416. INCREASED PENALTIES FOR DRUG TRAFFICKING NEAR PUBLIC HOUSING.

Section 419 of the Controlled Substances Act (21 U.S.C. 860) is amended—

(1) in subsection (a) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within"; and

(2) in subsection (b) by striking "playground, or within" and inserting "playground, or housing facility owned by a public housing authority, or within".

SEC. 417. INCREASED PENALTIES FOR TRAVEL ACT CRIMES INVOLVING VIOLENCE AND CONSPIRACY TO COMMIT CONTRACT KILLINGS.

(a) TRAVEL ACT PENALTIES.—Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both." and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

"(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.".

(b) MURDER CONSPIRACY PENALTIES.—Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

SEC. 418. AMENDMENTS CONCERNING RECORDS OF CRIMES COMMITTED BY JUVENILES.

(a) Section 5038 of title 18, United States Code, is amended by striking subsections (d) and (f), redesignating subsection (e) as subsection (d), and by adding at the end new subsections (e) and (f) as follows:

"(e) Whenever a juvenile has been found guilty of committing an act which if committed by an adult would be an offense described in clause (3) of the first paragraph of section 5032 of this title, the juvenile shall be fingerprinted and photographed, and the fingerprints and photograph shall be sent to the Federal Bureau of Investigation, Identification Division. The court shall also transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudication, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matter was a juvenile adjudication. The fingerprints, photograph, and other records and information relating to a juvenile described in this subsection, or to a juvenile who is prosecuted as an adult, shall be made available in the manner applicable to adult defendants.

"(f) In addition to any other authorization under this section for the reporting, retention, disclosure, or availability of records or information, if the law of the State in which a Federal juvenile delinquency proceeding takes place permits or requires the reporting, retention, disclosure, or availability of records or information relating to a juvenile or to a juvenile delinquency proceeding or adjudication in certain circumstances, then such reporting, retention, disclosure, or availability is permitted under this section whenever the same circumstances exist.".

(b) Section 3607 of title 18, United States Code, is repealed, and the corresponding item in the chapter analysis for chapter 229 of title 18 is deleted.

(c) Section 401(b)(4) of the Controlled Substances Act (21 U.S.C. 841(b)(4)) is amended by striking "and section 3607 of title 18".

SEC. 419. ADDITION OF ANTI-GANG BYRNE GRANT FUNDING OBJECTIVE.

Section 501(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3751) is amended—

(1) in paragraph (20) by striking "and" at the end;

(2) in paragraph (21) by striking the period and inserting "; and"; and

(3) by inserting after paragraph (21) the following new paragraph:

"(22) law enforcement and prevention programs relating to gangs, or to youth who are involved or at risk of involvement in gangs.".

Subtitle B—Gang Prosecution

SEC. 431. ADDITIONAL PROSECUTORS.

There is authorized to be appropriated $20,000,000 for each of fiscal years 1994, 1995,

1996, 1997, and 1998 for the hiring of additional Assistant United States Attorneys to prosecute violent youth gangs.

SEC. 432. GANG INVESTIGATION COORDINATION AND INFORMATION COLLECTION.

(a) COORDINATION.—The Attorney General (or the Attorney General's designee), in consultation with the Secretary of the Treasury (or the Secretary's designee), shall develop a national strategy to coordinate gang-related investigations by Federal law enforcement agencies.

(b) DATA COLLECTION.—The Director of the Federal Bureau of Investigation shall acquire and collect information on incidents of gang violence for inclusion in an annual uniform crime report.

(c) REPORT.—The Attorney General shall prepare a report on national gang violence outlining the strategy developed under subsection (a) to be submitted to the President and Congress by January 1, 1995.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $1,000,000 for fiscal year 1994.

SEC. 433. CONTINUATION OF FEDERAL-STATE FUNDING FORMULA.

Section 504(a)(1) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(a)(1)) is amended by striking "1992" and inserting "1993".

SEC. 434. GRANTS FOR MULTIJURISDICTIONAL DRUG TASK FORCES.

Section 504(f) of title I of the Omnibus Crime and Safe Streets Act of 1968 (42 U.S.C. 3754(f)) is amended by inserting "and gang" after "Except for grants awarded to State and local governments for the purpose of participating in multijurisdictional drug".

TITLE V—DRUG CONTROL AND RURAL CRIME

Subtitle A—Drug Trafficking in Rural Areas

SEC. 501. AUTHORIZATIONS FOR RURAL LAW ENFORCEMENT AGENCIES.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 1001(a)(9) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended to read as follows:

"(9) There are authorized to be appropriated to carry out part O $50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.".

(b) AMENDMENT TO BASE ALLOCATION.—Section 1501(a)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 is amended by striking "$100,000" and inserting "$250,000".

SEC. 502. RURAL CRIME AND DRUG ENFORCEMENT TASK FORCES.

(a) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this Act, the Attorney General, in consultation with the Governors, mayors, and chief executive officers of State and local law enforcement agencies, shall establish a Rural Crime and Drug Enforcement Task Force in each of the Federal judicial districts which encompass significant rural lands.

(b) TASK FORCE MEMBERSHIP.—The task forces established under subsection (a) shall be chaired by the United States Attorney for the respective Federal judicial district. The task forces shall include representatives from—

(1) State and local law enforcement agencies;

(2) the Drug Enforcement Administration;

(3) the Federal Bureau of Investigation;

(4) the Immigration and Naturalization Service;

(5) the Customs Service;

(6) the United States Marshals Service; and

(7) law enforcement officers from the United States Park Police, United States Forest Service and Bureau of Land Management, and such other Federal law enforcement agencies as the Attorney General may direct.

SEC. 503. CROSS-DESIGNATION OF FEDERAL OFFICERS.

(a) IN GENERAL.—The Attorney General may cross-designate up to 100 law enforcement officers from each of the agencies specified under section 1502(b)(6) of the Omnibus Crime Control and Safe Streets Act of 1968 with jurisdiction to enforce the provisions of the Controlled Substances Act on non-Federal lands and title 18 of the United States Code to the extent necessary to effect the purposes of this Act.

(b) ADEQUATE STAFFING.—The Attorney General shall ensure that each of the task forces established in accordance with this title are adequately staffed with investigators and that additional investigators are provided when requested by the task force.

SEC. 504. RURAL DRUG ENFORCEMENT TRAINING.

(a) SPECIALIZED TRAINING FOR RURAL OFFICERS.—The Director of the Federal Law Enforcement Training Center shall develop a specialized course of instruction devoted to training law enforcement officers from rural agencies in the investigation of drug trafficking and related crimes.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (a) $1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

Subtitle B—Rural Drug Prevention and Treatment

SEC. 511. RURAL SUBSTANCE ABUSE TREATMENT AND EDUCATION GRANTS.

Part A of title V of the Public Health Service Act (42 U.S.C. 290aa et seq.) is amended by adding at the end the following new section:

"SEC. 509H. RURAL SUBSTANCE ABUSE TREATMENT.

"(a) IN GENERAL.—The Director of the Office for Treatment Improvement (referred to in this section as the 'Director') shall establish a program to provide grants to hospitals, community health centers, migrant health centers, health entities of Indian tribes and tribal organizations (as defined in section 1913(b)(5)), and other appropriate entities that serve nonmetropolitan areas to assist such entities in developing and implementing projects that provide, or expand the availability of, substance abuse treatment services.

"(b) REQUIREMENTS.—To receive a grant under this section a hospital, community health center, or treatment facility shall—

"(1) serve a nonmetropolitan area or have a substance abuse treatment program that is designed to serve a nonmetropolitan area;

"(2) operate, or have a plan to operate, an approved substance abuse treatment program;

"(3) agree to coordinate the project assisted under this section with substance abuse treatment activities within the State and local agencies responsible for substance abuse treatment; and

"(4) prepare and submit an application in accordance with subsection (c).

"(c) APPLICATION.—

"(1) IN GENERAL.—To be eligible to receive a grant under this section an entity shall submit an application to the Director at such time, in such manner, and containing such information as the Director shall require.

"(2) COORDINATED APPLICATIONS.—State agencies that are responsible for substance abuse treatment may submit coordinated grant applications on behalf of entities that are eligible for grants pursuant to subsection (b).

"(d) PREVENTION PROGRAMS.—

"(1) IN GENERAL.—Each entity receiving a grant under this section may use a portion of such grant funds to further community-based substance abuse prevention activities.

"(2) REGULATIONS.—The Director, in consultation with the Director of the Office of Substance Abuse Prevention, shall promulgate regulations regarding the activities described in paragraph (1).

"(e) SPECIAL CONSIDERATION.—In awarding grants under this section the Director shall give priority to—

"(1) projects sponsored by rural hospitals that are qualified to receive rural health care transition grants as provided for in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987;

"(2) projects serving nonmetropolitan areas that establish links and coordinate activities between hospitals, community health centers, community mental health centers, and substance abuse treatment centers; and

"(3) projects that are designed to serve areas that have no available existing treatment facilities.

"(f) DURATION.—Grants awarded under subsection (a) shall be for a period not to exceed 3 years, except that the Director may establish a procedure for renewal of grants under subsection (a).

"(g) GEOGRAPHIC DISTRIBUTION.—To the extent practicable, the Director shall provide grants to fund at least one project in each State.

"(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section there is authorized to be appropriated $25,000,000 for each of fiscal years 1994 and 1995 and $20,000,000 for each of fiscal years 1996, 1997, and 1998.".

Subtitle C—Rural Areas Enhancement

SEC. 521. ASSET FORFEITURE.

The assets seized as a result of investigations initiated by a Rural Drug Enforcement Task Force shall be used primarily to enhance the operations of the task force and its participating State and local enforcement agencies.

SEC. 522. PROSECUTION OF CLANDESTINE LABORATORY OPERATORS.

(a) CRIMINAL CHARGES.—State and Federal prosecutors, when bringing charges against the operators of clandestine methamphetamine and other dangerous drug laboratories, shall, to the fullest extent possible, include, in addition to drug-related counts, counts involving infringements of the Resource Conservation and Recovery Act or any other environmental protection Act, including—

(1) illegal disposal of hazardous waste; and

(2) knowing endangerment of the environment.

(b) CIVIL ACTIONS.—Federal prosecutors may bring suit against the operators of clandestine methamphetamine and other dangerous drug laboratories for environmental and health related damages caused by the operators in their manufacture of illicit substances.

Subtitle D—Chemical Control

SEC. 531. SHORT TITLE.

This title may be cited as the "Chemical Control Amendments Act of 1993".

SEC. 532. DEFINITION AMENDMENTS.

(a) DEFINITIONS.—Section 102 of the Controlled Substances Act (21 U.S.C. 802) is amended—

(1) in paragraph (33) by striking "any listed precursor chemical or listed essential chemical" and inserting "any list I chemical or any list II chemical";

(2) in paragraph (34)—

(A) by striking "listed precursor chemical" and inserting "list I chemical"; and

(B) by striking "critical to the creation" and inserting "important to the manufacturer";

(3) in paragraph (34) (A), (F), and (H), by inserting ", its esters" before "and";

(4) in paragraph (35)—

(A) by striking "listed essential chemical" and inserting "list II chemical";

(B) by inserting "(other than a list I chemical)" before "specified";

(C) by striking "as a solvent, reagent, or catalyst"; and

(5) in paragraph (38) by inserting "or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine" before the period;

(6) in paragraph (39)(A)—

(A) by striking "importation or exportation of" and inserting "importation, or exportation of, or an international transaction involving shipment of,";

(B) in clause (iii) by inserting "or any category of transaction for a specific listed chemical or chemicals" after "transaction";

(C) by amending clause (iv) to read as follows:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless—

"(I)(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers as the only active medicinal ingredient or contains ephedrine and therapeutically insignificant quantities of another active medicinal ingredient; or

"(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of ephedrine or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General."; and

(D) in clause (v) by striking the semicolon and inserting "which the Attorney General has by regulation designated as exempt from the application of this title and title II based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered;";

(7) in paragraph (40) by striking "listed precursor chemical or a listed essential chemical" each place it appears and inserting "list I chemical or a list II chemical"; and

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

"(43) The term 'international transaction' means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

"(44) The terms 'broker' and 'trader' mean a person that assists in arranging an international transaction in a listed chemical by—

"(A) negotiating contracts;

"(B) serving as an agent or intermediary; or

"(C) bringing together a buyer and seller, buyer, and transporter, or a seller and transporter.".

(b) REMOVAL OF EXEMPTION OF CERTAIN DRUGS.—

(1) PROCEDURE.—Part B of the Controlled Substances Act (21 U.S.C. 811 et seq.) is amended by adding at the end the following new section:

"REMOVAL OF EXEMPTION OF CERTAIN DRUGS

"SEC. 204. (a) REMOVAL OF EXEMPTION.—The Attorney General shall by regulation remove from exemption under section 102(39)(A)(iv)(II) a drug or group of drugs that the Attorney General finds is being diverted to obtain a listed chemical for use in the illicit production of a controlled substance.

"(b) FACTORS TO BE CONSIDERED.—In removing a drug or group of drugs from exemption under subsection (a), the Attorney General shall consider, with respect to a drug or group of drugs that is proposed to be removed from exemption—

"(1) the scope, duration, and significance of the diversion;

"(2) whether the drug or group of drugs is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance; and

"(3) whether the listed chemical can be readily recovered from the drug or group of drugs.

"(c) SPECIFICITY OF DESIGNATION.—The Attorney General shall limit the designation of a drug or a group of drugs removed from exemption under subsection (a) to the most particularly identifiable type of drug or group of drugs for which evidence of diversion exists unless there is evidence, based on the pattern of diversion and other relevant factors, that the diversion will not be limited to that particular drug or group of drugs.

"(d) REINSTATEMENT OF EXEMPTION WITH RESPECT TO PARTICULAR DRUG PRODUCTS.—

"(1) REINSTATEMENT.—On application by a manufacturer of a particular drug product that has been removed from exemption under subsection (a), the Attorney General shall by regulation reinstate the exemption with respect to that particular drug product if the Attorney General determines that the particular drug product is manufactured and distributed in a manner that prevents diversion.

"(2) FACTORS TO BE CONSIDERED.—In deciding whether to reinstate the exemption with respect to a particular drug product under paragraph (1), the Attorney General shall consider—

"(A) the package sizes and manner of packaging of the drug product;

"(B) the manner of distribution and advertising of the drug product;

"(C) evidence of diversion of the drug product;

"(D) any actions taken by the manufacturer to prevent diversion of the drug product; and

"(E) such other factors as are relevant to and consistent with the public health and safety, including the factors described in subsection (b) as applied to the drug product.

"(3) STATUS PENDING APPLICATION FOR REINSTATEMENT.—A transaction involving a particular drug product that is the subject of a bona fide pending application for reinstatement of exemption filed with the Attorney General not later than 60 days after a regulation removing the exemption is issued pursuant to subsection (a) shall not be considered to be a regulated transaction if the transaction occurs during the pendency of the application and, if the Attorney General denies the application, during the period of 60 days following the date on which the Attorney General denies the application, unless—

"(A) the Attorney General has evidence that, applying the factors described in subsection (b) to the drug product, the drug product is being diverted; and

"(B) the Attorney General so notifies the applicant.

"(4) AMENDMENT AND MODIFICATION.—A regulation reinstating an exemption under paragraph (1) may be modified or revoked with respect to a particular drug product upon a finding that—

"(A) applying the factors described in subsection (b) to the drug product, the drug product is being diverted; or

"(B) there is a significant change in the data that led to the issuance of the regulation.".

(2) TECHNICAL AMENDMENT.—The table of contents of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) is amended by adding at the end of the section relating to part B of title II the following new item:

"Sec. 204. Removal of exemption of certain drugs.".

(c) REGULATION OF LISTED CHEMICALS.—Section 310 of the Controlled Substances Act (21 U.S.C. 830) is amended—

(1) in subsection (a)(1)—

(A) by striking "precursor chemical" and inserting "list I chemical"; and

(B) in subparagraph (B) by striking "an essential chemical" and inserting "a list II chemical"; and

(2) in subsection (c)(2)(D) by striking "precursor chemical" and inserting "chemical control".

SEC. 533. REGISTRATION REQUIREMENTS.

(a) RULES AND REGULATIONS.—Section 301 of the Controlled Substances Act (21 U.S.C. 821) is amended by striking the period and inserting "and to the registration and control of regulated persons and of regulated transactions.".

(b) PERSONS REQUIRED TO REGISTER UNDER SECTION 302.—Section 302 of the Controlled Substances Act (21 U.S.C. 822) is amended—

(1) in subsection (a)(1) by inserting "or list I chemical" after "controlled substance" each place it appears;

(2) in subsection (b)—

(A) by inserting "or list I chemicals" after "controlled substances"; and

(B) by inserting "or chemicals" after "such substances";

(3) in subsection (c) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(4) in subsection (e) by inserting "or list I chemicals" after "controlled substances".

(c) REGISTRATION REQUIREMENTS UNDER SECTION 303.—Section 303 of the Controlled Substances Act (21 U.S.C. 823) is amended by adding at the end the following new subsection:

"(h) The Attorney General shall register an applicant to distribute a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the distribution of a drug product that is exempted under section 102(39)(A)(iv). In determining the public interest for the purposes of this subsection, the Attorney General shall consider—

"(1) maintenance by the applicant of effective controls against diversion of listed

chemicals into other than legitimate channels;

"(2) compliance by the applicant with applicable Federal, State and local law;

"(3) any prior conviction record of the applicant under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

"(4) any past experience of the applicant in the manufacture and distribution of chemicals; and

"(5) such other factors as are relevant to and consistent with the public health and safety.".

(d) DENIAL, REVOCATION, OR SUSPENSION OF REGISTRATION.—Section 304 of the Controlled Substances Act (21 U.S.C. 824) is amended—

(1) in subsection (a)—

(A) by inserting "or a list I chemical" after "controlled substance" each place it appears; and

(B) by inserting "or list I chemicals" after "controlled substances";

(2) in subsection (b) by inserting "or list I chemical" after "controlled substance";

(3) in subsection (f) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(4) in subsection (g)—

(A) by inserting "or list I chemicals" after "controlled substances" each place it appears; and

(B) by inserting "or list I chemical" after "controlled substance" each place it appears.

(e) PERSONS REQUIRED TO REGISTER UNDER SECTION 1007.—Section 1007 of the Controlled Substances Import and Export Act (21 U.S.C. 957) is amended—

(1) in subsection (a)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance"; and

(B) in paragraph (2) by striking "in schedule I, II, III, IV, or V," and inserting "or list I chemical,"; and

(2) in subsection (b)—

(A) in paragraph (1) by inserting "or list I chemical" after "controlled substance" each place it appears; and

(B) in paragraph (2) by inserting "or list I chemicals" after "controlled substances".

(f) REGISTRATION REQUIREMENTS UNDER SECTION 1008.—Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958) is amended—

(1) in subsection (c)—

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

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

"(2)(A) The Attorney General shall register an applicant to import or export a list I chemical unless the Attorney General determines that registration of the applicant is inconsistent with the public interest. Registration under this subsection shall not be required for the import or export of a drug product that is exempted under section 102(39)(A)(iv).

"(B) In determining the public interest for the purposes of subparagraph (A), the Attorney General shall consider the factors specified in section 303(h).";

(2) in subsection (d)—

(A) in paragraph (3) by inserting "or list I chemical or chemicals," after "substances,"; and

(B) in paragraph (6) by inserting "or list I chemicals" after "controlled substances" each place it appears;

(3) in subsection (e) by striking "and 307" and inserting "307, and 310"; and

(4) in subsections (f), (g), and (h) by inserting "or list I chemicals" after "controlled substances" each place it appears.

(g) PROHIBITED ACTS C.—Section 403(a) of the Controlled Substances Act (21 U.S.C. 843(a)) is amended—

(1) by striking "or" at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting "; or"; and

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

"(9) if the person is a regulated person, to distribute, import, or export a list I chemical without the registration required by this Act.".

SEC. 534. REPORTING OF LISTED CHEMICAL MANUFACTURING.

Section 310(b) of the Controlled Substances Act (21 U.S.C. 830(b)) is amended—

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

(2) by redesignating paragraphs (1), (2), (3), and (4) as subparagraphs (A), (B), (C), and (D), respectively;

(3) by striking "paragraph (1)" each place it appears and inserting "subparagraph (A)";

(4) by striking "paragraph (2)" and inserting "subparagraph (B)";

(5) by striking "paragraph (3)" and inserting "subparagraph (C)"; and

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

"(2) A regulated person that manufactures a listed chemical shall report annually to the Attorney General, in such form and manner and containing such specific data as the Attorney General shall prescribe by regulation, information concerning listed chemicals manufactured by the person. The requirement of the preceding sentence shall not apply to the manufacture of a drug product that is exempted under section 102(39)(A)(iv).".

SEC. 535. REPORTS BY BROKERS AND TRADERS; CRIMINAL PENALTIES.

(a) NOTIFICATION, SUSPENSION OF SHIPMENT, AND PENALTIES WITH RESPECT TO IMPORTATION AND EXPORTATION OF LISTED CHEMICALS.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971) is amended by adding at the end the following new subsection:

"(d) A person located in the United States who is a broker or trader for an international transaction in a listed chemical that is a regulated transaction solely because of that person's involvement as a broker or trader shall, with respect to that transaction, be subject to all of the notification, reporting, recordkeeping, and other requirements placed upon exporters of listed chemicals by this title and title II.".

(b) PROHIBITED ACTS A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)) is amended to read as follows:

"(d) A person who knowingly or intentionally—

"(1) imports or exports a listed chemical with intent to manufacture a controlled substance in violation of this title or title II;

"(2) exports a listed chemical in violation of the laws of the country to which the chemical is exported or serves as a broker or trader for an international transaction involving a listed chemical, if the transaction is in violation of the laws of the country to which the chemical is exported;

"(3) imports or exports a listed chemical knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of this title or title II; or

"(4) exports a listed chemical, or serves as a broker or trader for an international transaction involving a listed chemical, knowing, or having reasonable cause to believe, that the chemical will be used to manufacture a controlled substance in violation of the laws of the country to which the chemical is exported,

shall be fined in accordance with title 18, imprisoned not more than 10 years, or both.".

SEC. 536. EXEMPTION AUTHORITY; ADDITIONAL PENALTIES.

(a) NOTIFICATION REQUIREMENT.—Section 1018 of the Controlled Substances Import and Export Act (21 U.S.C. 971), as amended by section 5(a), is amended by adding at the end the following new subsection:

"(e)(1) The Attorney General may by regulation require that the 15-day notification requirement of subsection (a) apply to all exports of a listed chemical to a specified country, regardless of the status of certain customers in such country as regular customers, if the Attorney General finds that such notification is necessary to support effective chemical diversion control programs or is required by treaty or other international agreement to which the United States is a party.

"(2) The Attorney General may by regulation waive the 15-day notification requirement for exports of a listed chemical to a specified country if the Attorney General determines that such notification is not required for effective chemical diversion control. If the notification requirement is waived, exporters of the listed chemical shall be required to submit to the Attorney General reports of individual exportations or periodic reports of such exportation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.

"(3) The Attorney General may by regulation waive the 15-day notification requirement for the importation of a listed chemical if the Attorney General determines that such notification is not necessary for effective chemical diversion control. If the notification requirement is waived, importers of the listed chemical shall be required to submit to the Attorney General reports of individual importations or periodic reports of the importation of the listed chemical, at such time or times and containing such information as the Attorney General shall establish by regulation.".

(b) PROHIBITED ACTS A.—Section 1010(d) of the Controlled Substances Import and Export Act (21 U.S.C. 960(d)), as amended by section 5(b), is amended—

(1) by striking "or" at the end of paragraph (3);

(2) by striking the comma at the end of paragraph (4) and inserting a semicolon; and

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

"(5) imports or exports a listed chemical, with the intent to evade the reporting or recordkeeping requirements of section 1018 applicable to such importation or exportation by falsely representing to the Attorney General that the importation or exportation qualifies for a waiver of the 15-day notification requirement granted pursuant to section 1018(e) (2) or (3) by misrepresenting the actual country of final destination of the listed chemical or the actual listed chemical being imported or exported; or

"(6) imports or exports a listed chemical in violation of section 1007 or 1018,".

SEC. 537. AMENDMENTS TO LIST I.

Section 102(34) of the Controlled Substances Act (21 U.S.C. 802(34)) is amended—

(1) by striking subparagraphs (O), (U), and (W);

(2) by redesignating subparagraphs (P) through (T) as (O) through (S), subparagraph

(V) as (T), and subparagraphs (X) and (Y) as (U) and (X), respectively;

(3) in subparagraph (X), as redesignated by paragraph (2), by striking "(X)" and inserting "(U)"; and

(4) by inserting after subparagraph (U), as redesignated by paragraph (2), the following new subparagraphs:

"(V) benzaldehyde.

"(W) nitroethane.".

SEC. 538. ELIMINATION OF REGULAR SUPPLIER STATUS AND CREATION OF REGULAR IMPORTER STATUS.

(a) DEFINITION.—Section 102(37) of the Controlled Substances Act (21 U.S.C. 802(37)) is amended to read as follows:

"(37) The term 'regular importer' means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.".

(b) NOTIFICATION.—Section 1018 of the Controlled Substances Act (21 U.S.C. 971) is amended—

(1) in subsection (b)—

(A) in paragraph (1) by striking "regular supplier of the regulated person" and inserting "to an importation by a regular importer"; and

(B) in paragraph (2)—

(i) by striking "a customer or supplier of a regulated person" and inserting "a customer of a regulated person or to an importer"; and

(ii) by striking "regular supplier" and inserting "the importer as a regular importer"; and

(2) in subsection (c)(1) by striking "regular supplier" and inserting "regular importer".

SEC. 539. ADMINISTRATIVE INSPECTIONS AND AUTHORITY.

Section 510 of the Controlled Substances Act (21 U.S.C. 880) is amended—

(1) by amending subsection (a)(2) to read as follows:

"(2) places, including factories, warehouses, and other establishments, and conveyances, where persons registered under section 303 (or exempt from registration under section 302(d) or by regulation of the Attorney General) or regulated persons may lawfully hold, manufacture, distribute, dispense, administer, or otherwise dispose of controlled substances or listed chemicals or where records relating to those activities are maintained."; and

(2) in subsection (b)(3)—

(A) in subparagraph (B) by inserting ", listed chemicals," after "unfinished drugs"; and

(B) in subparagraph (C) by inserting "or listed chemical" after "controlled substance" and inserting "or chemical" after "such substance".

SEC. 540. THRESHOLD AMOUNTS.

Section 102(39)(A) of the Controlled Substances Act (21 U.S.C. 802(39)(A)), as amended by section 2, is amended by inserting "of a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," before "a threshold amount, including a cumulative threshold amount for multiple transactions".

SEC. 541. MANAGEMENT OF LISTED CHEMICALS.

(a) IN GENERAL.—Part C of the Controlled Substances Act (21 U.S.C. 821 et seq.) is amended by adding at the end the following new section:

"MANAGEMENT OF LISTED CHEMICALS

"SEC. 311. (a) OFFENSE.—It is unlawful for a person who possesses a listed chemical with the intent that it be used in the illegal manufacture of a controlled substance to manage the listed chemical or waste from the manufacture of a controlled substance otherwise than as required by regulations issued under sections 3001, 3002, 3003, 3004, and 3005 of the Solid Waste Disposal Act (42 U.S.C. 6921, 6922, 6923, 6924, and 6925).

"(b) ENHANCED PENALTY.—(1) In addition to a penalty that may be imposed for the illegal manufacture, possession, or distribution of a listed chemical or toxic residue of a clandestine laboratory, a person who violates subsection (a) shall be assessed the costs described in paragraph (2) and shall be imprisoned as described in paragraph (3).

"(2) Pursuant to paragraph (1) a defendant shall be assessed the following costs to the United States, a State, or another authority or person that undertakes to correct the results of the improper management of a listed chemical:

"(A) The cost of initial cleanup and disposal of the listed chemical and contaminated property.

"(B) The cost of restoring property that is damaged by exposure to a listed chemical for rehabilitation under Federal, State, and local standards.

"(3)(A) A violation of subsection (a) shall be punished as a class D felony, or in the case of a willful violation, as a class C felony.

"(B) It is the sense of the Congress that guidelines issued by the Sentencing Commission regarding sentencing under this paragraph should recommend that the term of imprisonment for a violation of subsection (a) should not be less than 5 years, nor less than 10 years in the case of a willful violation.

"(4) A court may order that all or a portion of the earnings from work performed by a defendant in prison be withheld for payment of costs assessed under paragraph (2).

"(c) USE OF FORFEITED ASSETS.—The Attorney General may direct that assets forfeited under section 511 in connection with a prosecution under this section be shared with State agencies that participated in the seizure or cleaning up of a contaminated site.".

(b) EXCEPTION TO DISCHARGE IN BANKRUPTCY.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking "or" at the end of paragraph (11);

(2) by striking the period at the end of paragraph (12) and inserting "; or"; and

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

"(13) for costs assessed under section 311(b) of the Controlled Substances Act.".

SEC. 542. FORFEITURE EXPANSION.

Section 511(a) of the Controlled Substances Act (21 U.S.C. 881(a)) is amended—

(1) in paragraph (6) by inserting "or listed chemical" after "controlled substance"; and

(2) in paragraph (9) by striking "a felony provision of".

SEC. 543. ATTORNEY GENERAL ACCESS TO THE NATIONAL PRACTITIONER DATA BANK.

Part B of the Health Care Quality Improvement Act of 1986 (42 U.S.C. 11131 et seq.) is amended by adding at the end the following new section:

"SEC. 428. DISCLOSURE OF INFORMATION TO THE ATTORNEY GENERAL.

"Information respecting physicians or other licensed health care practitioners reported to the Secretary (or to the agency designated under section 424(b)) under this part or section 1921 of the Social Security Act (42 U.S.C. 1396r-2) shall be provided to the Attorney General. The Secretary shall—

"(1) transmit to the Attorney General such information as the Attorney General may designate or request to assist the Drug Enforcement Administration in the enforcement of the Controlled Substances Act (21 U.S.C. 801 et seq.) and other laws enforced by the Drug Enforcement Administration; and

"(2) transmit such information related to health care providers as the Attorney General may designate or request to assist the Federal Bureau of Investigation in the enforcement of title 18, the Act entitled 'An Act to regulate the practice of pharmacy and the sale of poison in the consular districts of the United States in China', approved March 3, 1915 (21 U.S.C. 201 et seq.), and chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.).".

SEC. 544. REGULATIONS AND EFFECTIVE DATE.

(a) REGULATIONS.—The Attorney General shall, not later than 90 days after the date of enactment of this subtitle, issue regulations necessary to carry out this subtitle.

(b) EFFECTIVE DATE.—This subtitle and the amendments made by this subtitle shall become effective on the date that is 120 days after the date of enactment of this subtitle.

Subtitle E—Personnel

SEC. 551. MORE AGENTS FOR THE DRUG ENFORCEMENT ADMINISTRATION.

There are authorized to be appropriated for the hiring of additional Drug Enforcement Administration agents $20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998.

SEC. 552. ADEQUATE STAFFING OF THE OFFICE OF NATIONAL DRUG POLICY.

Section 1003(d)(1) of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1502(d)(1) is amended by striking "such" and inserting "at least 75 and such additional".

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A—Death Penalty

SEC. 601. SHORT TITLE.

This title may be cited as the "Federal Death Penalty Act of 1993".

SEC. 602. DEATH PENALTY PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by inserting after chapter 227 the following new chapter:

"CHAPTER 228—DEATH PENALTY PROCEDURES

"Sec.
"3591. Sentence of death.
"3592. Factors to be considered in determining whether a sentence of death is justified.
"3593. Special hearing to determine whether a sentence of death is justified.
"3594. Imposition of a sentence of death.
"3595. Review of a sentence of death.
"3596. Implementation of a sentence of death.
"3597. Use of State facilities.
"3598. Appointment of counsel.
"3599. Collateral attack on judgment imposing sentence of death.
"3600. Application in Indian country.

"§ 3591. Sentence of death

"A defendant who has been found guilty of—

"(1) an offense described in section 794 or section 2381;

"(2) an offense described in section 1751(c) if the offense, as determined beyond a reasonable doubt at a hearing under section 3593, constitutes an attempt to murder the President of the United States and results in bodily injury to the President or comes dangerously close to causing the death of the President;

"(3) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21

U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under the conditions described in subsection (b) of that section which involved not less than twice the quantity of controlled substance described in subsection (b)(2)(A) or twice the gross receipts described in subsection (b)(2)(B);

"(4) an offense referred to in section 408(c)(1) of the Controlled Substances Act (21 U.S.C. 848(c)(1)), committed as part of a continuing criminal enterprise offense under that section, where the defendant is a principal administrator, organizer, or leader of such an enterprise, and the defendant, in order to obstruct the investigation or prosecution of the enterprise or an offense involved in the enterprise, attempts to kill or knowingly directs, advises, authorizes, or assists another to attempt to kill any public officer, juror, witness, or members of the family or household of such a person;

"(5) an offense constituting a felony violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.), where the defendant, intending to cause death or acting with reckless disregard for human life, engages in such a violation, and the death of another person results in the course of the violation or from the use of the controlled substance involved in the violation; or

"(6) any other offense for which a sentence of death is provided if the defendant, as determined beyond a reasonable doubt at a hearing under section 3593, caused the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or caused the death of a person through the intentional infliction of serious bodily injury,

shall be sentenced to death if, after consideration of the factors set forth in section 3592 in the course of a hearing held pursuant to section 3593, it is determined that imposition of a sentence of death is justified, except that no person may be sentenced to death who was less than 18 years of age at the time of the offense or who is mentally retarded.

"§ 3592. Factors to be considered in determining whether a sentence of death is justified

"(a) MITIGATING FACTORS.—In determining whether a sentence of death is justified for any offense, the jury, or if there is no jury, the court, shall consider each of the following mitigating factors and determine which, if any, exist:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, regardless of whether the capacity was so impaired as to constitute a defense to the charge.

"(2) DURESS.—The defendant was under unusual and substantial duress, regardless of whether the duress was of such a degree as to constitute a defense to the charge.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant's participation in the offense, which was committed by another, was relatively minor, regardless of whether the participation was so minor as to constitute a defense to the charge.

"(4) NO SIGNIFICANT CRIMINAL HISTORY.—The defendant did not have a significant history of other criminal conduct.

"(5) DISTURBANCE.—The defendant committed the offense under severe mental or emotional disturbance.

"(6) VICTIM'S CONSENT.—The victim consented to the criminal conduct that resulted in the victim's death.

The jury, or if there is no jury, the court, shall consider whether any other aspect of the defendant's background, character or record or any other circumstance of the offense that the defendant may proffer as a mitigating factor exists.

"(b) AGGRAVATING FACTORS FOR ESPIONAGE AND TREASON.—In determining whether a sentence of death is justified for an offense described in section 3591(1), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS ESPIONAGE OR TREASON CONVICTION.—The defendant has previously been convicted of another offense involving espionage or treason for which a sentence of life imprisonment or death was authorized by statute.

"(2) RISK OF SUBSTANTIAL DANGER TO NATIONAL SECURITY.—In the commission of the offense the defendant knowingly created a grave risk to the national security.

"(3) RISK OF DEATH TO ANOTHER.—In the commission of the offense the defendant knowingly created a grave risk of death to another person.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(c) AGGRAVATING FACTORS FOR HOMICIDE AND FOR ATTEMPTED MURDER OF THE PRESIDENT.—In determining whether a sentence of death is justified for an offense described in section 3591 (2) or (6), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) CONDUCT OCCURRED DURING COMMISSION OF SPECIFIED CRIMES.—The conduct resulting in death occurred during the commission or attempted commission of, or during the immediate flight from the commission of, an offense under section 32 (destruction of aircraft or aircraft facilities), section 33 (destruction of motor vehicles or motor vehicle facilities), section 36 (violence at international airports), section 351 (violence against Members of Congress, Cabinet officers, or Supreme Court Justices), section 751 (prisoners in custody of institution or officer), section 794 (gathering or delivering defense information to aid foreign government), section 844(d) (transportation of explosives in interstate commerce for certain purposes), section 844(f) (destruction of Government property by explosives), section 844(i) (destruction of property affecting interstate commerce by explosives), section 1116 (killing or attempted killing of diplomats), section 1118 (prisoners serving life term), section 1201 (kidnapping), section 1203 (hostage taking), section 1751 (violence against the President or Presidential staff), section 1992 (wrecking trains), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2332 (terrorist acts abroad against United States nationals), section 2339A (use of weapons of mass destruction), or section 2381 (treason) of this title, section 1826 of title 28 (persons in custody as recalcitrant witnesses or hospitalized following insanity acquittal), or section 902 (i) or (n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472 (i) or (n) (aircraft piracy)).

"(2) INVOLVEMENT OF FIREARM OR PREVIOUS CONVICTION OF VIOLENT FELONY INVOLVING FIREARM.—The defendant—

"(A) during and in relation to the commission of the offense or in escaping or attempting to escape apprehension used or possessed a firearm (as defined in section 921); or

"(B) has previously been convicted of a Federal or State offense punishable by a term of imprisonment of more than 1 year, involving the use of attempted or threatened use of a firearm (as defined in section 921), against another person.

"(3) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(4) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of 2 or more Federal or State offenses, each punishable by a term of imprisonment of more than 1 year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(5) GRAVE RISK OF DEATH TO ADDITIONAL PERSONS.—The defendant, in the commission of the offense or in escaping or attempting to escape apprehension, knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(6) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(7) PROCUREMENT OF OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(8) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

"(9) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(10) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(11) TYPE OF VICTIM.—The defendant committed the offense against—

"(A) the President of the United States, the President-elect, the Vice President, the Vice President-elect, the Vice President-designate, or, if there was no Vice President, the officer next in order of succession to the office of the President of the United States, or any person acting as President under the Constitution and laws of the United States;

"(B) a chief of state, head of government, or the political equivalent, of a foreign nation;

"(C) a foreign official listed in section 1116(b)(3)(A), if that official was in the United States on official business; or

"(D) a Federal public servant who was outside of the United States or who was a Federal judge, a Federal law enforcement officer, an employee (including a volunteer or contract employee) of a Federal prison, or an official of the Federal Bureau of Prisons—

"(i) while such public servant was engaged in the performance of his official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

For purposes of this paragraph, the terms 'President-elect' and 'Vice President-elect'

mean such persons as are the apparent successful candidates for the offices of President and Vice President, respectively, as ascertained from the results of the general elections held to determine the electors of President and Vice President in accordance with sections 1 and 2 of title 3; a 'Federal law enforcement officer' is a public servant authorized by law or by a Government agency or Congress to conduct or engage in the prevention, investigation, or prosecution of an offense; 'Federal prison' means a Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and 'Federal judge' means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate judge.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"(d) AGGRAVATING FACTORS FOR DRUG OFFENSE DEATH PENALTY.—In determining whether a sentence of death is justified for an offense described in section 3591 (3), (4), or (5), the jury, or if there is no jury, the court, shall consider each of the following aggravating factors and determine which, if any, exist:

"(1) PREVIOUS CONVICTION OF OFFENSE FOR WHICH A SENTENCE OF DEATH OR LIFE IMPRISONMENT WAS AUTHORIZED.—The defendant has previously been convicted of another Federal or State offense resulting in the death of a person, for which a sentence of life imprisonment or death was authorized by statute.

"(2) PREVIOUS CONVICTION OF OTHER SERIOUS OFFENSES.—The defendant has previously been convicted of two or more Federal or State offenses, each punishable by a term of imprisonment of more than one year, committed on different occasions, involving the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) or the infliction of, or attempted infliction of, serious bodily injury or death upon another person.

"(3) PREVIOUS SERIOUS DRUG FELONY CONVICTION.—The defendant has previously been convicted of another Federal or State offense involving the manufacture, distribution, importation, or possession of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for which a sentence of five or more years of imprisonment was authorized by statute.

"(4) USE OF FIREARM.—In committing the offense, or in furtherance of a continuing criminal enterprise of which the offense was a part, the defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm (as defined in section 921) to threaten, intimidate, assault, or injure a person.

"(5) DISTRIBUTION TO PERSONS UNDER 21.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 418 of the Controlled Substances Act (21 U.S.C. 859) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(6) DISTRIBUTION NEAR SCHOOLS.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 419 of the Controlled Substances Act (21 U.S.C. 860) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(7) USING MINORS IN TRAFFICKING.—The offense, or a continuing criminal enterprise of which the offense was a part, involved conduct proscribed by section 420 of the Controlled Substances Act (21 U.S.C. 861) which was committed directly by the defendant or for which the defendant would be liable under section 2 of this title.

"(8) LETHAL ADULTERANT.—The offense involved the importation, manufacture, or distribution of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), mixed with a potentially lethal adulterant, and the defendant was aware of the presence of the adulterant.

The jury, or if there is no jury, the court, may consider whether any other aggravating factor exists.

"§ 3593. Special hearing to determine whether a sentence of death is justified

"(a) NOTICE BY THE GOVERNMENT.—Whenever the Government intends to seek the death penalty for an offense described in section 3591, the attorney for the Government, a reasonable time before the trial, or before acceptance by the court of a plea of guilty, or at such time thereafter as the court may permit upon a showing of good cause, shall sign and file with the court, and serve on the defendant, a notice that the Government in the event of conviction will seek the sentence of death. The notice shall set forth the aggravating factor or factors enumerated in section 3592, and any other aggravating factor not specifically enumerated in section 3592, that the Government, if the defendant is convicted, will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the Government to amend the notice upon a showing of good cause.

"(b) HEARING BEFORE A COURT OR JURY.—When the attorney for the Government has filed a notice as required under subsection (a) and the defendant is found guilty of an offense described in section 3591, the judge who presided at the trial or before whom the guilty plea was entered, or another judge if that judge is unavailable, shall conduct a separate sentencing hearing to determine the punishment to be imposed. Prior to such a hearing, no presentence report shall be prepared by the United States Probation Service, notwithstanding the provisions of the Federal Rules of Criminal Procedure. The hearing shall be conducted—

"(1) before the jury that determined the defendant's guilt;

"(2) before a jury impaneled for the purpose of the hearing if—

"(A) the defendant was convicted upon a plea of guilty;

"(B) the defendant was convicted after a trial before the court sitting without a jury;

"(C) the jury that determined the defendant's guilt was discharged for good cause; or

"(D) after initial imposition of a sentence under this section, reconsideration of the sentence under the section is necessary; or

"(3) before the court alone, upon motion of the defendant and with the approval of the attorney for the Government.

A jury impaneled pursuant to paragraph (2) shall consist of 12 members, unless, at any time before the conclusion of the hearing, the parties stipulate, with the approval of the court, that it shall consist of a lesser number.

"(c) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—At the hearing, information may be presented as to—

"(1) any matter relating to any mitigating factor listed in section 3592 and any other mitigating factor; and

"(2) any matter relating to any aggravating factor listed in section 3592 for which notice has been provided under subsection (a) and (if information is presented relating to such a listed factor) any other aggravating factor for which notice has been so provided.

The information presented may include the trial transcript and exhibits. Any other information relevant to such mitigating or aggravating factors may be presented by either the Government or the defendant. The information presented by the Government in support of factors concerning the effect of the offense on the victim and the victim's family may include oral testimony, a victim impact statement that identifies the victim of the offense and the nature and extent of harm and loss suffered by the victim and the victim's family, and other relevant information. Information is admissible regardless of its admissibility under the rules governing admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The attorney for the Government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the Government shall open the argument. The defendant shall be permitted to reply. The Government shall then be permitted to reply in rebuttal. The burden of establishing the existence of an aggravating factor is on the Government, and is not satisfied unless the existence of such a factor is established beyond a reasonable doubt. The burden of establishing the existence of any mitigating factor is on the defendant, and is not satisfied unless the existence of such a factor is established by a preponderance of the evidence.

"(d) RETURN OF SPECIAL FINDINGS.—The jury, or if there is no jury, the court, shall consider all the information received during the hearing. It shall return special findings identifying any aggravating factor or factors set forth in section 3592 found to exist and any other aggravating factor for which notice has been provided under subsection (a) found to exist. A finding with respect to a mitigating factor may be made by one or more members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such factor established for purposes of this section regardless of the number of jurors who concur that the factor has been established. A finding with respect to any aggravating factor must be unanimous. If no aggravating factor set forth in section 3592 is found to exist, the court shall impose a sentence other than death authorized by law.

"(e) RETURN OF A FINDING CONCERNING A SENTENCE OF DEATH.—If, in the case of—

"(1) an offense described in section 3591(1), an aggravating factor required to be considered under section 3592(b) is found to exist;

"(2) an offense described in section 3591 (2) or (6), an aggravating factor required to be considered under section 3592(c) is found to exist; or

"(3) an offense described in section 3591 (3), (4), or (5), an aggravating factor required to be considered under section 3592(d) is found to exist,

the jury, or if there is no jury, the court, shall then consider whether the aggravating factor or factors found to exist under subsection (d) outweigh any mitigating factor or factors. The jury, or if there is no jury, the court shall recommend a sentence of death if it unanimously finds at least one aggravating factor and no mitigating factor or if it finds one or more aggravating factors which outweigh any mitigating factors. In any other case, it shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(f) SPECIAL PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, prior to the return of a finding under subsection (e), shall instruct the jury that, in considering whether a sentence of death is justified, it shall not be influenced by prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or of any victim and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or of any victim may be. The jury, upon return of a finding under subsection (e), shall also return to the court a certificate, signed by each juror, that prejudice or bias relating to the race, color, religion, national origin, or sex of the defendant or any victim was not involved in reaching his or her individual decision and that the individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religion, national origin, or sex of the defendant or any victim may be.

"§ 3594. Imposition of a sentence of death

"Upon the recommendation under section 3593(e) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law. Notwithstanding any other provision of law, if the maximum term of imprisonment for the offense is life imprisonment, the court may impose a sentence of life imprisonment without the possibility of release.

"§ 3595. Review of a sentence of death

"(a) APPEAL.—In a case in which a sentence of death is imposed, the sentence shall be subject to review by the court of appeals upon appeal by the defendant. Notice of appeal of the sentence must be filed within the time specified for the filing of a notice of appeal of the judgment of conviction. An appeal of the sentence under this section may be consolidated with an appeal of the judgment of conviction and shall have priority over all other cases.

"(b) REVIEW.—The court of appeals shall review the entire record in the case, including—

"(1) the evidence submitted during the trial;

"(2) the information submitted during the sentencing hearing;

"(3) the procedures employed in the sentencing hearing; and

"(4) the special findings returned under section 3593(d).

"(c) DECISION AND DISPOSITION.—

"(1) AFFIRMANCE.—If the court of appeals determines that—

"(A) the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor;

"(B) the evidence and information support the special findings of the existence of an aggravating factor or factors; and

"(C) the proceedings did not involve any other prejudicial error requiring reversal of the sentence that was properly preserved for and raised on appeal,

it shall affirm the sentence.

"(2) REMAND.—In a case in which the sentence is not affirmed under paragraph (1), the court of appeals shall remand the case for reconsideration under section 3593 or for imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor required to be considered under section 3592 remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds no mitigating factor or finds that the remaining aggravating factor or factors which were found to exist outweigh any mitigating factors.

"(3) STATEMENT OF REASONS.—The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"§ 3596. Implementation of a sentence of death

"(a) IN GENERAL.—A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of such State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does so provide, and the sentence shall be implemented in the manner prescribed by such law.

"(b) SPECIAL BARS TO EXECUTION.—A sentence of death shall not be carried out upon a person who lacks the mental capacity to understand the death penalty and why it was imposed on that person, or upon a woman while she is pregnant.

"(c) EMPLOYEES MAY DECLINE TO PARTICIPATE.—No employee of any State department of corrections, the Federal Bureau of Prisons, or the United States Marshals Service, and no employee providing services to that department, bureau, or service under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"§ 3597. Use of State facilities

"A United States Marshal charged with supervising the implementation of a sentence of death may use appropriate State or local facilities for the purpose, may use the services of an appropriate State or local official or of a person such an official employs for the purpose, and shall pay the costs thereof in an amount approved by the Attorney General.

"§ 3598. Appointment of counsel

"(a) REPRESENTATION OF INDIGENT DEFENDANTS.—This section shall govern the appointment of counsel for any defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, for an offense against the United States, where the defendant is or becomes financially unable to obtain adequate representation. Such a defendant shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in section 3599(b) has occurred. This section shall not affect the appointment of counsel and the provision of ancillary legal services under section 408(q) (4), (5), (6), (7), (8), (9), and (10) of the Controlled Substances Act (21 U.S.C. 848 (q) (4), (5), (6), (7), (8), (9), and (10)).

"(b) REPRESENTATION BEFORE FINALITY OF JUDGMENT.—A defendant within the scope of this section shall have counsel appointed for trial representation as provided in section 3005. At least 1 counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel.

"(c) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the Government shall promptly notify the district court that imposed the sentence. Within 10 days after receipt of such notice, the district court shall proceed to make a determination whether the defendant is eligible under this section for appointment of counsel for subsequent proceedings. On the basis of the determination, the court shall issue an order—

"(1) appointing 1 or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel;

"(2) finding, after a hearing if necessary, that the defendant rejected appointment of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation.

Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(d) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under this section, at least 1 counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the federal district courts. If new counsel is appointed after judgment, at least 1 counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet the standards prescribed in the 2 preceding sentences, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration

of the seriousness of the penalty and the nature of the litigation.

"(e) APPLICABILITY OF CRIMINAL JUSTICE ACT.—Except as otherwise provided in this section, section 3006A shall apply to appointments under this section.

"(f) CLAIMS OF INEFFECTIVENESS OF COUNSEL.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28 in a capital case shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"§ 3599. Collateral attack on judgment imposing sentence of death

"(a) TIME FOR MAKING SECTION 2255 MOTION.—In a case in which a sentence of death has been imposed, and the judgment has become final as described in section 3598(c), a motion in the case under section 2255 of title 28 shall be filed within 90 days of the issuance of the order relating to appointment of counsel under section 3598(c). The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. A motion described in this section shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(b) STAY OF EXECUTION.—The execution of a sentence of death shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28. The stay shall run continuously following imposition of the sentence, and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28 within the time specified in subsection (a), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28, the motion under that section is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of the decision to do so, the defendant waives the right to file a motion under section 2255 of title 28.

"(c) FINALITY OF DECISION ON REVIEW.—If one of the conditions specified in subsection (b) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim was—

"(A) the result of governmental action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 3600. Application in Indian country

"Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to a capital sentence under this chapter for any offense the Federal jurisdiction for which is predicated solely on Indian country as defined in section 1151 and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has made an election that this chapter have effect over land and persons subject to its criminal jurisdiction.".

(b) TECHNICAL AMENDMENT.—The part analysis for part II of title 18, United States Code, is amended by adding after the item relating to chapter 227 the following new item:

"228. Death penalty procedures ..... 3591.".

SEC. 603. CONFORMING AMENDMENT RELATING TO DESTRUCTION OF AIRCRAFT OR AIRCRAFT FACILITIES.

Section 34 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 604. CONFORMING AMENDMENT RELATING TO ESPIONAGE.

Section 794(a) of title 18, United States Code, is amended by striking the period at the end and inserting ", except that the sentence of death shall not be imposed unless the jury or, if there is no jury, the court, further finds beyond a reasonable doubt at a hearing under section 3593 that the offense directly concerned—

"(1) nuclear weaponry, military spacecraft and satellites, early warning systems, or other means of defense or retaliation against large-scale attack;

"(2) war plans;

"(3) communications intelligence or cryptographic information;

"(4) sources or methods of intelligence or counterintelligence operations; or

"(5) any other major weapons system or major element of defense strategy.".

SEC. 605. CONFORMING AMENDMENT RELATING TO TRANSPORTING EXPLOSIVES.

Section 844(d) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 606. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF FEDERAL PROPERTY BY EXPLOSIVES.

Section 844(f) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 607. CONFORMING AMENDMENT RELATING TO MALICIOUS DESTRUCTION OF INTERSTATE PROPERTY BY EXPLOSIVES.

Section 844(i) of title 18, United States Code, is amended by striking "as provided in section 34 of this title".

SEC. 608. CONFORMING AMENDMENT RELATING TO MURDER.

Section 1111(b) of title 18, United States Code, is amended to read as follows:

"(b) Within the special maritime and territorial jurisdiction of the United States—

"(1) whoever is guilty of murder in the first degree shall be punished by death or by imprisonment for life; and

"(2) whoever is guilty of murder in the second degree shall be imprisoned for any term of years or for life.".

SEC. 609. CONFORMING AMENDMENT RELATING TO KILLING OFFICIAL GUESTS OR INTERNATIONALLY PROTECTED PERSONS.

Section 1116(a) of title 18, United States Code, is amended by striking the comma after "title" and all that follows through "years".

SEC. 610. MURDER BY FEDERAL PRISONER.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1118. Murder by a Federal prisoner

"(a) OFFENSE.—Whoever, while confined in a Federal prison under a sentence for a term of life imprisonment, murders another shall be punished by death or by life imprisonment without the possibility of release.

"(b) DEFINITIONS.—For purposes of this section—

"(1) 'Federal prison' means any Federal correctional, detention, or penal facility, Federal community treatment center, or Federal halfway house, or any such prison operated under contract with the Federal Government; and

"(2) 'term of life imprisonment' means a sentence for the term of natural life, a sentence commuted to natural life, an indeterminate term of a minimum of at least 15 years and a maximum of life, or an unexecuted sentence of death.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Murder by a Federal prisoner.".

SEC. 611. CONFORMING AMENDMENT RELATING TO KIDNAPPING.

Section 1201(a) of title 18, United States Code, is amended by striking the period at the end and inserting "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 612. CONFORMING AMENDMENT RELATING TO HOSTAGE TAKING.

Section 1203(a) of title 18, United States Code, is amended by striking the period at the end and inserting "and, if the death of any person results, shall be punished by death or life imprisonment".

SEC. 613. CONFORMING AMENDMENT RELATING TO MAILABILITY OF INJURIOUS ARTICLES.

The last paragraph of section 1716 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 614. CONFORMING AMENDMENT RELATING TO PRESIDENTIAL ASSASSINATION.

Section 1751(c) of title 18, United States Code, is amended to read as follows:

"(c) Whoever attempts to murder or kidnap any individual designated in subsection (a) shall be punished—

"(1) by imprisonment for any term of years or for life; or

"(2) if the conduct constitutes an attempt to murder the President of the United States and results in bodily injury to the President or otherwise comes dangerously close to causing the death of the President, by death or imprisonment for any term of years or for life.".

SEC. 615. CONFORMING AMENDMENT RELATING TO MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by striking "and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both" and inserting "and if death results, shall be punished by death or life imprisonment, or shall be fined in accordance with this title, or both".

SEC. 616. CONFORMING AMENDMENT RELATING TO VIOLENT CRIMES IN AID OF RACKETEERING ACTIVITY.

Section 1959(a)(1) of title 18, United States Code, is amended to read as follows:

"(1) for murder, by death or life imprisonment, or a fine in accordance with this title, or both, and for kidnapping, by imprisonment for any term of years or for life, or a fine in accordance with this title, or both;".

SEC. 617. CONFORMING AMENDMENT RELATING TO WRECKING TRAINS.

The penultimate paragraph of section 1992 of title 18, United States Code, is amended by striking the comma after "life" and all that follows through "order".

SEC. 618. CONFORMING AMENDMENT RELATING TO BANK ROBBERY.

Section 2113(e) of title 18, United States Code, is amended by striking "or punished by death if the verdict of the jury shall so direct" and inserting "or if death results shall be punished by death or life imprisonment".

SEC. 619. CONFORMING AMENDMENT RELATING TO TERRORIST ACTS.

Section 2332(a)(1) of title 18, United States Code, as redesignated by section 601(b)(2), is amended to read as follows:

"(1) if the killing is murder as defined in section 1111(a), be fined under this title, punished by death or imprisonment for any term of years or for life, or both;".

SEC. 620. CONFORMING AMENDMENT RELATING TO AIRCRAFT HIJACKING.

Section 903 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1473) is amended by striking subsection (c).

SEC. 621. CONFORMING AMENDMENT TO CONTROLLED SUBSTANCES ACT.

Section 408 of the Controlled Substances Act (21 U.S.C. 848) is amended by striking subsections (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q) (1), (2), and (3), and (r).

SEC. 622. CONFORMING AMENDMENT RELATING TO GENOCIDE.

Section 1091(b)(1) of title 18, United States Code, is amended by striking "a fine of not more than $1,000,000 and imprisonment for life" and inserting "death or imprisonment for life and a fine of not more than $1,000,000".

SEC. 623. PROTECTION OF COURT OFFICERS AND JURORS.

Section 1503 of title 18, United States Code, is amended—

(1) by inserting "(a)" before "Whoever";

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

(A) by striking "commissioner" each place it appears and inserting "magistrate judge"; and

(B) by striking "fined not more than $5,000 or imprisoned not more than five years, or both" and inserting "punished as provided in subsection (b)"; and

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

"(b) The punishment for an offense under this section is—

"(1) in the case of a killing, the punishment provided in sections 1111 and 1112;

"(2) in the case of an attempted killing, or a case in which the offense was committed against a petit juror and in which a class A or B felony was charged, imprisonment for not more than 20 years; and

"(3) in any other case, imprisonment for not more than 10 years.".

SEC. 624. PROHIBITION OF RETALIATORY KILLINGS OF WITNESSES, VICTIMS, AND INFORMANTS.

Section 1513 of title 18, United States Code, is amended—

(1) by redesignating subsections (a) and (b) as subsections (b) and (c), respectively; and

(2) by inserting before subsection (b), as redesignated by paragraph (1), the following new subsection:

"(a)(1) Whoever kills or attempts to kill another person with intent to retaliate against any person for—

"(A) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

"(B) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer,

shall be punished as provided in paragraph (2).

"(2) The punishment for an offense under this subsection is—

"(A) in the case of a killing, the punishment provided in sections 1111 and 1112; and

"(B) in the case of an attempt, imprisonment for not more than 20 years.".

SEC. 625. DEATH PENALTY FOR MURDER OF FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by striking "be punished as provided under sections 1111 and 1112 of this title, except that" and inserting ", in the case of murder (as defined in section 1111), be punished by death or imprisonment for life, and, in the case of manslaughter (as defined in section 1112), be punished as provided in section 1112, and".

SEC. 626. DEATH PENALTY FOR MURDER OF STATE OR LOCAL LAW ENFORCEMENT OFFICERS ASSISTING FEDERAL LAW ENFORCEMENT OFFICERS.

Section 1114 of title 18, United States Code, is amended by inserting ", or any State or local law enforcement officer while assisting, or on account of his or her assistance of, any Federal officer or employee covered by this section in the performance of duties," after "other statutory authority".

SEC. 627. IMPLEMENTATION OF THE 1988 PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS OF VIOLENCE AT AIRPORTS SERVING INTERNATIONAL CIVIL AVIATION.

(a) OFFENSE.—Chapter 2 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 36. Violence at international airports

"(a) Whoever unlawfully and intentionally, using any device, substance or weapon—

"(1) performs an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause serious injury or death; or

"(2) destroys or seriously damages the facilities of an airport serving international civil aviation or a civil aircraft not in service located thereon or disrupts the services of the airport,

if such an act endangers or is likely to endanger safety at the airport, or attempts to do such an act, shall be fined under this title, imprisoned not more than 20 years, or both, and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) There is jurisdiction over the activity prohibited in subsection (a) if—

"(1) the prohibited activity takes place in the United States; or

"(2) the prohibited activity takes place outside the United States and the offender is later found in the United States.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 2 of title 18, United States Code, is amended by adding at the end the following new item:

"36. Violence at international airports.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2) the date on which the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971, has come into force and the United States has become a party to the Protocol.

SEC. 628. AMENDMENT TO FEDERAL AVIATION ACT.

Section 902(n) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1472(n)) is amended—

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

SEC. 629. OFFENSES OF VIOLENCE AGAINST MARITIME NAVIGATION OR FIXED PLATFORMS.

(a) OFFENSE.—Chapter 111 of title 18, United States Code, is amended by adding at the end the following new sections:

"§ 2280. Violence against maritime navigation

"(a) OFFENSE.—Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;

"(3) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;

"(4) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;

"(5) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such act is likely to endanger the safe navigation of a ship;

"(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship;

"(7) injures or kills any person in connection with the commission or the attempted commission of an offense described in paragraph (1), (2), (3), (4), (5), or (6); or

"(8) attempts to commit any act prohibited under paragraph (1), (2), (3), (4), (5), (6), or (7),

shall be fined under this title, imprisoned not more than 20 years, or both, and if the death of any person results from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) THREATENED OFFENSE.—Whoever threatens to commit any act prohibited under subsection (a) (2), (3), or (5), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safe navigation of the ship in question, shall be fined under this title, imprisoned not more than 5 years, or both.

"(c) JURISDICTION.—There is jurisdiction over the activity prohibited in subsections (a) and (b)—

"(1) in the case of a covered ship, if—

"(A) such activity is committed—

"(i) against or on board a ship flying the flag of the United States at the time the prohibited activity is committed;

"(ii) in the United States; or

"(iii) by a national of the United States or by a stateless person whose habitual residence is in the United States;

"(B) during the commission of such activity, a national of the United States is seized, threatened, injured, or killed; or

"(C) the offender is later found in the United States after such activity is committed;

"(2) in the case of a ship navigating or scheduled to navigate solely within the territorial sea or internal waters of a country other than the United States, if the offender is later found in the United States after such activity is committed; and

"(3) in the case of any vessel, if such activity is committed in an attempt to compel the United States to do or abstain from doing any act.

"(d) DELIVERY OF PROBABLE OFFENDER.—The master of a covered ship flying the flag of the United States who has reasonable grounds to believe that he or she has on board the ship any person who has committed an offense under Article 3 of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation may deliver such person to the authorities of a State Party to that Convention. Before delivering such person to the authorities of another country, the master shall notify in an appropriate manner the Attorney General of the United States of the alleged offense and await instructions from the Attorney General as to what action the master should take. When delivering the person to a country which is a State Party to the Convention, the master shall, whenever practicable, and if possible before entering the territorial sea of such country, notify the authorities of such country of his or her intention to deliver such person and the reason therefor. If the master delivers such person, the master shall furnish the authorities of such country with the evidence in the master's possession that pertains to the alleged offense.

"(e) DEFINITIONS.—In this section—

" 'covered ship' means a ship that is navigating or is scheduled to navigate into, through, or from waters beyond the outer limit of the territorial sea of a single country or a lateral limit of that country's territorial sea with an adjacent country.

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'ship' means a vessel of any type whatsoever not permanently attached to the seabed, including dynamically supported craft, submersibles or any other floating craft, but does not include a warship, a ship owned or operated by a government when being used as a naval auxiliary or for customs or police purposes, or a ship that has been withdrawn from navigation or laid up.

" 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

" 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands, and all territories and possessions of the United States.

"§ 2281. Violence against maritime fixed platforms

"(a) OFFENSE.—Whoever unlawfully and intentionally—

"(1) seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation;

"(2) performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety;

"(3) destroys a fixed platform or causes damage to it which is likely to endanger its safety;

"(4) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance that is likely to destroy the fixed platform or likely to endanger its safety;

"(5) injures or kills any person in connection with the commission or attempted commission of an offense described in paragraph (1), (2), (3), or (4); or

"(6) attempts to do anything prohibited under paragraphs (1), (2), (3), (4), or (5);

shall be fined under this title, imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) THREATENED OFFENSE.—Whoever threatens to do anything prohibited under subsection (a) (2) or (3), with apparent determination and will to carry the threat into execution, if the threatened act is likely to endanger the safety of the fixed platform, shall be fined under this title or imprisoned not more than 5 years, or both.

"(c) JURISDICTION.—There is jurisdiction over the activity prohibited in subsections (a) and (b) if—

"(1) such activity is committed against or on board a fixed platform—

"(A) that is located on the continental shelf of the United States;

"(B) that is located on the continental shelf of another country, by a national of the United States or by a stateless person whose habitual residence is in the United States; or

"(C) in an attempt to compel the United States to do or abstain from doing any act;

"(2) during the commission of such activity against or on board a fixed platform located on a continental shelf, a national of the United States is seized, threatened, injured or killed; or

"(3) such activity is committed against or on board a fixed platform located outside the United States and beyond the continental shelf of the United States and the offender is later found in the United States.

"(d) DEFINITIONS.—In this section—

" 'continental shelf' means the seabed and subsoil of the submarine areas that extend beyond a country's territorial sea to the limits provided by customary international law as reflected in Article 76 of the 1982 Convention on the Law of the Sea.

" 'fixed platform' means an artificial island, installation or structure permanently attached to the seabed for the purpose of exploration or exploitation of resources or for other economic purposes.

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'territorial sea of the United States' means all waters extending seaward to 12 nautical miles from the baselines of the United States determined in accordance with international law.

" 'United States', when used in a geographical sense, includes the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas Islands, and all territories and possessions of the United States.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 111 of title 18, United States Code, is amended by adding at the end the following new items:

"2280. Violence against maritime navigation.
"2281. Violence against maritime fixed platforms.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2)(A) in the case of section 2280 of title 18, United States Code, the date on which the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation has come into force and the United States has become a party to that Convention; and

(B) in the case of section 2281 of title 18, United States Code, the date on which the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf has come into force and the United States has become a party to that Protocol.

SEC. 630. TORTURE.

(a) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 113A the following new chapter:

"CHAPTER 113B—TORTURE

"Sec.
"2340. Definitions.
"2340A. Torture.
"2340B. Exclusive remedies.

"§ 2340. Definitions

"In this chapter—

" 'severe mental pain or suffering' means the prolonged mental harm caused by or resulting from—

"(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

"(B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

"(C) the threat of imminent death; or

"(D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

" 'torture' means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.

" 'United States' includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 101(38) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301(38)).

"§ 2340A. Torture

"(a) OFFENSE.—Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.

"(b) JURISDICTION.—There is jurisdiction over the activity prohibited in subsection (a) if—

"(1) the alleged offender is a national of the United States; or

"(2) the alleged offender is present in the United States, irrespective of the nationality of the victim or the alleged offender.

"§ 2340B. Exclusive remedies

"Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.".

(b) TECHNICAL AMENDMENT.—The part analysis for part I of title 18, United States Code, is amended by inserting after the item relating to chapter 113A the following new item:

"113B. Torture ..... 2340.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the later of—

(1) the date of enactment of this Act; or

(2) the date on which the United States has become a party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

SEC. 631. WEAPONS OF MASS DESTRUCTION.

(a) FINDINGS.—The Congress finds that the use and threatened use of weapons of mass destruction (as defined in the amendment made by subsection (b)) gravely harm the national security and foreign relations interests of the United States, seriously affect interstate and foreign commerce, and disturb the domestic tranquility of the United States.

(b) OFFENSE.—Chapter 113A of title 18, United States Code, is amended by adding at the end the following new section:

"§ 2339. Use of weapons of mass destruction

"(a) OFFENSE.—A person who uses, or attempts or conspires to use, a weapon of mass destruction—

"(1) against a national of the United States while such national is outside of the United States;

"(2) against any person within the United States; or

"(3) against any property that is owned, leased, or used by the United States or by any department or agency of the United States, whether the property is within or outside the United States,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

"(b) DEFINITIONS.—In this section—

" 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

" 'weapon of mass destruction' means—

"(A) a destructive device (as defined in section 921);

"(B) poison gas;

"(C) a weapon involving a disease organism; and

"(D) a weapon that is designed to release radiation or radioactivity at a level dangerous to human life.".

(c) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, is amended by adding at the end the following new item:

"2339. Use of weapons of mass destruction.".

SEC. 632. HOMICIDES AND ATTEMPTED HOMICIDES INVOLVING FIREARMS IN FEDERAL FACILITIES.

Section 930 of title 18, United States Code, is amended—

(1) by redesignating subsections (c), (d), (e), (f), and (g) as subsections (d), (e), (f), (g), and (h), respectively;

(2) in subsection (a), by striking "(c)" and inserting "(d)"; and

(3) by inserting after subsection (b) the following new subsection:

"(c) Whoever kills or attempts to kill any person in the course of a violation of subsection (a) or (b), or in the course of an attack on a Federal facility involving the use of a firearm or other dangerous weapon, shall—

"(1) in the case of a killing constituting murder (as defined in section 1111(a)), be punished by death or imprisoned for any term of years or for life; and

"(2) in the case of any other killing or an attempted killing, be subject to the penalties provided for engaging in such conduct within the special maritime and territorial jurisdiction of the United States under sections 1112 and 1113.".

SEC. 633. DEATH PENALTY FOR CIVIL RIGHTS MURDERS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(b) DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Section 242 of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(c) FEDERALLY PROTECTED ACTIVITIES.—Section 245(b) of title 18, United States Code, is amended by striking "shall be subject to imprisonment for any term of years or for life" and inserting "shall be punished by death or imprisonment for any term of years or for life".

(d) DAMAGE TO RELIGIOUS PROPERTY; OBSTRUCTION OF THE FREE EXERCISE OF RELIGIOUS RIGHTS.—Section 247(c)(1) of title 18, United States Code, is amended by inserting "the death penalty or" before "imprisonment".

SEC. 634. DEATH PENALTY FOR MURDER OF FEDERAL WITNESSES.

Section 1512(a)(2)(A) of title 18, United States Code, is amended to read as follows:

"(A) in the case of murder (as defined in section 1111), the death penalty or imprisonment for life, and in the case of any other killing, the punishment provided in section 1112;".

SEC. 635. DRIVE-BY SHOOTINGS.

(a) OFFENSE.—Chapter 44 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 931. Drive-by shootings

"(a) OFFENSE.—Whoever knowingly discharges a firearm at a person—

"(1) in the course of or in furtherance of drug trafficking activity; or

"(2) from a motor vehicle,

shall be punished by imprisonment for not more than 25 years, and if death results shall be punished by death or by imprisonment for any term of years or for life.

"(b) DEFINITION.—As used in this section, the term 'drug trafficking activity' means a drug trafficking crime (as defined in section 929(a)(2)), or a pattern or series of acts involving one or more drug trafficking crimes.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 44 of title 18, United States Code, is amended by adding at the end the following new item:

"931. Drive-by shootings.".

SEC. 636. DEATH PENALTY FOR GUN MURDERS DURING FEDERAL CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES.

Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(i) Whoever, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

"(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

"(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.".

SEC. 637. DEATH PENALTY FOR RAPE AND CHILD MOLESTATION MURDERS.

(a) OFFENSE.—Chapter 109A of title 18, United States Code, is amended—

(1) by redesignating section 2245 as section 2246; and

(2) by inserting after section 2244 the following new section:

"§ 2245. Sexual abuse resulting in death

"Whoever, in the course of an offense under this chapter, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 109A of title 18, United States Code, is amended by striking the item relating to section 2245 and inserting the following:

"2245. Sexual abuse resulting in death.

"2246. Definitions for chapter.".

SEC. 638. PROTECTION OF JURORS AND WITNESSES IN CAPITAL CASES.

Section 3432 of title 18, United States Code, is amended by striking the period and inserting: ", except that the list of the veniremen and witnesses need not be furnished if the court finds by a preponderance of the evidence that providing the list may jeopardize the life or safety of any person.".

SEC. 639. INAPPLICABILITY TO UNIFORM CODE OF MILITARY JUSTICE.

The provisions of chapter 228 of title 18, United States Code, as added by this Act, shall not apply to prosecutions under the Uniform Code of Military Justice (10 U.S.C. 801 et seq.).

SEC. 640. DEATH PENALTY FOR CAUSING DEATH IN THE SEXUAL EXPLOITATION OF CHILDREN.

Section 2251(d) of title 18, United States Code, is amended by adding at the end the following new sentence: "Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.".

SEC. 641. MURDER BY ESCAPED PRISONERS.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, as amended by section 110, is amended by adding at the end the following new section:

"§ 1119. Murder by escaped prisoners

"(a) OFFENSE.—A person who, having escaped from a Federal prison where the person was confined under a sentence for a term of life imprisonment, kills another person, shall be punished as provided in sections 1111 and 1112.

"(b) DEFINITION.—As used in this section, the terms 'Federal prison' and 'term of life imprisonment' have the meanings stated in section 1118.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1119. Murder by escaped prisoners.".

SEC. 642. DEATH PENALTY FOR MURDERS IN THE DISTRICT OF COLUMBIA.

(a) OFFENSE.—Chapter 51 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1118. Capital punishment for murders in the District of Columbia

"(a) OFFENSE.— It is an offense to cause the death of a person intentionally, knowingly, or through recklessness manifesting extreme indifference to human life, or to

cause the death of a person through the intentional infliction of serious bodily injury.

"(b) FEDERAL JURISDICTION.—There is a federal jurisdiction over an offense described in this section if the conduct resulting in death occurs in the District of Columbia.

"(c) PENALTY.—An offense described in this section is a Class A felony. A sentence of death may be imposed for an offense described in this section as provided in subsections (d), (e), (f), (g), (h), (i), (j), (k), and (l).

"(d) MITIGATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider whether any aspect of the defendant's character, background, or record or any circumstance of the offense that the defendant may proffer as a mitigating factor exists, including the following factors:

"(1) MENTAL CAPACITY.—The defendant's mental capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired.

"(2) DURESS.—The defendant was under unusual and substantial duress.

"(3) PARTICIPATION IN OFFENSE MINOR.—The defendant is punishable as a principal in an offense committed by another person, but the defendant's participation was relatively minor.

"(e) AGGRAVATING FACTORS.—In determining whether to recommend a sentence of death, the jury shall consider any aggravating factor for which notice has been provided under subsection (f), including the following factors—

"(1) KILLING IN FURTHERANCE OF DRUG TRAFFICKING.—The defendant engaged in the conduct resulting in death in the course of or in furtherance of drug trafficking activity.

"(2) KILLING IN THE COURSE OF OTHER SERIOUS VIOLENT CRIMES.—The defendant engaged in the conduct resulting in death in the course of committing or attempting to commit an offense involving robbery, burglary, sexual abuse, kidnaping, or arson.

"(3) MULTIPLE KILLINGS OR ENDANGERMENT OF OTHERS.—The defendant committed more than one offense under this section, or in committing the offense knowingly created a grave risk of death to one or more persons in addition to the victim of the offense.

"(4) INVOLVEMENT OF FIREARM.—During and in relation to the commission of the offense, the defendant used or possessed a firearm as defined in section 921.

"(5) PREVIOUS CONVICTION OF VIOLENT FELONY.—The defendant has previously been convicted of an offense punishable by a term of imprisonment of more than 1 year that involved the use or attempted or threatened use of force against a person or that involved sexual abuse.

"(6) KILLING WHILE INCARCERATED OR UNDER SUPERVISION.—The defendant at the time of the offense was confined in or had escaped from a jail, prison, or other correctional or detention facility, was on pre-trial release, or was on probation, parole, supervised release, or other post-conviction conditional release.

"(7) HEINOUS, CRUEL, OR DEPRAVED MANNER OF COMMISSION.—The defendant committed the offense in an especially heinous, cruel, or depraved manner in that it involved torture or serious physical abuse to the victim.

"(8) PROCUREMENT OF THE OFFENSE BY PAYMENT.—The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

"(9) COMMISSION OF THE OFFENSE FOR PECUNIARY GAIN.—The defendant committed the offense as consideration for receiving, or in the expectation of receiving or obtaining, anything of pecuniary value.

"(10) SUBSTANTIAL PLANNING AND PREMEDITATION.—The defendant committed the offense after substantial planning and premeditation.

"(11) VULNERABILITY OF VICTIM.—The victim was particularly vulnerable due to old age, youth, or infirmity.

"(12) KILLING OF PUBLIC SERVANT.—The defendant committed the offense against a public servant—

"(i) while such public servant was engaged in the performance of his or her official duties;

"(ii) because of the performance of such public servant's official duties; or

"(iii) because of such public servant's status as a public servant.

"(13) KILLING TO INTERFERE WITH OR RETALIATE AGAINST WITNESS.—The defendant committed the offense in order to prevent or inhibit any person from testifying or providing information concerning an offense, or to retaliate against any person for testifying or providing such information.

"(f) NOTICE OF INTENT TO SEEK DEATH PENALTY.—If the government intends to seek the death penalty for an offense under this section, the attorney for the government shall file with the court and serve on the defendant a notice of such intent. The notice shall be provided a reasonable time before the trial or acceptance of a guilty plea, or at such later time as the court may permit for good cause. The notice shall set forth the aggravating factor or factors set forth in subsection (e) and any other aggravating factor or factors that the government will seek to prove as the basis for the death penalty. The factors for which notice is provided under this subsection may include factors concerning the effect of the offense on the victim and the victim's family. The court may permit the attorney for the government to amend the notice upon a showing of good cause.

"(g) JUDGE AND JURY AT CAPITAL SENTENCING HEARING.—A hearing to determine whether the death penalty will be imposed for an offense under this section shall be conducted by the judge who presided at trial or accepted a guilty plea, or by another judge if that judge is not available. The hearing shall be conducted before the jury that determined the defendant's guilt if that jury is available. A new jury shall be impaneled for the purpose of the hearing if the defendant pleaded guilty, the trial of guilt was conducted without a jury, the jury that determined the defendant's guilt was discharged for good cause, or reconsideration of the sentence is necessary after the initial imposition of a sentence of death. A jury impaneled under this subsection shall have twelve members unless the parties stipulate to a lesser number at any time before the conclusion of the hearing with the approval of the judge. Upon motion of the defendant, with the approval of the attorney for the government, the hearing shall be carried out before the judge without a jury. If there is no jury, references to "the jury" in this section, where applicable, shall be understood as referring to the judge.

"(h) PROOF OF MITIGATING AND AGGRAVATING FACTORS.—No presentence report shall be prepared if a capital sentencing hearing is held under this section. Any information relevant to the existence of mitigating factors, or to the existence of aggravating factors for which notice has been provided under subsection (f), may be presented by either the government or the defendant, regardless of its admissibility under the rules governing the admission of evidence at criminal trials, except that information may be excluded if its probative value is outweighed by the danger of creating unfair prejudice, confusing the issues, or misleading the jury. The information presented may include trial transcripts and exhibits. The attorney for the government and for the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any aggravating or mitigating factor, and as to the appropriateness in that case of imposing a sentence of death. The attorney for the government shall open the argument, the defendant shall be permitted to reply, and the government shall then be permitted to reply in rebuttal.

"(i) FINDINGS OF AGGRAVATING AND MITIGATING FACTORS.—The jury shall return special findings identifying any aggravating factor or factors for which notice has been provided under subsection (f) and which the jury unanimously determines have been established by the government beyond a reasonable doubt. A mitigating factor is established if the defendant has proven its existence by a preponderance of the evidence, and any member of the jury who finds the existence of such a factor may regard it as established for purposes of this section regardless of the number of jurors who concur that the factor has been established.

"(j) FINDING CONCERNING A SENTENCE OF DEATH.—If the jury specially finds under subsection (i) that one or more aggravating factors set forth in subsection (e) exist, and the jury further finds unanimously that there are no mitigating factors or that the aggravating factor or factors specially found under subsection (i) outweigh any mitigating factors, then the jury shall recommend a sentence of death. In any other case, the jury shall not recommend a sentence of death. The jury shall be instructed that it must avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factors in its decision, and should make such a recommendation as the information warrants.

"(k) SPECIAL PRECAUTION TO ENSURE AGAINST DISCRIMINATION.—In a hearing held before a jury, the court, before the return of a finding under subsection (j), shall instruct the jury that, in considering whether to recommend a sentence of death, it shall not consider the race, color, religion, national origin, or sex of the defendant or any victim, and that the jury is not to recommend a sentence of death unless it has concluded that it would recommend a sentence of death for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim. The jury, upon the return of a finding under subsection (j), shall also return to the court a certificate, signed by each juror, that the race, color, religion, national origin, or sex of the defendant or any victim did not affect the juror's individual decision and that the individual juror would have recommended the same sentence for such a crime regardless of the race, color, religion, national origin, or sex of the defendant or any victim.

"(l) IMPOSITION OF A SENTENCE OF DEATH.—Upon a recommendation under subsection (j) that a sentence of death be imposed, the court shall sentence the defendant to death. Otherwise the court shall impose a sentence, other than death, authorized by law.

"(m) REVIEW OF A SENTENCE OF DEATH.—

"(1) The defendant may appeal a sentence of death under this section by filing a notice

of appeal of the sentence within the time provided for filing a notice of appeal of the judgment of conviction. An appeal of a sentence under this subsection may be consolidated within an appeal of the judgment of conviction and shall have priority over all noncapital matters in the court of appeals.

"(2) The court of appeals shall review the entire record in the case including the evidence submitted at trial and information submitted during the sentencing hearing, the procedures employed in the sentencing hearing, and the special findings returned under subsection (i). The court of appeals shall uphold the sentence if it determines that the sentence of death was not imposed under the influence of passion, prejudice, or any other arbitrary factor, that the evidence and information support the special findings under subsection (i), and that the proceedings were otherwise free of prejudicial error that was properly preserved for review.

"(3) In any other case, the court of appeals shall remand the case for reconsideration of the sentence or imposition of another authorized sentence as appropriate, except that the court shall not reverse a sentence of death on the ground that an aggravating factor was invalid or was not supported by the evidence and information if at least one aggravating factor described in subsection (e) remains which was found to exist and the court, on the basis of the evidence submitted at trial and the information submitted at the sentencing hearing, finds that the remaining aggravating factor or factors which were found to exist outweigh any mitigating factors. The court of appeals shall state in writing the reasons for its disposition of an appeal of a sentence of death under this section.

"(n) IMPLEMENTATION OF SENTENCE OF DEATH.—A person sentenced to death under this section shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States Marshal. The Marshal shall supervise implementation of the sentence in the manner prescribed by the law of a State designated by the court. The Marshal may use State or local facilities, may use the services of an appropriate State or local official or of a person such an official employs, and shall pay the costs thereof in an amount approved by the Attorney General.

"(o) SPECIAL BAR TO EXECUTION.—A sentence of death shall not be carried out upon a woman while she is pregnant.

"(p) CONSCIENTIOUS OBJECTION TO PARTICIPATION IN EXECUTION.—No employee of any State department of corrections, the United States Marshals Service, or the Federal Bureau of Prisons, and no person providing services to that department, service, or bureau under contract shall be required, as a condition of that employment or contractual obligation, to be in attendance at or to participate in any execution carried out under this section if such participation is contrary to the moral or religious convictions of the employee. For purposes of this subsection, the term 'participate in any execution' includes personal preparation of the condemned individual and the apparatus used for the execution, and supervision of the activities of other personnel in carrying out such activities.

"(q) APPOINTMENT OF COUNSEL FOR INDIGENT CAPITAL DEFENDANTS.—A defendant against whom a sentence of death is sought, or on whom a sentence of death has been imposed, under this section, shall be entitled to appointment of counsel from the commencement of trial proceedings until one of the conditions specified in subsection (v) has occurred, if the defendant is or becomes financially unable to obtain adequate representation. Counsel shall be appointed for trial representation as provided in section 3005, and at least 1 counsel so appointed shall continue to represent the defendant until the conclusion of direct review of the judgment, unless replaced by the court with other qualified counsel. Except as otherwise provided in this section, the provisions of section 3006A shall apply to appointments under this section.

"(r) REPRESENTATION AFTER FINALITY OF JUDGMENT.—When a judgment imposing a sentence of death under this section has become final through affirmance by the Supreme Court on direct review, denial of certiorari by the Supreme Court on direct review, or expiration of the time for seeking direct review in the court of appeals or the Supreme Court, the government shall promptly notify the court that imposed the sentence. The court, within 10 days of receipt of such notice, shall proceed to make determination whether the defendant is eligible for appointment of counsel for subsequent proceedings. The court shall issue an order appointing one or more counsel to represent the defendant upon a finding that the defendant is financially unable to obtain adequate representation and wishes to have counsel appointed or is unable competently to decide whether to accept or reject appointment of counsel. The court shall issue an order denying appointment of counsel upon a finding that the defendant is financially able to obtain adequate representation or that the defendant rejected appointment of counsel with an understanding of the consequences of that decision. Counsel appointed pursuant to this subsection shall be different from the counsel who represented the defendant at trial and on direct review unless the defendant and counsel request a continuation or renewal of the earlier representation.

"(s) STANDARDS FOR COMPETENCE OF COUNSEL.—In relation to a defendant who is entitled to appointment of counsel under subsections (q) and (r), at least 1 counsel appointed for trial representation must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the trial of felony cases in the Federal district courts. If new counsel is appointed after judgment, at least 1 counsel so appointed must have been admitted to the bar for at least 5 years and have at least 3 years of experience in the litigation of felony cases in the Federal courts of appeals or the Supreme Court. The court, for good cause, may appoint counsel who does not meet these standards, but whose background, knowledge, or experience would otherwise enable him or her to properly represent the defendant, with due consideration of the seriousness of the penalty and the nature of the litigation.

"(t) CLAIMS OF INEFFECTIVENESS OF COUNSEL IN COLLATERAL PROCEEDINGS.—The ineffectiveness or incompetence of counsel during proceedings on a motion under section 2255 of title 28 in a case under this section shall not be a ground for relief from the judgment or sentence in any proceeding. This limitation shall not preclude the appointment of different counsel at any stage of the proceedings.

"(u) TIME FOR COLLATERAL ATTACK ON DEATH SENTENCE.—A motion under section 2255 of title 28 attacking a sentence of death under this section, or the conviction on which it is predicated, must be filed within 90 days of the issuance of the order under subsection (r) appointing or denying the appointment of counsel for such proceedings. The court in which the motion is filed, for good cause shown, may extend the time for filing for a period not exceeding 60 days. Such a motion shall have priority over all noncapital matters in the district court, and in the court of appeals on review of the district court's decision.

"(v) STAY OF EXECUTION.—The execution of a sentence of death under this section shall be stayed in the course of direct review of the judgment and during the litigation of an initial motion in the case under section 2255 of title 28. The stay shall run continuously following imposition of the sentence and shall expire if—

"(1) the defendant fails to file a motion under section 2255 of title 28 within the time specified in subsection (u), or fails to make a timely application for court of appeals review following the denial of such a motion by a district court;

"(2) upon completion of district court and court of appeals review under section 2255 of title 28 the Supreme Court disposes of a petition for certiorari in a manner that leaves the capital sentence undisturbed, or the defendant fails to file a timely petition for certiorari; or

"(3) before a district court, in the presence of counsel and after having been advised of the consequences of such a decision, the defendant waives the right to file a motion under section 2255 of title 28.

"(w) FINALITY OF THE DECISION ON REVIEW.—If one of the conditions specified in subsection (v) has occurred, no court thereafter shall have the authority to enter a stay of execution or grant relief in the case unless—

"(1) the basis for the stay and request for relief is a claim not presented in earlier proceedings;

"(2) the failure to raise the claim is the result of governmental action in violation of the Constitution or laws of the United States, the result of the Supreme Court's recognition of a new Federal right that is retroactively applicable, or the result of the fact that the factual predicate of the claim could not have been discovered through the exercise of reasonable diligence in time to present the claim in earlier proceedings; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"(x) DEFINITIONS.—In this section—

"'arson' means damaging or destroying a building or structure through the use of fire or explosives.

"'burglary' means entering or remaining in a building or structure in violation of the law of the District of Columbia, another State, or the United States, with the intent to commit an offense in the building or structure.

"'drug trafficking activity' means a drug trafficking crime (as defined in section 929(a)(2)) or a pattern or series of acts involving 1 or more drug trafficking crimes.

"'kidnapping' means seizing, confining, or abducting a person, or transporting a person without his or her consent.

"'offense', as used in paragraphs (2), (5), and (13) of subsection (e) and in this subsection, means an offense under the law of the District of Columbia, another State, or the United States.

"'pre-trial release', 'probation', 'parole', 'supervised release', and 'other post-conviction conditional release', as used in subsection (e)(6), mean any such release, imposed in relation to a charge or conviction for an offense under the law of the District of Columbia, another State, or the United States.

"'public servant' means an employee, agent, officer, or official of the District of Columbia, another State, or the United States, or an employee, agent, officer, or official of a foreign government who is within the scope of section 1116.

"'robbery' means obtaining the property of another by force or threat of force.

"'sexual abuse' means any conduct proscribed by chapter 109A, whether or not the conduct occurs in the special maritime and territorial jurisdiction of the United States.

"'State' has the meaning stated in section 513, including the District of Columbia.

"(y) JOINDER OF CHARGES.—When an offense is charged under this section, the government may join any charge under the District of Columbia Code that arises from the same incident.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 51 of title 18, United States Code, is amended by adding at the end the following new item:

"1118. Capital punishment for murders in the District of Columbia.".

Subtitle B—Equal Justice Act

SEC. 651. SHORT TITLE.

This subtitle may be cited as the "Equal Justice Act".

SEC. 652. PROHIBITION OF RACIALLY DISCRIMINATORY POLICIES CONCERNING CAPITAL PUNISHMENT OR OTHER PENALTIES.

(a) GENERAL RULE.—The penalty of death and all other penalties shall be administered by the United States and by every State without regard to the race or color of the defendant or victim. Neither the United States nor any State shall prescribe any racial quota or statistical test for the imposition or execution of the death penalty or any other penalty.

(b) DEFINITIONS.—For purposes of this subtitle—

(1) the action of the United States or of a State includes the action of any legislative, judicial, executive, administrative, or other agency or instrumentality of the United States or a State, or of any political subdivision of the United States or a State;

(2) the term "State" has the meaning stated in section 513 of title 18, United States Code; and

(3) the term "racial quota or statistical test" includes any law, rule, presumption, goal, standard for establishing a prima facie case, or mandatory or permissive inference that—

(A) requires or authorizes the imposition or execution of the death penalty or another penalty so as to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims; or

(B) requires or authorizes the invalidation of, or bars the execution of, sentences of death or other penalties based on the failure of a jurisdiction to achieve a specified racial proportion relating to offenders, convicts, defendants, arrestees, or victims in the imposition or execution of such sentences or penalties.

SEC. 653. GENERAL SAFEGUARDS AGAINST RACIAL PREJUDICE OR BIAS IN THE TRIBUNAL.

In a criminal trial in a court of the United States, or of any State—

(1) on motion of the defense attorney or prosecutor, the risk of racial prejudice or bias shall be examined on voir dire if there is a substantial likelihood in the circumstances of the case that such prejudice or bias will affect the jury either against or in favor of the defendant;

(2) on motion of the defense attorney or prosecutor, a change of venue shall be granted if an impartial jury cannot be obtained in the original venue because of racial prejudice or bias; and

(3) neither the prosecutor nor the defense attorney shall make any appeal to racial prejudice or bias in statements before the jury.

SEC. 654. FEDERAL CAPITAL CASES.

(a) JURY INSTRUCTIONS AND CERTIFICATION.—In a prosecution for an offense against the United States in which a sentence of death is sought, and in which the capital sentencing determination is to be made by a jury, the judge shall instruct the jury that it is not to be influenced by prejudice or bias relating to the race or color of the defendant or victim in considering whether a sentence of death is justified, and that the jury is not to recommend the imposition of a sentence of death unless it has concluded that it would recommend the same sentence for such a crime regardless of the race or color of the defendant or victim. Upon the return of a recommendation of a sentence of death, the jury shall also return a certificate, signed by each juror, that the juror's individual decision was not affected by prejudice or bias relating to the race or color of the defendant or victim, and that the individual juror would have made the same recommendation regardless of the race or color of the defendant or victim.

(b) RACIALLY MOTIVATED KILLINGS.—In a prosecution for an offense against the United States for which a sentence of death is authorized, the fact that the killing of the victim was motivated by racial prejudice or bias shall be deemed an aggravating factor whose existence permits consideration of the death penalty, in addition to any other aggravating factors that may be specified by law as permitting consideration of the death penalty.

SEC. 655. EXTENSION OF PROTECTION OF CIVIL RIGHTS STATUTES.

(a) SECTION 241.—Section 241 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in".

(b) SECTION 242.—Section 242 of title 18, United States Code, is amended by striking "inhabitant of" and inserting "person in", and by striking "such inhabitant" and inserting "such person".

Subtitle C—Enhanced Penalties for Criminal Use of Firearms and Explosives

SEC. 661. SMUGGLING FIREARMS IN AID OF DRUG TRAFFICKING.

Section 924 of title 18, United States Code, as amended by section 136, is amended by adding at the end the following new subsection:

"(j) Whoever, with the intent to engage in or to promote conduct that—

"(1) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) violates any law of a State relating to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)); or

"(3) constitutes a crime of violence (as defined in subsection (c)(3) of this section),

smuggles or knowingly brings into the United States a firearm, or attempts to do so, shall be imprisoned not more than 10 years, fined under this title, or both.".

SEC. 662. PROHIBITION AGAINST THEFT OF FIREARMS OR EXPLOSIVES.

(a) FIREARMS.—Section 924 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) Whoever steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned not more than 10 years, fined in accordance with this title, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(j) Whoever steals any explosive materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned not more than 10 years, fined in accordance with this title, or both.".

SEC. 663. INCREASED PENALTY FOR KNOWINGLY FALSE, MATERIAL STATEMENT IN CONNECTION WITH THE ACQUISITION OF A FIREARM FROM A LICENSED DEALER.

Section 924(a) of title 18, United States Code, is amended—

(1) in paragraph (1)(B) by striking "(a)(6),"; and

(2) in paragraph (2) by inserting "(a)(6)," after "subsection".

SEC. 664. SUMMARY DESTRUCTION OF EXPLOSIVES SUBJECT TO FORFEITURE.

Section 844(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" before "Any"; and

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

"(2) Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture where it is impracticable or unsafe to remove the materials to a place of storage, or where it is unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least one credible witness. The seizing officer shall make a report of the seizure and take samples as the Secretary may by regulation prescribe.

"(3) Within 60 days after any destruction made pursuant to paragraph (2), the owner of, including any person having an interest in, the property so destroyed may make application to the Secretary for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Secretary that—

"(A) the property has not been used or involved in a violation of law; or

"(B) any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,

the Secretary shall make an allowance to the claimant not exceeding the value of the property destroyed.".

SEC. 665. ELIMINATION OF OUTMODED LANGUAGE RELATING TO PAROLE.

Section 924 of title 18, United States Code, is amended—

(1) in subsection (c)(1) by striking "No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein."; and

(2) in subsection (e)(1) by striking ", and such person shall not be eligible for parole with respect to the sentence imposed under this subsection".

SEC. 666. RECEIPT OF FIREARMS BY NONRESIDENT.

Section 922(a) of title 18, United States Code, is amended—

(1) in paragraph (7)(C) by striking "and";

(2) in paragraph (8)(C) by striking the period and inserting "; and"; and

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

"(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.".

SEC. 667. PROHIBITION OF THEFT OF FIREARMS OR EXPLOSIVES FROM LICENSEE.

(a) FIREARMS.—Section 924 of title 18, United States Code, as amended by section 402(a), is amended by adding at the end the following new subsection:

"(k) Whoever steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined in accordance with this title, imprisoned not more than 10 years, or both.".

(b) EXPLOSIVES.—Section 844 of title 18, United States Code, as amended by section 402(b), is amended by adding at the end the following new subsection:

"(k) Whoever steals any explosive material from a licensed importer, licensed manufacturer, licensed dealer, or permittee shall be fined in accordance with this title, imprisoned not more than 10 years, or both.".

SEC. 668. INCREASED PENALTY FOR INTERSTATE GUN TRAFFICKING.

Section 924 of title 18, United States Code, as amended by section 407(a), is amended by adding at the end the following new subsection:

"(l) Whoever, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A), travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.".

SEC. 669. PROHIBITION OF TRANSACTIONS INVOLVING STOLEN FIREARMS WHICH HAVE MOVED IN INTERSTATE OR FOREIGN COMMERCE.

Section 922(j) of title 18, United States Code, is amended to read as follows:

"(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.".

SEC. 670. POSSESSION OF EXPLOSIVES BY FELONS AND OTHERS.

Section 842(i) of title 18, United States Code, is amended by inserting "or possess" after "to receive".

SEC. 671. DISPOSITION OF FORFEITED FIREARMS.

Subsection 5872(b) of the Internal Revenue Code of 1986 is amended to read as follows:

"(b) DISPOSAL.—In the case of the forfeiture of any firearm, where there is no remission or mitigation of forfeiture thereof—

"(1) the Secretary may retain the firearm for official use of the Department of the Treasury or, if not so retained, offer to transfer the weapon without charge to any other executive department or independent establishment of the Government for official use by it and, if the offer is accepted, so transfer the firearm;

"(2) if the firearm is not disposed of pursuant to paragraph (1), is a firearm other than a machinegun or firearm forfeited for a violation of this chapter, is a firearm that in the opinion of the Secretary is not so defective that its disposition pursuant to this paragraph would create an unreasonable risk of a malfunction likely to result in death or bodily injury, and is a firearm which (in the judgment of the Secretary, taking into consideration evidence of present value and evidence that like firearms are not available except as collector's items, or that the value of like firearms available in ordinary commercial channels is substantially less) derives a substantial part of its monetary value from the fact that it is novel or rare or because of its association with some historical figure, period, or event, the Secretary may sell the firearm, after public notice, at public sale to a dealer licensed under chapter 44 of title 18, United States Code;

"(3) if the firearm has not been disposed of pursuant to paragraph (1) or (2), the Secretary shall transfer the firearm to the Administrator of General Services, who shall destroy or provide for the destruction of such firearm; and

"(4) no decision or action of the Secretary pursuant to this subsection shall be subject to judicial review.".

SEC. 672. DEFINITION OF BURGLARY UNDER THE ARMED CAREER CRIMINAL STATUTE.

Section 924(e)(2) of title 18, United States Code, is amended—

(1) by striking "and" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; and"; and

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

"(D) the term 'burglary' means a crime that—

"(i) consists of entering or remaining surreptitiously within a building that is the property of another person with intent to engage in conduct constituting a Federal or State offense; and

"(ii) is punishable by a term of imprisonment exceeding 1 year.".

Subtitle D—Exclusionary Rule

SEC. 681. ADMISSIBILITY OF CERTAIN EVIDENCE.

(a) IN GENERAL.—Chapter 223 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 3509. Admissibility of evidence obtained by search or seizure

"(a) EVIDENCE OBTAINED BY OBJECTIVELY REASONABLE SEARCH OR SEIZURE.—Evidence that is obtained as a result of a search or seizure shall not be excluded in a proceeding in a court of the United States on the ground that the search or seizure was in violation of the fourth amendment to the Constitution of the United States, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the fourth amendment. The fact that evidence was obtained pursuant to and within the scope of a warrant constitutes prima facie evidence of the existence of such circumstances.

"(b) EVIDENCE NOT EXCLUDABLE BY STATUTE OR RULE.—Evidence shall not be excluded in a proceeding in a court of the United States on the ground that it was obtained in violation of a statute, an administrative rule or regulation, or a rule of procedure unless exclusion is expressly authorized by statute or by a rule prescribed by the Supreme Court pursuant to statutory authority.

"(c) RULE OF CONSTRUCTION.—This section shall not be construed to require or authorize the exclusion of evidence in any proceeding.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 223 of title 28, United States Code, is amended by adding at the end the following new item:

"3509. Admissibility of evidence obtained by search or seizure.".

Subtitle E—Pre-Trial Interrogation

SEC. 691. PRE-TRIAL INTERROGATION.

It is the sense of the Congress that the Attorney General shall instruct all United States Attorneys, and implement policies consistent therewith, that confessions obtained in conformity with section 3501 of title 18, United States Code will be offered into evidence.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

Subtitle A—General Habeas Corpus Reform

SEC. 701. SHORT TITLE.

This title may be cited as the "Habeas Corpus Reform Act of 1993".

SEC. 702. PERIOD OF LIMITATION.

Section 2244 of title 28, United States Code, is amended by adding at the end the following new subsection:

"(d) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

"(1) the time at which State remedies are exhausted;

"(2) the time at which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, where the applicant was prevented from filing by such State action;

"(3) the time at which the Federal right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.".

SEC. 703. APPEAL.

Section 2253 of title 28, United States Code, is amended to read as follows:

"§ 2253. Appeal

"In a habeas corpus proceeding or a proceeding under section 2255 before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

"There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

"An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, or from the final order in a proceeding under section 2255, unless a circuit justice or judge issues a certificate of probable cause.".

SEC. 704. AMENDMENT OF FEDERAL RULES OF APPELLATE PROCEDURE.

Rule 22 of the Federal Rules of Appellate Procedure is amended to read as follows:

"Rule 22. Habeas corpus and section 2255 proceedings

"(a) *Application for an Original Writ of Habeas Corpus.*—An application for a writ of habeas corpus shall be made to the appropriate

district court. If application is made to a circuit judge, the application will ordinarily be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge is not favored; the proper remedy is by appeal to the court of appeals from the order of the district court denying the writ.

"(b) *Necessity of Certificate of Probable Cause for Appeal.*—In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, and in a motion proceeding pursuant to section 2255 of title 28, United States Code, an appeal by the applicant or movant may not proceed unless a circuit judge issues a certificate of probable cause. If a request for a certificate of probable cause is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or the Government or its representative, a certificate of probable cause is not required.".

SEC. 705. SECTION 2254 AMENDMENTS.

Section 2254 of title 28, United States Code, is amended—

(1) by amending subsection (b) to read as follows:

"(b) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the applicant. An application may be denied on the merits notwithstanding the failure of the applicant to exhaust the remedies available in the courts of the State.";

(2) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(3) by inserting after subsection (c) the following new subsection:

"(d) An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that has been fully and fairly adjudicated in State proceedings.";

(4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:

"(e) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a full and fair determination of a factual issue made in the case by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting this presumption by clear and convincing evidence."; and

(5) by adding at the end the following new subsection:

"(h) In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a petitioner who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18, United States Code.".

SEC. 706. SECTION 2255 AMENDMENTS.

Section 2255 of title 28, United States Code, is amended—

(1) by striking the second paragraph and the penultimate paragraph; and

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

"A two-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

"(1) the time at which the judgment of conviction becomes final;

"(2) the time at which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, where the movant was prevented from making a motion by such governmental action;

"(3) the time at which the right asserted was initially recognized by the Supreme Court, where the right has been newly recognized by the Court and is retroactively applicable; or

"(4) the time at which the factual predicate of the claim or claims presented could have been discovered through the exercise of reasonable diligence.

"In all proceedings brought under this section, and any subsequent proceedings on review, appointment of counsel for a movant who is or becomes financially unable to afford counsel shall be in the discretion of the court, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18, United States Code.".

Subtitle B—Death Penalty Litigation Procedures

SEC. 711. SHORT TITLE.

This subtitle may be cited as the "Death Penalty Litigation Procedures Act of 1993".

SEC. 712. DEATH PENALTY LITIGATION PROCEDURES.

(a) ADDITION OF CHAPTER TO TITLE 28, UNITED STATES CODE.—Title 28, United States Code, is amended by inserting after chapter 153 the following new chapter:

"CHAPTER 154—SPECIAL HABEAS CORPUS PROCEDURES IN CAPITAL CASES

"Sec.

"2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment.
"2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions.
"2258. Filing of habeas corpus petition; time requirements; tolling rules.
"2259. Evidentiary hearings; scope of Federal review; district court adjudication.
"2260. Certificate of probable cause inapplicable.
"2261. Application to state unitary review procedures.
"2262. Limitation periods for determining petitions.
"2263. Rule of construction.

"§ 2256. Prisoners in State custody subject to capital sentence; appointment of counsel; requirement of rule of court or statute; procedures for appointment

"(a) APPLICATION OF CHAPTER.—This chapter shall apply to cases arising under section 2254 brought by prisoners in State custody who are subject to a capital sentence. It shall apply only if the provisions of subsections (b) and (c) are satisfied.

"(b) ESTABLISHMENT OF APPOINTMENT MECHANISM.—This chapter is applicable if a State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation and payment of reasonable litigation expenses of competent counsel in State postconviction proceedings brought by indigent prisoners whose capital convictions and sentences have been upheld on direct appeal to the court of last resort in the State or have otherwise become final for State law purposes. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(c) OFFER OF COUNSEL.—Any mechanism for the appointment, compensation and reimbursement of counsel as provided in subsection (b) must offer counsel to all State prisoners under capital sentence and must provide for the entry of an order by a court of record—

"(1) appointing 1 or more counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

"(2) finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

"(3) denying the appointment of counsel upon a finding that the prisoner is not indigent.

"(d) PREVIOUS REPRESENTATION.—No counsel appointed pursuant to subsections (b) and (c) to represent a State prisoner under capital sentence shall have previously represented the prisoner at trial or on direct appeal in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(e) NO GROUND FOR RELIEF.—The ineffectiveness or incompetence of counsel during State or Federal collateral postconviction proceedings in a capital case shall not be a ground for relief in a proceeding arising under section 2254. This limitation shall not preclude the appointment of different counsel, on the court's own motion or at the request of the prisoner, at any phase of State or Federal postconviction proceedings on the basis of the ineffectiveness or incompetence of counsel in such proceedings.

"§ 2257. Mandatory stay of execution; duration; limits on stays of execution; successive petitions

"(a) STAY.—Upon the entry in the appropriate State court of record of an order under section 2256(c), a warrant or order setting an execution date for a State prisoner shall be stayed upon application to any court that would have jurisdiction over any proceedings filed under section 2254. The application must recite that the State has invoked the postconviction review procedures of this chapter and that the scheduled execution is subject to stay.

"(b) EXPIRATION OF STAY.—A stay of execution granted pursuant to subsection (a) shall expire if—

"(1) a State prisoner fails to file a habeas corpus petition under section 2254 within the time required in section 2258, or fails to make a timely application for court of appeals review following the denial of such a petition by a district court;

"(2) upon completion of district court and court of appeals review under section 2254 the petition for relief is denied and—

"(A) the time for filing a petition for certiorari has expired and no petition has been filed;

"(B) a timely petition for certiorari was filed and the Supreme Court denied the petition; or

"(C) a timely petition for certiorari was filed and upon consideration of the case, the Supreme Court disposed of it in a manner that left the capital sentence undisturbed; or

"(3) before a court of competent jurisdiction, in the presence of counsel and after having been advised of the consequences of his decision, a State prisoner under capital sentence waives the right to pursue habeas corpus review under section 2254.

"(c) LIMITATION ON FURTHER STAY.—If one of the conditions in subsection (b) has occurred, no Federal court thereafter shall have the authority to enter a stay of execution or grant relief in a capital case unless—

"(1) the basis for the stay and request for relief is a claim not previously presented in the State or Federal courts;

"(2) the failure to raise the claim is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State or Federal postconviction review; and

"(3) the facts underlying the claim would be sufficient, if proven, to undermine the court's confidence in the determination of guilt on the offense or offenses for which the death penalty was imposed.

"§ 2258. Filing of habeas corpus petition; time requirements; tolling rules

"Any petition for habeas corpus relief under section 2254 must be filed in the appropriate district court within 180 days from the filing in the appropriate State court of record of an order under section 2256(c). The time requirements established by this section shall be tolled—

"(1) from the date that a petition for certiorari is filed in the Supreme Court until the date of final disposition of the petition if a State prisoner files the petition to secure review by the Supreme Court of the affirmance of a capital sentence on direct review by the court of last resort of the State or other final State court decision on direct review;

"(2) during any period in which a State prisoner under capital sentence has a properly filed request for postconviction review pending before a State court of competent jurisdiction; if all State filing rules are met in a timely manner, this period shall run continuously from the date that the State prisoner initially files for postconviction review until final disposition of the case by the highest court of the State, but the time requirements established by this section are not tolled during the pendency of a petition for certiorari before the Supreme Court except as provided in paragraph (1); and

"(3) during an additional period not to exceed 60 days, if—

"(A) a motion for an extension of time is filed in the Federal district court that would have proper jurisdiction over the case upon the filing of a habeas corpus petition under section 2254; and

"(B) a showing of good cause is made for the failure to file the habeas corpus petition within the time period established by this section.

"§ 2259. Evidentiary hearings; scope of Federal review; district court adjudication

"(a) REVIEW OF RECORD; HEARING.—Whenever a State prisoner under a capital sentence files a petition for habeas corpus relief to which this chapter applies, the district court shall—

"(1) determine the sufficiency of the record for habeas corpus review based on the claims actually presented and litigated in the State courts except when the prisoner can show that the failure to raise or develop a claim in the State courts is—

"(A) the result of State action in violation of the Constitution or laws of the United States;

"(B) the result of the Supreme Court recognition of a new Federal right that is retroactively applicable; or

"(C) based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim for State postconviction review; and

"(2) conduct any requested evidentiary hearing necessary to complete the record for habeas corpus review.

"(b) ADJUDICATION.—Upon the development of a complete evidentiary record, the district court shall rule on the claims that are properly before it, but the court shall not grant relief from a judgment of conviction or sentence on the basis of any claim that was fully and fairly adjudicated in State proceedings.

"§ 2260. Certificate of probable cause inapplicable

"The requirement of a certificate of probable cause in order to appeal from the district court to the court of appeals does not apply to habeas corpus cases subject to this chapter except when a second or successive petition is filed.

"§ 2261. Application to State unitary review procedure

"(a) IN GENERAL.—For purposes of this section, the term 'unitary review procedure' means a State procedure that authorizes a person under sentence of death to raise, in the course of direct review of the judgment, such claims as could be raised on collateral attack. This chapter shall apply, as provided in this section, in relation to a State unitary review procedure if the State establishes by rule of its court of last resort or by statute a mechanism for the appointment, compensation, and payment of reasonable litigation expenses of competent counsel in the unitary review proceedings, including expenses relating to the litigation of collateral claims in the proceedings. The rule of court or statute must provide standards of competency for the appointment of such counsel.

"(b) OFFER OF COUNSEL.—A unitary review procedure, to qualify under this section, must include an offer of counsel following trial for the purpose of representation on unitary review, and entry of an order, as provided in section 2256(c), concerning appointment of counsel or waiver or denial of appointment of counsel for that purpose. No counsel appointed to represent the prisoner in the unitary review proceedings shall have previously represented the prisoner at trial in the case for which the appointment is made unless the prisoner and counsel expressly request continued representation.

"(c) APPLICATION OF OTHER SECTIONS.—Sections 2257, 2258, 2259, 2260, and 2262 shall apply in relation to cases involving a sentence of death from any State having a unitary review procedure that qualifies under this section. References to State 'post-conviction review' and 'direct review' in those sections shall be understood as referring to unitary review under the State procedure. The references in sections 2257(a) and 2258 to 'an order under section 2256(c)' shall be understood as referring to the post-trial order under subsection (b) concerning representation in the unitary review proceedings, but if a transcript of the trial proceedings is unavailable at the time of the filing of such an order in the appropriate State court, the start of the 180-day limitation period under section 2258 shall be deferred until a transcript is made available to the prisoner or the prisoner's counsel.

"§ 2262. Limitation periods for determining petitions

"(a) IN GENERAL.—The adjudication of any petition under section 2254 that is subject to this chapter, and the adjudication of any motion under section 2255 by a person under sentence of death, shall be given priority by the district court and by the court of appeals over all noncapital matters. The adjudication of such a petition or motion shall be subject to the following time limitations:

"(1) A Federal district court shall determine such a petition or motion within 110 days of filing.

"(2)(A) The court of appeals shall hear and determine any appeal relating to such a petition or motion within 90 days after the notice of appeal is filed.

"(B) The court of appeals shall decide any application for rehearing en banc within 20 days of the filing of the application unless a responsive pleading is required, in which case the court of appeals shall decide the application within 20 days of the filing of the responsive pleading. If en banc consideration is granted, the en banc court shall determine the appeal within 90 days of the decision to grant such consideration.

"(3) The Supreme Court shall act on any application for a writ of certiorari relating to such a petition or motion within 90 days after the application is filed.

"(b) APPLICATION OF SECTION.—The time limitations under subsection (a) shall apply to an initial petition or motion, and to any second or successive petition or motion. The same limitations shall also apply to the redetermination of a petition or motion or related appeal following a remand by the court of appeals or the Supreme Court for further proceedings, and in such a case the limitation period shall run from the date of the remand.

"(c) RULE OF CONSTRUCTION.—The time limitations under this section shall not be construed to entitle a petitioner or movant to a stay of execution, to which the petitioner or movant would otherwise not be entitled, for the purpose of litigating any petition, motion, or appeal.

"(d) NO GROUND FOR RELIEF.—The failure of a court to meet or comply with the time limitations under this section shall not be a ground for granting relief from a judgment of conviction or sentence. The State or Government may enforce the time limitations under this section by applying to the court of appeals or the Supreme Court for a writ of mandamus.

"(e) REPORT.—The Administrative Office of the United States Courts shall report annually to Congress on the compliance by the courts with the time limits established in this section.

"§ 2263. Rule of construction

"This chapter shall be construed to promote the expeditious conduct and conclusion of State and Federal court review in capital cases.".

(b) TECHNICAL AMENDMENT.—The part analysis for part IV of title 28, United States Code, is amended by adding after the item relating to chapter 153 the following new item:

"154. Special habeas corpus procedures in capital cases ..... 2256.".

Subtitle C—Equalization of Capital Habeas Corpus Litigation Funding

SEC. 721. FUNDING FOR DEATH PENALTY PROSECUTIONS.

Part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et seq.) is amended by inserting after section 511 the following new section:

"FUNDING FOR DEATH PENALTY PROSECUTIONS

"SEC. 511A. Notwithstanding any other provision of this part, the Director shall provide grants to the States, from the funding allocated pursuant to section 511, for the purpose of supporting litigation pertaining to Federal habeas corpus petitions in capital cases. The total funding available for such grants within any fiscal year shall be equal to the funding provided to capital resource centers, pursuant to Federal appropriation, in the same fiscal year.".

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A—Penalties and Offenses

SEC. 801. PROVIDING MATERIAL SUPPORT TO TERRORISM.

(a) OFFENSE.—Chapter 113A of title 18, United States Code, as amended by section 631(b), is amended by adding the following new section:

"§ 2339A. Providing material support to terrorists

"A person who, within the United States, provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used to facilitate a violation of section 32, 36, 351, 844(f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2331, or 2339 of this title, or section 902(i) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1472(i)), or to facilitate the concealment or an escape from the commission of any of the foregoing, shall be fined under this title, imprisoned not more than 10 years, or both. For purposes of this section, material support or resources shall include, but not be limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, as amended by section 631(c), is amended by adding the following new item:

"2339A. Providing material support to terrorists.".

SEC. 802. ENHANCED PENALTIES FOR CERTAIN OFFENSES.

(a) INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT.—Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) is amended—

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

(2) in subsection (b) by striking "$50,000" and inserting "$1,000,000".

(b) PASSPORTS AND VISAS.—(1) Section 1541 of title 18, United States Code, is amended—

(A) by striking "$500" and inserting "$250,000"; and

(B) by striking "one year" and inserting "5 years".

(2) Sections 1542, 1543, 1544 and 1546 of title 18, United States Code, are each amended—

(A) by striking "$2,000" and inserting "$250,000"; and

(B) by striking "five years" and inserting "10 years".

(3) Section 1545 of title 18, United States Code, is amended—

(A) by striking "$2,000" and inserting $250,000"; and

(B) by striking "three years" and inserting "10 years".

SEC. 803. SENTENCING GUIDELINES INCREASE FOR TERRORIST CRIMES.

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an increase of not less than three levels in the base offense level for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime.

SEC. 804. EXTENSION OF THE STATUTE OF LIMITATIONS FOR CERTAIN TERRORISM OFFENSES.

(a) OFFENSE.—Chapter 213 of title 18, United States Code, is amended by inserting after section 2385 the following new section:

"§ 3286. Extension of statute of limitations for certain terrorism offenses

"Notwithstanding section 3282, no person shall be prosecuted, tried, or punished for any offense involving a violation of section 32 (aircraft destruction), section 36 (airport violence), section 112 (assaults upon diplomats), section 351 (crimes against Congressmen or Cabinet officers), section 1116 (crimes against diplomats), section 1203 (hostage taking), section 1361 (willful injury to government property), section 1751 (crimes against the President), section 2280 (maritime violence), section 2281 (maritime platform violence), section 2331 (terrorist acts abroad against United States nationals), section 2339 (use of weapons of mass destruction), or section 2340A (torture) of this title or section 902(i), (j), (k), (l), or (n) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1572(i), (j), (k), (l), or (n)), unless the indictment is found or the information is instituted within 10 years after such offense shall have been committed.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 213 of title 18, United States Code, is amended by inserting after the item for section 3285 the following new item:

"3286. Extension of statute of limitations for certain terrorism offenses.".

SEC. 805. FORFEITURE OF ASSETS USED TO SUPPORT TERRORISTS.

Section 982(a) of title 18, United States Code, is amended by adding at the end the following new paragraph:

"(5) Any property, real or personal—

"(A) used or intended for use in committing or to facilitate the concealment or an escape from the commission of; or

"(B) constituting or derived from the gross profits or other proceeds obtained from,

a violation of section 32, 36, 351, 844 (f) or (i), 1114, 1116, 1203, 1361, 1363, 1751, 2280, 2281, 2332, or 2339A of this title or section 902(i) of the Federal Aviation Act of 1958 (49 U.S.C. 1472(i)).".

SEC. 806. ALIEN WITNESS COOPERATION.

(a) AMENDMENT OF CHAPTER 224 OF TITLE 18.—Chapter 224 of title 18, United States Code, is amended—

(1) by redesignating section 3528 as section 3529; and

(2) by inserting after section 3527 the following new section:

"§ 3528. Aliens; waiver of admission requirements

"(a) IN GENERAL.—Upon authorizing protection to any alien under this chapter, the United States shall provide the alien with appropriate immigration visas and allow the alien to remain in the United States so long as that alien abides by all laws of the United States and guidelines, rules and regulations for protection. The Attorney General may determine that the granting of permanent resident status to such alien is in the public interest and necessary for the safety and protection of such alien without regard to the alien's admissibility under immigration or any other laws and regulations or the failure to comply with such laws and regulations pertaining to admissibility.

"(b) ALIEN WITH FELONY CONVICTIONS.—Notwithstanding any other provision of this chapter, an alien who would not be excluded because of felony convictions shall be considered for permanent residence on a conditional basis for a period of 2 years. Upon a showing that the alien is still being provided protection, or that protection remains available to the alien in accordance with this chapter, or that the alien is still cooperating with the Government and has maintained good moral character, the Attorney General shall remove the conditional basis of the status effective as of the second anniversary of the alien's obtaining the status of admission for permanent residence. Permanent resident status shall not be granted to an alien who would be excluded because of felony convictions unless the Attorney General determines, pursuant to regulations which shall be prescribed by the Attorney General, that granting permanent residence status to the alien is necessary in the interests of justice and comports with safety of the community.

"(c) LIMIT ON NUMBER OF ALIENS.—The number of aliens and members of their immediate families entering the United States under the authority of this section shall in no case exceed 200 persons in any fiscal year. The decision to grant or deny permanent resident status under this section is at the discretion of the Attorney General and shall not be subject to judicial review.

"(d) DEFINITIONS.—As used in this section, the terms 'alien' and 'United States' have the meanings stated in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 224 of title 18, United States Code, is amended by striking the item relating to section 3528 and inserting the following:

"3528. Aliens; waiver of admission requirements.

"3529. Definition.".

SEC. 807. TERRITORIAL SEA EXTENDING TO 12 MILES INCLUDED IN SPECIAL MARITIME AND TERRITORIAL JURISDICTION.

The Congress declares that all the territorial sea of the United States, as defined by Presidential Proclamation 5928 of December 27, 1988, is part of the United States, subject to its sovereignty, and, for purposes of Federal criminal jurisdiction, is within the special maritime and territorial jurisdiction of the United States wherever that term is used in title 18, United States Code.

SEC. 808. ASSIMILATED CRIMES IN EXTENDED TERRITORIAL SEA.

Section 13 of title 18, United States Code is amended—

(1) in subsection (a), by inserting after "title" the following: "or on, above, or below any portion of the territorial sea of the United States not within the territory of any State, territory, possession, or district"; and

(2) by inserting at the end the following new subsection:

"(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, territory, possession, or

district, such waters (including the airspace above and the seabed and subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed for purposes of subsection (a) to lie within the area of the State, territory, possession, or district within which it would lie if the boundaries of the State, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.".

SEC. 809. JURISDICTION OVER CRIMES AGAINST UNITED STATES NATIONALS ON CERTAIN FOREIGN SHIPS.

Section 7 of title 18, United States Code, is amended by inserting at the end the following new paragraph:

"(8) Any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.".

SEC. 810. PENALTIES FOR INTERNATIONAL TERRORIST ACTS.

Section 2332 of title 18, United States Code, as redesignated by section 601(a)(2), is amended—

(1) in subsection (a)—

(A) in paragraph (2) by striking "ten" and inserting "20"; and

(B) in paragraph (3) by striking "three" and inserting "10"; and

(2) in subsection (c) by striking "five" and inserting "10".

SEC. 811. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each of fiscal years 1994 and 1995, in addition to any other amounts specified in appropriations Acts, for counterterrorist operations and programs—

(1) for the Federal Bureau of Investigation, $30,000,000;

(2) for the Department of State, $10,000,000; and

(3) for the Immigration and Naturalization Service, $20,000,000.

SEC. 812. INTERNATIONAL PARENTAL KIDNAPPING.

(a) IN GENERAL.—Chapter 55 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1204. International parental kidnapping

"(a) OFFENSE.—Whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title, imprisoned not more than 3 years, or both.

"(b) DEFINITIONS.—As used in this section—

"(1) the term 'child' means a person who has not attained the age of 16 years; and

"(2) the term 'parental rights', with respect to a child, means the right to physical custody of the child—

"(A) whether joint or sole (and includes visiting rights); and

"(B) whether arising by operation of law, court order, or legally binding agreement of the parties.

"(c) RULE OF CONSTRUCTION.—This section does not detract from The Hague Convention on the Civil Aspects of International Parental Child Abduction, done at The Hague on October 25, 1980.".

(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 55 of title 18, United States Code, is amended by adding at the end the following new item:

"1204. International parental kidnapping.".

SEC. 813. FOREIGN MURDER OF UNITED STATES NATIONALS.

(a) IN GENERAL.—Chapter 51 of title 18, United States Code, as amended by section 141(a), is amended by adding at the end the following new section:

"§ 1120. Foreign murder of United States nationals

"(a) OFFENSE.—Whoever kills or attempts to kill a national of the United States while such national is outside the United States but within the jurisdiction of another country shall be punished as provided under sections 1111, 1112, and 1113.

"(b) APPROVAL OF PROSECUTION.—No prosecution may be instituted against any person under this section except upon the written approval of the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, which function of approving prosecutions may not be delegated. No prosecution shall be approved if prosecution has been previously undertaken by a foreign country for the same act or omission.

"(c) CRITERIA FOR APPROVAL.—No prosecution shall be approved under this section unless the Attorney General, in consultation with the Secretary of State, determines that the act or omission took place in a country in which the person is no longer present, and the country lacks the ability to lawfully secure the person's return. A determination by the Attorney General under this subsection is not subject to judicial review.

"(d) ASSISTANCE FROM OTHER AGENCIES.—In the course of the enforcement of this section and notwithstanding any other law, the Attorney General may request assistance from any Federal, State, local, or foreign agency, including the Army, Navy, and Air Force.

"(e) DEFINITION.—As used in this section, the term 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) TECHNICAL AMENDMENTS.—(1) Section 1117 of title 18, United States Code, is amended by striking "or 1116" and inserting "1116, or 1120".

(2) The chapter analysis for chapter 51 of title 18, United States Code, as amended by section 141(b), is amended by adding at the end the following new item:

"1120. Foreign murder of United States nationals.".

SEC. 814. EXTRADITION.

(a) SCOPE.—Section 3181 of title 18, United States Code, is amended—

(1) by inserting "(a) IN GENERAL.—" before "The provisions of this chapter"; and

(2) by adding at the end the following new subsections:

"(b) SURRENDER WITHOUT REGARD TO EXISTENCE OF EXTRADITION TREATY.—This chapter shall be construed to permit, in the exercise of comity, the surrender of persons who have committed crimes of violence against nationals of the United States in foreign countries without regard to the existence of any treaty of extradition with such foreign government if the Attorney General certifies in writing that—

"(1) evidence has been presented by the foreign government that indicates that, if the offenses had been committed in the United States, they would constitute crimes of violence (as defined under section 16); and

"(2) the offenses charged are not of a political nature.

"(c) DEFINITION.—In this section, 'national of the United States' has the meaning stated in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).".

(b) FUGITIVES.—Section 3184 of title 18, United States Code, is amended—

(1) in the first sentence by inserting after "United States and any foreign government," the following: "or in cases arising under section 3181(b),";

(2) in the first sentence by inserting after "treaty or convention," the following: "or provided for under section 3181(b),"; and

(3) in the third sentence by inserting after "treaty or convention," the following: "or under section 3181(b),".

SEC. 815. FBI ACCESS TO TELEPHONE SUBSCRIBER INFORMATION.

(a) REQUIRED CERTIFICATION.—Section 2709(b) of title 18, United States Code, is amended to read as follows:

"(b) REQUIRED CERTIFICATION.—

"(1) NAME, ADDRESS, AND LENGTH OF SERVICE ONLY.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director, may request the name, address, and length of service of a person or entity if the Director (or designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the information sought is relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that communication facilities registered in the name of the person or entity have been used, through the services of the provider, in communication with—

"(i) an individual who is engaging or has engaged in international terrorism (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States; or

"(ii) a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or an agent of a foreign power (as defined in that section) under circumstances giving reason to believe that the communication concerned international terrorism (as defined in that section) or clandestine intelligence activities that involve or may involve a violation of the criminal statutes of the United States.

"(2) NAME, ADDRESS, LENGTH OF SERVICE, AND TOLL BILLING RECORDS.—The Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director, may request the name, address, length of service, and toll billing records of a person or entity if the Director (or designee in a position not lower than Deputy Assistant Director) certifies in writing to the wire or electronic communication service provider to which the request is made that—

"(A) the name, address, length of service, and toll billing records sought are relevant to an authorized foreign counterintelligence investigation; and

"(B) there are specific and articulable facts giving reason to believe that the person or entity to whom the information sought pertains is a foreign power (as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801)) or an agent of a foreign power (as defined in that section).".

(b) REPORT TO JUDICIARY COMMITTEES.—Section 2709(e) of title 18, United States Code, is amended by adding after "Senate" the following: ", and the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate,".

Subtitle B—Removal of Alien Terrorists

SEC. 821. REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

"(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

"(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(4) the term 'special court' means the court described in subsection (c) of this section; and

"(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

"(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

"(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

"(2) an alien terrorist is physically present in the United States; and

"(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

"(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to 7 judges from up to 7 United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

"(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to 50 U.S.C. 1803(a).

"(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

"(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified;

"(B) a deportation proceeding described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

"(C) the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

"(3) The alien shall have a right to introduce evidence on his own behalf, and except as provided in paragraph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6) If the judge determines—

"(A) that the substituted evidence described in paragraph (4)(B) will provide the alien with substantially the same ability to make his defense as would disclosure of the specific evidence, or

"(B) that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under such subsection.

"(2)(A) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

"(B) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. If the Attorney General is appealing a determination under subsection (d) or (e), the court of appeals shall consider such appeal in camera and ex parte.".

Subtitle C—Enhanced Entry Controls

SEC. 831. ADMISSIONS FRAUD.

(a) EXCLUSION FOR FRAUDULENT DOCUMENTS AND FAILURE TO PRESENT DOCUMENTS.—Section 212(a)(6)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)) is amended—

(1) by striking "(C) MISREPRESENTATION" and inserting in lieu thereof the following:

"(C) FRAUD, MISREPRESENTATION, AND FAILURE TO PRESENT DOCUMENTS";

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

"(iii) FRAUDULENT DOCUMENTS AND FAILURE TO PRESENT DOCUMENTS.—

"(I) Any alien who, in seeking entry to the United States or boarding a common carrier for the purpose of coming to the United States, presents any document which, in the determination of the immigration officer, is forged, counterfeit, altered, falsely made, stolen, or inapplicable to the alien presenting the document, or otherwise contains a misrepresentation of a material fact, is excludable.

"(II) Any alien who, in boarding a common carrier for the purpose of coming to the United States, presents a document that relates or purports to relate to the alien's eligibility to enter the United States, and fails to present such document to an immigration officer upon arrival at a port of entry into the United States, is excludable.".

(b) AVAILABILITY OF ASYLUM AND OTHER DISCRETIONARY RELIEF.—

(1) Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following new subsection:

"(e) FRAUD.—

"(1) APPLICATION OF FRAUD EXCLUSION.—Notwithstanding subsection (a) and except as provided in paragraph (2), any alien who is excludable under section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i) may not apply for or be granted asylum.

"(2) EXCEPTION.—(A) The limitation under paragraph (1) shall not apply if the action upon which the exclusion is based was pursuant to direct departure from a country in which—

"(i) the alien has a credible fear of persecution; or

"(ii) there is a significant danger that the alien would be returned to a country in which the alien would have a credible fear of persecution.

"(B) For the purposes of subparagraph (A), an alien may be considered to have a credible fear of persecution if—

"(i) it is more probable than not that the statements made by the alien in support of his or her claim are true; and

"(ii) there is a significant possibility, in light of such statements and of such other facts as are known to the officer about country conditions, that the alien could establish eligibility as a refugee within the meaning of section 101(a)(42)(A).".

(2) Section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended in the third sentence by inserting before the period "or to any alien who is excludable pursuant to section 212(a)(6)(C)(iii)".

SEC. 832. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

"(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(2)(A) If the examining immigration officer determines that an alien seeking entry—

"(i)(I) is excludable under section 212(a)(6)(C)(iii), or

"(II) is excludable under section 212(a)(7)(A)(i),

"(ii) does not have any reasonable basis for legal entry into the United States, and

"(iii) does not indicate an intention to apply for asylum under section 208,

the alien shall be specially excluded from entry into the United States without a hearing.

"(B) The examining immigration officer shall refer to an immigration officer, specially trained to conduct interviews and make determinations bearing on eligibility for asylum, any alien who is (i) excludable under section 212(a)(6)(C)(iii) or section 212(a)(7)(A) (i) and (ii) who has indicated an intention to apply for asylum. Such an alien shall not be considered to have entered the United States for purposes of this Act.

"(C) An alien under subparagraph (B) who is determined by an immigration officer, specially trained to conduct interviews and make determinations bearing on eligibility for asylum, to be excludable and ineligible for the exception under section 208(e)(2), shall be specially excluded and deported from the United States without further hearing.

"(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before an immigration judge.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (2)(A) or (2)(C), or

"(iii) if the conditions described in section 273(d) exist.

"(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before an immigration judge for a hearing on exclusion of the alien.

"(5) The Attorney General shall establish procedures that ensure that aliens are not specially excluded under paragraph (2)(A) without an inquiry into their reasons for seeking entry into the United States.

"(6)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

"(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer may be said to have entered the United States without inspection. Such an alien is subject to deportation pursuant to section 241(a)(1)(B).".

SEC. 833. JUDICIAL REVIEW.

Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) (as amended by section 732) is amended by adding after subsection (c) the following new subsections:

"(d) HABEAS CORPUS REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i). In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (1) is an alien, and (2) was ordered excluded from the United States pursuant to section 235(b)(2).

"(e) OTHER LIMITS ON JUDICIAL REVIEW AND ACTION.—Notwithstanding any other provision of law, no court shall have jurisdiction (1) to review the procedures established by the Attorney General for the determination of exclusion pursuant to section 212(a)(6)(C)(iii) or section 212(a)(7)(A)(i), or (2) to enter declaratory or injunctive relief with respect to the implementation of subsection (b)(2). Regardless of the nature of the suit or claim, no court shall have jurisdiction except by habeas corpus petition as provided in subsection (d) to consider the validity of any adjudication or determination of special exclusion or to provide declaratory or injunctive relief with respect to the special exclusion of any alien.

"(f) COLLATERAL ENFORCEMENT PROCEEDINGS.—In any action brought for the assessment of penalties for improper entry or reentry of an alien under section 275 or 276, no court shall have jurisdiction to hear claims collaterally attacking the validity of orders of exclusion, special exclusion, or deportation entered under sections 235, 236, and 242.".

SEC. 834. CONFORMING AMENDMENTS.

Section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 835. EFFECTIVE DATE.

Except as otherwise provided, the amendments made by this subtitle shall take effect on the date of the enactment of this Act and shall apply to aliens who arrive in or seek admission to the United States on or after that date.

TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE

Subtitle A—Victims' Rights

SEC. 901. RESTITUTION AMENDMENTS.

Section 3663(b) of title 18, United States Code, is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (4) the following new paragraph:

"(4) in any case, reimburse the victim for necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense; and".

(b) SUSPENSION OF FEDERAL BENEFITS.—Section 3663 of title 18, United States Code, is amended—

(1) by redesignating subsections (g) and (h) as subsections (h) and (i), respectively; and

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

"(g)(1) If the defendant is delinquent in making restitution in accordance with any schedule of payments or any requirement of immediate payment imposed under this section, the court may, after a hearing, suspend the defendant's eligibility for all Federal benefits until such time as the defendant demonstrates to the court good-faith efforts to return to such schedule.

"(2) In this subsection—

"(A) 'Federal benefits'—

"(i) means any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

"(ii) does not include any retirement, welfare, Social Security, health, disability, veterans benefit, public housing, or other similar benefit, or any other benefit for which payments or services are required for eligibility.

"(B) 'veterans benefit' means all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States.".

SEC. 902. RIGHT OF THE VICTIM TO AN IMPARTIAL JURY.

Rule 24(b) of the Federal Rules of Criminal Procedure is amended by striking "the Government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges" and inserting "each side is entitled to 6 peremptory challenges".

SEC. 903. MANDATORY RESTITUTION AND OTHER PROVISIONS.

(a) ORDER OF RESTITUTION.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking "may order" and inserting "shall order"; and

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

"(4) In addition to ordering restitution of the victim of the offense of which a defendant is convicted, a court may order restitution of any person who, as shown by a preponderance of evidence, was harmed physically, emotionally, or pecuniarily, by unlawful conduct of the defendant during—

"(A) the criminal episode during which the offense occurred; or

"(B) the course of a scheme, conspiracy, or pattern of unlawful activity related to the offense.";

(2) in subsection (b)(1)(A) by striking "impractical" and inserting "impracticable";

(3) in subsection (b)(2) by inserting "emotional or" after "resulting in";

(4) in subsection (c) by striking "If the Court decides to order restitution under this section, the" and inserting "The";

(5) by striking subsections (d), (e), (f), (h), and (i), as redesignated by section 871(b)(1);

(6) by redesignating subsection (g), as added by section 871(b)(2), as subsection (d); and

(7) by adding at the end the following new subsections:

"(e)(1) The court shall order restitution to a victim in the full amount of the victim's losses as determined by the court and without consideration of—

"(A) the economic circumstances of the offender; or

"(B) the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source.

"(2) Upon determination of the amount of restitution owed to each victim, the court shall specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

"(A) the financial resources and other assets of the offender;

"(B) projected earnings and other income of the offender; and

"(C) any financial obligations of the offender, including obligations to dependents.

"(3) A restoration order may direct the offender to make a single, lump-sum payment, partial payment at specified intervals, or such in-kind payments as may be agreeable to the victim and the offender.

"(4) An in-kind payment described in paragraph (3) may be in the form of—

"(A) return of property;

"(B) replacement of property; or

"(C) services rendered to the victim or to a person or organization other than the victim.

"(f) When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

"(g) When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

"(h)(1) If the victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

"(2) The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss, at which time a person that has provided compensation to the victim shall be entitled to receive any payments remaining to be paid under the restitution order.

"(3) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by the victim in—

"(A) any Federal civil proceeding; and

"(B) any State civil proceeding, to the extent provided by the law of the State.

"(i) A restitution order shall provide that—

"(1) all fines, penalties, costs, restitution payments and other forms of transfers of money or property made pursuant to the sentence of the court shall be made by the offender to an entity designated by the Director of the Administrative Office of the United States Courts for accounting and payment by the entity in accordance with this subsection;

"(2) the entity designated by the Director of the Administrative Office of the United States Courts shall—

"(A) log all transfers in a manner that tracks the offender's obligations and the current status in meeting those obligations, unless, after efforts have been made to enforce the restitution order and it appears that compliance cannot be obtained, the court determines that continued recordkeeping under this subparagraph would not be useful;

"(B) notify the court and the interested parties when an offender is 90 days in arrears in meeting those obligations; and

"(C) disburse money received from an offender so that each of the following obligations is paid in full in the following sequence:

"(i) a penalty assessment under section 3013;

"(ii) restitution of all victims; and

"(iii) all other fines, penalties, costs, and other payments required under the sentence; and

"(3) the offender shall advise the entity designated by the Director of the Administrative Office of the United States Courts of any change in the offender's address during the term of the restitution order.

"(j) A restitution order shall constitute a lien against all property of the offender and may be recorded in any Federal or State office for the recording of liens against real or personal property.

"(k) Compliance with the schedule of payment and other terms of a restitution order shall be a condition of any probation, parole, or other form of release of an offender. If a defendant fails to comply with a restitution order, the court may revoke probation or a term of supervised release, modify the term or conditions of probation or a term of supervised release, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, or take any other action necessary to obtain compliance with the restitution order. In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the restitution order.

"(l) An order of restitution may be enforced—

"(1) by the United States—

"(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229; or

"(B) in the same manner as a judgment in a civil action; and

"(2) by a victim named in the order to receive restitution, in the same manner as a judgment in a civil action.

"(m) A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.".

(b) PROCEDURE FOR ISSUING ORDER OF RESTITUTION.—Section 3664 of title 18, United States Code, is amended—

(1) by striking subsection (a);

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (a), (b), (c), and (d);

(3) by amending subsection (a), as redesignated by paragraph (2), to read as follows:

"(a) The court may order the probation service of the court to obtain information pertaining to the amount of loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs."; and

(4) by adding at the end the following new subsection:

"(e) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.".

Subtitle B—National Child Protection Act

SEC. 911. SHORT TITLE.

This subtitle may be cited as the "National Child Protection Act of 1993".

SEC. 912. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) more than 2,500,000 reports of suspected child abuse and neglect are made each year, and increases have occurred in recent years in the abuse of children by persons who have previously committed crimes of child abuse or other serious crimes;

(2) although the great majority of child care providers are caring and dedicated professionals, child abusers and others who harm or prey on children frequently seek employment in or volunteer for positions that give them access to children;

(3) nearly 6,000,000 children received day care in 1990, and this total is growing rapidly to an estimated 8,000,000 children by 1995;

(4) exposure to child abusers and others who harm or prey on children is harmful to the physical and emotional well-being of children;

(5) there is no reliable, centralized national source through which child care organizations may obtain the benefit of a nationwide criminal background check on persons who provide or seek to provide child care;

(6) some States maintain automated criminal background files and provide criminal history information to child care organizations on persons who provide or seek to provide child care; and

(7) because State and national criminal justice databases are inadequate to permit effective national background checks, persons convicted of crimes of child abuse or other serious crimes may gain employment at a child care organization.

(b) PURPOSES.—The purposes of this subtitle are—

(1) to establish a national system through which child care organizations may obtain the benefit of a nationwide criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(2) to establish minimum criteria for State laws and procedures that permit child care organizations to obtain the benefit of nationwide criminal background checks to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes;

(3) to provide procedural rights for persons who are subject to nationwide criminal background checks, including procedures to challenge and correct inaccurate background check information;

(4) to establish a national system for the reporting by the States of child abuse crime information; and

(5) to document and study the problem of child abuse by providing statistical and informational data on child abuse and related crimes to the Department of Justice and other interested parties.

SEC. 913. DEFINITIONS.

In this subtitle—

"authorized agency" means a division or office of a State designated by a State to report, receive, or disseminate information under this subtitle.

"background check crime" means a child abuse crime, murder, manslaughter, aggravated assault, kidnapping, arson, sexual assault, domestic violence, incest, indecent exposure, prostitution, promotion of prostitution, and a felony offense involving the use or distribution of a controlled substance.

"child" means a person who is a child for purposes of the criminal child abuse law of a State.

"child abuse" means the physical or mental injury, sexual abuse or exploitation, neglectful treatment, negligent treatment, or maltreatment of a child by any person in violation of the criminal child abuse laws of a State, but does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

"child abuse crime" means a crime committed under any law of a State that establishes criminal penalties for the commission

of child abuse by a parent or other family member of a child or by any other person.

"child abuse crime information" means the following facts concerning a person who is under indictment for, or has been convicted of, a child abuse crime: full name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, legal residence address, a brief description of the child abuse crime or offenses for which the person is under indictment or has been convicted, and any other information that the Attorney General determines may be useful in identifying persons under indictment for, or convicted of, a child abuse crime.

"child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children.

"domestic violence" means a felony or misdemeanor involving the use or threatened use of force by—

(A) a present or former spouse of the victim;

(B) a person with whom the victim shares a child in common;

(C) a person who is cohabiting with or has cohabited with the victim as a spouse; or

(D) any person defined as a spouse of the victim under the domestic or family violence laws of a State.

"exploitation" means child pornography and child prostitution.

"mental injury" means harm to a child's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors or by a change in behavior, emotional response, or cognition.

"national criminal background check system" means the system of information and identification relating to convicted and accused child abuse offenders that is maintained by the Attorney General under this subtitle.

"negligent treatment" means the failure to provide, for a reason other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of a child.

"physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising, and serious bodily harm.

"provider" means

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care.

"qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services.

"sex crime" means an act of sexual abuse that is a criminal act.

"sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children or incest with children.

"State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

SEC. 914. REPORTING BY THE STATES.

(a) IN GENERAL.—An authorized agency of a State shall report child abuse crime information to the national criminal background check system.

(b) PROVISION OF STATE CHILD ABUSE CRIME RECORDS TO THE NATIONAL CRIMINAL BACKGROUND CHECK SYSTEM.—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall—

(A) investigate the criminal records of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line capacity basis to the national criminal background check system;

(B) establish guidelines for the reporting of child abuse crime information, including guidelines relating to the format, content, and accuracy of child abuse crime information and other procedures for carrying out this subtitle; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of the State timetable that the State—

(A) achieve, by not later than the date that is 3 years after the date of enactment of this Act, at least 80 percent currency of child abuse crime case dispositions in computerized criminal history files for all child abuse crime cases in which there has been an entry of activity within the last 5 years; and

(B) continue to maintain such a system.

(c) EXCHANGE OF INFORMATION.—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of information and technical assistance in cases of child abuse.

(d) ANNUAL SUMMARY.—(1) The Attorney General shall publish an annual statistical summary of the child abuse crime information reported under this subtitle.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim of a crime.

(e) ANNUAL REPORT.—The Attorney General shall publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal background check system.

(f) STUDY OF CHILD ABUSE OFFENDERS.—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State;

(C) whether there are crimes or classes of crimes, in addition to those defined as background check crimes in section 883, that are indicative of a potential to abuse children; and

(D) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

SEC. 915. BACKGROUND CHECKS.

(a) IN GENERAL.—(1) A State may have in effect procedures (established by or under State statute or regulation) to permit a qualified entity to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether there is a report that a provider is under indictment for, or has been convicted of, a background check crime.

(2) The authorized agency shall access and review State and Federal records of background check crimes through the national criminal background check system and other criminal justice recordkeeping systems and shall respond promptly to the inquiry.

(b) GUIDELINES.—(1) The Attorney General shall establish guidelines for State background check procedures established under subsection (a), including procedures for carrying out the purposes of this subtitle.

(2) The guidelines established under paragraph (1) shall require—

(A) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first completes and signs a statement that—

(i) contains the name, address, and date of birth appearing on a valid identification document (as defined by section 1028(d)(1) of title 18, United States Code) of the provider;

(ii) the provider is not under indictment for, and has not been convicted of, a background check crime and, if the provider is under indictment for or has been convicted of a background check crime, contains a description of the crime and the particulars of the indictment or conviction;

(iii) notifies the provider that the entity may request a background check under subsection (a);

(iv) notifies the provider of the provider's rights under subparagraph (B); and

(v) notifies the provider that prior to the receipt of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(B) that each State establish procedures under which a provider who is the subject of a background check under subsection (a) is entitled—

(i) to obtain a copy of any background check report and any record that forms the basis for any such report; and

(ii) to challenge the accuracy and completeness of any information contained in any such report or record and obtain a prompt determination from an authorized agency as to the validity of such challenge;

(C) that an authorized agency to which a qualified entity has provided notice pursuant to subsection (a) make reasonable efforts to complete research in whatever State and local recordkeeping systems are available and in the national criminal background check system and respond to the qualified entity within 15 business days;

(D) that the response of an authorized agency to an inquiry pursuant to subsection (a) informs the qualified entity that the background check pursuant to this section—

(i) may not reflect all indictments or convictions for a background check crime;

(ii) is not certain to include arrest information; and

(iii) should not be the sole basis for determining the fitness of a provider;

(E) that the response of an authorized agency to an inquiry pursuant to subsection (a)—

(i) at a minimum, states whether the background check information set forth in the identification document required under subparagraph (A) is complete and accurate; and

(ii) be limited to the information reasonably required to accomplish the purposes of this subtitle;

(F) that no qualified entity may take action adverse to a provider, except that the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care, on the basis of a background check under subsection (a) until the provider has obtained a determination as to the validity of any challenge under subparagraph (B) or waived the right to make such challenge;

(G) that each State establish procedures to ensure that any background check under subsection (a) and the results thereof shall be requested by and provided only to—

(i) qualified entities identified by States;

(ii) authorized representatives of a qualified entity who have a need to know such information;

(iii) the providers;

(iv) law enforcement authorities; or

(v) pursuant to the direction of a court of law;

(H) that background check information conveyed to a qualified entity pursuant to subsection (a) shall not be conveyed to any person except as provided under subparagraph (G);

(I) that an authorized agency shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a background check; and

(J) that a State employee or a political subdivision of a State or employee thereof responsible for providing information to the national criminal background check system shall not be liable in an action at law for damages for failure to prevent a qualified entity from taking action adverse to a provider on the basis of a background check.

(c) EQUIVALENT PROCEDURES.—(1) Notwithstanding anything to the contrary in this section, the Attorney General may certify that a State licensing or certification procedure that differs from the procedures described in subsections (a) and (b) shall be deemed to be the equivalent of such procedures for purposes of this subtitle, but the procedures described in subsections (a) and (b) shall continue to apply to those qualified entities, providers, and background check crimes that are not governed by or included within the State licensing or certification procedure.

(2) The Attorney General shall by regulation establish criteria for certifications under this subsection. Such criteria shall include a finding by the Attorney General that the State licensing or certification procedure accomplishes the purposes of this subtitle and incorporates a nationwide review of State and Federal records of background check offenses through the national criminal background check system.

(d) RECORDS EXCHANGE.—The Attorney General may exchange Federal Bureau of Investigation identification records with authorized agencies for purposes of background checks under subsection (a) and may by regulation authorize further dissemination of such records by authorized agencies for such purposes.

(e) REGULATIONS.—(1) The Attorney General shall by regulation prescribe such other measures as may be required to carry out the purposes of this subtitle, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

SEC. 916. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.—Section 509(b) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking "and" after the semicolon;

(2) in paragraph (3) by striking the period and inserting "; and"; and

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

"(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the records required by the Attorney General under section 884 of the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.".

(b) ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.—(1) The Attorney General shall, subject to appropriations and with preference to States that as of the date of enactment of this Act have the lowest percent currency of case dispositions in computerized criminal history files, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this subtitle;

(B) for the improvement of existing computerized criminal history files for the purposes of this subtitle;

(C) to improve accessibility to the national criminal background check system for the purposes of this subtitle; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history records in, the national criminal background check system for the purposes of this subtitle.

(2) There are authorized to be appropriated for grants under paragraph (1) $20,000,000 for fiscal year 1994 and $10,000,000 for each of fiscal years 1995 and 1996.

(c) WITHHOLDING STATE FUNDS.—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce by up to 10 percent the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 of a State that is not in compliance with the timetable established for that State under section 914.

Subtitle C—Jacob Wetterling Crimes Against Children Registration Act

SEC. 921. SHORT TITLE.

This subtitle may be cited as the "Jacob Wetterling Crimes Against Children Registration Act".

SEC. 922. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—

(1) STATE GUIDELINES.—The Attorney General shall establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being placed on parole, or being placed on supervised release.

(2) DEFINITION.—For purposes of this subsection, "criminal offense against a victim who is a minor" includes—

(A) kidnapping of a minor, except by a noncustodial parent;

(B) false imprisonment of a minor, except by a noncustodial parent;

(C) criminal sexual conduct toward a minor;

(D) solicitation of minors to engage in sexual conduct;

(E) use of minors in a sexual performance; or

(F) solicitation of minors to practice prostitution.

(b) REGISTRATION REQUIREMENT UPON RELEASE, PAROLE, OR SUPERVISED RELEASE.—An approved State registration program established by this section shall contain the following requirements:

(1) NOTIFICATION.—If a person who is required to register under this section is released from prison, paroled, or placed on supervised release, a State prison officer shall—

(A) inform the person of the duty to register;

(B) inform the person that if the person changes residence address, the person shall give the new address to a designated State law enforcement agency in writing within 10 days;

(C) obtain fingerprints and a photograph of the person if these have not already been obtained in connection with the offense that triggers registration; and

(D) require the person to read and sign a form stating that the duty of the person to register under this section has been explained.

(2) TRANSFER OF INFORMATION TO STATE AND THE FBI.—The officer shall, within 3 days after receipt of information described in paragraph (1), forward it to a designated State law enforcement agency. The State law enforcement agency shall immediately enter the information into the appropriate State law enforcement record system and notify the appropriate law enforcement agency having jurisdiction where the person expects to reside. The State law enforcement agency shall also immediately transmit the conviction data and fingerprints to the Identification Division of the Federal Bureau of Investigation.

(3) ANNUAL VERIFICATION.—On each anniversary of a person's initial registration date during the period in which the person is required to register under this section, the designated State law enforcement agency shall mail a nonforwardable verification form to the last reported address of the person. The person shall mail the verification form to the officer within 10 days after receipt of the form. The verification form shall be signed by the person, and state that the person still resides at the address last reported to the designated State law enforcement agency. If the person fails to mail the verification form to the designated State law enforcement agency within 10 days after receipt of the form, the person shall be in violation of this section unless the person proves that the person has not changed his or her residence address.

(4) NOTIFICATION OF LOCAL LAW ENFORCEMENT AGENCIES OF CHANGES IN ADDRESS.—Any change of address by a person required to register under this section reported to the designated State law enforcement agency shall immediately be reported to the appropriate law enforcement agency having jurisdiction where the person is residing.

(c) REGISTRATION FOR 10 YEARS.—A person required to register under this section shall continue to comply with this section until 10 years have elapsed since the person was released from imprisonment, or placed on parole or supervised release.

(d) PENALTY.—A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to criminal penalties in such State. It is the sense of Congress that such penalties should include at least 6 months' imprisonment.

(e) PRIVATE DATA.—The information provided under this section is private data on individuals and may be used for law enforcement purposes and confidential background checks conducted with fingerprints for child care services providers.

SEC. 923. STATE COMPLIANCE.

(a) COMPLIANCE DATE.—Each State shall have 3 years from the date of the enactment of this Act in which to implement this subtitle.

(b) INELIGIBILITY FOR FUNDS.—The allocation of funds under section 506 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3756) received by a State not complying with this subtitle 3 years after the date of enactment of this Act shall be reduced by 25 percent and the unallocated funds shall be reallocated to the States in compliance with this section.

TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT

Subtitle A—Violent Crimes

SEC. 1001. ADDITION OF ATTEMPTED ROBBERY, KIDNAPPING, SMUGGLING, AND PROPERTY DAMAGE OFFENSES TO ELIMINATE INCONSISTENCIES AND GAPS IN COVERAGE.

(a) ROBBERY AND BURGLARY.—(1) Section 2111 of title 18, United States Code, is amended by inserting "or attempts to take" after "takes".

(2) Section 2112 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(3) Section 2114 of title 18, United States Code, is amended by inserting "or attempts to rob" after "robs".

(b) KIDNAPPING.—Section 1201(d) of title 18, United States Code, is amended by striking "Whoever attempts to violate subsection (a)(4) or (a)(5)" and inserting "Whoever attempts to violate subsection (a)".

(c) SMUGGLING.—Section 545 of title 18, United States Code, is amended by inserting "or attempts to smuggle or clandestinely introduce" after "smuggles, or clandestinely introduces".

(d) MALICIOUS MISCHIEF.—(1) Section 1361 of title 18, United States Code, is amended—

(A) by inserting "or attempts to commit any of the foregoing offenses" before "shall be punished", and

(B) by inserting "or attempted damage" after "damage" each place it appears.

(2) Section 1362 of title 18, United States Code, is amended by inserting "or attempts willfully or maliciously to injure or destroy" after "willfully or maliciously injures or destroys".

(3) Section 1366 of title 18, United States Code, is amended—

(A) by inserting "or attempts to damage" after "damages" each place it appears;

(B) by inserting "or attempts to cause" after "causes"; and

(C) by inserting "or would if the attempted offense had been completed have exceeded" after "exceeds" each place it appears.

SEC. 1002. INCREASE IN MAXIMUM PENALTY FOR ASSAULT.

(a) CERTAIN OFFICERS AND EMPLOYEES.—Section 111 of title 18, United States Code, is amended—

(1) in subsection (a) by inserting ", where the acts in violation of this section constitute only simple assault, be fined under this title, imprisoned not more than 1 year, or both, and in all other cases," after "shall"; and

(2) in subsection (b) by inserting "or inflicts bodily injury" after "weapon".

(b) FOREIGN OFFICIALS, OFFICIAL GUESTS, AND INTERNATIONALLY PROTECTED PERSONS.—Section 112(a) of title 18, United States Code, is amended—

(1) by striking "not more than $5,000" and inserting "under this title";

(2) by inserting ", or inflicts bodily injury," after "weapon"; and

(3) by striking "not more than $10,000" and inserting "under this title".

(c) MARITIME AND TERRITORIAL JURISDICTION.—Section 113 of title 18, United States Code, is amended—

(1) in subsection (c)—

(A) by striking "of not more than $1,000" and inserting "under this title"; and

(B) by striking "five" and inserting "10"; and

(2) in subsection (e)—

(A) by striking "of not more than $300" and inserting "under this title"; and

(B) by striking "three" and inserting "6".

(d) CONGRESS, CABINET, OR SUPREME COURT.—Section 351(e) of title 18, United States Code, is amended—

(1) by striking "not more than $5,000," and inserting "under this title,";

(2) by inserting "the assault involved the use of a dangerous weapon, or" after "if";

(3) by striking "not more than $10,000" and inserting "under this title"; and

(4) by striking "for".

(e) PRESIDENT AND PRESIDENT'S STAFF.—Section 1751(e) of title 18, United States Code, is amended—

(1) by striking "not more than $10,000," each place it appears and inserting "under this title,";

(2) by striking "not more than $5,000," and inserting "under this title,"; and

(3) by inserting "the assault involved the use of a dangerous weapon, or" after "if".

SEC. 1003. INCREASED MAXIMUM PENALTY FOR MANSLAUGHTER.

Section 1112 of title 18, United States Code, is amended—

(1) in subsection (b)—

(A) by inserting "fined under this title or" after "shall be" in the second undesignated paragraph; and

(B) by inserting ", or both" after "years";

(2) by striking "not more than $1,000" and inserting "under this title"; and

(3) by striking "three" and inserting "6".

SEC. 1004. INCREASED PENALTY FOR TRAVEL ACT VIOLATIONS.

Section 1952(a) of title 18, United States Code, is amended by striking "and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2), and (3), shall be fined not more than $10,000 or imprisoned for not more than five years, or both" and inserting "and thereafter performs or attempts to perform—

"(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

"(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.".

SEC. 1005. INCREASED PENALTY FOR CONSPIRACY TO COMMIT MURDER FOR HIRE.

Section 1958(a) of title 18, United States Code, is amended by inserting "or who conspires to do so" before "shall be fined" the first place it appears.

SEC. 1006. FEDERAL PENALTIES FOR CARJACKING.

Section 2119 of title 18, United States Code, is amended to read as follows:

"(a) DEFINITION.—In this section, 'covered motor vehicle' means a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce.

"(b) OFFENSES.—A person who, while in possession of a firearm (as defined in section 921) or other weapon or dangerous device—

"(1) intentionally strikes or otherwise makes physical contact with a covered motor vehicle with a motor vehicle operated by the person, with any other thing, or with any part of the person's body, in one of the circumstances described in subsection (c); or

"(2) takes a covered motor vehicle from the person or presence of another by force and violence or by intimidation, or attempts to do so,

shall be punished under subsection (d).

"(c) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in subsection (b)(1) are that—

"(1) the person makes the contact with the intent to injure an occupant of the motor vehicle or to take or cause damage to the motor vehicle; or

"(2) in the course of events immediately following the contact, an occupant of the motor vehicle is injured or the motor vehicle is taken or damaged.

"(d) PENALTIES.—A person who violates subsection (b) shall—

"(1) be fined under this title or imprisoned not more than 15 years, or both;

"(2) if serious bodily injury (as defined in section 1365) results, be fined under this title or imprisoned not more than 25 years, or both; and

"(3) if death results, be fined under this title or imprisoned for any number of years up to life, or both, or sentenced to death.".

SEC. 1007. INCREASED MANDATORY MINIMUM SENTENCES FOR CRIMINALS USING FIREARMS.

Section 924(c)(1) of title 18, United States Code, is amended to read as follows:

"(c)(1)(A) Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States—

"(i) knowingly uses, carries, or otherwise possesses a firearm, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 10 years;

"(ii) discharges a firearm with intent to injure another person, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 20 years; or

"(iii) knowingly uses, carries, or otherwise possesses a firearm that is a machinegun or destructive device, or that is equipped with a firearm silencer or firearm muffler, shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 30 years.

"(B)(i) In the case of a second conviction under this subsection, a person shall, in addition to the punishment provided for the underlying crime, be sentenced to imprisonment for 20 years for a violation of subparagraph (A)(i), to imprisonment for 30 years for

a violation of subparagraph (A)(ii), and life imprisonment for a violation of subparagraph (A)(iii).

"(ii) In the case of a third or subsequent conviction under this subsection, or a conviction for a violation of subparagraph (A)(ii) that results in the death of another person, a person shall be sentenced to death or life imprisonment.

"(C) Notwithstanding any other law, a term of imprisonment under this subsection shall not run concurrently with any other term of imprisonment imposed for the underlying crime.

"(D) For the purposes of paragraph (A), a person shall be considered to be in possession of a firearm if the person has a firearm readily available at the scene of the crime during the commission of the crime.".

SEC. 1008. LIFE IMPRISONMENT WITHOUT RELEASE FOR CRIMINALS CONVICTED A THIRD TIME.

Section 401(b)(1)(A) of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A)) is amended by striking "If any person commits a violation of this subparagraph or of section 418, 419, or 420 after two or more prior convictions for a felony drug offense have become final, such person shall be sentenced to a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence." and inserting "If any person commits a violation of this subparagraph or of section 418, 419, or 420 or a crime of violence after two or more prior convictions for a felony drug offense or crime of violence or for any combination thereof have become final, such person shall be sentenced to not less than a mandatory term of life imprisonment without release and fined in accordance with the preceding sentence. For purposes of this subparagraph, the term 'crime of violence' means an offense that is a felony punishable by a maximum term of imprisonment of 10 years or more and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.".

Subtitle B—National Commission to Support Law Enforcement

SEC. 1021. SHORT TITLE.

This subtitle may be cited as the "National Commission to Support Law Enforcement Act.".

SEC. 1022. FINDINGS.

The Congress finds that—

(1) law enforcement officers risk their lives daily to protect citizens, for modest rewards and too little recognition;

(2) a significant shift has occurred in the problems that law enforcement officers face without a corresponding change in the support from the Federal Government;

(3) law enforcement officers are on the front line in the war against drugs and crime;

(4) the rate of violent crime continues to increase along with the increase in drug use;

(5) a large percentage of individuals arrested test positive for drug usage;

(6) the Presidential Commission on Law Enforcement and the Administration of Justice of 1965 focused attention on many issues affecting law enforcement, and a review 25 years later would help to evaluate current problems, including drug-related crime, violence, racial conflict, and decreased funding; and

(7) a comprehensive study of law enforcement issues, including the role of the Federal Government in supporting law enforcement officers, working conditions, and responsibility for crime control would assist in redefining the relationships among the Federal Government, the public, and law enforcement officials.

SEC. 1023. ESTABLISHMENT OF COMMISSION.

There is established a national commission to be known as the "National Commission to Support Law Enforcement" (referred to in this subtitle as the "Commission").

SEC. 1024. DUTIES.

(a) IN GENERAL.—The Commission shall study and recommend changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the following:

(1) FUNDING.—The sufficiency of funding, including a review of grant programs at the Federal level.

(2) EMPLOYMENT.—The conditions of law enforcement employment.

(3) INFORMATION.—The effectiveness of information-sharing systems, intelligence, infrastructure, and procedures among law enforcement agencies of Federal, State, and local governments.

(4) RESEARCH AND TRAINING.—The status of law enforcement research and education and training.

(5) EQUIPMENT AND RESOURCES.—The adequacy of equipment, physical resources, and human resources.

(6) COOPERATION.—The cooperation among Federal, State, and local law enforcement agencies.

(7) RESPONSIBILITY.—The responsibility of governments and law enforcement agencies in solving the crime problem.

(8) IMPACT.—The impact of the criminal justice system, including court schedules and prison overcrowding, on law enforcement.

(b) CONSULTATION.—The Commission shall conduct surveys and consult with focus groups of law enforcement officers, local officials, and community leaders across the Nation to obtain information and seek advice on important law enforcement issues.

SEC. 1025. MEMBERSHIP.

(a) NUMBER AND APPOINTMENT.—The Commission shall be composed of 24 members as follows:

(1) Eight individuals from among national law enforcement officers, of whom—

(A) two shall be appointed by the Speaker of the House of Representatives;

(B) two shall be appointed by the Majority Leader of the Senate;

(C) two shall be appointed by the Minority Leader of the House; and

(D) two shall be appointed by the Minority Leader of the Senate.

(2) Eight individuals from national law enforcement organizations representing law enforcement management, of whom—

(A) two shall be appointed by the Speaker of the House of Representatives;

(B) two shall be appointed by the Majority Leader of the Senate;

(C) two shall be appointed by the Minority Leader of the House; and

(D) two shall be appointed by the Minority Leader of the Senate.

(3) Two individuals with academic expertise regarding law enforcement issues, of whom—

(A) one shall be appointed by the Speaker of the House of Representatives and the Majority Leader of the Senate; and

(B) one shall be appointed by the Minority Leader of the Senate and the Minority Leader of the House of Representatives.

(4) Two Members of the House of Representatives, appointed by the Speaker and the Minority Leader of the House of Representatives.

(5) Two Members of the Senate, appointed by the Majority Leader and the Minority Leader of the Senate.

(6) One individual from the Department of Justice, appointed by the President.

(7) The Comptroller General of the United States, who shall serve as the chairperson of the Commission.

(b) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall receive no additional pay, allowance, or benefit by reason of service on the Commission.

(2) TRAVEL EXPENSES.—Each member of the Commission shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

(c) APPOINTMENT DATES.—Members of the Commission shall be appointed no later than 90 days after the enactment of this title.

SEC. 1026. EXPERTS AND CONSULTANTS.

(a) EXPERTS AND CONSULTANTS.—The Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of that agency to the Commission to assist the Commission in carrying out its duties under this subtitle.

(c) ADMINISTRATIVE SUPPORT.—The Administrator of General Services shall provide to the Commission, on a reimbursable basis, administrative support services as the Commission may request.

SEC. 1027. POWERS OF COMMISSION.

(a) HEARINGS.—The Commission may, for purposes of this subtitle, hold hearings, sit and act at the time and places, take testimony, and receive evidence, as the Commission considers appropriate.

(b) DELEGATION OF AUTHORITY.—Any member or agent of the Commission may, if authorized by the Commission, take any action that the Commission is authorized to take by this section.

(c) INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subtitle. Upon request of the chairperson of the Commission, the head of an agency shall furnish the information to the Commission to the extent permitted by law.

(d) GIFTS AND DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

(e) MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as other Federal agencies.

SEC. 1028. REPORT.

Not later than the expiration of the 18-month period beginning on the date of the appointment of the members of the Commission, a report containing the findings of the Commission and specific proposals for legislation and administrative actions that the Commission has determined to be appropriate shall be submitted to Congress.

SEC. 1029. TERMINATION.

The Commission shall cease to exist upon the expiration of the 60-day period beginning on the date on which the Commission submits its report under section 1028.

SEC. 1030. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this subtitle $1,000,000 for fiscal year 1994.

SEC. 1031. REPEALS.

Title XXXIV of the Crime Control Act of 1990 (42 U.S.C. 3721 note) and section 211(B) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (42 U.S.C. 3721 note; 104 Stat. 2122) are repealed.

TITLE XI—CIVIL RIGHTS OFFENSES

SEC. 1101. INCREASED MAXIMUM PENALTIES FOR CIVIL RIGHTS VIOLATIONS.

(a) CONSPIRACY AGAINST RIGHTS.—Section 241 of title 18, United States Code, is amended—

(1) by striking "not more than $10,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "results"; and

(3) by inserting "and may be fined under this title, or both" before the period.

(b) DEPRIVATION OF RIGHTS.—Section 242 of title 18, United States Code, is amended—

(1) by striking "not more more than $1,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire," after "bodily injury results";

(3) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill," after "death results"; and

(4) by inserting "and may be fined under this title, or both" before the period.

(c) FEDERALLY PROTECTED ACTIVITIES.—The first sentence of section 245(b) of title 18, United States Code, is amended in the matter following paragraph (5)—

(1) by striking "not more than $1,000" and inserting "under this title";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results;

(3) by striking "not more than $10,000" and inserting "under this title";

(4) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill," after "death results"; and

(5) by inserting "and may be fined under this title, or both" before the period.

(d) DAMAGE TO RELIGIOUS PROPERTY.—Section 247 of title 18, United States Code, is amended—

(1) in subsection (c)(1) by inserting "from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "death results";

(2) in subsection (c)(2)—

(A) by striking "serious"; and

(B) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results"; and

(3) by amending subsection (e) to read as follows:

"(e) As used in this section, the term 'religious property' means any church, synagogue, mosque, religious cemetery, or other religious property.".

(e) FAIR HOUSING ACT.—Section 901 of the Fair Housing Act (42 U.S.C. 3631) is amended—

(1) by striking "not more than $1,000," and inserting "under title 18, United States Code,";

(2) by inserting "from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire" after "bodily injury results";

(3) by striking "not more than $10,000," and inserting "under title 18, United States Code,";

(4) by inserting "from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill" after "death results";

(5) by striking "subject to imprisonment" and inserting "fined under title 18, United States Code, or imprisoned"; and

(6) by inserting ", or both" after "life".

TITLE XII—PUBLIC CORRUPTION

SEC. 1201. SHORT TITLE.

This title may be cited as the "Anti-Corruption Act of 1993".

SEC. 1202. PUBLIC CORRUPTION.

(a) OFFENSES.—Chapter 11 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 226. Public corruption

"(a) STATE AND LOCAL GOVERNMENT.—

"(1) HONEST SERVICES.—Whoever, in a circumstance described in paragraph (3), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of the honest services of an official or employee of the State or political subdivision shall be fined under this title, imprisoned not more than 10 years, or both.

"(2) FAIR AND IMPARTIAL ELECTIONS.—Whoever, in a circumstance described in paragraph (3), deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of a State or political subdivision of a State of a fair and impartially conducted election process in any primary, run-off, special, or general election—

"(A) through the procurement, casting, or tabulation of ballots that are materially false, fictitious, or fraudulent or that are invalid, under the laws of the State in which the election is held;

"(B) through paying or offering to pay any person for voting;

"(C) through the procurement or submission of voter registrations that contain false material information, or omit material information; or

"(D) through the filing of any report required to be filed under State law regarding an election campaign that contains false material information or omits material information,

shall be fined under this title, imprisoned not more than 10 years, or both.

"(3) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in paragraphs (1) and (2) are that—

"(A) for the purpose of executing or concealing a scheme or artifice described in paragraph (1) or (2) or attempting to do so, a person—

"(i) places in any post office or authorized depository for mail matter, any matter or thing to be sent or delivered by the Postal Service, or takes or receives therefrom any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing;

"(ii) transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce any writings, signs, signals, pictures, or sounds;

"(iii) transports or causes to be transported any person or thing, or induces any person to travel in or to be transported in, interstate or foreign commerce; or

"(iv) uses or causes the use of any facility of interstate or foreign commerce;

"(B) the scheme or artifice affects or constitutes an attempt to affect in any manner or degree, or would if executed or concealed affect, interstate or foreign commerce; or

"(C) in the case of an offense described in paragraph (2), an objective of the scheme or artifice is to secure the election of an official who, if elected, would have any authority over the administration of funds derived from an Act of Congress totaling $10,000 or more during the 12-month period immediately preceding or following the election or date of the offense.

"(b) FEDERAL GOVERNMENT.—Whoever deprives or defrauds, or endeavors to deprive or to defraud, by any scheme or artifice, the inhabitants of the United States of the honest services of a public official or a person who has been selected to be a public official shall be fined under this title, imprisoned not more than 10 years, or both.

"(c) OFFENSE BY AN OFFICIAL AGAINST AN EMPLOYEE OR OFFICIAL.—

"(1) CRIMINAL OFFENSE.—Whoever, being an official, public official, or person who has been selected to be a public official, directly or indirectly discharges, demotes, suspends, threatens, harasses, or in any manner discriminates against an employee or official of the United States or of a State or political subdivision of a State, or endeavors to do so, in order to carry out or to conceal a scheme or artifice described in subsection (a) or (b), shall be fined under this title, imprisoned not more than 5 years, or both.

"(2) CIVIL ACTION.—(A) Any employee or official of the United States or of a State or political subdivision of a State who is discharged, demoted, suspended, threatened, harassed, or in any manner discriminated against because of lawful acts done by the employee or official as a result of a violation of this section or because of actions by the employee on behalf of himself or herself or others in furtherance of a prosecution under this section (including investigation for, initiation of, testimony for, or assistance in such a prosecution) may bring a civil action and obtain all relief necessary to make the employee or official whole, including—

"(i) reinstatement with the same seniority status that the employee or official would have had but for the violation;

"(ii) 3 times the amount of backpay;

"(iii) interest on the backpay; and

"(iv) compensation for any special damages sustained as a result of the violation, including reasonable litigation costs and reasonable attorney's fees.

"(B) An employee or official shall not be afforded relief under subparagraph (A) if the employee or official participated in the violation of this section with respect to which relief is sought.

"(C)(i) A civil action or proceeding authorized by this paragraph shall be stayed by a court upon certification of an attorney for the Government that prosecution of the action or proceeding may adversely affect the interests of the Government in a pending criminal investigation or proceeding.

"(ii) The attorney for the Government shall promptly notify the court when a stay may be lifted without such adverse effects.

"(d) DEFINITIONS.—In this section—

"'official' includes—

"(A) any person employed by, exercising any authority derived from, or holding any position in the government of a State or any subdivision of the executive, legislative, judicial, or other branch of government thereof, including a department, independent establishment, commission, administration, authority, board, and bureau, and a corporation or other legal entity established and subject to control by a government or governments for the execution of a governmental or intergovernmental program;

"(B) any person acting or pretending to act under color of official authority; and

"(C) any person who has been nominated, appointed, or selected to be an official or who has been officially informed that he or she will be so nominated, appointed, or selected.

"'person acting or pretending to act under color of official authority' includes a person who represents that he or she controls, is an agent of, or otherwise acts on behalf of an official, public official, and person who has been selected to be a public official.

"'public official' and 'person who has been selected to be a public official' have the meanings stated in section 201 and also include any person acting or pretending to act under color of official authority.

"'State' means a State of the United States, the District of Columbia, Puerto Rico, and any other commonwealth, territory, or possession of the United States.

"'uses any facility of interstate or foreign commerce' includes the intrastate use of any facility that may also be used in interstate or foreign commerce.".

(b) TECHNICAL AMENDMENTS.—(1) The chapter analysis for chapter 11 of title 18, United States Code, is amended by adding at the end the following new item:

"226. Public corruption.".

(2) Section 1961(1) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (relating to sports bribery),".

(3) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 226 (relating to public corruption)," after "section 224 (bribery in sporting contests),".

SEC. 1203. INTERSTATE COMMERCE.

(a) IN GENERAL.—Section 1343 of title 18, United States Code, is amended—

(1) by striking "transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds" and inserting "uses or causes to be used any facility of interstate or foreign commerce"; and

(2) by inserting "or attempting to do so" after "for the purpose of executing such scheme or artifice".

(b) TECHNICAL AMENDMENTS.—(1) The heading of section 1343 of title 18, United States Code, is amended to read as follows:

"§ 1343. Fraud by use of facility of interstate commerce".

(2) The chapter analysis for chapter 63 of title 18, United States Code, is amended by amending the item relating to section 1343 to read as follows:

"1343. Fraud by use of facility of interstate commerce.".

SEC. 1204. NARCOTICS-RELATED PUBLIC CORRUPTION.

(a) OFFENSES.—Chapter 11 of title 18, United States Code, is amended by inserting after section 219 the following new section:

"§ 220. Narcotics and public corruption

"(a) OFFENSE BY PUBLIC OFFICIAL.—A public official who, in a circumstance described in subsection (c), directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person in return for—

"(1) being influenced in the performance or nonperformance of any official act; or

"(2) being influenced to commit or to aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State,

shall be guilty of a class B felony.

"(b) OFFENSE BY PERSON OTHER THAN A PUBLIC OFFICIAL.—A person who, in a circumstance described in subsection (c), directly or indirectly, corruptly gives, offers, or promises anything of value to any public official, or offers or promises any public official to give anything of value to any other person, with intent—

"(1) to influence any official act;

"(2) to influence the public official to commit or aid in committing, or to collude in, or to allow or make opportunity for the commission of any offense against the United States or any State; or

"(3) to influence the public official to do or to omit to do any act in violation of the official's lawful duty,

shall be guilty of a class B felony.

"(c) CIRCUMSTANCES IN WHICH OFFENSE OCCURS.—The circumstances referred to in subsections (a) and (b) are that the offense involves, is part of, or is intended to further or to conceal the illegal possession, importation, manufacture, transportation, or distribution of any controlled substance or controlled substance analogue.

"(d) DEFINITIONS.—In this section—

"'controlled substance' and 'controlled substance analogue' have the meanings stated in section 102 of the Controlled Substances Act (21 U.S.C. 802).

"'official act' means any decision, action, or conduct regarding any question, matter, proceeding, cause, suit, investigation, or prosecution which may at any time be pending, or which may be brought before any public official, in such official's official capacity, or in such official's place of trust or profit.

"'public official' means—

"(A) an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Government thereof in any official function, under or by authority of any such department, agency, or branch of Government;

"(B) a juror;

"(C) an officer or employee or person acting for or on behalf of the government of any State, territory, or possession of the United States (including the District of Columbia), or any political subdivision thereof, in any official function, under or by the authority of any such State, territory, possession, or political subdivision; and

"(D) any person who has been nominated or appointed to a position described in subparagraph (A), (B), or (C), or has been officially informed that he or she will be so nominated or appointed.".

(b) TECHNICAL AMENDMENTS.—(1) Section 1961(1) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "Section 201 (relating to bribery),".

(2) Section 2516(1)(c) of title 18, United States Code, is amended by inserting "section 220 (relating to narcotics and public corruption)," after "section 201 (bribery of public officials and witnesses),".

(3) The chapter analysis for chapter 11 of title 18, United States Code, is amended by inserting after the item for section 219 the following new item:

"220. Narcotics and public corruption.".

TITLE XIII—FUNDING

SEC. 1301. REDUCTION IN OVERHEAD COSTS INCURRED IN FEDERALLY SPONSORED RESEARCH.

(a) CBO SCORING.—The Congressional Budget Office estimates that the reduction in overhead payments for federally funded university research required by this section will produce savings of $1,540,000,000 over 5 years ($150,000,000 for fiscal year 1994, $310,000,000 for fiscal year 1995, $350,000,000 for fiscal year 1996, $360,000,000 for fiscal year 1997, and $370,000,000 for fiscal year 1998).

(b) LIMITATION.—Notwithstanding any other law, on and after the date of the enactment of this Act, each head of a Federal agency making a grant to, or entering into a contract with, an institution of higher education for research and development, shall reduce the overhead payment rate under the grant or contract to 90 percent of the current level and return the amount saved to the general fund of the Treasury.

(c) DEFINITIONS.—In this section—

"institution of higher education" has the meaning stated in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

"Federal agency" means a department, agency, or instrumentality of the Federal Government (including an executive agency (as defined in section 105 of title 5, United States Code)).

SEC. 1302. OVERHEAD EXPENSE REDUCTION.

(a) CBO SCORING.—The Congressional Budget Office estimates that the reduction in administrative costs required by this section will produce savings of $6,000,000,000 over 5 years ($1,200,000,000 in each of fiscal years 1994, 1995, 1996, 1997, and 1998).

(b) REDUCTION.—The overhead expenses identified and reduced by the President in Executive Order 12837 are hereby reduced by an additional 5 percent. The reduction required by this section shall be taken from the total of such expenses before the reduction by the President.

SEC. 1303. FUNDING OF PROGRAMS AUTHORIZED BY THIS ACT.

The amount of available budget authority resulting from the enactment of sections 1301 and 1302 shall be reallocated as follows:

(1) $800,000,000 ($100,000,000 for fiscal year 1994, $125,000,000 for fiscal year 1995, $175,000,000 for fiscal year 1996, and $200,000,000 for each of fiscal years 1997 and 1998) for the hiring of former members of the Armed Forces as police officers as authorized by section 102(d).

(2) $650,000,000 ($100,000,000 for fiscal years 1994 and 1995 and $150,000,000 for each of fiscal years 1996, 1997, and 1998) for cops on the street grants as authorized by the amendment made by section 112(c).

(3) $250,000,000 for the Police Corps ($50,000,000 for fiscal year 1994 and $100,000,000 for each of fiscal years 1995 and 1996) as authorized by section 130.

(4) $300,000,000 ($60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for community policing grants as authorized by the amendment made by section 141(c).

(5) $100,000,000 for fiscal year 1994 for improved police training and technical automation as authorized by section 153.

(6) $2,000,000,000 for the construction of 10 new Federal prisons ($200,000,000 for fiscal year 1994, $400,000,000 for each of fiscal years 1995 and 1996, and $500,000,000 for each of fiscal years 1997 and 1998) as authorized by section 165.

(7) $1,000,000,000 for Federal grants for State prison construction and operation ($200,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998, with $100,000,000 of that available for construction and $100,000,000 available for operation) as authorized by section 177.

(8) $500,000,000 ($100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of former members of the Armed Forces as teachers as authorized by section 202(e).

(9) $500,000,000 ($100,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the Federal safe school districts as authorized by section 203(d).

(10) $300,000,000 ($60,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of 1,000 additional Border Patrol agents as authorized by section 321.

(11) $385,000,000 ($77,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of 1,000 additional Immigration and Naturalization Service criminal investigators as authorized by section 322.

(12) $13,000,000 ($5,000,000 for fiscal year 1994 and $2,000,000 for each of fiscal years 1995, 1996, 1997, and 1998) for the operation of the criminal alien tracking center as authorized by section 323.

(13) $100,000,000 to hire Assistant United States Attorneys to prosecute gang activity ($20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) as authorized by section 431.

(14) $1,000,000 for fiscal year 1994 for gang investigation coordination and information collection as authorized by section 432(d).

(15) $250,000,000 ($50,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for rural law enforcement as authorized by the amendment made by section 501.

(16) $5,000,000 ($1,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for rural drug enforcement training as authorized by section 504(b).

(17) $110,000,000 ($25,000,000 for each of fiscal years 1994 and 1995 and $20,000,000 for each of fiscal years 1996, 1997, and 1998) for rural drug prevention and treatment as authorized by section 511(h).

(18) $100,000,000 ($20,000,000 for each of fiscal years 1994, 1995, 1996, 1997, and 1998) for the hiring of additional Drug Enforcement Administration agents as authorized by section 551.

(19) $120,000,000 ($60,000,000 for each of fiscal years 1994 and 1995) for the prevention of terrorism as authorized by section 811.

(20) $40,000,000 ($20,000,000 for fiscal year 1994 and $10,000,000 for each of fiscal years 1995 and 1996) to fund improvement of child abuse crime information as authorized by section 916(b)(2).

(21) $1,000,000 for fiscal year 1994 to fund the National Commission to Support Law Enforcement as authorized by section 1030.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title and Table of Contents. The bill is entitled the "Neighborhood Security Act of 1993."

TITLE I—SAFE STREETS

Subtitle A. Police

Chapter 1. Defense Conversion.

Section 101. Definition. This section defines "former member of the Armed Services" to mean a member of the Armed Services of the United States who is involuntarily separated from the Armed Services within the meaning of section 1141 of title 10, United States Code.

Section 102. America's Safe Streets Program. This section authorizes the Attorney General, in consultation with the Secretary of Defense, to enter into an agreement with a State or local law enforcement agency to pay, for a period of six years, the salaries of former members of the Armed Services who are hired within five years as police officers assigned to neighborhood patrol duties.

When seeking to enter into an agreement with a State or local law enforcement agency, the Attorney General is authorized to give priority to those agencies located in communities adversely affected by the recent closing of a military base.

For the first three years, the maximum Federal share of an annual salary of a police officer hired under the agreement is the annual salary earned by the officer during his or her last year as a member of the Armed Services. The maximum Federal share of an annual salary for the 4th through 6th years that a police officer may be paid under the agreement is 50 percent of the annual salary earned by the officer during his or her last year as a member of the Armed Services.

Police officers hired pursuant to this section must add to the total number of officers employed by the State or local law enforcement agency.

Chapter 2. Cops on the Street.

Chapter 2 establishes a grant program to be administered through the Bureau of Justice Assistance to supplement local expenditures to increase police presence in the community. Not less than 50 and not more than 100 grants are to be made under this program. Factors to be considered in making these grants include the crime rate per capita and the rate of increase in crime, as well as certification that convicted offenders serve 85% of the sentence imposed or that significant progress is being made toward achieving that goal.

Chapter 3. Police Corps Program.

Chapter 3 establishes the Police Corps program, which is designed to provide educational assistance to law enforcement personnel who want to further their education, and to students who have a sincere interest in law enforcement.

The Police Corps program provides up to $30,000 in college scholarship grants to selected participants who agree to work for 4 years after graduation on a State or local police force. Receipt of the scholarship grant is dependent upon the student maintaining satisfactory progress at his or her educational institution. Participants in the Police Corps program must also meet the requirements of the State or local police force to which they will be assigned.

Chapter 3 allows the dependent child of a Federal, State, or local police officer who is not a participant in the Police Corps (but serves in a State that participates in the program) and is killed in the line of duty, to obtain scholarship assistance.

Chapter 4. Community Policing Grants.

Chapter 4 authorizes the Director of the Bureau of Justice Assistance to make grants to units of local government and to community groups to establish or expand cooperative efforts between the police and the community. These cooperative efforts include, but are not limited to, 1) providing new technologies to reduce the amount of time officers spend processing cases instead of patrolling the community; 2) purchasing equipment to improve communications between officers and the community and to improve the collection, analysis, and use of information about crime-related community problems; 3) creating decentralized police substations throughout the community to encourage interaction and cooperation between the public and law enforcement personnel on a local level; and 4) developing community-based crime prevention programs, such as safety programs for senior citizens, community anticrime groups, and other anticrime awareness groups.

To be eligible to receive a grant, applications must be submitted to the Director of the Bureau of Justice Assistance. The Director must allocate not less than 75 percent of the funds available to units of local government and not more than 20 percent to community groups. The Director must not use more than 5 percent of the funds available for administration, technical assistance, and evaluation.

Chapter 5. Improved Training and Technical Automation.

Chapter 5 directs the Attorney General to provide grants to state and local law enforcement agencies for the purpose of improving efficiency through computerized automation and technological improvements. Grants under this chapter may include, but shall not be limited to, programs to increase use of mobile digital terminals, improve communications systems, accomplish paper-flow reduction, and establish and improve ballistics identification programs.

Subtitle B. Prisons

Chapter 1. Regional Prisons for Violent Criminals and Violent Criminal Aliens.

Chapter 1 directs the Attorney General to construct a minimum of ten regional prisons, situated throughout the United States, each containing space for at least 2,500 inmates. At least 50% of the total capacity of the regional prisons must be dedicated to "qualifying prisoners" from "qualifying States."

The Attorney General shall not certify a State as a "qualifying State" unless such State is adequately providing 1) truth in sentencing (providing that defendants will serve at least 85% of the sentence ordered); 2) pretrial detention; 3) mandatory minimum sentences for firearm offenders, violent criminals, sex offenders, and child abuse offenders; and 4) suitable recognition for the rights of victims, including consideration of the victim's perspective at all stages of criminal proceedings.

The term "qualifying prisoner" means 1) an alien who is in this country illegally and who has been convicted of a crime of violence as defined in section 924(c)(3) of title 18, United States Code, or a serious drug offense as defined in section 924(e)(2)(A) of title 18, United States Code; and 2) a violent criminal.

The term "violent criminal" 1) means a person convicted under Federal law of an offense described in, under the circumstances described in, the provisions of section 924(c) or (e) of title 18 or section 994(h) of title 28, United States Code, or a person convicted under State law for the same or similar offense, and 2) insofar as any of the circumstances described in subsection (a) is the

prior conviction of an offense, includes a person who had been adjudicated as a juvenile delinquent by reason of the commission of an act that, if committed by an adult, would constitute such an offense.

Chapter 2. Federal Grants for State Prison Construction and Operation.

Chapter 2 authorizes the Attorney General to enter into agreements with any qualifying State to provide construction grants or operating grants for "new prisons."

The Attorney General may make construction grants for up to 50 percent of the construction costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons. The Attorney General may make operating grants for up to 50 percent of the operating costs, as approved by the Director of the Federal Bureau of Prisons, for new prisons.

The term "new prisons" means those prisons and city or county detention facilities, including additions to existing prisons or city or county detention facilities, certified by the State, and approved by the Attorney General, as providing additional prison capacity beyond that which the State previously had available, or had already planned to construct. "New prisons" must be principally dedicated, as determined by the Attorney General, to housing repeat violent offenders and sex offenders.

Chapter 3. Judicial Remedies for Prison Crowding.

Chapter 3 adds a new Section 3626 to Title 18 of the United States Code. This new section provides that a Federal court shall not hold prison or jail overcrowding to be unconstitutional under the Eighth Amendment to the United States Constitution except to the extent that an individual plaintiff inmate proves that the crowding causes the infliction of cruel and unusual punishment.

Chapter 3 also provides that a Federal court shall not place a ceiling on the inmate population of any Federal, State, or local detention facility as an equitable remedial measure for conditions that violate the Eighth Amendment unless crowding inflicted is cruel and unusual punishment on particular identified prisoners.

Chapter 4. Sentences to Account for Costs to the Government of Imprisonment, Release, and Probation.

Chapter 4 amends both the substantive Federal sentencing guidelines and the duties of the Sentencing Commission to include in criminal fines the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence.

Section 5E1.2(i) of the current Sentencing Guidelines provides for the imposition of "an additional fine amount that is at least sufficient to pay the costs to the government of any imprisonment, probation, or supervised release ordered." In United States v. Spiropoulos, 976 F.2d 155 (3rd Cir. 1992), the court held that a criminal fine imposed pursuant to section 5E1.2(i) was invalid insofar as it ordered the defendant to pay costs of imprisonment. In the court's view, recoupment of the costs of imprisonment is not authorized by the Sentencing Reform Act of 1984, and therefore the Sentencing Commission lacked the authority to promulgate section 5E1.2(i). However, the court noted that the goal of allowing the government to recoup these costs is constitutionally permissible. 976 F.2d at 168.

Under this section, authority is provided under the Sentencing Reform Act for courts to consider the costs of imprisonment in sentencing. To further underscore the legality of such a guideline provision, a parallel amendment is provided in the Sentencing Commission's enabling legislation that specifically authorizes the Commission to include the costs of sentence administration as part of the fine guideline.

This section does not alter the fact that criminal fines are paid under the Crime Victims Fund, payment to which is required by 42 U.S.C. 10601(a) and (b). Thus, in reality, the monies are not directly used to recoup government costs of sentence administration. That the funds will be used for other purposes does not preclude basing a fine component on sentence administration costs.

TITLE II—SAFE SCHOOLS

Section 201. Definition. This section defines "former member of the Armed Services" to mean a member of the Armed Services of the United States who is involuntarily separated from the Armed Services within the meaning of section 1141 of title 10 of the United States Code.

Section 202. America's Safe Schools Program. This section authorizes the Secretary of Education, in consultation with the Secretary of Defense, to enter into an agreement with a local educational agency to pay, for a period of six years, the salaries of former members of the Armed Services who are hired within five years as teachers assigned to public elementary and secondary schools.

When seeking to enter into an agreement with a local educational agency, the Secretary of Education is authorized to give priority to those agencies located in communities adversely affected by the recent closing of a military base.

For the first three years, the maximum Federal share of an annual salary of a teacher hired under the agreement is the annual salary earned by the teacher during his or her last year as a member of the Armed Services. The maximum Federal share of an annual salary for the 4th through 6th years that a teacher may be paid under the agreement is 50 percent of the annual salary earned by the teacher during his or her last year as a member of the Armed Services.

Teachers hired pursuant to this section must add to the total number of teachers employed by the local educational agency.

Section 203. Federal Safe School Districts. This section allows a local school district to elect to qualify as a "Federal safe school district." The election may occur by decision of a local educational agency or by referendum of the voters in a school district served by a local educational agency.

This section authorizes the Attorney General to make a grant to a local educational agency serving a Federal safe school district or to a local law enforcement agency with jurisdiction over the Federal safe school district, to pay for enhanced school security measures. The measures that may be funded by a grant include a) equipping schools with metal detectors, fences, closed-circuit cameras, and other physical security measures; b) providing increased police patrols in and around schools, including police hired pursuant to section 102; c) mailings to parents at the beginning of the school year outlining the enhanced mandatory penalties for drug trafficking and weapons offenses within a Federal safe school district; d) signs for school districts indicating they have elected to be a Federal safe school district; and e) gun hotlines.

The United States Attorney who has jurisdiction over each Federal safe school district shall prosecute as an adult any juvenile 16 years of age or older who uses or carries a firearm in or within 1000 feet of a public or private elementary or secondary school.

Within each Federal safe school district, it shall be unlawful for any person who is less than 18 years of age, or any person 18 years of age or older who does not have lawful authority to do so, to carry a firearm into a public or private elementary or secondary school, or to possess a firearm within such school. Whoever knowingly violates this provision by using a firearm shall be imprisoned for not more than 10 years.

This section also directs the United States Sentencing Commission to review, and if necessary, amend its sentencing guidelines to assign an offense level of at least 26 to a first offense under section 924(i)(2) of title 18, United States Code.

TITLE III—CRIMINAL ALIENS AND ALIEN SMUGGLING

Subtitle A. Deportation of Criminal Aliens

Section 301. Deportation Procedures For Certain Criminal Aliens Who Are Not Permanent Residents. This section provides for the prompt deportation of any alien who is not a permanent resident alien and whom the Attorney General determines is deportable and has been convicted of an aggravated felony. Section 242(h) of the INA provides that an alien sentenced to imprisonment shall not be deported until such alien's release. This new section does not alter this requirement—the alien would still serve his or her prison term. However, a final order of deportation could be issued during such alien's imprisonment and executed immediately upon the alien's release.

This section eliminates the following procedures for nonpermanent resident criminal aliens: (1) administrative hearing before an immigration judge, (2) administrative review by the Board of Immigration Appeals of the immigration judge's determination, (3) availability of current grounds of relief from deportation, and (4) Federal court review of the Attorney General's determination on any grounds other than whether the alien has in fact been convicted of an aggravated felony. The Attorney General may not execute a final order of deportation until 14 days after it has been issued in order to allow the alien an opportunity to seek Federal court review.

The deportation proceedings currently included in section 242A and now applicable to all aliens would be limited to permanent resident aliens ("green card holders"). Current section 242A language allows for the institution of deportation proceedings while the alien is incarcerated, with the intent of completing the process so that the alien can be deported upon his or her release.

Section 302. Judicial Deportation. This section allows Federal trial courts to issue an order of deportation during the sentencing phase of the criminal trial of an alien convicted of an aggravated felony. This section applies to all criminal aliens, including permanent residents.

Such an order must have been requested by the U.S. Attorney with the concurrence of the INS Commissioner. Notice of intent to seek a judicial order of deportation must be given promptly after an adjudication of guilt or a guilty plea. The government would still be responsible for showing that the defendant is an alien subject to deportation and that the crime the alien has been convicted of meets the definition of an "aggravated felony;" a statement containing factual allegations on these two matters must be filed at least 20 days prior to the sentencing date.

Judicial deportation would replace current administrative deportation procedures in

those cases where it is sought. Aliens found deportable under this process would continue to have the right to appeal their deportation to the appropriate Federal circuit court of appeals.

The Attorney General would retain his or her right to seek an administrative determination of deportability if the Federal court denies a motion for judicial deportation.

Section 303. Restricting Defenses to Deportation for Certain Criminal Aliens. This section restricts defenses against deportation for criminal aliens convicted of aggravated felonies. As a result of amendments made by this section, the only defense against deportation for aggravated felon aliens would be for permanent resident aliens who have lived in the U.S. in such status for at least seven years and who have been sentenced to less than five years' imprisonment after conviction of an aggravated felony.

Currently, a permanent resident alien is ineligible for relief under section 212(c) waiver of deportation (for permanent resident aliens who have lived in the U.S. for seven consecutive years), if the alien has served five or more years for one or more aggravated felonies. This section would amend the language to make aliens who have been sentenced to five or more years ineligible for section 212(c) relief.

This standard is more relevant to judging the seriousness of an offense since dangerous criminals are at times released prematurely due to prison overcrowding or other reasons unrelated to the seriousness of the crime. Moreover, the current standard presents a serious logistical obstacle to the speedy commencement of deportation proceedings since it may be unknown until five years have been served whether the alien would be able to seek relief under 212(c).

Section 303 also makes it clear that aggravated felons may not request or be granted withholding of deportation under section 243(h). The Immigration Act of 1990 unambiguously denied aggravated felon-aliens the right to political asylum; however, the question of an aggravated felon's ability to request a hearing on eligibility for withholding of deportation was not addressed. Although the Executive Office for Immigration Review has determined that no hearing is possible in such cases, litigation on this issue is likely.

This section does not affect the Attorney General's authority to designate a country other than that of the alien's nationality for deportation. The provision is consistent with the intent of the United Nations Protocol Relating to the Status of Refugees to permit denial of withholding of deportation in cases of persons convicted of a "particularly serious crime."

Section 304. Enhancing Penalties for Failing to Depart, or Reentering, After Final Order of Deportation. This section enhances penalties for failing to depart or for reentering after a final order of deportation has been issued.

Currently, an alien who is deportable for criminal offenses, document fraud, or as a security risk is subject to criminal penalties of up to 10 years imprisonment for failure to depart. However, there are no penalties for aliens deportable for other reasons than failure to depart. Subsection (a) retains the current 10 year penalty and provides for criminal penalties of up to 4 years' imprisonment for aliens who are issued deportation orders on other grounds and who fail to depart.

Subsection (b) increases the penalties for criminal aliens who reenter the U.S. after being formally deported. Currently, an alien convicted of a felony other than an aggravated felony who re-enters is subject to 5 years in prison and a criminal fine; this subsection extends the penalties to aliens convicted of three or more misdemeanors and increases the maximum prison sentence to 10 years. Aggravated felons who re-enter the U.S. currently are subject to criminal fines and up to 15 years in prison; this subsection increases the maximum prison sentence to 20 years. Language also is added to make it clear that any alien who stipulates to deportation during a criminal trial shall be considered to have been formally deported.

Subsection (c) would allow a court in a criminal proceeding against a deported alien who has re-entered the U.S. to reexamine the underlying deportation order only if the alien demonstrates (1) that she has exhausted available administrative remedies that may have been available against the deportation order, (2) that the deportation proceedings improperly deprived the alien of the opportunity for judicial review, and (3) that the entry of the order of deportation was "fundamentally unfair." This language, taken from United States v. Mendoza-Lopez, 481 U.S. 828 (1987), is intended to ensure that minimum due process was followed in the original deportation proceeding while preventing wholesale, time-consuming attacks on underlying deportation orders.

Section 305. Miscellaneous and Technical Changes. This section responds to two holdings of the 9th Circuit. Subsection (a) makes it clear that the Attorney General can authorize deportation proceedings to be conducted by electronic or telephonic means or, where waived or agreed to by the parties, in the absence of the alien.

Subsection (b) makes it clear that nothing in this Act or in section 242(i) (directing the Attorney General to begin deportation proceedings as quickly as possible after a conviction) shall be construed to create a legally enforceable right or benefit.

Subtitle B. Prevention and Punishment of Alien Smuggling

Section 311. Increased Penalties for Alien Smuggling. This section increases the prison terms for alien smuggling in the following ways: 1) increases the penalty for alien smuggling to 10 years (current law is 5 years), 2) enhances the penalty if the smuggler willfully subjects any alien to a substantial risk of death or serious bodily harm by adding a penalty of up to 10 years, 3) requires the death penalty for a smuggler who causes death, and 4) provides a penalty of up to 5 years if a person knowingly hires a smuggled alien.

Section 312. Smuggling Aliens for Commission of Crimes. This section creates a new crime for smuggling aliens for the purpose of committing offenses against the U.S. All offenses punishable for more than 1 year are included, such as violations of, attempted violations of, and conspiracy to violate, laws on drug trafficking, prostitution, firearms trafficking, money laundering, gang activities, kidnapping, extortion, terrorism and organized crime activities. The penalty is enhanced by a minimum of 3 and maximum of 5 years.

Section 313. Addition of Alien Smuggling to RICO. This section adds alien smuggling to the list of crimes which establish the basis for bringing a RICO (Racketeering and Influenced Criminal Organizations) charge (at least two of the enumerated crimes are necessary to show a "pattern of racketeering activity"). Since a significant portion of alien smuggling is conducted by organized crime, this addition will allow law enforcement officials and prosecutors to use RICO penalties (such as forfeiture and imprisonment) against organized crime syndicates.

Section 314. Expanded Forfeiture for Smuggling or Harboring Illegal Aliens. This section expands current INS authority to seize and subject to forfeiture property used in, or facilitating, the smuggling or harboring of illegal aliens. This is important in cases when RICO charges (and penalties) are not available.

Section 315. Expansion in Definition of "Aggravated Felony." This section expands the definition of "aggravated felony." This section expands the definition of "aggravated felony" for purposes of the Immigration and Nationality Act (INA). Currently the definition includes: murder, drug trafficking, trafficking in firearms or explosives, money laundering, terrorism and any crime of violence for which the sentence is 5 or more years. This section adds the following: firearms violations, failure to appear before a court to answer a felony charge, demanding or receiving ransom money, unlawful conduct relating to RICO, certain immigration-related offenses including alien smuggling and sale of fraudulent documents, child pornography, owning or operating a prostitution business, treason, and tax evasion exceeding $200,000.

Section 316. Amendment of Sentencing Guidelines. This section directs the United States Sentencing Commission to review, and if necessary, amend its sentencing guidelines to assign an offense level of at least 19 to a first offense under (1) Section 274(a)(1) of the Immigration and Nationality Act, as amended by Section 311(1); (2) Section 274(a)(3) and (5) of the Immigration and Nationality Act, as added by Section 311(2); and (3) Section 274(a)(2) of the Immigration and Nationality Act, as amended by Section 312.

Section 317. Increased Penalty for Visa Fraud. This section amends Sections 1542 (false statement), 1543 (forgery), 1544 (misuse of passport), 1545 (safe conduct violation), and 1546(a) (fraud and misuse of visas) of Title 18, United States Code, to increase the maximum penalties for various types of immigration fraud from five years' to ten years' imprisonment.

Section 318. Training of Airline Personnel in Detection of Fraudulent Documents. This section is designed to assist the training of airline personnel in the detection of fraudulent documents.

Subtitle C. Border Patrol

Section 321. Border Patrol Agents. This section authorizes funding for an additional 1,000 Border Patrol agents.

Section 322. INS Criminal Investigators. This section authorizes funding for an additional 1,000 INS criminal investigators.

Section 323. Criminal Alien Tracking Center. This section authorizes funding for the operation of a criminal alien tracking center as established by 8 U.S.C. 1252(a)(3)(A).

TITLE IV—GANGS, JUVENILES, DRUGS, AND PROSECUTORS

Section 401. Short Title. Title IV shall be known as the "Anti-Gang and Youth Protection Act of 1993."

Subtitle A. Criminal Youth Gangs

Section 411. Criminal Street Gang Offenses. Section 411 adds a new chapter 94 to title 18 of the United States Code, designed to assist prosecutors in combating the proliferation of violent youth gang activity.

This section makes it a separate criminal offense to 1) commit, or to attempt to commit, a "predicate gang crime" with intent to promote or further the activities of a "criminal street gang" or for the purpose of gaining entrance to or maintaining or increasing

position in such a gang; 2) to participate, or attempt to participate, in a criminal street gang, or conspire to do so; 3) to command, counsel, persuade, induce, entice, or coerce any individual to participate in a criminal street gang; or 4) to employ, use, command, counsel, persuade, induce, entice, or coerce any individual to commit, cause to commit, or facilitate the commission of, a predicate gang crime, with intent to promote the activities of a criminal street gang or for the purpose of gaining entrance to or maintaining or increasing position in such gang.

The term "predicate gang crime" means any act or threat, or attempted act or threat, which is chargeable under Federal or State law and punishable by imprisonment for more than 1 year, involving murder, assault, robbery, extortion, burglary, arson, property damage or destruction, obstruction of justice, tampering with or retaliating against a witness, victim or informant, or manufacturing, importing, or otherwise dealing in an illegal controlled substance.

The term "criminal street gang" means any organization, or group, of 5 or more individuals, whether formal or informal, who act in concert, or agree to act in concert, for a period in excess of 30 days, with a purpose that any of these individuals alone, or in any combination, commit or will commit, 2 or more predicate gang crimes.

Section 412. Crimes Involving the Use of Minors as RICO Predicates.

Section 413. Serious Juvenile Drug Offenses as Armed Career Criminal Act Predicates. This section treats certain serious drug crimes by juveniles as armed career criminal predicate offenses.

Section 414. Adult Prosecution of Serious Juvenile Offenders. This section creates a presumption in favor of adult prosecution of leaders of juvenile gangs or juveniles with a history of violent crime or drug activity.

Section 415. Increased Penalties for Employing Children to Distribute Drugs Near Schools and Playgrounds.

Section 416. Increased Penalties for Drug Trafficking Near Public Housing.

Section 417. Increased Penalties for Travel Act Crimes Involving Violence and Conspiracy to Commit Contract Killings.

Section 418. Amendments Concerning Records of Crimes Committed by Juveniles.

Section 419. Addition of Anti-Gang Byrne Grant Funding Objective. This section adds another objective to State and local law enforcement block grants to support programs addressing the need for effective bindover systems for adult prosecution of juveniles who commit serious violent crimes.

Subtitle B. Gang Prosecution

Section 431. Additional Prosecutors. This section authorizes funding for additional assistant United States attorneys to be assigned to the prosecution of violent youth gangs.

Section 432. Gang Investigation Coordination and Information Collection. This section directs the Attorney General to develop a national strategy aimed at coordinating Federal gang-related investigations.

Section 433. Continuation of Federal-State Funding Formula.

Section 434. Grants for Multijurisdictional Drug Task Forces.

TITLE V—DRUG CONTROL AND RURAL CRIME

This title assists in the fight against drug traffickers and violent criminals, with a special focus on crime in rural areas.

Subtitle A. Drug Trafficking in Rural Areas

Section 501. Authorizations for Rural Law Enforcement Agencies. This section amends current State and local law enforcement grants program to authorize an additional $250 million in grants for rural States.

Section 502. Rural Crime and Drug Enforcement Task Forces. This section directs the Attorney General to establish Rural Crime and Drug Enforcement Task Forces in every Federal judicial district that includes significant rural areas. Headed by the local U.S. Attorneys, the Task Forces would include personnel from DEA, FBI, Customs, U.S. Park Police, U.S. Marshals, and State and local law enforcement. These Task Forces would be required to coordinate activities to ensure that resources are used as effectively as possible.

Section 503. Cross-Designation of Federal Officers. This section permits the Attorney General to cross-designate up to 100 law enforcement officers from the U.S. Park Police, U.S. Forest Service, Bureau of Land Management, and other law enforcement agencies to enforce Federal drug and criminal law in rural areas.

Section 504. Rural Drug Enforcement Training. This section establishes a specialized training program at the Federal Law Enforcement Training Center in Glynco, Georgia to teach police officers and sheriffs from rural agencies the most effective methods of conducting investigations.

Subtitle B. Rural Drug Prevention and Treatment

Section 511. Rural Substance Abuse Treatment and Education Grants. This section proposes a HHS drug prevention and treatment program for rural areas. Grants will go to hospitals, community health centers, and State agencies responsible for treatment. This section requires that, to the extent practicable, one grant should go to each state.

Subtitle C. Rural Areas Enhancement

Section 521. Asset Forfeiture. This section requires that the assets forfeited by Rural Task Forces be used to enhance the operations of the Task Force and participating State and local law enforcement agencies.

Section 522. Prosecution of Clandestine Laboratory Operators. This section requires Federal prosecutors bringing charges against "ice" manufacturers to seek environmentally-related indictments as well as civil suits where environmental damage has occurred or hazardous waste has been dumped.

Subtitle D. Chemical Control

Section 531. Short Title.

Section 532. Definition Amendments. This section eliminates the terms 'Precursor Chemical' and 'Essential Chemical' and replaces them with 'List I Chemical' and 'List II Chemical.' This section also expands the definition of 'Regulated Person' and 'Regulated Transaction' to include brokers and traders.

Section 533. Registration Requirements.

Section 534. Reporting of Listed Chemical Manufacturing. This section requires all manufacturers to submit annual reports on the total quantity of listed chemicals produced during the year. This reporting requirement does not apply to the manufacture of drug products containing List I Chemicals covered by the legal drug exemption.

Section 535. Reports by Brokers and Traders; criminal penalties. This section provides that brokers and traders will have the same recordkeeping and reporting requirements for international transactions as exporters and will be subject to the same criminal penalties.

Section 536. Exemption Authority; additional penalties. This section allows the DEA to apply a targeted approach to export controls. This section also establishes criminal penalties for attempting to evade reporting requirements and for smuggling listed drugs.

Section 537. Amendments to List I. This section deletes three chemicals that were added by the Crime Control Act of 1990. Two of the three deleted chemicals are not controlled under Federal law and the third is already listed as a controlled substance. This section also adds to List I two chemicals that are used to illicitly manufacture the immediate precursor to methamphetamine.

Section 538. Elimination of Regular Supplier Status and Creation of Regular Importer Status. This section places the focus of control on the U.S. firm that imports a listed chemical. The present focus is on the foreign firm that supplied the chemical.

Section 539. Administrative Inspections and Authority. This section gives the DEA the same inspection authority for listed chemicals as it presently has for controlled substances.

Section 540. Threshold Amounts. This section clarifies the Attorney General's authority to eliminate thresholds for specific chemicals.

Section 541. Management of Listed Chemicals. This section creates an additional felony if an individual violates the Solid Waste Disposal Act in the handling of chemicals used to illegally manufacture a controlled substance.

Section 542. Forfeiture Expansion. This section subjects listed chemicals to the same forfeiture provisions that apply to controlled substances.

Section 543. Attorney General Access to the National Practitioner Data Bank. This section grants the DEA full access to all information in the National Practitioners Data Bank, such as adverse State licensing actions and other reportable data.

Section 544. Regulations and Effective Date.

Subtitle E. Personnel

Section 551. More Agents for the Drug Enforcement Administration. The section authorizes funding for the hiring of additional DEA agents.

Section 552. Adequate Staffing of the Office of National Drug Policy. This section ensures that the Office of National Drug Policy will be adequately staffed.

TITLE VI—PUNISHMENT AND DETERRENCE

Subtitle A. Death Penalty

This subtitle provides necessary procedural provisions and conforming amendments to enable law enforcement authorities to seek the death penalty for the most heinous federal crimes (47 separate offenses) and it authorizes the death penalty for the District of Columbia. It is identical in most respects to the federal death penalty proposal which passed the House in 1990 and 1991.

In all, this subtitle provides the death penalty for the following offenses: 1) espionage; 2) treason; 3) aircraft destruction where death results; 4) motor vehicle destruction where death results; 5) retaliatory murder against an official's family; 6) murder of members of Congress or the Cabinet; 7)–9) three explosive offenses where death results; 10) murder in special territorial jurisdictions; 11) murder of Federal judges and court officers; 12) witness tampering where death results; 13) mailing of dangerous articles where death results; 14) assassination of the President, 15) wrecking trains where death results; 16) bank robbery where death results; 17) certain drug-related killings; and 18) air piracy where death results.

This subtitle also imposes the death penalty for the following new offenses: 1) violence at international airports where death results; 2) Federal child abuse resulting in death; 3) conspiracy against civil rights where death results; 4) violence against a person exercising Federal rights where death results; 5) firearms murders during Federal crimes of violence; 6) fatal firearms attacks at Federal facilities; 7) drive-by shootings where death results; 8) murder in the furtherance of genocide; 9) murder of local law enforcement officials assisting Federal law enforcement officials; 10) murder of certain foreign officials; 11) murder by prisoner serving life term; 12) murder by escaped federal prisoner; 13) kidnapping where death results; 14) hostage taking where death results; 15) murder of jurors and court officers; 16) retaliatory murder of witnesses; 17) attempted assassination of the President /1/; 18) murder for hire; 19) murder in aid of racketeering; 20) sexual exploitation resulting in death; 21) violence against maritime navigation where death results; 22) violence against maritime platforms where death results; 23) terrorist murders of Americans abroad; 24) use of weapons of mass destruction where death results; 25) torture where death results; 26) drug kingpins currently subject to mandatory life /1/; 27) drug kingpins who attempt to kill to obstruct justice /1/; 28) murder in the course of drug felonies NOTE /1/ No resulting death is required for the death penalty to be considered.

This subtitle also amends title 18 of the United States Code to authorize the death penalty for murders in the District of Columbia. It proposes a separate set of procedures applicable to capital cases brought in the District of Columbia in order to address D.C.'s particular problems as well as the unique federal-District relationship.

Subtitle B. Equal Justice Act

The Equal Justice Act establishes additional safeguards against racial bias in the administration of capital punishment and other penalties. It codifies certain Supreme Court decisions addressing racial discriminatory practices in the imposition of the death penalty. It permits a motion by the defense attorney to examine jurors on the risk of racial prejudice during voir dire (*Turner* v. *Murray* (1986)); permits a change of venue where an impartial jury cannot be obtained (*Irvin* v. *Dowd* (1967)); and prohibits all appeals to racial prejudice or bias by defense counsel or the prosecutor before the jury.

Subtitle C. Enhanced Penalties for Criminal Use of Firearms and Explosives

Section 661. Smuggling Firearms in Aid of Drug Trafficking. This section increases the penalties for smuggling firearms in furtherance of drug trafficking.

Section 662. Prohibition against Theft of Firearms or Explosives. This section imposes a ten-year maximum penalty for the theft of firearms.

Section 663. Increased Penalty for Knowingly False, Material Statement in connection with the Acquisition of a Firearm from a Licensed Dealer. This section increases the maximum penalty for making a knowingly false, material statement in connection with the purchase of a firearm.

Section 664. Summary Destruction of Explosives Subject to Forfeiture.

Section 665. Elimination of Outmoded Parole Language.

Section 666. Receipt of Firearms by Nonresident. This section makes it illegal to transfer firearms to a nonresident unless for lawful purposes.

Section 667. Prohibition of Theft of Firearms or Explosives from Licensee.

Section 668. Increased Penalty for Interstate Gun Trafficking. This section increases the maximum penalty for interstate gun trafficking.

Section 669. Prohibition of Transactions involving Stolen Firearms which have Moved in Interstate or Foreign Commerce.

Section 670. Possession of Explosives by Felons and Others. This section makes possession of explosives by felons equivalent to receipt of explosives.

Section 671. Disposition of Forfeited Firearms. This section facilitates the disposition of firearms forfeited to the Federal government. The government may use forfeited weapons or sell firearms which are historic antiques.

Section 672. Definition of Burglary under the Armed Career Criminal Statute. This section defines burglary under the armed career criminal statute.

Subtitle D. Exclusionary Rule Reform

This subtitle is identical to the exclusionary rule reform proposal which passed the House of Representatives as an amendment to H.R. 3371 in 1991.

This subtitle adds a new section 3509 to the Federal criminal code. Subsection 3509(a) would provide that evidence shall not be excluded in any Federal proceeding on the ground that the search or seizure was in violation of the Fourth Amendment, if the search or seizure was carried out in circumstances justifying an objectively reasonable belief that it was in conformity with the Fourth Amendment. A police officer's mere subjective belief in the legality of his or her own search is insufficient to support admissibility. This would extend the underlying principle of *United States* v. *Leon*, 468 U.S. 897 (1984), so as to bar the exclusion of evidence obtained in cases involving warrantless searches, as well as in cases involving searches made pursuant to a warrant.

This subtitle also provides specifically that evidence was obtained pursuant to a warrant constitutes prima facie evidence of the existence of circumstances justifying an objectively reasonable belief that a search was in conformity with the Fourth Amendment.

Subsection 3509(b) would bar the exclusion of evidence in Federal proceedings on the basis of non-constitutional violations except as expressly authorized by statute or rule promulgated by the Supreme Court. Subsection 3509(c) makes it clear that the section is not construed as reflecting legislative approval of the exclusion of evidence as a sanction for official misconduct in any circumstances.

Subtitle E. Pre-Trial Interrogation.

Subtitle E provides that it is the sense of the Congress that the Attorney General shall instruct all United States Attorneys, and implement policies consistent therewith, that confessions obtained in conformity with Section 3501 of title 18, United States Code, will be offered into evidence.

TITLE VII—ELIMINATION OF DELAYS IN CARRYING OUT SENTENCES

This title curbs the abuse of habeas corpus by state and federal prisoners and is identical to the habeas corpus amendment to the crime bill, which passed the Senate by a vote of 58 to 40 in 1991.

Subtitle A. General Habeas Corpus Reform

Subtitle A proposes general habeas corpus reform.

Subtitle B. Death Penalty Litigation Procedures

Subtitle B contains reforms aimed at addressing the unique problems of abuse and delay in capital cases. It is modeled after the "Powell Committee" proposal for death penalty litigation. (The States may opt. in. If a State opts in, it must provide counsel in State collateral review, and it limits the petitioner to a single habeas petition.) It improves upon the Powell Committee by including the "full and fair" rule of deference of State court adjudications and placing time limits upon the Federal courts.

Subtitle C. Equalization of Capital Habeas Corpus Litigation Funding.

Subtitle C ensures that, each year, State Attorneys General shall receive habeas corpus litigation support grants equal in amount given to capital resources centers.

TITLE VIII—PREVENTION OF TERRORISM

Subtitle A. Penalties and Offenses

Subtitle A establishes penalties for providing "material support" to terrorists. "Material support" includes, but is not limited to, currency or other financial securities, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets. Subtitle A also increases the penalties for terrorism offenses and extends to 10 years the statute of limitations for certain terrorism offenses.

Subtitle B. Removal of Alien Terrorists

Subtitle B establishes a mechanism for the removal of alien terrorists that protects certain classified information whose disclosure may be necessary to show that an alien is deportable. In a special removal hearing established by this subtitle, a judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

Subtitle C. Enhanced Entry Controls

Subtitle C establishes tougher entry controls to prevent the type of abuse of our asylum system that allowed the entry of at least one of the indicted suspects in the World Trade Towers bombing. For example, it would allow an examining immigration officer to exclude, without a hearing, any alien who 1) presents fraudulent documents to the examining immigration officer, 2) does not have any reasonable basis for legal entry into the United States, and 3) does not indicate an intention to apply for political asylum.

TITLE IX—VICTIMS' RIGHTS AND CHILD ABUSE

Subtitle A. Victims' Rights

Subtitle A enhances the access of victims to the criminal justice system and provides victims with mandatory restitution.

Subtitle B. National Child Protection Act

Subtitle B directs the Attorney General to establish a national system through which child care organizations may obtain the benefits of a national criminal background check to determine if persons who are current or prospective child care providers have committed child abuse crimes or other serious crimes.

Subtitle C. Jacob Wetterling Crimes Against Children Registration Act

Subtitle C directs the Attorney General to establish guidelines for State programs requiring any person who is convicted of a criminal offense against a victim who is a minor to register a current address with a designated State law enforcement agency for 10 years after release from prison, being

placed on parole, or being placed on supervised release.

TITLE X—VIOLENT CRIMES AND LAW ENFORCEMENT SUPPORT

Subtitle A. Violent Crimes

Subtitle A establishes maximum penalties for certain crimes, including assault, manslaughter, and carjacking. Subtitle A also requires that a person convicted of a third crime of violence shall be sentenced to not less than a mandatory term of life imprisonment without release.

Subtitle B. National Commission to Support Law Enforcement

Subtitle B establishes a 24-member National Commission to Support law Enforcement. The Commission is charged with studying and recommending changes regarding law enforcement agencies and law enforcement issues on the Federal, State, and local levels, including the 1) sufficiency of funding, 2) the conditions of law enforcement employment, 3) the effectiveness of information-sharing systems, 4) the status of law enforcement research, 5) the adequacy of equipment, physical resources, and human resources, 6) the cooperation among Federal, State, and local law enforcement agencies, 7) the responsibility of governments and law enforcement agencies in solving the crime problem, and 8) the impact of the criminal justice system, including court scheduling and prison overcrowding, or law enforcement. The Commission must submit a report to Congress within 18 months.

TITLE XI—CIVIL RIGHTS OFFENSES

Title XI increases the maximum penalties for serious violent acts in violation of criminal civil rights statutes.

TITLE XII—PUBLIC CORRUPTION

Title XII strengthens the Federal laws against public corruption by increasing the penalties, providing a more adequate basis of Federal jurisdiction to prosecute corruption offenses, prohibiting retaliation against whistleblowers who expose public corruption, and through specific provisions relating to election fraud and drug-related corruption.

TITLE XIII—FUNDING

Section 1301. Reduction in Overhead Costs Incurred in Federally Sponsored Research. This section states that the Congressional Budget Office estimates that capping the overhead payment rate for Federally-funded university research at 90% of the current level will produce savings of $1.54 billion over five years.

Section 1302. Overhead Expenses Reduction. This section reduces the overhead expenses identified and reduced by the President in Executive Order 12837 by an additional 5 percent. The Congressional Budget Office estimates that the reduction in overhead expenses required by this section will produce savings of approximately $6 billion over five years.

Section 1303. Funding of Programs Authorized by this Act. This section provides that the amount of available budget authority resulting from the enactment of sections 1301 and 1302 shall be reallocated as follows:

1. $800 million for America's Safe Streets Program as authorized by section 102 ($100 million for FY94, $125 million for FY95, $175 million for FY96, $200 million for FY97, and $200 million for FY98).

2. $650 million for the Cops-on-the-Street grants as authorized by section 112 ($100 million for FY94, $100 million for FY95, $150 million for FY96, $150 million for FY97, and $150 million for FY98).

3. $250 million for the Police Corps as authorized by section 130 ($50 million for FY94, $100 million for FY95, and $100 million for FY96).

4. $300 million for Community Policing grants as authorized by section 141 ($60 million for FY94, $60 million for FY95, $60 million for FY96, $60 million for FY97, and $60 million for FY98).

5. $100 million for Police Automation and Technology as authorized by section 153 ($100 million for FY94).

6. $2 billion for the Regional Prisons as authorized by section 165 ($200 million for FY94, $400 million for FY95, $400 million for FY96, $500 million for FY97, and $500 million for FY98).

7. $1 billion for the Prison Construction and Operation grants as authorized by section 177 ($200 million for FY94, $200 million for FY95, $200 million for FY96, $200 million for FY97, and $200 million for FY98).

8. $500 million for America's Safe Schools Program as authorized by section 202 ($100 million for FY94, $100 million for FY95, $100 million for FY96, $100 million for FY97, and $100 million for FY98).

9. $500 million for the Federal Safe School Districts as authorized by section 203 ($100 million for FY64, $100 million for FY95, $100 million for FY96, $100 million for FY97, and $100 million for FY98).

10. $300 million for the hiring of 1,000 additional Border Patrol agents as authorized by section 321 ($60 million for FY94, $60 million for FY95, $60 million for FY96, $60 million for FY97, and $60 million for FY98).

11. $385 million for the hiring of 1,000 additional INS criminal investigators as authorized by section 322 ($77 million for FY94, $77 million for FY95, $77 million for FY96, $77 million for FY97, and $77 million for FY98).

12. $13 million for the operation of a criminal alien tracking center as authorized by section 323 ($5 million for FY94, $2 million for FY95, $2 million for FY96, $2 million for FY97, and $2 million for FY98).

13. $100 million for the hiring of additional Assistant U.S. Attorneys to prosecute violent youth gangs as authorized by section 431 ($20 million for FY94, $20 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

14. $1 million for Gang Investigation Coordination as authorized by section 432 ($1 million for FY94).

15. $250 million for Rural Law Enforcement grants as authorized by section 501 ($50 million for FY94, $50 million for FY95, $50 million for FY96, $50 million for FY97, and $50 million for FY98).

16. $5 million for Drug Enforcement Training as authorized by section 504 ($1 million for FY94, $1 million for FY95, $1 million for FY96, $1 million for FY97, and $1 million for FY98).

17. $110 million for Rural Substance Abuse Treatment and Education grants as authorized by section 511 ($25 million for FY94, $25 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

18. $100 million for the hiring of additional DEA agents as authorized by section 551 ($20 million for FY94, $20 million for FY95, $20 million for FY96, $20 million for FY97, and $20 million for FY98).

19. $120 million for Counterterrorism operations as authorized by section 811 ($60 million for FY94 and $60 million for FY95).

20. $40 million for Child Abuse Information grants as authorized by section 916 ($20 million for FY94, $10 million for FY95, and $10 million for FY96).

21. $1 million for the establishment of the National Commission to Support Law Enforcement as authorized by section 1030 ($1 million for FY94).

NEIGHBORHOOD SECURITY ACT OF 1993—FUNDING

I. SAVINGS (ESTIMATED BY THE CONGRESSIONAL BUDGET OFFICE)

a. Cutting Overhead in the Federal Government by 5% above the Cuts Proposed in Executive Order 12837:

FY94—$1.2 billion.
FY95—$1.2 billion.
FY96—$1.2 billion.
FY97—$1.2 billion.
FY98—$1.2 billion.
Subtotal—$6 billion.

b. Capping the Overhead Payment Rate for Federally-Funded University Research at 90% of Current Levels:

FY94—$150 million.
FY95—$310 million.
FY96—$350 million.
FY97—$360 million.
FY98—$370 million.

c. Total Savings:

FY94—$1.35 million.
FY95—$1.51 million.
FY96—$1.55 million.
FY97—$1.56 million.
FY98—$1.57 million.
Five-Year Total—$7.54 billion.

II ALLOCATIONS

[In millions of dollars]

Program	Fiscal year				
	1994	1995	1996	1997	1998
America's Safe Streets	100	125	175	200	200
Cops-on-the-Street	100	100	150	150	150
Police Corps	50	100	100	.....	.....
Community Policing	60	60	60	60	60
Police Automation	100	.....	.....	.....	.....
Regional Prisons	200	400	400	500	500
State Prison Grants	200	200	200	200	200
America's Safe Schools	100	100	100	100	100
Safe School Districts	100	100	100	100	100
Border Patrol Agents (1,000)	60	60	60	60	60
INS Criminal Investigators (1,000)	77	77	77	77	77
Criminal Alien Tracking Center	5	2	2	2	2
Gang Investigation Coordination	1	.....	.....	.....	.....
Law Enforcement Commission	1	.....	.....	.....	.....
Assistant U.S. Attorneys	20	20	20	20	20
Rural Law Enforcement Training	50	50	50	50	50
Rural Drug Enforcement	1	1	1	1	1
Rural Drug Prevention	25	25	20	20	20
DEA Agents	20	20	20	20	20
Terrorism Prevention	60	60	.....	.....	.....
Children Abuse Info.	20	10	10	.....	.....
Annual totals (billions)	1.35	1.51	1.545	1.56	1.56

Five-year total—$7.53 billion.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1993.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate,
Washington, DC.

DEAR MR. LEADER: As you requested, the Congressional Budget Office has estimated the savings that could be attained by reducing administrative expenses for government agencies.

On February 10, 1993, the President issued Executive Order 12837 requiring agencies to submit budgets incorporating reductions in administrative expenses of 3 percent in 1994, 6 percent in 1995, 9 percent in 1996, and 14 percent in 1997, relative to 1993 spending adjusted for inflation. The Office of Management and Budget has categorized about $22 billion in 1993 executive branch spending as administrative costs. (These costs include certain categories of overhead expenses, but do not include the costs of any salaries or benefits for personnel.) If appropriations are reduced accordingly, the executive order will result in savings of about $3.5 billion in 1998 and $11 billion over the 1994–1998 period, compared to 1993 spending adjusted for inflation.

Cutting administrative costs by an additional 5 percentage points in each year would

produce additional savings of about $1.2 billion a year, or $6 billion over five years. This would necessitate a reduction from the inflation-adjusted 1993 level of 8 percent in 1994, 11 percent in 1995, 14 percent in 1996, and 19 percent in 1997. If appropriations were reduced accordingly, total savings would be $17 billion over five years, compared to $11 billion for the Administration's plan.

The executive order and legislation requiring reductions in administrative costs would not, by themselves, reduce federal spending. Savings would result only if appropriations were correspondingly reduced.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mickey Buhl, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 30, 1993.

Hon. ROBERT DOLE,
Republican Leader,
U.S. Senate,
Washington, DC.

DEAR MR. LEADER: As you requested, the Congressional Budget Office is pleased to provide additional information about the estimated savings that would result from a ten percent cut in the overhead rate paid to each university that receives federal research funding. This proposal was discussed as part of option DOM-44 in our publication "Reducing the Deficit: Spending and Revenue Options," which was released in February 1993.

We estimate that a ten percent cut in the overhead rate would make possible outlay savings of $150 million in fiscal year 1994, $310 million in 1995, $350 million in 1996, $360 million in 1997, and $370 million in 1998. To achieve these savings, the Congress would have to reduce the appropriations for university research by an amount corresponding to the mandated reduction in overhead costs.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Mr. MACK. Mr. President, I first want to thank Senators DOLE and HATCH for putting together this comprehensive bill addressing our Nation's crisis of violent crime. I want to highlight two provisions of the bill that I took part in drafting. First, we included an amendment to the Federal carjacking statute which broadens its scope and incorporates the death penalty. Second, we developed a new regional prison system, specifically designed to put our most violent criminals and convicted aliens behind bars, and keep them there.

The bill's section forges a Federal-State alliance to help States deal with their own violent crime problem. A State will be deemed eligible to participate in this innovative nationwide enterprise if it steps up to the plate and eliminates parole, adopts more stringent pretrial detention standards, and deals swiftly and decisively with violent repeat offenders, sex offenders and criminals using guns. The reward for those States who act in such a responsible manner will be what they need most, more prison beds at no additional cost to them.

We are here today to essentially open the door to a safer America. An America where criminals who rape, rob, or murder, will be stiffly sentenced and will serve every day of the sentence they are given. An America where we can rely upon our criminal system to dispense true justice, and a place which favors innocent victims over brutal thugs. If this legislation is passed, gone will be the days of the revolving door where vicious criminals are back out on the street within a matter of months of their third or fourth offense.

The finger pointing between the States, the Congress and the Federal judges shall stop here. With this bill, the U.S. Government will do its job to combat the problem of diminishing prison space and escalating crime rates. I say to the American people that we, as Republicans in the U.S. Senate, have heard your call for safety ad we are heeding it.

I want to again thank the leadership, and also mention Congressman BILL MCCOLLUM for his contributions to the prison section of the bill, and say that I am eager to work with my colleagues to secure passage of this hard hitting, get tough crime legislation.

By Mr. LEVIN (for himself and Mr. RIEGLE):

S. 1357. A bill to reaffirm and clarify the Federal relationships of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians as distinct federally recognized Indian tribes, and for other purposes; to the Committee on Indian Affairs.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS AND THE LITTLE RIVER BAND OF OTTAWA INDIANS ACT

• Mr. LEVIN. Mr. President, today, I am joined by my colleague from Michigan, Senator RIEGLE, in introducing legislation to reaffirm and clarify the Federal relationship with the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Both of these tribes are descendants of the tribes that signed the 1836 Treaty of Washington and the 1855 Treaty of Detroit. This legislation seeks to reaffirm the Federal trust responsibility to these two tribes which the most recognized Indian scholar in the United States, University of Colorado Prof. Vine Deloria, Jr., has gone on record as stating was never terminated. Identical legislation has been introduced in the House by Representatives DALE KILDEE, DAVE CAMP, and PETER HOEKSTRA.

Mr. President, historical documentation proves that these tribes have had a government-to-government relationship with the United States since Americans first entered the Great Lakes. Both are signatories to treaties with the United States and both maintained distinct political and cultural structures from that time to the present. Additionally, both tribes petitioned for recognition of their governments under the Indian Reorganization Act in 1935. The U.S. Government's failure to act on this petition, claiming budgetary constraints and bureaucratic redtape, has brought about the necessity for this legislation.

Mr. President, numerous Indian law experts have found that these two tribes are technically, federally recognized and therefore eligible for services as a result of this recognition. Yet, the Bureau of Indian Affairs has refused to provide such recognition using a series of historical and legal technicalities as its excuse. No one questions the fact that these tribes signed treaties with the United States and that they have upheld their end of the agreement. Mr. President, I urge speedy enactment of this legislation. It is long overdue. I ask unanimous consent that the full text 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. 1357

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 "Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians are descendants of, and political successors to, signatories of the 1836 Treaty of Washington and the 1855 Treaty of Detroit.

(2) The Grand Traverse Band of Ottawa and Chippewa Indians, the Sault Ste. Marie Tribe of Chippewa Indians, and the Bay Mills Band of Chippewa Indians, whose members are also descendants of the signatories to the 1836 Treaty of Washington and the 1855 Treaty of Detroit, have been recognized by the Federal Government as distinct Indian tribes.

(3) The Little Traverse Bay Bands of Odawa Indians consists of at least 1,000 eligible members who continue to reside close to their ancestral homeland as recognized in the Little Traverse Reservation in the 1836 Treaty of Washington and 1855 Treaty of Detroit, which area is now known as Emmet and Charlevoix Counties, Michigan.

(4) The Little River Band of Ottawa Indians consists of at least 500 eligible members who continue to reside close to their ancestral homeland as recognized in the Manistee Reservation in the 1836 Treaty of Washington and reservation in the 1855 Treaty of Detroit, which area is now known as Manistee and Mason Counties, Michigan.

(5) The Bands filed for reorganization of their existing tribal governments in 1935 under the Act of June 18, 1934 (25 U.S.C. et seq.; commonly referred to as the "Indian Reorganization Act"). Federal agents who visited the Bands, including Commissioner of Indian Affairs, John Collier, attested to the continued social and political existence of the Bands and concluded that the Bands

were eligible for reorganization. Due to a lack of Federal appropriations to implement the provisions of such Act, the Bands were denied the opportunity to reorganize.

(6) In spite of such denial, the Bands continued their political and social existence with viable tribal governments. The Bands, along with other Michigan Odawa/Ottawa groups, including the tribes described in paragraph (2), formed the Northern Michigan Ottawa Association in 1948. The Association subsequently pursued a successful land claim with the Indian Claims Commission.

(7) Between 1948 and 1975, the Bands carried out many of their governmental functions through the Northern Michigan Ottawa Association, while retaining individual Band control over local decisions.

(8) In 1975, the Northern Michigan Ottawa Association petitioned under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), to form a government on behalf of the Bands. Again in spite of the Bands' eligibility, the Bureau of Indian Affairs failed to act on their request.

(9) The United States Government, the government of the State of Michigan, and local governments have had continuous dealings with the recognized political leaders of the Bands from 1836 to the present.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) the term "Bands" means the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians;

(2) the term "member" means those individuals enrolled in the Bands pursuant to section 7; and

(3) the term "Secretary" means the Secretary of the Interior.

SEC. 4. FEDERAL RECOGNITION.

(a) FEDERAL RECOGNITION.—Federal recognition of the Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians is hereby reaffirmed. All laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians, including the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act"), which are not inconsistent with any specific provision of this Act shall be applicable to the Bands and their members.

(b) FEDERAL SERVICES AND BENEFITS.—

(1) IN GENERAL.—The Bands and their members shall be eligible for all services and benefits provided by the Federal Government to Indians because of their status as federally recognized Indians, and notwithstanding any other provision of law, such services and benefits shall be provided after the date of the enactment of this Act to the Bands and their members without regard to the existence of a reservation or the location of the residence of any member on or near any Indian reservation.

(2) SERVICE AREAS.—

(A) LITTLE TRAVERSE BAY BANDS.—For purposes of the delivery of Federal services to the enrolled members of the Little Traverse Bay Bands of Odawa Indians, the area of the State of Michigan within 70 miles of the boundaries of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs "third" and "fourth" of the Treaty of 1855, 11 Stat. 621, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after the date of the enactment of this Act. Services may be provided to members outside the named service area unless prohibited by law or program regulations.

(B) LITTLE RIVER BAND.—For purposes of the delivery of Federal services to enrolled members of the Little River Band of Ottawa Indians, the Counties of Manistee, Mason, Wexford and Lake, in the State of Michigan, shall be deemed to be within or near a reservation, notwithstanding the establishment of a reservation for the tribe after the date of the enactment of this Act. Services may be provided to members outside the named Counties unless prohibited by law or program regulations.

SEC. 5. REAFFIRMATION OF RIGHTS.

(a) IN GENERAL.—All rights and privileges of the Bands, and their members thereof, which may have been abrogated or diminished before the date of the enactment of this Act are hereby reaffirmed.

(b) EXISTING RIGHTS OF TRIBE.—Nothing in this Act shall be construed to diminish any right or privilege of the Bands, or of their members, that existed prior to the date of enactment of this Act. Except as otherwise specifically provided in any other provision of this Act, nothing in this Act shall be construed as altering or affecting any legal or equitable claim the Bands might have to enforce any right or privilege reserved by or granted to the Bands which were wrongfully denied to or taken from the Bands prior to the enactment of this Act.

SEC. 6. TRANSFER OF LAND FOR THE BENEFIT OF THE BANDS.

(a) LITTLE TRAVERSE BAY BANDS.—The Secretary shall acquire real property in Emmet and Charlevoix Counties for the benefit of the Little Traverse Bay Bands. The Secretary shall also accept any real property located in those Counties for the benefit of the Little Traverse Bay Bands if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(b) LITTLE RIVER BAND.—The Secretary shall acquire real property in Manistee and Mason Counties for the benefit of the Little River Band. The Secretary shall also accept any real property located in those Counties for the benefit of the Little River Band if conveyed or otherwise transferred to the Secretary, if at the time of such acceptance, there are no adverse legal claims on such property including outstanding liens, mortgages or taxes owed.

(c) ADDITIONAL LANDS.—The Secretary may accept any additional acreage in each of the Bands' service area specified by section 4(b) of this Act pursuant to his authority under the Act of June 18, 1934 (25 U.S.C. 461 et seq.; commonly referred to as the "Indian Reorganization Act").

(d) RESERVATION.—Subject to the conditions imposed by this section, the land acquired by or transferred to the Secretary under or pursuant to this section shall be taken in the name of the United States in trust for the Bands and shall be a part of the respective Bands' reservation.

SEC. 7. MEMBERSHIP.

Not later than 18 months after the date of the enactment of this Act, the Bands shall submit to the Secretary membership rolls consisting of all individuals currently enrolled for membership in such Bands. The qualifications for inclusion on the membership rolls of the Bands shall be determined by the membership clauses in such Bands' respective governing documents, in consultation with the Secretary. Upon completion of the rolls, the Secretary shall immediately publish notice of such in the Federal Register. The Bands shall ensure that such rolls are maintained and kept current.

SEC. 8. CONSTITUTION AND GOVERNING BODY.

(a) CONSTITUTION.—

(1) ADOPTION.—Not later than 24 months after the date of the enactment of this Act, the Secretary shall conduct, by secret ballot, elections for the purposes of adopting new constitutions for the Bands. The elections shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (25 U.S.C. 476; commonly referred to as the "Indian Reorganization Act").

(2) INTERIM GOVERNING DOCUMENTS.—Until such time as new constitutions are adopted under paragraph (1), the governing documents in effect on the date of the enactment of this Act shall be the interim governing documents for the Bands.

(b) OFFICIALS.—

(1) ELECTION.—Not later than 6 months after the Bands adopt constitutions and bylaws pursuant to subsection (a), the Bands shall conduct elections by secret ballot for the purpose of electing officials for the Bands as provided in the Bands' respective governing constitutions. The elections shall be conducted according to the procedures described in the Bands' constitutions and bylaws.

(2) INTERIM GOVERNMENTS.—Until such time as the Bands elect new officials pursuant to paragraph (1), the Bands' governing bodies shall be those governing bodies in place on the date of the enactment of this Act, or any new governing bodies selected under the election procedures specified in the respective interim governing documents of the Bands.●

● Mr. RIEGLE. Mr. President, I am pleased to join Senator LEVIN, again this year, as a cosponsor of legislation extending Federal recognition to the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Both these tribes have strong cases for seeking recognition through Congress, and I believe that this Federal acknowledgement is long overdue.

The variety of recognition processes the Federal Government has created since the 1930's have not worked properly with regard to these two Great Lakes tribes. In 1935, after fulfilling all the requirements for recognition, these tribes applied for recognition under the Wheeler-Howard Act. They were unfairly denied formal recognition solely because of Federal budgetary shortfalls and bureaucratic difficulties. Since that time, they have maintained viable tribal governments, sustained a constructive relationship with our Government, and have attempted to obtain recognition. Despite their continued eligibility, the Bureau of Indian Affairs has failed to act on the tribes' request for Federal approval.

Both the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians have a long and rich history that extends well before the first Europeans entered the Great Lakes area. Current members of these tribes are direct descendants of those Indians who signed the 1836 Treaty of Washington and the 1855 Treaty of Detroit—these tribes have a strong cultural identity that has survived hundreds of years of hostility and mistreatment at the hands of European

settlers and the U.S. Government. I believe that we have a moral obligation to do what we can to mend our relationship with these tribes, and Federal recognition is the first step toward that goal.

I am hopeful that the Senate will move forward with this legislation.●

By Mr. JOHNSTON:

S. 1358. A bill to amend the Immigration and Nationality Act to improve immigration enforcement and antismuggling activities, to reform the asylum law, and to authorize appropriations for the Immigration and Naturalization Service; to the Committee on the Judiciary.

IMMIGRATION ENFORCEMENT AND ASYLUM REFORM ACT OF 1993

● Mr. JOHNSTON. Mr. President, I rise today to introduce a bill that would provide workable and much needed reforms in our asylum laws and related immigration provisions while at the same time, ensuring that persons who have legitimate asylum claims receive full and fair hearings. This legislation is designed to combat the growing immigration policy problems which confront the United States on a daily basis. It is quite obvious that a majority of Americans find that the problem of illegal immigration is more serious now than ever before. As President Clinton and Attorney General Reno have recently noted, our immigration policy is in disarray. The Immigration and Naturalization Service is underfunded and there are almost 300,000 cases pending. The current claim process takes about 2 years to complete and, as result, many asylum applicants never even check on their claims. This cannot be allowed to continue.

This bill is identical to H.R. 2602, which was introduced in the House by Mr. MAZZOLI, for himself, Mr. SCHUMER, and Mr. MCCOLLUM on July 1, 1993. I believe it deserves our attention in this body as well. The bill represents an collaborative effort to deal with the escalating problem of alien smuggling and abuse of the asylum system. The United States, a nation founded by immigrants, should welcome legal immigrants and turn away illegal immigrants in a judicious and cost effective manner. This legislation is the most effective at alleviating the current immigration policy crisis.

Mr. President, I commend the Clinton administration for recognizing that major reforms are needed to combat illegal immigration. However, the administration's proposed bill will not achieve the commendable reform goals that President Clinton appears to support. The asylum reform provisions in the legislation that I introduce today would be far more effective in combating asylum fraud.

This legislation is aimed at aliens who show up at U.S. airports without official, or with fraudulent, documentation and claim political asylum. Only a limited number of such arrivals typically qualify for asylum, but under current procedures all may go through lengthy asylum proceedings before the Government can deport them. Countless numbers of aliens now know that once they arrive at an American port of entry, by simply uttering the words "political asylum," and claiming that they will be killed or persecuted if they are returned home, they are virtually assured an extended stay in the United States. Most are not detained and in the interim some drop out of sight.

An important aspect of this legislation is that it would prevent many illegal immigrants from ever reaching U.S. soil. The Immigration and Naturalization Service [INS] would be required to train airline employees in the detection of fraudulent documents. Additionally, INS would be required to establish overseas preinspection stations at foreign airports which have send large numbers of asylum seekers with fraudulent documents to the United States. These stations would prevent passengers with forged documents from ever boarding planes headed for the United States.

Furthermore, this bill will provide expedited exclusion procedures for aliens who still manage to arrive at ports of entry or elsewhere in the United States with fraudulent or no documentation. Passengers who do not claim a fear of persecution will be returned immediately. Passengers who claim persecution and are determined by an INS asylum officer—subject to immediate supervisory review—not to have a credible fear of persecution will also be returned immediately. The only type of judicial review authorized for an alien found excludable under the expedited exclusion provisions is a petition for habeas corpus.

This legislation also streamlines procedures for considering asylum claims—which by the way are now heard, depending on circumstances, by either INS asylum officers or Justice Department immigration judges, or both—by giving sole authority to conduct asylum hearings to specially trained INS asylum officers.

As for immigrants with complete and official documentation, this legislation would place an affirmative obligation on those who claim asylum to come forward and make their intentions known within their first 30 days in the United States. This prevents aliens from using asylum as a defense to deportation unless the alien can demonstrate changed circumstances. Also, many aliens currently fail to appear for asylum hearings and continue to receive immigration benefits. This legislation would prevent this transgression.

Moreover Mr. President, this legislation increases the Federal criminal penalty for alien smuggling from 5 to 10 years. Additionally, Federal criminal penalties would be extended to gangs and sweatshops who contract with smugglers in order to obtain illegal labor.

To effectively implement this legislation, it is necessary to increase the size of the Border Patrol, the antismuggling unit of INS, and the INS asylum officer corps. Although this will cost money, the savings realized by American citizens will be more. Recently, Prof. Don Huddle of Rice University indicated that the immigrants who have entered the United States since 1970 have cost all levels of government more than $45 billion per year, above and beyond what they paid in taxes. Illegal aliens cost taxpayers billions of dollars by using public education, health benefits, and other welfare services, and their fraud limits the availability of these services to American citizens. To illustrate, major cost incurred by illegal aliens in 1992 alone included: primary and secondary education, $3,900,000,000; bilingual education, $858,000,000; aid to families with dependent children, $820,000,000; and assistance to displaced workers, $6,928,000,000.

I ask unanimous consent that the text of the bill be printed at this point in the RECORD.

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

S. 1358

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

SECTION 1. SHORT TITLE; AMENDMENTS MADE BY ACT; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Immigration Enforcement and Asylum Reform Act of 1993".

(b) AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.—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 Immigration and Nationality Act.

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

Sec. 1. Short title; amendments made by Act; table of contents.

TITLE I—SMUGGLING AND FRAUD

Sec. 101. Inspection and exclusion by immigration officers.
Sec. 102. Enhanced penalties for alien smuggling.
Sec. 103. Effective date.

TITLE II—ASYLUM

Sec. 201. Asylum.
Sec. 202. Failure to appear for provisional asylum hearing; judicial review.
Sec. 203. Conforming amendments.
Sec. 204. Effective dates.

TITLE III—INSPECTIONS

Sec. 301. Preinspection at foreign airports.
Sec. 302. Expediting airport immigration processing.
Sec. 303. Visa waiver program.

Sec. 304. Training of airline personnel in detection of fraudulent documents.
TITLE IV—AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE
Sec. 401. Authorization of appropriations for I.N.S. for fiscal years 1994 and 1995.

TITLE I—SMUGGLING AND FRAUD

SEC. 101. INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.

(a) IN GENERAL.—Section 235(b) (8 U.S.C. 1225(b)) is amended to read as follows:

"(b) INSPECTION AND EXCLUSION BY IMMIGRATION OFFICERS.—

"(1) An immigration officer shall inspect each alien who is seeking entry to the United States.

"(2)(A) If the examining immigration officer determines that an alien seeking entry—

"(i) does not present the documentation required (if any) to obtain legal entry to the United States; and

"(ii) does not indicate either an intention to apply for provisional asylum (under section 208) or a fear of persecution,

the officer shall order the alien excluded from the United States without further hearing or review.

"(B) The examining immigration officer shall refer for immediate inspection at the port of entry by an asylum officer under subparagraph (C) any alien who (i) does not present the documentation required (if any) to obtain legal entry to the United States, and (ii) has indicated an intention to apply for provisional asylum or a fear of persecution.

"(C)(i) If an asylum officer determines that an alien has a credible fear of persecution, the alien shall be entitled to apply for provisional asylum under section 208.

"(ii)(I) Subject to subclause (II), if an asylum officer determines that an alien does not have a credible fear of persecution the officer shall order the alien excluded from the United States without further hearing or review.

"(II) The Attorney General shall promulgate regulations to provide for the immediate review by another asylum officer at the port of entry of a decision under subclause (I).

"(iii) For the purposes of this subparagraph, the term 'credible fear of persecution' means (I) that it is more probable than not that the statements made by the alien in support of his or her claim are true, and (II) that there is a significant possibility, in light of such statements and of such other facts as are known to the officer that the alien could establish eligibility for provisional asylum under section 208.

"(iv) Notwithstanding any other provision of law, no court shall have jurisdiction to review, except by petition for habeas corpus, any determination made with respect to an alien found excludable pursuant to this paragraph. In any such case, review by habeas corpus shall be limited to examination of whether the petitioner (I) is an alien, and (II) was ordered excluded from the United States pursuant to this paragraph.

"(3)(A) Except as provided in subparagraph (B), if the examining immigration officer determines that an alien seeking entry is not clearly and beyond a doubt entitled to enter, the alien shall be detained for a hearing before a special inquiry officer.

"(B) The provisions of subparagraph (A) shall not apply—

"(i) to an alien crewman,

"(ii) to an alien described in paragraph (2)(A) or 2(C)(ii)(I), or

"(iii) if the conditions described in section 273(d) exist.

"(4) The decision of the examining immigration officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer and such challenge shall operate to take the alien, whose privilege to enter is so challenged, before a special inquiry officer for a hearing on exclusion of the alien.

"(5)(A) Subject to subparagraph (B), an alien has not entered the United States for purposes of this Act unless and until such alien has been inspected and admitted by an immigration officer pursuant to this subsection.

"(B) An alien who (i) is physically present in the United States, (ii) has been physically present in the United States for a continuous period of one year, and (iii) has not been inspected and admitted by an immigration officer shall be deemed to have entered the United States without inspection.".

(b) CONFORMING AMENDMENTS.—Section 237(a) (8 U.S.C. 1227(a)) is amended—

(1) in the second sentence of paragraph (1) by striking "Deportation" and inserting "Subject to section 235(b)(2), deportation"; and

(2) in the first sentence of paragraph (2) by striking "If" and inserting "Subject to section 235(b)(2), if".

SEC. 102. ENHANCED PENALTIES FOR ALIEN SMUGGLING.

(a) ADDITIONAL CRIMINAL PENALTY.—Section 274(a)(1) (8 U.S.C. 1324(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (C),

(2) by striking the comma at the end of subparagraph (D) and inserting "; or",

(3) by inserting after subparagraph (D) the following:

"(E) contracts or agrees with another party for that party to provide, for employment by the person or another, an alien who is not authorized to be employed in the United States, knowing that such party intends to cause such alien to be brought into the United States in violation of the laws of the United States,", and

(4) by striking "five years" and inserting "ten years".

(b) TREATMENT OF SMUGGLING AS AN AGGRAVATED FELONY.—The first sentence of section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended by inserting "or any offense under section 274(a)" before "for which the term of imprisonment".

SEC. 103. EFFECTIVE DATE.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to aliens who arrive in or seek admission to the United States on or after such date.

(b) SMUGGLING.—The amendment made by section 102(b) shall apply to offenses for which convictions are entered before, on, or after the date of the enactment of this Act.

(c) INTERIM REFERENCE TO PROVISIONAL ASYLUM.—Any reference in section 235(b)(2) of the Immigration and Nationality Act (as amended by section 101(a) of this Act) to provisional asylum under section 208 of the Immigration and Nationality Act shall be deemed, before the effective date of the amendment made by section 201(a), to be a reference to asylum under section 208 of such Act.

TITLE II—ASYLUM

SEC. 201. ASYLUM.

(a) IN GENERAL.—Section 208 (8 U.S.C. 1158) is amended to read as follows:

"ASYLUM

"SEC. 208. (a) PROVISIONAL ASYLUM.—

"(1) RIGHT TO APPLY.—An alien physically present in the United States or at a land border or port of entry, irrespective of such alien's status, may apply for provisional asylum in accordance with this section.

"(2) CONDITIONS FOR GRANTING.—

"(A) MANDATORY CASES.—The Attorney General shall grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of this section and establishes that it is more likely than not that in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) such alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(B) DISCRETIONARY CASES.—The Attorney General may grant provisional asylum to an alien if the alien applies for provisional asylum in accordance with the requirements of this section and establishes that the alien has good reason to fear persecution in the alien's country of nationality (or, in the case of a person having no nationality, the country in which such alien last habitually resided) on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply to an alien if the Attorney General determines that—

"(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

"(ii) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

"(iii) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States;

"(iv) there are reasonable grounds for regarding the alien as a danger to the security of the United States; or

"(v) a country willing to accept the alien has been identified (other than the country described in subparagraph (A)) to which the alien can be deported or returned and the alien does not establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

For purposes of clause (ii), an alien who has been convicted of an aggravated felony shall be considered to have committed a particularly serious crime. The Attorney General shall promulgate regulations that specify additional crimes that will be considered to be a crime described in clause (ii) or clause (iii). The Attorney General shall promulgate regulations establishing such additional limitations and conditions as the Attorney General considers appropriate under which an alien shall be ineligible to apply for provisional asylum under subparagraph (B).

"(3) PROVISIONAL ASYLUM STATUS.—In the case of any alien granted provisional asylum under paragraph (2), the Attorney General, in accordance with this section—

"(A) shall not deport or return the alien to the country described under paragraph (2)(A);

"(B) shall authorize the alien to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit; and

"(C) may allow the alien to travel abroad with the prior consent of the Attorney General.

"(4) TERMINATION.—Provisional asylum granted under paragraph (2) may be terminated if the Attorney General, pursuant to such regulations as the Attorney General may prescribe, determines that—

"(A) the alien no longer meets the conditions described in paragraph (2) owing to a change in circumstances in the alien's country of nationality or, in the case of an alien having no nationality, in the country in which the alien last habitually resided;

"(B) the alien meets a condition described in paragraph (2)(C); or

"(C) a country willing to accept the alien has been identified (other than the country described in paragraph (2)) to which the alien can be deported or returned and the alien cannot establish that it is more likely than not that the alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(5) ACCEPTANCE BY ANOTHER COUNTRY.—In the case of an alien described in paragraph (2)(C)(v) or paragraph (4)(C), the alien's deportation or return shall be directed by the Attorney General in the sole discretion of the Attorney General, to any country which is willing to accept the alien into its territory (other than the country described in paragraph (2)).

"(b) PROVISIONAL ASYLUM PROCEDURE.—

"(1) APPLICATIONS.—

"(A) IN GENERAL.—

"(i) DEADLINE.—Subject to clause (ii), an alien's application for provisional asylum shall not be considered under this section unless—

"(I) the alien has filed, not later than 30 days after entering or coming to the United States, notice of intention to file such an application, and

"(II) such application is actually filed not later than 60 days after entering or coming to the United States.

"(ii) EXCEPTION.—An application for provisional asylum may be considered, notwithstanding that the requirements of clause (i) have not been met, only if the alien demonstrates by clear and convincing evidence changed circumstances in the alien's country of nationality (or in the case of an alien with no nationality, in the country where the alien last habitually resided) affecting eligibility for provisional asylum.

"(B) REQUIREMENTS.—An application for provisional asylum shall not be considered unless the alien submits to the taking of fingerprints and a photograph in a manner determined by the Attorney General.

"(C) FEES.—The Attorney General may provide for a reasonable fee for the consideration of an application for provisional asylum or for any employment authorization under subsection (a)(3)(B).

"(D) NOTICE OF PRIVILEGE OF COUNSEL AND CONSEQUENCES OF FRIVOLOUS APPLICATION.—

"(i) NOTICE.—At the time of filing a notice of intention to apply for provisional asylum, the alien shall be advised of the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as the alien shall choose and of the consequences, under subsection (d), of filing a frivolous application for provisional asylum.

"(ii) PROVISION OF LIST OF COUNSEL.—The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in provisional asylum proceedings. Such lists shall be provided to the alien at the time of filing of notice of intention to apply for provisional asylum, and otherwise be made generally available.

"(2) CONSIDERATION OF APPLICATIONS; HEARINGS.—

"(A) ASYLUM OFFICERS.—Applications for provisional asylum shall be considered by officers of the Service (referred to in this Act as 'asylum officers') who are specially designated by the Service as having special training and knowledge of international conditions and human rights records of foreign countries. Pending the designation of such officers, individuals who as of the date of the enactment of the Immigration Enforcement and Asylum Reform Act of 1993 are authorized to perform duties as asylum officers shall be deemed to be qualified to be asylum officers for purposes of this Act.

"(B) SCHEDULING OF HEARINGS.—

"(i) IN GENERAL.—Upon the filing of an application for provisional asylum, an asylum officer, at the earliest practicable time and after consultation with the attorney for the Government and the attorney (if any) for the applicant, shall set the application for hearing on a day certain or list it on a weekly or other short-term calendar, so as to assure a speedy hearing.

"(ii) DEADLINE.—Unless the applicant (or an attorney for the applicant) consents in writing to the contrary, the hearing on the provisional asylum application shall commence not later than 45 days after the date the application was filed.

"(C) PUBLIC HEARINGS.—A hearing on a provisional asylum application shall be open to the public unless the applicant requests that it be closed to the public.

"(D) RIGHTS IN HEARINGS.—The officer shall conduct the hearing in a nonadversarial manner. During such hearing, the applicant shall have the privilege of the assistance and participation of counsel (as provided under paragraph (1)(D)) and shall be entitled to present evidence and witnesses, to examine and object to evidence presented by the Government, and to cross-examine all witnesses presented by the Government.

"(E) COUNTRY CONDITIONS.—An officer may request opinions regarding country conditions from the Secretary of State, but shall not request or consider recommendations from the Secretary of State as to whether a particular named individual should or should not be granted provisional asylum.

"(F) TRANSCRIPT OF HEARINGS.—A complete record of the proceedings and of all testimony and evidence produced at the hearing shall be kept. The hearing shall be recorded verbatim. The Attorney General and the Service shall provide that a transcript of a hearing held under this section is made available not later than 10 days after the date of completion of the hearing.

"(G) DEADLINE FOR DETERMINATIONS ON APPLICATIONS.—The officer shall render a determination on the application not later than 30 days after the date of completion of the hearing. The determination of the officer shall be based only on the evidence produced at the hearing.

"(H) RESOURCE ALLOCATION.—The Attorney General shall allocate sufficient resources so as to assure that applications for provisional asylum are heard and determined on a timely basis. However, nothing in this paragraph relating to scheduling or deadlines shall be construed as creating any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers, or any other person.

"(I) SANCTIONS FOR FAILURE TO APPEAR.—

"(i) Subject to clause (ii), the application for provisional asylum of an alien who does not appear for a hearing on such application shall be summarily dismissed unless the alien can show exceptional circumstances (as defined in section 242B(f)(2)) as determined by the asylum officer.

"(ii) Clause (i) shall not apply if written and oral notice were not provided as required by section 242B(e)(4)(B).

"(J) FINALITY OF DETERMINATIONS.—

"(i) IN GENERAL.—The decision of the asylum officer shall be the final administrative determination of a claim for provisional asylum.

"(ii) TREATMENT OF CASES IN EXCLUSION OR DEPORTATION.—If proceedings are instituted against an alien under section 235 or 242 of this Act and the alien files an application for provisional asylum based on circumstances described in subsection (b)(1)(A)(ii), the asylum officer shall render, on an expedited basis, a decision on the application.

"(c) ASYLUM.—

"(1) ADJUSTMENT OF STATUS.—Under such regulations as the Attorney General may prescribe, the Attorney General shall adjust to the status of an alien granted asylum the status of any alien granted provisional asylum under subsection (a)(2)(A) who—

"(A) applies for such adjustment;

"(B) has been physically present in the United States for at least 1 year after being granted provisional asylum;

"(C) continues to be eligible for provisional asylum under this section; and

"(D) is admissible under this Act at the time of examination for adjustment of status under this subsection.

"(2) TREATMENT OF SPOUSE AND CHILDREN.—A spouse or child (as defined in section 101(b)(A), (B), (C), (D), or (E)) of an alien whose status is adjusted to that of an alien granted asylum under paragraph (a)(2) may be granted the same status as the alien if accompanying, or following to join, such alien.

"(3) APPLICATION FEES.—The Attorney General may impose a reasonable fee for the filing of an application for asylum under this subsection.

"(d) DENIAL OF IMMIGRATION BENEFITS FOR FRIVOLOUS APPLICATIONS.—

"(1) IN GENERAL.—If the asylum officer determines that an alien has made a frivolous application for provisional asylum under this section and the alien has received the notice under subsection (b)(1)(D)(i), the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

"(2) TREATMENT OF MATERIAL MISREPRESENTATIONS.—For purposes of this subsection, an application considered to be 'frivolous' includes, but is not limited to, an application which contains a willful misrepresentation or concealment of a material fact.".

(b) CLERICAL AMENDMENT.—The item in the table of contents relating to section 208 is amended to read as follows:

"Sec. 208. Asylum.".

SEC. 202. FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING; JUDICIAL REVIEW.

(a) FAILURE TO APPEAR FOR PROVISIONAL ASYLUM HEARING.—Section 242B(e)(4) (8 U.S.C. 1252b(e)(4)) is amended—

(1) in the heading, by striking "ASYLUM" and inserting "PROVISIONAL ASYLUM";

(2) by striking "asylum" each place it appears and inserting "provisional asylum"; and

(3) in subparagraph (A), by striking all after clause (iii) and inserting "shall not be eligible for any benefits under this Act.".

(b) JUDICIAL REVIEW.—Section 106 (8 U.S.C. 1105a) is amended by adding at the end the following subsection:

"(d) The procedure prescribed by, and all the provisions of chapter 158 of title 28, United States Code, shall apply to, and shall be the sole and exclusive procedure for, the judicial review of all final orders granting or denying provisional asylum, except that—

"(1) a petition for review may be filed not later than 90 days after the date of the issuance of the final order granting or denying provisional asylum;

"(2) the venue of any petition for review under this subsection shall be in the judicial circuit in which the administrative proceedings before an asylum officer were conducted in whole or in part, or in the judicial circuit wherein is the residence, as defined in this Act, of the petitioner, but not in more than one circuit; and

"(3) notwithstanding any other provision of law, a determination granting or denying provisional asylum based on changed circumstances pursuant to section 208(b)(1)(A)(ii) shall be in the sole discretion of the asylum officer.".

SEC. 203. CONFORMING AMENDMENTS.

(a) LIMITATION ON DEPORTATION.—Section 243 (8 U.S.C. 1253) is amended by striking subsection (h).

(b) ADJUSTMENT OF STATUS.—Section 209(b) (8 U.S.C. 1159(b)) is amended—

(1) in paragraph (2) by striking "one year" and inserting "2 years"; and

(2) by amending paragraph (3) to read as follows:

"(3) continues to be eligible for provisional asylum under section 208,".

(c) ALIENS INELIGIBLE FOR TEMPORARY PROTECTED STATUS.—Section 244A(c)(2)(B)(ii) (8 U.S.C. 1254a(c)(2)(B)(ii)) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B)".

(d) ELIGIBILITY FOR NATURALIZATION.—Section 316(f)(1) (8 U.S.C. 1427(f)(1)) is amended by striking "subparagraphs (A) through (D) of paragraph 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B).".

(e) FAMILY UNITY.—Section 301(e) of the Immigration Act of 1990 (P.L. 101-649) is amended by striking "section 243(h)(2)" and inserting "clauses (i), (ii), (iii), or (iv) of section 208(a)(2)(B).".

SEC. 204. EFFECTIVE DATES.

(a) IN GENERAL.—Except as otherwise provided, the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) EXCEPTIONS.—

(1) The amendments made by this title shall not apply to applications for asylum or withholding of deportation made before the first day of the first month that begins more than 180 days after the date of the enactment of this Act and no application for provisional asylum under section 208 of the Immigration and Nationality Act (as amended by section 201 of this Act) shall be considered before such first day.

(2) In applying section 208(b)(1)(A) of the Immigration and Nationality Act (as amended by this title) in the case of an alien who has entered or came to the United States before the first day described in paragraph (1), notwithstanding the deadlines specified in such section—

(A) the deadline for the filing of a notice of intention to file an application for provisional asylum is 30 days after such first day, and

(B) the deadline for the filing of the application for provisional asylum is 30 days after the date of filing such notice.

(3) The amendments made by section 203(b) (relating to adjustment of status) shall not apply to aliens granted asylum under section 208 of the Immigration and Nationality Act, as in effect before the date of the enactment of this Act.

TITLE III—INSPECTIONS

SEC. 301. PREINSPECTION AT FOREIGN AIRPORTS.

(a) IN GENERAL.—The Immigration and Nationality Act is amended by inserting after section 235 the following new section:

"PREINSPECTION AT FOREIGN AIRPORTS

"SEC. 235A. (a) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS AT HIGH VOLUME AIRPORTS.—Subject to subsection (c), not later than 2 years after the date of the enactment of this section, the Attorney General, in consultation with the Secretary of State, shall establish and maintain preinspection stations in at least 3 of the foreign airports that are among the 10 foreign airports which the Attorney General identifies as serving as last points of departure for the greatest numbers of passengers who arrive from abroad by air at ports of entry within the United States. Such preinspection stations shall be in addition to any preinspection stations established or authorized to be established prior to the date of the enactment of this section.

"(b) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS AT CERTAIN FOREIGN AIRPORTS FROM WHICH UNDOCUMENTED ALIENS DEPART FOR THE UNITED STATES.—

"(1) REPORTS TO CONGRESS.—Not later than November 1, 1993, and each subsequent November 1, the Attorney General shall compile and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report identifying the foreign airports which served as last points of departure for aliens who arrived by air at United States ports of entry without valid documentation during the preceding fiscal year. Such report shall indicate the number and nationality of such aliens arriving from each such foreign airport.

"(2) ESTABLISHMENT OF ADDITIONAL PREINSPECTION STATIONS.—Subject to subsection (c), not later than November 1, 1995, the Attorney General, in consultation with the Secretary of State, shall establish preinspection stations in at least 3 of the foreign airports that are among the 10 foreign airports identified in the first report submitted under paragraph (1) as serving as the last points of departure for the greatest number of aliens who arrive from abroad by air at points of entry within the United States without valid documentation. Such preinspection stations shall be in addition to any preinspection stations established or authorized to be established either under subsection (a) or prior to the date of the enactment of this section.

"(3) ESTABLISHMENT OF CARRIER CONSULTANT PROGRAM.—The Attorney General shall assign additional immigration officers to any foreign airport identified in the first report submitted under paragraph (1) which served as a point of departure for a significant number of arrivals at United States ports of entry without valid documentation, but where no preinspection station is established.

"(c) CONDITIONS FOR ESTABLISHMENT OF PREINSPECTION.—Prior to the establishment of a preinspection station the Attorney General, in consultation with the Secretary of State, shall ensure that—

"(1) employees of the United States stationed at the preinspection station and their accompanying family members will receive appropriate protection,

"(2) such employees and their families will not be subject to unreasonable risks to their welfare and safety, and

"(3) the country in which the preinspection station is to be established maintains practices and procedures with respect to asylum seekers and refugees in accordance with the Convention Relating to the Status of Refugees (done at Geneva, July 28, 1951) or the Protocol Relating to the Status of Refugees (done at New York, January 31, 1967).".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 235 the following new item:

"Sec. 235A. Preinspection at foreign airports.".

SEC. 302. EXPEDITING AIRPORT IMMIGRATION PROCESSING.

(a) PASSENGER MANIFESTS.—

(1) ELECTRONIC PASSENGER MANIFESTS.—Section 231(a) (8 U.S.C. 1221(a)) is amended in the first sentence by striking "typewritten" and inserting "electronic, typewritten,".

(2) INFORMATION CONTAINED IN PASSENGER MANIFEST.—Section 231(a) (8 U.S.C. 1221(a)) is further amended by inserting immediately before the period at the end of the second sentence ", except that regulations concerning the information contained in such lists may not require information other than the full name, date of birth, passport number, and citizenship of the person transported, and information identifying the flight on which the person was transported".

(b) INSPECTION BY IMMIGRATION OFFICERS.—Section 235(a) (8 U.S.C. 1225(a)) is amended by adding after the second sentence the following: "Except as the Attorney General may provide, nothing in this section shall be construed as requiring a personal interview in the conduct of an examination or inspection.".

(c) EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS.—

(1) IN GENERAL.—Section 235A, as inserted by section 301(a) of this Act, is amended—

(A) in the heading, by adding at the end the following: "; EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS", and

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

"(d) EXPEDITED PROCESS FOR THE INSPECTION OF CITIZENS.—Not later than 90 days after the date of the enactment of this section, the Attorney General shall implement an expedited process for the inspection of United States citizens upon arrival from abroad by air at ports of entry within the United States. An expedited process shall be maintained except during a national or airport specific security emergency as determined by the Attorney General.".

(2) CLERICAL AMENDMENT.—The item in the table of contents relating to section 235A, as inserted by section 301(b) of this Act, is amended to read as follows:

"Sec. 235A. Preinspection at foreign airports; expedited process for the inspection of citizens.".

SEC. 303. VISA WAIVER PROGRAM.

(a) PERMANENCY OF PROGRAM.—Section 217 (8 U.S.C. 1187) is amended—

(1) by amending the section heading to read as follows:

"VISA WAIVER PROGRAM FOR CERTAIN VISITORS";

(2) in the heading of subsection (a), (a)(2), and (c) by striking "PILOT" and "PILOT" each place either appears and inserting "VISA WAIVER" and "VISA WAIVER", respectively;

(3) by striking "pilot" each place it appears and inserting "visa waiver";

(4) in subsection (a)(1) by striking "during the pilot program period (as defined in subsection (e)),";

(5) in subsection (c)(3) by striking "(within the pilot program period) after the initial period";

(6) in subsection (c) by striking paragraph (4);

(7) in subsection (e)(1)(A) by striking "(a)(1)(A)" and inserting "(a)(1)"; and

(8) by striking subsection (f).

(b) ELIMINATION OF REQUIREMENT FOR EXECUTION OF IMMIGRATION FORMS.—Section 217 is further amended—

(1) in subsection (a) by striking paragraph (3);

(2) in subsection (a) by redesignating paragraphs (4) through (7) as paragraphs (3) through (6); and

(3) in subsection (e)(1) by striking "subsection (a)(4)" and inserting "subsection (a)(3)".

(c) EXCLUSION AND DEPORTATION OF APPLICANTS FOR ADMISSION UNDER VISA WAIVER PROGRAM.—Section 217(b) (8 U.S.C. 1187(b)) is amended to read as follows:

"(b) EXCLUSION AND DEPORTATION OF APPLICANTS FOR ADMISSION UNDER VISA WAIVER PROGRAM.—

"(1) EXCLUSION.—

"(A) An immigration officer's determination that an applicant for admission under this section is not clearly and beyond a doubt entitled to land shall constitute a final order of exclusion and deportation, enforceable pursuant to section 237. Pending such a determination, the Attorney General may maintain such applicant in custody.

"(B) The procedure described in section 236 shall not apply to an order issued under this paragraph.

"(2) DEPORTATION.—

"(A) Notwithstanding any other provision of law, an alien admitted to the United States under this section who is determined, pursuant to such regulations as the Attorney General shall prescribe, to be subject to deportation shall be deported pursuant to section 243. An immigration officer's determination under this subsection shall constitute a final order of deportation. Pending such determination, the Attorney General may maintain such alien in custody.

"(B) The procedure described in section 242 shall not apply to an order issued under this paragraph.

"(3) REVIEW.—Notwithstanding any other provision of law or the failure of a carrier to provide the notice described in subsection (e)(1)(D), an alien who applies for admission to the United States under this section shall not be entitled—

"(A) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or

"(B) subject to paragraph (4), to contest an immigration officer's determination under paragraph (2).

"(4) ASYLUM.—The Attorney General shall establish a procedure for an alien who is applying for admission under this section or who has been admitted under this section to apply for provisional asylum under section 208.

"(5) TREATMENT OF NATIONALS OF VISA WAIVER COUNTRIES.—An alien who—

"(A) is a national of a visa waiver program country or claims to be a national of a visa waiver country, and

"(B) is not in possession of a valid visa,

shall be considered to be an applicant for admission under this section.".

(d) CARRIER AGREEMENTS.—Section 217(e)(1) (8 U.S.C. 1187(e)(1)) is amended—

(1) in subparagraph (B) by striking "and";

(2) in subparagraph (C) by striking the period at the end and inserting "; and"; and

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

"(D) to provide passengers applying for admission to the United States under this section with written notification that they are not entitled (i) to any appeal or review of an immigration officer's determination of admissibility, or (ii) to contest any action for deportation.".

(e) CLERICAL AMENDMENT.—The item in the table of contents relating to section 217 is amended to read as follows:

"Sec. 217. Visa waiver program for certain visitors.".

SEC. 304. TRAINING OF AIRLINE PERSONNEL IN DETECTION OF FRAUDULENT DOCUMENTS.

(a) USE OF FUNDS.—Section 286(h)(2)(A) (8 U.S.C. 1356(h)(2)(A)) is amended—

(1) in clause (iv), by inserting ", including training of, and technical assistance to, commercial airline personnel on such detection" after "United States", and

(2) by adding at the end the following:

"The Attorney General shall provide for expenditures for training and assistance described in clause (iv) in an amount, for any fiscal year, not less than 5 percent of the total of the expenses incurred that are described in the previous sentence.".

(b) COMPLIANCE WITH DETECTION REGULATIONS.—Section 212(f) (8 U.S.C. 1182(f)) is amended by adding at the end the following: "Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline.".

(c) EFFECTIVE DATES.—

(1) The amendments made by subsection (a) shall apply to expenses incurred during or after fiscal year 1994.

(2) The Attorney General shall first issue, in proposed form, regulations referred to in the second sentence of section 212(f) of the Immigration and Nationality Act, as added by the amendment made by subsection (b), by not later than 90 days after the date of the enactment of this Act.

TITLE IV—AUTHORIZATION OF APPROPRIATIONS FOR THE IMMIGRATION AND NATURALIZATION SERVICE

SEC. 401. AUTHORIZATION OF APPROPRIATIONS FOR I.N.S. FOR FISCAL YEARS 1994 AND 1995.

(a) IN GENERAL.—There are authorized to be appropriated for the Immigration and Naturalization Service—

(1) for fiscal year 1994, $1,082,038,100, of which $413,224,900 are authorized to be appropriated for the operation of the Border Patrol and $27,434,000 are authorized to be appropriated for anti-smuggling activities; and

(2) for fiscal year 1995, $1,154,885,900, of which $454,547,000 are authorized to be appropriated for the operation of the Border Patrol and $31,277,400 are authorized to be appropriated for anti-smuggling activities.

Of the amounts authorized to be appropriated under this subsection, such sums as may be necessary are authorized to be available to provide by October 1, 1996, for not less than a 100 percent increase in the average number of asylum officers from the period for fiscal year 1993.

(b) ACTIVITIES INCLUDED.—The amounts provided pursuant to subsection (a) for a fiscal year include—

(1) funds for the purchase for police-type use of passenger motor vehicles, without regard to the general purchase price limit for the fiscal year involved, and for the hire of passenger motor vehicles;

(2) funds for the acquisition, lease, maintenance, and operation of aircraft;

(3) funds for the purchase of uniforms without regard to the general purchase price limitation for the fiscal year involved;

(4) not to exceed $50,000 to meet unforeseen emergencies of a confidential character to be expended under the direction of the Attorney General and to be accounted for solely on the certificate of the Attorney General; and

(5) not to exceed $500,000 of those sums appropriated for research and $17,188,000 of those funds appropriated for construction, which amounts shall remain available until expended.

(c) LIMITATION ON OVERTIME.—None of the funds available to the Immigration and Naturalization Service under this section shall be available for administrative expenses to pay any employee overtime pay in an amount in excess of $25,000 for a fiscal year involved.●

By Mr. LEAHY (for himself, Mr. HARKIN, Mr. SIMON, Ms. MOSELEY-BRAUN, Mr. WOFFORD, Mr. PRYOR, Mr. KERREY, Mr. BAUCUS, and Mr. JOHNSTON):

S. 1359. A bill to amend the Food Stamp Act of 1977 to require the domestic production of food stamp coupons; to the Committee on Agriculture, Nutrition, and Forestry.

NATIONAL FOOD STAMP ANTI-COUNTERFEITING ACT OF 1993

Mr. LEAHY. Mr. President, 2 weeks ago, I sent a letter to the U.S. Department of Agriculture objecting to the Department's proposal to allow foreign production of food stamps. Despite my objection, on July 30 the Department issued its request for proposals [RFP], which I believe will effectively allow for the first time the printing of food stamps in foreign countries.

USDA is making a big mistake. With over $20 billion of food stamps printed annually, I believe it essential to ensure the highest degree of accountability and integrity possible in the manufacture of food stamps.

Therefore, I feel I have no choice but to introduce legislation to prohibit the foreign printing and production of food stamps. We do not allow U.S. currency to be printed overseas, and I will not tolerate food stamps being printed overseas.

Two main concerns have driven me to introduce this bill: increased counterfeiting risk and other security problems which would arise with foreign production of food stamps, and the several thousand domestic jobs that will be lost.

69-059 O—97 Vol. 139 (Pt. 13) 21

Today, the domestic production of food stamps costs more than $50 million annually and employs thousands of Americans. The production, distribution, and use of food stamps is carefully monitored by the Secret Service, FBI, and police to combat counterfeiting or other illegal activities.

In allowing the foreign production of food stamps, we will force U.S. law enforcement to rely on foreign countries to ensure the security of printing, storage, and shipment of a form of U.S. legal tender. That is a big mistake. While we are trying to combat all forms of food stamp fraud—it makes no sense to open ourselves to unnecessary risks and costs of counterfeiting.

Foreign countries cannot be expected to implement the strict security requirements we have in the United States, nor is it realistic to expect foreign countries to be able to match the considerable resources and expertise of the Secret Service and the Department of Justice.

The United States must keep control over the printing, distribution, and production of food stamps—just as we do for all U.S. currency and other U.S. security documents.

The millions of Americans who participate in the Food Stamp Program receive food coupon books in various denominations. These coupons are accepted by food stores as a substitute for cash for the purchase of food. Food stamps are considered an official obligation of the United States and as such, are backed by the Federal Government just like a currency.

If the distinctive paper and the plates are moved abroad, the enforcement tasks of the Secret Service, FBI, and police become much more difficult, if not impossible. And the risks of counterfeiting and coupon security are very real.

The Department should reconsider its decision. I want to work with the Department of Agriculture on this issue. It is a matter of great importance and we cannot afford unnecessary risks to the integrity of this vital program. Mr. President, I hope USDA changes its mind on this issue. In case they do not, I am introducing this bill and I urge my colleagues to join with me to work this legislation through Congress.

Mr. President, I ask unanimous consent that the text 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. 1359

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 "National Food Stamp Anti-Counterfeiting Act of 1993".

SEC. 2. FINDINGS.

Congress finds that—

(1) the face value of food stamp coupons printed each year exceeds $20,000,000,000, and more than 27,000,000 residents of the United States participate in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.);

(2) food stamps are a legal obligation of the United States;

(3) throughout the history of the food stamp program, the policy of the United States Department of Agriculture for the production of food stamp coupons has been to produce the coupons within the United States;

(4) in 1991, the Committee on Appropriations of the Senate reiterated the expectation of the Committee that the policy would continue;

(5) the United States Department of Agriculture recently indicated that the Department intends to change the policy of the Department so as to permit foreign production of food stamps;

(6) removing the production of these legal obligations of the United States from the United States could limit the reach of enforcement authorities of the Federal Government and undermine enforcement of criminal laws on counterfeiting and misappropriaton of food stamps, thus threatening the integrity of the food stamp program;

(7) for security reasons, Federal laws in effect on the date of enactment of this Act already require the domestic production of the distinctive paper used in the manufacturing of other forms of currency and secure paper, such as food stamps; and

(8) it is in the public interest for food stamps to be produced domestically to enable law enforcement agencies to prevent counterfeiting and theft.

SEC. 3. DOMESTIC PRINTING REQUIREMENT FOR FOOD STAMP COUPONS.

Section 7(a) of the Food Stamp Act of 1977 (7 U.S.C. 2016(a)) is amended by inserting after "shall be printed" the following: "within the United States and".

By Mrs. MURRAY:

S. 1360. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to exempt from preemption under such title certain provisions of the law of the State of Washington relating to health plans; to the Committee on Labor and Human Resources.

WASHINGTON STATE HEALTH SERVICES REFORM ENABLING ACT OF 1993

Mrs. MURRAY. Mr. President, I am introducing today legislation relating to one of the toughest issues we face—health care reform. It is unlike most others facing our Nation because it has touched all of our lives in some way, all of us have a stake in its outcome. In the State of Washington, we have already taken the first major step toward reform of our health care system and my legislation will keep us moving forward.

Although the people of Washington State spend upward of $17 billion annually on health care, more than one million of our citizens will have no health insurance at some point during the year. Tragically, one of the largest groups of uninsured are children. For a typical Washington family, the cost of health care has increased over 462 percent since 1980. This means that, for many people, the cost of acquiring necessary and even basic health insurance is completely out of reach. For someone with a preexisting condition who loses his or her job, getting insurance is often impossible.

Fortunately, people in my State recognized the magnitude of the health care crisis years ago, and began to discuss how the system could be made to work again for individuals and families. After years of hard work, a consensus was finally reached, and the Washington State Legislature passed the Washington Health Services Act of 1993.

This far-reaching health care reform bill addresses many of the problems worrying a growing number of people throughout the Nation. It ensures all Washington State residents, even those with preexisting conditions, access to affordable health care by 1999. It controls costs through a blending of market and regulatory forces. A five-member Health Services Commission, just appointed by Governor Lowry, will work closely with citizen, business, and labor advisory committees to develop a uniform benefits package with a premium cap. In this managed care system all individuals will enroll in certified health plans which emphasize primary and preventive care.

Gov. Mike Lowry has asked for help of our congressional delegation to obtain Federal approval of the various waivers necessary to implement crucial elements of Washington State's plan. Some of these require legislative action; others require administrative action. The bill I am introducing, the Washington State Health Services Reform Enabling Act of 1993, deals with the most important—and most controversial—waiver: the one relating to ERISA, the Employee Retirement Income Security Act of 1974.

Since its enactment in 1974 to correct widespread pension problems, ERISA has prohibited States from enacting any law that related to health benefits for private sector workers and retirees. States have continued to pass laws regulating private insurance companies, but ERISA has precluded them from ordering employers to provide any minimum level of benefits to workers or retirees. Self-insured companies have been able to offer lesser coverage than traditional insurers must provide. Moreover, the already high cost of health insurance for small businesses has been driven even higher because big companies pull large numbers of employees outside the risk pools. With the foundation of the new Washington health care package being a mandate to employers to pay part of the cost of health care, the plan simply will not come into effect until an ERISA waiver is obtained.

The new Washington State health care reform bill requires all nonfarm

employers to pay at least 50 percent of the premium on a uniform benefits package for their employees. My bill will give Washington State a waiver from the ERISA provisions so that the employer mandate can be implemented.

Passage of the Washington State Health Services Reform Enabling Act permits the following specific provisions of the State's reform bill to be put into effect:

Enrollment of certain employees in the basic health plan;

Taxation of premiums and hospitals;

Medical risk adjustment mechanisms;

Benefits required to be offered to registered employer health plans;

Requirements applicable to registered employer health plans; and

The requirement that employers offer and pay a portion of the costs of employee health care coverage.

I am proud of my State for its leadership in health care reform. While the Washington State plan may not be perfect, it gives us a good model as we begin reforming the health care system at the national level.

The Federal Government must recognize the pioneering work of States like Washington in health care reform. Unless we protect States' flexibility to address their unique health care needs, health care reform at the national level will be unworkable.

I hope my colleagues in the U.S. Senate will support the efforts of the Washington State delegation to see the Washington State Health Act implemented. Compromise and flexibility are the keys to successful reform of our Nation's health care system. Passage of this bill will demonstrate that, by working together, States and the Federal Government can move the country forward on this critical issue.

By Mr. COVERDELL (for himself, Mrs. HUTCHISON, Mr. BENNETT, Mr. FAIRCLOTH, Mr. GREGG, Mr. KEMPTHORNE, Mr. CRAIG, Mr. WALLOP, Mr. THURMOND, Mr. HELMS, Mr. LOTT, Mr. MCCAIN, and Mr. SMITH):

S.J. Res. 120. A joint resolution proposing an amendment to the Constitution prohibiting the imposition of retroactive taxes on the American people; to the Committee on the Judiciary.

RETROACTIVE TAXATION CONSTITUTIONAL AMENDMENT

• Mr. COVERDELL. Mr. President, today I introduce a constitutional amendment banning the U.S. Government from imposing any tax increase retroactively. The amendment states, "No Federal tax shall be imposed for the period before the date of enactment of the tax."

On Friday, we will vote on a tax increase that will actually rewrite tax rates for the past 8 months. We have changed the rules of the road for Americans, and this is wrong.

I am grateful to be joined by Senators BENNETT, FAIRCLOTH, GREGG, HUTCHISON, and KEMPTHORNE in introducing this amendment. It is a telling sign that all Republican freshmen have signed on to this amendment.

We have come fresh from the campaign trail and have heard directly from the voters. Looking backward for extra taxes is unacceptable, and it is not a fair deal to the taxpayers.

Americans have been working under one set of rules regarding taxes. Now we are saying to them, more than two-thirds through this year, that the Government is changing the rules to exact a higher amount of taxes for months you have already worked.

Is it any wonder Americans feel so disillusioned with this Government? If a Government can reach back several months and squeeze more taxes out of our families, what's to stop them from reaching back years to change the rules of the road? It is a reprehensible action on the part of the Government, and it should be stopped.

As Senator DOLE has pointed out, even the draft Constitution of the Russian Federation states that laws introducing new taxes cannot be imposed retroactively.•

ADDITIONAL COSPONSORS

S. 235

At the request of Mr. REID, the name of the Senator from New Mexico [Mr. DOMENICI] was added as a cosponsor of S. 235, a bill to limit State taxation of certain pension income, and for other purposes.

S. 411

At the request of Mr. D'AMATO, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of S. 411, a bill to freeze domestic discretionary spending for fiscal years 1994 and 1995 at fiscal year 1993 levels.

S. 491

At the request of Mr. WELLSTONE, the name of the Senator from Illinois [Ms. MOSELEY-BRAUN] was added as a cosponsor of S. 491, a bill to provide health care for every American and to control the cost of the health care system.

S. 560

At the request of Mr. NUNN, the name of the Senator from Vermont [Mr. JEFFORDS] was added as a cosponsor of S. 560, a bill to further the goals of the Paperwork Reduction Act to have Federal agencies become more responsible and publicly accountable for reducing the burden of Federal paperwork on the public, and for other purposes.

S. 570

At the request of Mr. GRASSLEY, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 570, a bill to recognize the unique status of local exchange carriers in providing the public switched network infrastructure and to ensure the broad availability of advanced public switched network infrastructure.

S. 575

At the request of Mr. KENNEDY, the name of the Senator from Maryland [Ms. MIKULSKI] was added as a cosponsor of S. 575, a bill to amend the Occupational Safety and Health Act of 1970 to improve the provisions of such Act with respect to the health and safety of employees, and for other purposes.

S. 802

At the request of Mr. LAUTENBERG, the names of the Senator from Colorado [Mr. CAMPBELL] and the Senator from California [Mrs. BOXER] were added as cosponsors of S. 802, a bill to require the President to seek to obtain host nation payment of most or all of the overseas basing costs for forces of the Armed Forces of the United States in such nation, to limit the use of funds for paying overseas basing costs for U.S. forces, and for other purposes.

S. 922

At the request of Ms. MOSELEY-BRAUN, the name of the Senator from Alabama [Mr. SHELBY] was added as a cosponsor of S. 922, a bill to provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

S. 968

At the request of Mr. BRADLEY, the names of the Senator from New Mexico [Mr. BINGAMAN] and the Senator from Vermont [Mr. JEFFORDS] were added as cosponsors of S. 968, a bill to establish additional exchange and training programs with the independent states of the former Soviet Union and the Baltic states.

S. 1029

At the request of Mr. GORTON, the names of the Senator from Nevada [Mr. REID] and the Senator from Alaska [Mr. MURKOWSKI] were added as cosponsors of S. 1029, a bill to amend the Job Training Partnership Act to encourage the placement of youths in private sector jobs under the Summer Youth Employment and Training Program, and for other purposes.

S. 1125

At the request of Mr. DODD, the name of the Senator from Oregon [Mr. HATFIELD] was added as a cosponsor of S. 1125, a bill to help local school systems achieve Goal Six of the National Education Goals, which provides that by the year 2000, every school in America will be free of drugs and violence and will offer a disciplined environment conducive to learning, by ensuring that all schools are safe and free of violence.

S. 1209

At the request of Mr. KEMPTHORNE, the name of the Senator from Alabama

[Mr. HEFLIN] was added as a cosponsor of S. 1209, a bill to provide for a delay in the applicability of certain regulations to certain municipal solid waste landfills under the Solid Waste Disposal Act, and for other purposes.

S. 1226

At the request of Mr. AKAKA, the names of the Senator from Hawaii [Mr. INOUYE] and the Senator from South Dakota [Mr. DASCHLE] were added as cosponsors of S. 1226, a bill to amend title 38, United States Code, to provide for the organization and administration of the Readjustment Counseling Service, to improve eligibility for readjustment counseling and related counseling, and for other purposes.

S. 1276

At the request of Mr. LEAHY, the names of the Senator from Arkansas [Mr. PRYOR], the Senator from Tennessee [Mr. SASSER], the Senator from Virginia [Mr. ROBB], the Senator from New Mexico [Mr. BINGAMAN], the Senator from Colorado [Mr. CAMPBELL], the Senator from Ohio [Mr. GLENN], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 1276, a bill to extend for three years the moratorium on the sale, transfer or export of anti-personnel landmines abroad, and for other purposes.

S. 1310

At the request of Ms. MIKULSKI, the name of the Senator from Minnesota [Mr. WELLSTONE] was added as a cosponsor of S. 1310, a bill to amend the Public Health Service Act to revise and extend the program of grants relating to preventive health measures with respect to breast and cervical cancer, and for other purposes.

S. 1329

At the request of Mr. D'AMATO, the name of the Senator from Pennsylvania [Mr. WOFFORD] was added as a cosponsor of S. 1329, a bill to provide for an investigation of the whereabouts of the United States citizens and others who have been missing from Cyprus since 1974.

SENATE JOINT RESOLUTION 58

At the request of Mr. RIEGLE, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of Senate Joint Resolution 58, a joint resolution to designate the weeks of May 2, 1993, through May 8, 1993, and May 1, 1994, through May 7, 1994, as "National Correctional Officers Week."

SENATE JOINT RESOLUTION 90

At the request of Mr. ROBB, the name of the Senator from Florida [Mr. GRAHAM] was added as a cosponsor of Senate Joint Resolution 90, a joint resolution to recognize the achievements of radio amateurs, and to establish support for such amateurs as national policy.

SENATE JOINT RESOLUTION 92

At the request of Mr. D'AMATO, the name of the Senator from Delaware [Mr. BIDEN] was added as a cosponsor of Senate Joint Resolution 92, a joint resolution to designate both the month of October 1993 and the month of October 1994 as "National Down Syndrome Awareness Month."

SENATE JOINT RESOLUTION 94

At the request of Mr. DOLE, the names of the Senator from Nevada [Mr. REID], and the Senator from North Carolina [Mr. HELMS] were added as cosponsors of Senate Joint Resolution 94, a joint resolution to designate the week of October 3, 1993, through October 9, 1993, as "National Customer Service Week."

SENATE JOINT RESOLUTION 113

At the request of Mr. DECONCINI, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 113, a joint resolution designating October 1993 as "Italian-American Heritage and Culture Month."

At the request of Mr. D'AMATO, the name of the Senator from Maine [Mr. MITCHELL] was added as a cosponsor of Senate Joint Resolution 113, supra.

SENATE JOINT RESOLUTION 115

At the request of Mr. COCHRAN, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Joint Resolution 115, a joint resolution designating November 22, 1993, as "National Military Families Recognition Day."

SENATE CONCURRENT RESOLUTION 26

At the request of Mr. SIMON, the name of the Senator from New Mexico [Mr. BINGAMAN] was added as a cosponsor of Senate Concurrent Resolution 26, a concurrent resolution urging the President to redirect U.S. foreign assistance policies and spending priorities toward promoting sustainable development, which reduces global hunger and poverty, protects the environment, and promotes democracy.

SENATE RESOLUTION 70

At the request of Mr. BRADLEY, the names of the Senator from Oklahoma [Mr. BOREN], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Michigan [Mr. LEVIN], the Senator from Tennessee [Mr. MATHEWS], the Senator from Nevada [Mr. REID], the Senator from Alaska [Mr. MURKOWSKI], the Senator from New York [Mr. D'AMATO], the Senator from Vermont [Mr. JEFFORDS], the Senator from Colorado [Mr. CAMPBELL], and the Senator from New Mexico [Mr. BINGAMAN] were added as cosponsors of Senate Resolution 70, a resolution expressing the sense of the Senate regarding the need for the President to seek the advice and consent of the Senate to the ratification of the United Nations Convention on the Rights of the Child.

AMENDMENT NO. 756

At the request of Mr. HARKIN the name of the Senator from Missouri [Mr. DANFORTH] was added as a cosponsor of Amendment No. 756 proposed to H.R. 2667, a bill making emergency supplemental appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes.

SENATE RESOLUTION 138—RELATIVE TO THE PRINTING OF A PUBLICATION WITH RESPECT TO BOSNIA

Mr. KENNEDY (for Mr. PELL for himself and Mr. BIDEN) submitted the following resolution; which was considered and agreed to:

S. RES. 138

Resolved, That an additional 250 copies of the publication entitled, "To Stand Against Aggression; Milosevic, the Bosnian Republic, and the Conscience of the West," be printed for the use of the Committee on Foreign Relations.

SENATE RESOLUTION 139—RELATIVE TO OFFICE OF SENATE FAIR EMPLOYMENT PRACTICES

Mr. KENNEDY (for Mr. MITCHELL for himself and Mr. DOLE) submitted the following resolution; which was considered and agreed to:

S. RES. 139

Resolved, (a)(1) If, at any time after a Senate employee (as defined in section 301(c)(1) of the Government Employee Rights Act of 1991 (Public Law 102-166) (hereinafter referred to as the "Act")) files a formal complaint under section 307(a) of the Act with the Office of Senate Fair Employment Practices (hereinafter referred to as the "Office")—

(A) such employee and the head of an employing office (as defined in section 301(c)(2) of the Act) resolve the issues involved and enter into a written settlement agreement requiring the payment of money as provided in subsection (c), and

(B) the agreement is approved by the Director of the Office (hereinafter referred to as the "Director"),

the Director shall submit the agreement, together with a letter of advice by the Director that the agreement is reasonable and appropriate, to the Chairman and Ranking Minority Member of the Committee on Rules and Administration (hereinafter referred to as the "Chairman and Ranking Member") for approval.

(2) Any such settlement agreement that includes any provision regarding Senate payment of a Senate employee's attorney's fees shall be forwarded by the Director to the Senate Legal Counsel who shall also review that provision and advise the Chairman and Ranking Member whether that provision is reasonable and appropriate.

(3) If the Chairman and Ranking Member disapprove the agreement, the agreement shall be returned to the Director with a written explanation for the disapproval. Following such disapproval, a new or revised agreement that is approved by the Director may be submitted by the Director to the Chairman and Ranking Member, and, if appropriate, forwarded to the Senate Legal Counsel, in the same manner as the original. If the Chairman and Ranking Member disapprove such a new or revised agreement, such agreement shall be returned to the Director with a written explanation and such

instructions as the Chairman and Ranking Member may deem appropriate.

(4) If the Chairman and Ranking Member approve the agreement, the payment of money under the terms of such agreement may be authorized as provided in subsection (c).

(5) The time necessary to complete the procedures under paragraphs (1)(B), (2), and (3) shall be excluded in calculating the period within which a hearing shall be conducted under section 307(d) of the Act.

(b) Notwithstanding the third sentence of section 307(h) of the Act, if, upon the conclusion of all proceedings conducted pursuant to sections 307, 308, and 309 of the Act, there is a final order requiring the payment of money, the Chairman and Ranking Member may approve and authorize the payment of money as provided in subsection (c). The Senate Legal Counsel shall provide such advice and assistance as the Chairman and Ranking Member may request for the purposes of this subsection.

(c) The payment of any monetary amount approved as part of a settlement agreement approved under subsection (a) and any payment pursuant to an order under subsection (b) shall be paid from the Contingent Fund of the Senate from the appropriations account "Settlements and Awards Reserve", established by section 1205 of Public Law 103–50, upon vouchers approved by the Chairman and Ranking Member.

(d) The Chairman and Ranking Member, the Senate Legal Counsel, and the Director may review information necessary to carry out the provisions of this resolution notwithstanding the provisions of section 313 of the Act.

(e) The provisions of this resolution shall apply to—

(1) an allegation of a violation as defined in section 301(c)(3) of the Act,

(2) an allegation of an unlawful employment practice under section 312 of the Act, and

(3) an allegation of a violation of a provision of sections 101 through 105 of the Family and Medical Leave Act of 1993.

(f) The first sentence of section 303(e) of the Act is deemed to have inserted the words ", upon the approval of the Committee on Rules and Administration," after "The Director".

AMENDMENTS SUBMITTED

EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR RELIEF FROM THE MAJOR, WIDESPREAD FLOODING IN THE MIDWEST ACT OF 1993

SPECTER (AND DODD) AMENDMENT NO. 757

Mr. SPECTER (for himself and Mr. DODD) proposed an amendment to the bill (H.R. 2667) making emergency supplemental appropriations for relief from the major, widespread flooding in the Midwest for the fiscal year ending September 30, 1993, and for other purposes; as follows:

The Senate finds:

Numerous atrocities have been reported on the conflict in the former Yugoslavia;

Such atrocities against innocent civilians and prisoners would violate universally accepted law as embodied in the Geneva Conventions of August 12, 1949 for the Protection of War Victims; the Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations annexed thereto of October 18, 1907; the Convention on the Prevention and Punishment of the Crime of Genocide of December 9, 1948; and the Charter of the International Military Tribunal of August 8, 1945;

In October 1992 the United Nations Security Council adopted Resolution 780 establishing a Commission of Experts to gather and evaluate evidence of such war crimes;

The Commission of Experts submitted an interim report dated January 26, 1993 which concluded that grave breaches and other violations of international humanitarian law had been committed in the territory of the former Yugoslavia, including willful killing, "ethnic cleansing," mass killings, torture, rape, pillage, and destruction of civilian property, destruction of cultural and religious property and arbitrary arrests;

The Commission of Experts has been hindered in carrying out fully its legal charge because of insufficient resources;

On February 22, 1993, the United Nations Security Council adopted Resolution 808 establishing an international tribunal to try individuals accused of the commission of war crimes in the former Yugoslavia;

On May 3, 1993, the Secretary General of the United Nations issued his report which established the procedures for an international war crimes tribunal;

The United Nations is presently in the process of selecting judges and prosecutors for the international war crimes tribunal;

According to reports, the atrocities in the former Yugoslavia continue unabated; and

There is a dire need to establish promptly the tribunal and commence prosecution of alleged war criminals: Now, therefore,

(a) the Senate hereby commends the United Nations for its recognition of the importance and necessity of the rule of law as evidenced by its establishment of an international tribunal for the prosecution of war crimes in the former Yugoslavia.

(b) It is the sense of the Senate that the United Nations should

(1) expedite the selection of judges and prosecutors for the tribunal in order to begin prosecutions of alleged war criminals; and

(2) provide all assistance necessary to continue gathering evidence for such prosecutions.

HARKIN (AND OTHERS) AMENDMENT NO. 758

Mr. HARKIN (for himself, Mr. BOND, Mr. WELLSTONE, Mr. DASCHLE, and Mr. CONRAD) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 2 line 13 at the end of the sentence insert the following: "notwithstanding any other provision of this Act, the following shall be the law with respect to the Commodity Credit Corporation.".

COMMODITY CREDIT CORPORATION

COMMODITY CREDIT CORPORATION FUND

For an additional amount for the "Commodity Credit Corporation Fund" to cover 1993 crop losses resulting from damaging weather or related floods associated with the conditions as defined in section 2251 of Public Law 101–624, in 1993, $1,050,000,000, and in addition $300,000,000, which shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress, the total to remain available until June 30, 1994: *Provided*, That from funds previously made available in Public Law 102–368 by Presidential declaration, $100,000,000 to remain available until June 30, 1994, shall be for 1993 crop losses only: *Provided further*, That if prior to April 1, 1994, the President determines that extraordinary circumstances exist that warrant further assistance, the Secretary of Agriculture shall use such funds of the Commodity Credit Corporation as are necessary to make payments in an amount equal to 100 percent of each eligible claim as determined under title XXII of Public Law 101–624: *Provided further*, That all additional amounts made available herein are subject to the terms and conditions in Public Law 101–624: *Provided further*, That Congress hereby designates the entire amount provided herein as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended: *Provided further*, That notwithstanding any provision of Public Law 103–50, funds provided by such Act shall not be expended for 1993 crop losses resulting from 1993 natural disasters, and claims for assistance from funds provided by that Act by producers with 1990, 1991, and 1992 crop losses shall be paid only to the extent such claims are filed by September 17, 1993.

BYRD (AND OTHERS) AMENDMENT NO. 759

Mr. BYRD (for himself, Mr. HATFIELD, Mr. HARKIN, and Mr. WELLSTONE) proposed an amendment to the bill (H.R. 2667), supra, as follows:

Before the period at the end of the first excepted Committee amendment, insert the following: ": *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for Economic Development Assistance programs under the heading "Economic Development Administration" shall be $200,000,000, of which $100,000,000 shall only be available to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for the Disaster Loan Program account under the heading "Small Business Administration" shall be $70,000,000, of which $10,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to $750,000 for Presidentially-declared major disasters for recent Midwest flooding: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein under the heading "Employment and Training Administration" for part B of title III of the Job Training Partnership Act shall be $54,600,000 of

which $11,100,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That notwithstanding any other provision of this Act, the amount provided herein for programs and activities of the Commission on National and Community Service shall be $4,000,000, of which $2,000,000 shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, is transmitted by the President to Congress: *Provided further*, That all of the above amounts are designated by Congress as emergency requirements pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended".

BOND (AND OTHERS) AMENDMENT NO. 760

Mr. HATFIELD (for Mr. BOND for himself, Mr. SIMON, Mr. DANFORTH, Mr. HARKIN, Mr. WELLSTONE, Mr. DURENBERGER, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 18, line 10 through line 14, restore the matter stricken.

On line 14, strike the numeral.

On line 25, strike "$6,000,000 of".

DURENBERGER AMENDMENT NO. 761

Mr. DURENBERGER proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, add the following:

FUNDING SPENDING THROUGH SEQUESTERS

SEC. . (a) REMOVAL OF EMERGENCY DESIGNATION.—Not withstanding any other provision of this Act to the contrary, all the amounts designated in this Act as emergency requirements for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be treated as not being emergency spending under the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) It is the sense of the Congress that spending reductions required by this section should be achieved through reductions in administrative expenses rather than in the expenses of underlying programs or assistance.

BROWN AMENDMENT NO. 762

Mr. BROWN proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the end of chapter VIII add the following new section:

SEC. . PROHIBITED FLOOD DISASTER ASSISTANCE.

(a) GENERAL PROHIBITION.—Notwithstanding any other provision of law, no Federal funds made available for assistance under this Act in a flood disaster area may be used to make a payment (including any loan assistance payment) to a person for damage to any personal, residential, or commercial property if that person at any time has received flood disaster assistance that was conditional on the person first having obtained flood insurance under applicable Federal law and subsequently having failed to obtain and maintain flood insurance as required under applicable Federal law on such property.

(b) AMENDMENT TO THE FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(a)) is amended—

(1) By striking ", during the anticipated economic or useful life of the project,"; and

(2) By adding at the end of the following: "The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.".

(c) DEFINITION.—For purposes of this section, the term "flood disaster area" means an area with respect to which—

(1) the Secretary of Agriculture finds, or has found, to have been substantially affected by a natural disaster in the United States pursuant to section 321(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. Section 1961(a)); or

(2) the President declares, or has declared, the existence of a major disaster or emergency pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.), as a result of flood conditions existing in or affecting that area.

DURENBERGER (AND OTHERS) AMENDMENT NO. 763

Mr. DURENBERGER (for himself, Mr. GRASSLEY, and Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, insert the following new section:

SEC. . FEDERAL CROP INSURANCE FAIRNESS.

(a) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—Subsection (a) of section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508(a)) is amended to read as follows:

"(a) AUTHORITY TO OFFER INSURANCE.—

"(1) IN GENERAL.—If sufficient actuarial data are available, as determined by the Board, the Corporation may insure producers of agricultural commodities grown in the United States under any plan or plans of insurance determined by the Board to be adapted to the agricultural commodity involved.

"(2) CAUSES.—The insurance shall be against loss of the insured commodity due to unavoidable causes, including drought, flood, hail, wind, frost, winterkill, lighting, fire, excessive rain, snow, wildlife, hurricane, tornado, insect infestation, plant disease, and such other unavoidable causes as may be determined by the Board.

"(3) PERIOD.—

"(A) IN GENERAL.—Except in the case of tobacco, insurance shall not extend beyond the period the insured commodity is in the field.

"(B) DEFINITION OF FIELD.—For purposes of subparagraph (A), in the case of aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(4) STANDARD YIELD COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), any insurance offered against loss in yield shall make available to producers protection against loss in yield that covers 75 percent of the recorded or appraised average yield of the commodity on the insured farm for a representative period.

"(B) ADJUSTMENTS.—Average yields established under subparagraph (A) shall be subject to such adjustments as the Board may prescribe to the end that the average yields fixed for farms in the same area, that are subject to the same conditions, may be fair and just.

"(5) LESSER YIELD COVERAGE.—In addition, the Corporation shall make available to producers lesser levels of yield coverage, including a level of coverage at 50 percent of the recorded or appraised average yield, as adjusted.

"(7) ADDITIONAL PREMIUMS.—Additional insurance under this subsection shall be provided for an additional premium (for which no premium subsidy or administrative subsidy may be provided) set at such rate as the Board determines—

"(A) appropriate to reflect accurately the increased risk involved; and

"(B) actuarially sufficient to—

"(i) cover claims for losses on the insurance; and

"(ii) establish a reasonable reserve against unforeseen losses.

"(8) LEVELS OF COVERAGE IN EXCESS OF 75 PERCENT OF RECORDED OR APPRAISED AVERAGE YIELD.—The Corporation may make available to producers on a farm located in a growing area a level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted, if the Corporation determines that normal variations in yield in the growing area have not resulted in the payment of claims for losses while the level of coverage is limited to 75 percent.

"(9) MAXIMUM LEVEL OF COVERAGE.—Except as provided in paragraphs (6) through (8), the corporation may not make available to producers any level of coverage in excess of 75 percent of the recorded or appraised average yield, as adjusted.

"(10) PROJECTED MARKET PRICE OPTION.—One of the price elections offered shall approximate (but be not less than 90 percent of) the projected market price for the commodity involved, as determined by the Board.

"(11) UNINSURED LOSSES.—Insurance provided under this subsection shall not cover losses due to—

"(A) neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in areas and under circumstances where it is customary to so reseed; or

"(C) the failure of the producer to follow established good farming practices.

"(12) INSURANCE RISKS.—The Board may limit or refuse insurance in any county or area, or on any farm, on the basis of the insurance risk involved.

"(13) AGRICULTURAL INCOME IN COUNTIES.—Insurance shall not be provided on any agricultural commodity in any county in which the Board determines that the income from the commodity constitutes an unimportant part of the total agricultural income of the county, except that insurance may be provided for producers on farms situated in a local producing area bordering on a county with a crop-insurance program.

"(14) ANNUAL REPORTS.—The Corporation shall report annually to Congress the results of the operations of the Corporation as to each commodity insured.

"(15) PROJECT MARKET PRICE LEVEL.—Beginning with the 1994 crop year, the Corporation shall establish a price level for each commodity on which insurance is offered that shall not be less than the projected market price for the commodity, as determined by the Board.

"(16) PRICE ELECTION.—Insurance coverage shall be made available to a producer on the

basis of any price election that equals or is less than that established by the Board. The coverage shall be quoted in terms of dollars per acre.".

(b) DISTRIBUTION OF COVERAGE INFORMATION.—Section 508(m) of such Act (7 U.S.C. 1508(m)) is amended by adding at the end the following new paragraph:

"(3) DISTRIBUTION OF COVERAGE INFORMATION.—The Corporation shall distribute information on Federal crop insurance coverage offered for a commodity to each producer participating in a price support or production adjustment program established for the commodity.".

(c) LATE PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) LATE PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall be offered late planting coverage that would permit planting after the final planting date for a commodity by up to 25 days for coverage under the contract.

"(2) REDUCTION OF COVERAGE.—If the producers on a farm purchase late planting coverage under paragraph (1), the yield guarantee shall be reduced by—

"(A) 1 percent per day for each of the 1st through 10th days planting is delayed beyond the normal final planting date;

"(B) 2 percent per day for each of the 11th through 25th days planting is delayed beyond the normal final planting date; and

"(C) such other amounts as can be demonstrated to offset the additional insurer risk of providing the coverage.

"(3) PRESUMPTION OF COVERAGE.—The producers on a farm shall have late planting coverage as part of a basic policy of insurance under this Act unless the producers notify the Corporation that the producers waive late planting coverage.

"(4) RAISES IN PREMIUMS.—If the Corporation determines that late planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer late planting as a separate endorsement.".

(d) PREVENTED PLANTING COVERAGE.—Section 508 of such Act (7 U.S.C. 1508) (as amended by subsection (c)) is further amended by adding at the end the following new subsection:

"(o) PREVENTED PLANTING COVERAGE.—

"(1) IN GENERAL.—Producers on a farm entering into a crop insurance contract under this Act shall have prevented planting coverage as part of the basic policy of insurance under this Act.

"(2) COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if the producers on a farm are prevented from planting a crop of a covered commodity as the result of excess moisture, drought, or other natural disaster, the producers shall be eligible for coverage equal to 35 percent of the guaranteed level of coverage for the crop.

"(B) OPTIONAL COVERAGE.—The producers on a farm may purchase additional coverage described in subparagraph (A) such that the total coverage for the producers is not greater than 50 percent of the guaranteed level of coverage for the crop.

"(3) SUBSTITUTE CROP.—The producers on a farm shall have the option of planting a substitute crop, in lieu of an insured crop, as part of the basic policy under this Act. The value of the substitute crop shall offset the remaining guaranteed level of coverage of the insured crop.

"(4) PRESUMPTION OF COVERAGE.—The producers on a farm shall have prevented planting coverage as part of a basic policy of insurance made available under this Act unless the producers notify the Corporation that the producers waive prevented planting coverage.

"(5) RAISES IN PREMIUMS.—If the Corporation determines that prevented planting coverage would raise premiums to such an extent as to discourage participation in the program established by this Act, the Corporation shall offer prevented planting as a separate endorsement.".

(f) YIELD AVERAGES.—Section 508A(b) of such Act (7 U.S.C. 1508a(b)) is amended by adding at the end the following new paragraph:

"(4) YIELD AVERAGES.—

"(A) ESTABLISHING A MINIMUM LEVEL OF INSURANCE PROTECTION.—The Corporation shall establish a minimum level of insurance protection for those covered producers who have had reduced yields due to natural disasters.

"(B) NONSTANDARD CLASSIFICATION PROCEDURES.—The Corporation shall make adjustments in the Nonstandard Classification procedures established under subpart O of part 400 of chapter IV of subtitle B of title 7, Code of Federal Regulations, to account for producer yield declines due to recurrent natural disasters.".

(g) DATE OF IMPLEMENTATION.—

The provisions of this amendment will take effect on January 1, 1994.

DURENBERGER AMENDMENT NO. 764

Mr. DURENBERGER proposed an amendment to the bill (H.R. 2667), supra, as follows:

Amendment intended to be proposed by Mr. Durenberger.

At the end of the pending committee amendment, insert the following:

NATURAL DISASTER FUNDING PROCESS

SEC. ___. (a) PRESIDENTIAL DECLARATION.—(1) IN GENERAL.—(A) Effective beginning with fiscal year 1994, the President may declare that a natural disaster has occurred in a State or States and submit a natural disaster emergency funding request (and a draft bill implementing the request) to Congress to be considered as provided in this section.

(B) The provisions of this section shall not apply to funding requested in a regular appropriations Act.

(C) For purposes of this section, the term "emergency funding" does not include appropriations for the purpose of construction, rehabilitation, removal, or alteration of any public facility, road, bridge, lock, levee, building, airport, or similar object.

(2) REQUIREMENTS FOR A NATURAL DISASTER EMERGENCY FUNDING REQUEST.—(A) A natural disaster emergency funding request shall contain the following provisions:

(i) An appropriation of budget authority available only for assistance needed as a result of the natural disaster.

(ii) A funding offset provision containing any of the following means of funding:

(I) Rescissions of budget authority.

(II) A sequester order that designates an amount to be offset by sequester. The sequester shall be achieved by sequestering some combination of (aa) amounts pursuant to the sequester provisions of section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 for fiscal years 1994 and 1995, and (bb) amounts through the mandatory sequester process established in subsection (c).

(III) If necessary and subject to the provisions of subparagraph (C), a tax.

The funding offset required by this paragraph shall be equal to or greater than the amount to be appropriated. The amount to be appropriated shall be offset by the end of the calendar year beginning after the date of enactment.

(B) The President shall consider rescinding unnecessary funding before requesting a sequester under subparagraph (A). A tax shall be considered only if necessary because of the extraordinary nature of the natural disaster. The Congress shall, similarly, give priority to rescissions in making offsets, then sequesters should be considered, and taxes imposed only in truly extraordinary situations. Priority is to be given, in making offsets, to achieving reductions in administrative expenses rather than in the expenses of the underlying programs or assistance.

(C) A tax may be imposed under this section only if the Director of the Office of Management and Budget certifies that the aggregate total of funds appropriated in a fiscal year (those previously appropriated pursuant to this section and those proposed to be appropriated in the bill in which the tax is contained) exceed 1 percent of all amounts subject to discretionary and mandatory sequester under this section. Any tax enacted pursuant to this section shall expire at the end of the calendar year beginning after the date of enactment.

(3) SOLE FUNDING MECHANISM.—(A) Notwithstanding any other provision of law, it shall not be in order in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment, motion, or conference report that contains supplemental emergency funding for a United States natural disaster that is not being considered pursuant to the provisions of this section.

(B) This paragraph may be waived or suspended only by the vote of three-fifths of the Members, duly chosen and sworn.

(b) CONGRESSIONAL ACTION.—

(1) IN GENERAL.—A request for natural disaster funding shall considered by Congress on an expedited basis in accordance with this subsection.

(2) HOUSE ACTION.—(A) Not later than 5 session days after the House of Representatives receives a request pursuant to subsection (a), the Committee on Appropriations shall report out an appropriations bill containing the language of the President's draft bill together with any relevant amendments. The House of Representatives shall consider and dispose of the bill not later than 10 session days after the President's request.

(B) If the House of Representatives does not act upon the bill as required by subparagraph (A) then on the 11th session day any Member may introduce the President's bill and require a vote on the bill during that day.

(C) No amendment that is not germane to the provisions of the funding bill shall be received.

(3) SENATE ACTION.—(A) Not later than 5 session days after the Senate receives a bill passed by the House of Representatives pursuant to paragraph (2), the Committee on Appropriations shall report out the appropriations bill together with any relevant amendments. The Senate shall consider and dispose of the bill not later than 8 session days after receipt of the bill from the House of Representatives.

(B) If the Senate has not disposed of the bill as required by subparagraph (A) then on the 9th session day any Member may call up the bill and require a vote on the bill during that day.

(C) The provisions of section 305 of the Congressional Budget Act of 1974 for consideration in the Senate of concurrent resolutions on the budget or conference reports thereon shall apply to the consideration of bills under this paragraph. Debate on the bill and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours.

(D)(i) No amendment that is not germane to the provisions of the funding bill shall be received. A funding bill and conference report thereon shall contain only relevant provisions.

(ii) This subparagraph may be waived or suspended only by a vote of three-fifths of the Members, duly chosen and sworn.

(c) MANDATORY SEQUESTER.—Amounts required to be sequestered under the provisions of a bill enacted pursuant to subsection (b) shall be sequestered pursuant to an order of the President as follows:

(1) SEQUESTRATION.—Effective on the first day of the fiscal year subject to sequester, there shall be a sequestration to reduce the amount of direct spending in the current policy baseline by the amount specified in the bill enacted pursuant to subsection (b).

(2) UNIFORM REDUCTIONS; LIMITATIONS.—The amount required to be sequestered for the budget year under paragraph (1) shall be obtained from nonexempt direct spending accounts by reducing each remaining nonexempt direct spending account by the uniform percentage necessary to achieve those additional reductions, except that—

(A) the low-income programs specified in paragraph (4)(C) shall not be reduced by sequestration by more than 1 percent, during any one fiscal year;

(B) the retirement and veterans' benefits specified in paragraph (4)(D) shall not be reduced by sequestration by more than 2 percent in any one fiscal year in the manner specified in that section; and

(C) the medicare programs shall not be reduced by more than 4 percent by sequestration in any one fiscal year in the manner specified in paragraph (4)(E).

The limitations set forth in subparagraphs (A), (B), and (C) shall be applied iteratively, and after each iteration the uniform percentage applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the reductions required by this paragraph.

(3) EXEMPT PROGRAMS AND ACTIVITIES.—

(A) DESCRIPTIONS AND LISTS.—Except as provided in subparagraph (B), the following budget accounts or activities shall be exempt from sequestration:

(i) net interest;

(ii) all payments to trust funds from excise taxes or other receipts or collections properly creditable to those trust funds;

(iii) all payments from one Federal direct spending budget account to another Federal budget account; and all intragovernmental funds including those from which funding is derived primarily from other Government accounts, except to the extent that such funds are augmented by direct appropriations for the fiscal year for which the order is in effect;

(iv) activities resulting from private donations, bequests, or voluntary contributions to the Government;

(v) payments from any revolving fund or trust-revolving fund (or similar activity) that provides deposit insurance or other Government insurance, Government guarantees, or any other form of contingent liability, to the extent those payments result from contractual or other legally binding commitments of the Government at the time of any sequestration;

(vi) credit liquidating and financing accounts;

(vii) the following accounts, which largely fulfill requirements of the Constitution or otherwise make payments to which the Government is committed:

Administration of Territories, Northern Mariana Islands Covenant grants (14–0412–0–1–806);

Bureau of Indian Affairs, miscellaneous payments to Indians (14–2303–0–1–452);

Bureau of Indian Affairs, miscellaneous trust funds, tribal trust funds (14–9973–0–7–999);

Claims, defense;

Claims, judgments, and relief act (20–1895–0–1–806);

Compact of Free Association, economic assistance pursuant to Public Law 99–658 (14–0415–0–1–806);

Compensation of the President (11–0001–0–1–802);

Customs Service, miscellaneous permanent appropriations (20–9992–0–2–852);

Eastern Indian Land Claims Settlement Fund (14–2202–0–1–806);

Farm Credit System Financial Assistance Corporation, interest payments (20–1850–0–1–351);

Internal Revenue collections of Puerto Rico (20–5737–0–2–852);

Panama Canal Commission, operating expenses and capital outlay (95–5190–0–2–403);

Payments of Vietnam and USS Pueblo prisoner-of-war claims (15–0104–0–1–153);

Payments to copyright owners (03–5175–0–2–376);

Payments to the United States territories, fiscal assistance (14–0418–0–1–801);

Payments to widows and heirs of deceased Members of Congress (00–0215–0–1–801);

Salaries of Article III judges;

Soldier's and Airmen's Home, payment of claims (84–8930–0–7–705);

Washington Metropolitan Area Transit Authority, interest payments (46–0300–0–1–401).

(viii) the following noncredit special, revolving, or trust-revolving funds:

Coinage profit fund (20–5811–0–2–803);

Comptroller of the Currency;

Director of the Office of Thrift Supervision;

Exchange Stabilization Fund (20–4444–0–3–155);

Federal Housing Finance Board;

Foreign Military Sales Trust Fund (11–82232–0–7–155);

(ix) Thrift Savings Fund;

(x) appropriations for the District of Columbia to the extent they are appropriations of locally raised funds;

(xi)(I) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act);

(II) any advance made to a State from the Federal Unemployment Account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal Unemployment Account pursuant to section 1203 of such Act; and

(III) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account;

(xii) the earned income tax credit (payments to individuals pursuant to section 32 of the Internal Revenue Code of 1986).

(4) EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES.—

(A) THE GUARANTEED STUDENT LOAN PROGRAM.—(i) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965 under any sequestration order shall be achieved only from loans described in clauses (ii) and (iii) by the application of the measures described in such clauses.

(ii) For any loan made during the period beginning on the date that a sequestration order takes effect with respect to a fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of—

(I) 0.40 percent, or

(II) the percentage by which the rate specified in such section exceeds 3 percent.

(iii) For any loan made during the period beginning on the date that a sequestration order takes effect with respect to a fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(B) FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS.—Any sequestration order shall make the reduction otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments attributable to the increases taking effect during that year. No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage. No State may, after the date of the enactment of this Act, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(C) LOW-INCOME ENTITLEMENTS.—(i) Benefit payments or payments to States or other entities for the programs listed in clause (ii) shall not be reduced by more than 1 percent under any sequestration order.

(ii) The programs referred to in clause (i) are the following:

Aid to families with dependent children (75–0412–0–1–609);

Child nutrition (12–2539–0–1–605);

Food stamp programs (12–3505–0–1–605) and (12–3550–0–1–605);

Grants to States for medicaid (75–0512–0–1–551); and

Supplemental security income program (75–0406–0–1–609);

(D) FEDERAL RETIREMENT AND VETERANS' PROGRAMS.—For each of the programs listed in clause (ii) and except as provided in clause (iii), monthly (or other periodic) benefit payments shall be reduced by the uniform percentage applicable to direct spending sequestrations for such programs under paragraph

(1), which shall in no case exceed 2 percent under any sequestration order.

(ii) The programs subject to clause (i) are:

Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act;

Benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974;

Benefits under chapter 21 of title 38, United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36–0137–0–1–702);

Benefits under section 907 of title 38, United States Code, relating to burial benefits for veterans who die as a result of service-connected disability (36–0155–0–1–701);

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed Forces (36–0137–0–1–702);

Black lung benefits (20–8144–0–7–601);

Central Intelligence Agency retirement and disability system fund (56–3400–0–1–054);

Civil service retirement and disability fund (24–8135–0–7–602);

Comptrollers general retirement system (05–0107–0–1–801);

Foreign service retirement and disability fund (19–8186–0–7–602);

Judicial survivors' annuities fund (10–8110–0–7–602);

Longshoremen's and harborworkers' compensation benefits (16–9971–0–7–601);

Military retirement fund (97–8097–0–7–602);

National Oceanic and Atmospheric Administration retirement (13–1450–0–1–306);

Pensions for former Presidents (47–0105–0–1–802);

Railroad retirement tier II (60–8011–0–7–601);

Railroad supplemental annuity pension fund (60–8012–0–7–602);

Retired pay, Coast Guard (69–0241–0–1–403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75–0379–0–1–551);

Special benefits, Federal Employees' Compensation Act (16–1521–0–1–600);

Special benefits for disabled coal miners (75–0409–0–1–601);

Tax court judges survivors annuity fund (23–8115–0–7–602);

Veterans' compensation (36–0153–0–1–701); and

Veterans' pensions (36–0154–0–1–701).

(iii) Notwithstanding clauses (i) and (ii), benefit payments from the Old Age and Survivors Insurance and Disability Trust Funds and for Railroad Retirement Tier I shall be reduced only for beneficiaries receiving benefits in excess of $600 per month as follows:

(I) The aggregate amount of all benefits in excess of $600 per month per beneficiary paid out to such beneficiaries shall be the amount subject to reduction.

(II) The reduction required by this clause shall not cause any beneficiaries monthly benefits to fall below $600.

(E) MEDICARE PROGRAM.—

(i) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS.—To achieve the total percentage reduction in those programs required by paragraph (1), the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after any sequestration order is issued shall be such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.

(ii) TIMING OF APPLICATION OF REDUCTIONS.—

(I) IN GENERAL.—Except as provided in subclause (II), if a reduction is made under clause (i) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for services furnished after the effective date of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(II) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under title XVIII of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs after the effective date of the order, but only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs after the effective date of the order.

(iii) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under clause (i) for services for which payment under part B of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1) of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration order, as payment in full.

(iv) NO EFFECT ON COMPUTATION OF AAPCC.—In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

(F) FEDERAL PAY.—

(i) IN GENERAL.—New budget authority to pay Federal personnel shall be reduced by the uniform percentage calculated under paragraph (1), but no sequestration order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any statutory pay system (as increased by any amount payable under section 5304 of title 5, United States Code, or section 302 of the Federal Employees Pay Comparability Act of 1990) or the rate of any element of military pay to which any individual is entitled under title 37, United States Code, or any increase in rates of pay which is scheduled to take effect under section 5303 of title 5, United States Code, section 1009 of title 37, United States Code, or any other provision of law.

(ii) DEFINITIONS.—For purposes of this subsection:

(I) The term "statutory pay system" shall have the meaning given that term in section 5302(1) of title 5, United States Code.

(II) The term "elements of military pay" means—

(aa) the elements of compensation of members of the uniformed services specified in section 1009 of title 37, United States Code,

(bb) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(cc) cadet pay and midshipman pay under section 203(c) of such title.

(III) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37, United States Code.

(G) CHILD SUPPORT ENFORCEMENT PROGRAM.—Any sequestration order shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(H) EXTENDED UNEMPLOYMENT COMPENSATION.—(i) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254 by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(ii) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

(I) COMMODITY CREDIT CORPORATION.—

(i) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION.—This subsection shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a corporation, the purpose for which it was created.

(ii) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS.—(I) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time any sequestration order has been issued shall not be reduced by an order subsequently issued. Subject to subclause (II), after any sequestration order is issued for a fiscal year, any cash payments made by the Commodity Credit Corporation—

(aa) under the terms of any one-year contract entered into in or after such fiscal year and after the issuance of the order; and

(bb) out of an entitlement account,

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(II) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under clause (i) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity have been entered into prior to the issuance of any sequestration order, the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for succeeding crops of the commodity, under the authority provided in clause (iii).

(iii) DELAYED REDUCTION IN OUTLAYS PERMISSIBLE.—Notwithstanding any other provision of this subsection, if any sequestration order is issued with respect to a fiscal year, any reduction under the order applicable to

contracts described in clause (ii) may provide for reductions in outlays for the account involved to occur in the fiscal years following the fiscal year to which the order applies.

(iv) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS.—All reductions described in clause (ii) that are required to be made in connection with any sequestration order with respect to a fiscal year—

(I) shall be made so as to ensure that outlays for each program, project, activity, or account involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(II) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that—

(aa) uncertainty as to the scope of benefits under any such program is minimized;

(bb) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(cc) normal production and marketing relationships among agricultural commodities (including both contract and noncontract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subclause (II) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(v) CERTAIN AUTHORITY NOT TO BE LIMITED.—Nothing in this subsection shall limit or reduce in any way any appropriation that provides the Commodity Credit Corporation with funds to cover the Corporation's net realized losses.

(J) THE JOBS PORTION OF AFDC.—

(i) FULL AMOUNT OF SEQUESTRATION REQUIRED.—Any sequestration order shall accomplish the full amount of any required reduction of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

(ii) NEW ALLOTMENT FORMULA.—

(I) GENERAL RULE.—Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after sequestration for direct spending pursuant to section 403(l) of such Act shall be equal to that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year, except that a State may not be allotted an amount under this subparagraph that exceeds the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(II) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE.—Any amount made available after sequestration for direct spending pursuant to section 403(l) of the Social Security Act that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(K) POSTAL SERVICE FUND.—Notwithstanding any other provision of law, any sequestration of the Postal Service Fund shall be accomplished by a payment from that Fund to the general fund of the Treasury, and the Postmaster General of the United States shall make the full amount of that payment during the fiscal year to which the Presidential sequestration order applies.

(L) EFFECTS OF SEQUESTRATION.—The effects of sequestration shall be as follows:

(i) Budgetary resources sequestered from any account other than an entitlement trust, special, or revolving fund account shall revert to the Treasury and be permanently canceled.

(ii) Except as otherwise provided, the same percentage sequestration shall apply to all programs, projects, and activities within a budget account (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(iii) Administrative regulations or similar actions implementing a sequestration shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources within an account, program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with that lower appropriation being obligated as though it had been the presequestration appropriation and no sequestration had occurred.

(iv) Any cap on the reduction of benefits as determined under a formula for reducing benefits in this paragraph shall be a cap on the total reductions in such benefits for a fiscal year.

(v) Benefit payments or payments to States or other entities for programs subject to sequestration under this paragraph shall not be reduced by a sequestration order below the level of such benefits or payments during the previous fiscal year.

(M) CURRENT POLICY BASELINE.—

(i) IN GENERAL.—The current policy baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through, and discretionary regulations promulgated as final by, the applicable date.

(ii) DIRECT SPENDING AND RECEIPTS.—The baseline shall be calculated using the following assumptions:

(I) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those entitlements.

(II) EXCEPTIONS.—

(a) No program with estimated current-year gross new budget authority greater than $100,000,000 shall be assumed to expire in the budget year or outyears. Expiring entitlement programs and programs financed by indefinite budget authority shall be assumed to continue as in effect just prior to their expiration. Expiring programs financed by definite new budget authority shall be assumed to continue with that new budget authority.

(bb) The percentage increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(cc) Excise taxes dedicated to a trust fund, if expiring (in the budget year or outyears), are assumed to continue at the rates in effect immediately prior to their expiration.

(iii) CUTOFF DATE.—The assumptions made under clause (ii) regarding budget-year continuations and percentage increases shall no longer apply after the end of the budget-year.

(d) ELIGIBILITY FOR FUNDING.—It is the sense of Congress that before the adjournment of the 103d Congress, the Congress should enact into law—

(1) a system under which the President would make periodic certifications of the adequacy of preparations for natural disasters in the several States; and

(2) a provision for a system of disincentives, under the various disaster relief programs, to States which have not made adequate preparations for natural disasters, except that such disincentives would not affect any assistance necessary for humanitarian aid or to provide immediate protection to life, health, and property.

(e) SEQUESTER OF AMOUNTS NOT OFFSET.—If the President determines that a bill enacted pursuant to this section does not fully offset the amounts appropriated, the President shall order a sequester of the amount not offset pursuant to the sequester provisions of subsection (a)(2)(A)(ii)(II)(aa) relating to discretionary spending.

KOHL AMENDMENT NO. 765

Mr. KOHL (for himself and Mr. FEINGOLD) proposed an amendment to the bill (H.R. 2667), supra, as follows:

Insert at the appropriate place in the amendment:

The Secretary shall implement an emergency forage program under the same terms and conditions used to administer the 1988 Emergency Forage Assistance Program authorized by section 103 of Public Law 100-387, except that it shall apply to pasture damaged by winterkill, excessive moisture, flooding, drought and/or related conditions in 1993: *Provided*, That funds for this purpose shall be available only to the extent an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in the balanced Budget and Emergency Deficit Control Act of 1985, is transmitted by the President to Congress: *Provided further*, That the entire amount of funds used under this paragraph is designated by Congress as an emergency requirement pursuant to section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

DECONCINI AMENDMENT NO. 766

Mr. DECONCINI proposed an amendment to the bill (H.R. 2667), supra, as follows:

At the appropriate place, add the following:

SEC. . (a) Notwithstanding any other provision of this Act, in the administration of this Act, $118,000,000 of the aggregate amount appropriated by this Act, from such accounts as shall be determined by the Director of the Office of Management and Budget, in consultation with the Secretary of the Interior, and other appropriate heads of Federal departments, agencies and entities receiving appropriations under this Act, and after consultation by the Secretary of the Interior with the tribal governments of the Navajo Indian tribe and the Hopi Indian tribe, shall be available as follows:

(1) $100,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Navajo Indian Reservation in Arizona, which funds shall remain available until expended; and

(2) $18,000,000 shall be available only for the purpose of providing relief under this Act to the former Bennett Freeze Area within the Hopi Indian Reservation, which funds shall remain available until expended.

(b) for purposes of this section, the term "former Bennett Freeze Area" means that portion of the Navajo Indian Reservation and that portion of the Hopi Indian Reservation for which the restriction referred to in subsection (c)(1) was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992.

(c) For purposes of this Act—

(1) the 26-year restriction on construction and development on an area of the Navajo Indian Reservation and the area of the Hopi Indian Reservation, commonly referred to as the Bennett Freeze, referred to in section 10(f) of the Act of December 22, 1974 (25 U.S.C. 640d–10(f)) is deemed a natural disaster; and

(2) those portions of the Navajo Indian Reservation and the Hopi Indian Reservation for which such restriction was lifted pursuant to an order of the United States District Court for the District of Arizona on September 25, 1992, are each deemed a disaster area.

(d) No funds made available by this section may be expended on any portion of the Navajo Indian Reservation or any portion of the Hopi Indian Reservation with respect to which there is in effect a restriction on construction or improvement pursuant to the order of the United States District Court for the District of Arizona on December 18, 1992.

BYRD AMENDMENT NO. 767

Mr. BYRD proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 22 at line 8 after 1993 insert "and other disasters".

PRESSLER AMENDMENT NO. 768

Mr. BYRD (for Mr. PRESSLER) proposed an amendment to the bill (H.R. 2667), supra, as follows:

After section 701, insert the following new section:

SEC. 702. In any case in which the Secretary of Agriculture finds that the farming, ranching, or aquaculture operations of producers on a farm have been substantially affected by a natural disaster in the United States or by a major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) during the 1993 crop year, the Secretary of Agriculture shall not require any repayment under subparagraph (G) or (H) of section 114(a)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445j(a)(2)) for the 1993 crop of a commodity prior to January 1, 1994.

KERREY AMENDMENT NO. 769

Mr. BYRD (for Mr. KERREY) proposed an amendment to the bill (H.R. 2667), supra, as follows:

On page 20, line 17, following "flood", insert the following: ", high winds, hall and other related weather damages".

On page 22, line 8, following "floods", insert the following: ", high winds, hail and other related weather damages".

BYRD AMENDMENT NO. 770

Mr. BYRD proposed an amendment to the bill (H.R. 2667), supra, as follows:

Under the heading "National Park Service, Historic Preservation Fund" strike the following: beginning with the word "to" after "1993," and continuing through "(16 U.S.C. 470),".

GALLATIN RANGE CONSOLIDATION AND PROTECTION ACT OF 1993

BAUCUS AMENDMENT NO. 771

Mr. KENNEDY (for Mr. BAUCUS) proposed an amendment to the bill (H.R. 873) entitled "Gallatin Range Consolidation and Protection Act of 1993", as follows:

In section 3(b)(1), strike "the map entitled Plum Creek Timber and Forest Service Proposed Gallatin Land Exchange, dated May 20, 1988", and insert the following; "two maps entitled 'Proposed BSL Land Acquisitions,' East Half and West Half Gallatin National Forest, dated February, 1993".

In section 3(b)(2), immediately after "as depicted on the maps referred to in paragraph (1)," insert the following: "and the five maps entitled 'H.R. 873, the Gallatin Range Consolidation and Protection Act of 1993,' Lolo and Flathead National Forest,".

In section 4(a), strike "depicted on the map entitled Porcupine Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Procupine Area,' in the Option."

In section 5(a), strike "depicted on the map entitled Taylor Fork Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Taylor Fork Area,' in the Option."

In section 6(a), strike "depicted on the map entitled Gallatin Area dated September 1992", and insert the following: "listed as 'Exhibit A, Gallatin Roaded,' in the Option."

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate Wednesday, August 4, 1993, at 10 a.m. to vote on the nominations of Gordon Linton, to be Federal Transit Administrator; and Nelson Diaz, to be General Counsel of the Department of Housing and Urban Development.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on August 4, 1993, at 9:30 a.m. on reauthorization of the Magnuson Fishery Protection Act/Federal process.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be authorized to meet on Wednesday, August 4, for a hearing on the subject: "Auditing the Auditors: Waste and Abuse at IRS and Customs?"

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

COMMITTEE ON FOREIGN RELATIONS

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Wednesday, August 4, 1993, at 10 a.m., to hold nomination hearings on the following nominees:

Ms. Aurelia Erskine Brazeal, of Georgia, to be Ambassador to the Republic of Kenya;

Mr. Walter C. Carrington, of Maryland, to be Ambassador to the Federal Republic of Nigeria;

Mr. John S. Davison, of Maryland, to be Ambassador to the Republic of Niger;

Mr. Robert G. Houdek, of Illinois, to be Ambassador to Eritrea;

Mr. Roland K. Kuchel, of Florida, to be Ambassador to the Republic of Zambia;

Mr. Donald J. McConnell, of Ohio, to be Ambassador to Burkina Faso; and

Mr. John T. Sprott, of Virginia, to be Ambassador to the Kingdom of Swaziland.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee on Appropriations be authorized to meet during the session of the Senate, 9:30 a.m., August 4, 1993, to receive testimony on the superconducting super collider.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES AND THE SUBCOMMITTEE ON ENERGY AND WATER DEVELOPMENT

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources and the Subcommittee on Energy and Water Development of the Committee

on Appropriations be authorized to meet during the session of the Senate, 2:30 p.m., August 4, 1993, to receive testimony on the superconducting super collider.

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

SUBCOMMITTEE ON CLEAN WATER, FISHERIES AND WILDLIFE

Mr. KENNEDY. Mr. President, I ask unanimous consent that the Subcommittee on Clean Water, Fisheries and Wildlife, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, August 4, beginning at 9:30 a.m., to conduct a hearing on reauthorization of the Clean Water Act, focusing on regional issues.

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

MEDAL OF HONOR PENSION

• Mr. LAUTENBERG. Mr. President, I am pleased to join with the minority leader in introducing legislation that will provide, for the first time in 15 years, an increase to the Medal of Honor pension. This increase is long overdue.

The Medal of Honor is the Nation's highest distinction that can be awarded to a member of the armed services of the United States. It is an award presented by the President of the United States, in the name of Congress, to an individual who, while serving in the Armed Forces, distinguished themselves by a specific act of heroism, gallantry, bravery, or intrepidity.

This award is a military distinction paid to an individual who put his or her life at risk above and beyond the call of duty.

There are only 204 Americans alive today that are recipients of the Medal of Honor. These Americans should not be forgotten. We should continue to recognize and remember their selfless acts of bravery.

They have earned their pension and we owe it to these recipients to not let their pension disintegrate through inflation. The Medal of Honor pension has not been increased since 1978. I believe the increase proposed in our bill, which will raise the Medal of Honor pension from $200 to $500 per month, is not only justified but it is long overdue.

Mr. President, I ask that letters I have received from New Jersey organizations, in support of this amendment, be included in the RECORD.

The letters follow:

LADIES' AUXILIARY TO PETERSILGE-VELOCK POST 809, V.F.W., LITTLE FERRY, NJ,

July 19, 1993.

Senator FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: By order of President Coppola and on behalf of the entire membership of the Petersilge-Velock V.F.W. Ladies Auxiliary 809 I have been instructed to urge you to support bill H.R. 1796, that would enable the Medal of Honor recipients special pension be raised from $200 per month to $500.

I am concerned with the legislation procedure and results of voting when it comes to any veterans legislation on every level.

We wish to thank you for your past support of veterans legislation and sincerely hope we can count on you again.

Would you please reply to my letter and let me know how you stand on this issue. Would you also put me on your mailing list.

Thank you for your consideration in this matter.

Sincerely,

ADELE ROVITO,
Secretary.

CORPORAL ARTHUR E. SMITH AUXILIARY TO POST NO. 2856, VETERANS OF FOREIGN WARS OF THE U.S., LIVINGSTON, NJ,

July 15, 1993.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to you on behalf of our Medal of Honor recipients who at the present time are receiving an amount of $200,00 per month as a Special Pension.

A bill introduced in Congress, H.R. 1796, and a similar bill to be introduced as I understand with you as one of the sponsoring Senators will raise this Special Pension to $500.00.

I fully support this Bill and hope that you will do all in your power to have this Bill passed.

A reply to the above matter would be appreciated.

Sincerely,

LEONA KANE.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

Trenton, NJ, July 12, 1993.

Hon. FRANK LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am writing to you regarding the bill that you and Senator Dole will introduce in the Senate regarding the raising of the monthly pension to our Medal of Honor recipients from two hundred to five hundred dollars.

This issue is very important to the members of the Veterans of Foreign Wars of the Department of New Jersey, and all veterans of this country.

These heros deserve so much more for what they did for all of us, and this great country of ours.

I am in full support of this issue, and I hope that you will continue to support the veterans of this country.

Sincerely yours,

WILLIAM GOODE,
Sr. Vice Commander.

LADIES AUXILIARY, VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

July 21, 1993.

Hon. FRANK R. LAUTENBERG,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I understand that you and Senator Dole are about to introduce a bill to increase the special pension for Medal of Honor recipients to $500.000 per month. I agree with the attempt to increase this pension as it is long overdue.

I would appreciate it if you would keep me advised in the event that this bill is held up in some committee or sub-committee so that I can communicate directly with the committee chairpersons.

Thank you for your interest in helping to reward our Medal of Honor recipients.

With warm regards, I remain,

MRS. FRIEDA PRITCHARD
Lyons VFWA Representative.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT COMMANDER, NEW JERSEY,

July 6, 1993.

Hon. FRANK LAUTENBERG,
U.S. Senate, Washington, DC.

DEAR SENATOR LAUTENBERG: A bill has been introduced in The House of Representatives that is near and dear to all Veterans. This bill, HR 1796, raises the special pension for Medal of Honor recipients from $200 per month to $500 per month.

It is my understanding that you, along with Senator Dole, will introduce a similar bill in the Senate. I would like to take this opportunity to thank you and Senator Dole, and wish you well. Raising the pension for these Heros is long over due.

Sincerely,

HARRY MORECROFT,
Past State Commander.

VETERANS OF FOREIGN WARS OF THE UNITED STATES, DEPARTMENT OF NEW JERSEY,

July 26, 1993.

Hon. FRANK LAUTENBERG,
Senate Hart Office Building, Washington, DC.

DEAR SENATOR LAUTENBERG: I am under the impression that Senator Dole and you will be introducing in the Senate a companion bill to H.R. 1796, increasing the monthly pension for Medal of Honor recipients from $200 to $500.

I personally support this legislation, along with the membership of the Veterans of Foreign Wars of the United States.

Please provide me with a copy of your bill when available.

I thank you for taking a leadership role in this matter. Please feel free to contact me if I can be of any assistance.

MICHAEL H. WYSONG,
Legislative Officer.•

TRIBUTE TO THE KENTUCKY HIGHLANDS INVESTMENT CORPORATION

• Mr. MCCONNELL. Mr. President, I rise today to pay tribute to the Kentucky Highlands Investment Corp. (KHIC), which celebrated its 25th year of operation in June.

The Kentucky Highlands Investment Corp. is based in London, KY, and was founded in 1968 as a Job Start corporation within the Johnson administration's War on Poverty. After about a decade of operation, KHIC faced a decline in Federal funding and made a transition from running programs to manage investments. Now, KHIC is operated as a business in every respect except one—its profits go back into job creation.

The Kentucky Highlands Investment Corporation has been praised on many fronts, both inside and outside of Kentucky for its altruistic spirit combined

with capitalist expertise. Today, KHIC has assets of almost $20 million, and its portfolio includes 22 investees—firms in which the corporation has some kind of direct financial involvement.

In a typical year, KHIC manages to create over 200 new jobs for southeastern Kentucky, and the corporation currently employs over 2,800 people. About 60 percent of those people had previously been on some form of public assistance.

Currently, KHIC is planning a number of new projects, including an aspiring entrepreneur program and some innovative forms of financing. Overall, KHIC has never been constrained by the conventional way of doing things.

I applaud KHIC's efforts to bring new jobs to southeastern Kentucky and to encourage growth in the area.

Mr. President, I ask that a recent article from Appalachia be submitted in today's CONGRESSIONAL RECORD.

The article follows:

GRASS ROOTS GIVE AND TAKE

(By Fred D. Baldwin)

Conference speakers like to say that community service agencies should be "run like a business." In southeastern Kentucky there's a nonprofit community development corporation that is a business in every respect but one—its profits go back into job creation.

This June the Kentucky Highlands Investment Corporation (KHIC), based in London (Laurel County), celebrates its 25th year of operation. It was founded in 1968 as a Job Start corporation within the Johnson administration's War on Poverty. A decade or so later, facing a decline in federal funding, KHIC achieved something that few such agencies were able to achieve: a transition from running programs to managing investments.

"We shifted from giving out money," says Jerry A. Rickett, KHIC president and CEO, "to giving it out and then getting it back."

That change was more than a matter of rhetoric.

The Wall Street Journal has called KHIC "a rare mix of altruism and hard-nosed capitalism. . . . A lean operation [that] has toted up a record that might make an orthodox venture capitalist blush."

Today KHIC (legally, a cluster of three corporations of which KHIC is the parent company) has assets of almost $20 million. As of January 1993, its portfolio included 22 "investees"—firms in which the corporation has some kind of direct financial involvement.

The investees bear little resemblance to the "Fortune 500." In fact, "500" happens to be the largest number of people employed at any one firm (Mid South Electronics, a manufacturer of electronics components). Other businesses include a ham processor, a firm that makes walnut plaques and trophy bases, and one that makes stainless-steel kitchen fixtures. Another firm makes automobile air bags. Altogether, the 22 businesses employ over 2,800 people. Rickett estimates that at least 75 percent of these jobs would not exist today except for KHIC's help.

Every job is desperately needed. The KHIC primary service area covers nine counties: Bell, Clay, Clinton, Harlan, Jackson, McCreary, Rockcastle, Wayne and Whitley. They are among the U.S. Department of Agriculture's "perpetually poor" rural counties, with recent poverty rates ranging from 38 percent to 46 percent. In 1992 official unemployment rates for these counties were generally 8 percent to 10 percent, based on the number of people actively looking for work. A recent study produced for the Kentucky legislature by the Appalachian Civic Leadership Project concludes that "discouraged workers" (potential members of the labor force who have given up looking for jobs) swell true unemployment rates to over 50 percent in some KHIC counties.

"We're not in a growth area," Rickett says. "In 1950 there were 40,000 coal mining jobs around here. I think there are less than 8,000 now."

KHIC nevertheless manages to create over 200 new jobs per year. Almost all of these jobs are in manufacturing.

"It's the best way to get the most job return for the dollar invested," Rickett says. "The dollar investment per job is higher than in service businesses. But with retail jobs we'd just be moving jobs from store A to store B in the local community. If you're in manufacturing, you're exporting your product to the world."

EARNINGS ARE REINVESTED

KHIC has a staff of eight employees and two regular consultants. Its 1992 operating expenses were approximately $700,000. Just over $500,000 of these expenses were covered by income from investments—loan interest and rental income. Earnings over the amount needed to cover operating expenses are reinvested. The corporation also received approximately $200,000 in grants to cover the administrative costs of specific federal loan programs that require too much staff time, relative to the amount of income generated, to be self-supporting.

KHIC is governed by a 17-member board "as diverse as you can get," ranging from bankers to individuals with modest incomes. Turnover is slow; the cumulative tenure of the members is 195 years.

"I think we got our last operating grant around 1981," says Wayne Stewart, KHIC board president and a board member for 17 years, "We said, 'What can we do to stay alive?' We turned to things that earned money. As we earned money, we plowed it back into job-making. We know that in the kind of things we do, they can't all work. But our percentage has been good."

In fact, five KHIC-assisted ventures have failed outright, and several others are still in shaky financial condition.

"We put $200,000 equity capital in one company," says Ray Moncrief, KHIC vice president and chief operating officer. "We salvaged $6,000 of our investment. We lost $194,000 on that deal."

Most organizations would avoid mentioning that, but KHIC staffers can afford to talk matter-of-factly about risks and rewards.

"the good news," Moncrief continues, "is that we've made about $5 million. We invested $88,000 into that auto air bag business in 1988 and sold our interest out in 1992 for $2.75 million. And our investment of $500,000 in a plastics company was a success story."

Indeed it was.

Mt. Vernon Plastics, an injection molding company in Rockcastle County, was formed around 1980 by an industrial engineer who turned to KHIC after failing to attract venture capital elsewhere. After a few good years, the business began to show serious losses. The KHIC board was initially divided, Stewart recalls, over whether the situation called for putting in more money or "pulling the plug." "That was a long, drawn-out session," he says. "In the end, about midnight, the board was unanimous."

KHIC exercised an option to take over the company and, although keeping its existing management team intact, installed a staff member, Steve Meng, as temporary CEO. The infusion of money and management help sufficed to turn the company around. In 1989 KHIC sold Mt. Vernon Plastics to Reynolds Metal for a profit of approximately $3 million. The thriving plant employs 420 people, not counting secondary employment.

"The success we've had," says Rickett, "is based on our ability to be entrepreneurial. And on our ability to stay through thin times and give entrepreneurs an opportunity to fight another day."

KHIC's investment opportunities come to it in various ways, but mostly from a network of contacts developed over its 25-year history.

"A lot of our deals are networked to us by bankers, attorneys, state agencies, and just word-of-mouth from people we've partnered with," Rickett says. "Someone may drive in here with a business plan that they first brought next door to the ADD." (The offices of the Cumberland Valley Area Development District are adjacent to those of KHIC.)

THE ENTREPRENEURIAL ADVANTAGE

One of the advantages of "being entrepreneurial" is that KHIC isn't bound by the guidelines of any specific federal or state program. If it's legal, and the board approves, the staff can work out whatever combination of investment strategies seem to make the best business and human sense.

In putting a deal together, KHIC can offer a client not just money but help with special needs, such as identifying the best hardware and software for data processing.

"In an urban area," says Rickett, "you can buy these functions for a relatively inexpensive fee. In rural economic development it just doesn't work that way. Luckily, we have an experience base that allows us to do that."

The KHIC entrepreneurial tool kit has a lot of tools in it, but they can be classified under five broad headings: (1) loans (both for expansion and for working capital), (2) equity investments, (3) real estate, (4) management assistance, and (5) "partnering" (helping to put together deals involving many public and private partners). [See page 9 for how these tools are used in practice.]

Whatever tools KHIC uses, Rickett and Stewart take pains to emphasize that the bottom line for KHIC is always jobs. In September 1992, Rickett testified before a House Education and Labor subcommittee. He acknowledged that, during its 25-year history, KHIC had received roughly $12.5 million in federal grants, most in the first decade of its existence.

What, he asked, could KHIC show for that money?

First, Rickett told the committee, about 60 percent of the 2,800 people now employed by KHIC investees had been on some form of public assistance. Were this still the case, the annual cost to taxpayers would by now be approximately $14 million, taking into account food stamps, unemployment compensation, and other transfer payments. Now these people are themselves taxpayers. A reasonable estimate of their tax payments might be $9 million. Therefore, he concluded, the government's return on its past investment is by now likely to be somewhere around $23 million—per year.

Looking to the future, the KHIC board and staff have a number of projects in varying stages of planning. They'd like to use the "Aspiring Entrepreneur" program to jumpstart at least one new company. They're also

considering some innovative forms of financing.

"When you're not constrained by reality, you can do a lot of things," says Rickett. Then he corrects himself: "I shouldn't say, 'reality.' I mean 'the usual way of doing things.' We invest in people. The only bias we have is that they have to put their business in southeastern Kentucky."•

IRISH-AMERICAN HERITAGE MONTH

• Mr. SIMON. Mr. President, it is my pleasure to join my colleagues in sponsoring Senate Joint Resolution 119 to designate March 1994 as Irish-American Heritage Month. This resolution is an effort to give thanks to all Irish-Americans who have contributed to our great Nation.

American men and women of Irish descent have added immeasurably to this Nation through many levels of devotion and allegiance. Whether it is in politics, arts, science, athletics, military service, and so many other fields, Irish-Americans have been able to tap into their ideals and beliefs of hard work and democracy to successfully forge their aspirations into reality.

Irish-Americans have played key roles in the life of our Nation. Irish emigrants arrived in North American as early as 1621 and ever since then have been an important part of our history. I am most proud of those Irish-Americans from my home State of Illinois who have contributed to our Nation's successes.

Industrialist, inventor, and Irish-American Cyrus McCormick used Illinois as his base to promote efficient farming techniques. The Daley family, part of Chicago's southside Irish community, has been an integral part of Chicago's Democratic leadership for the last half of this century. In addition, many of the 44-million Americans of Irish ancestry who live and work in Illinois every day spread their Irish work ethic and cheer to other Americans.

I urge my colleagues to support this resolution because it honors a large portion of our society who have played an indispensable role in shaping our Nation and reiterates how our country has effectively used ethnic diversity as a strength.•

BUT WHERE ARE THE HIGH-SKILL WORKPLACES

• Mr. SIMON. Mr. President, I recently read an article in the magazine America's Agenda by the former Secretary of Labor, Ray Marshall, and Marc Tucker, president of the National Center on Education and the Economy.

What they have to say is extremely important for the future of the economy of this country.

At one point in the article, they say:

Bill Brock, co-chair of the Commission on the Skills of the American Workforce, said when its report was released that "the good news is that there is no shortage of skilled labor in the United States. The bad news is that there is no shortage of skilled labor in the United States." The five percent of American firms moving toward high-performance work organization is the same five percent that is moving toward embracing Total Quality principles * * *. As long as that is so, there will be no real improvement in education and training of our people, because there will be no effective demand for it.

Five percent is not enough. If five percent are struggling to create learning organizations that can compete on quality and productivity and 95 percent are competing on wages and hours, the United States will slip more quickly into relative poverty with every passing year.

Ray Marshall has always been willing to be creative and yet practical. And he shows it once again.

This article is taken from a book that was published last year titled, "Thinking for a Living: Education and the Wealth of Nations."

I also noted in the article that Ray Marshall holds the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the University of Texas, Austin. I was not aware that my friends, Audre and Bernard Rapoport, had endowed such a chair; but it is typical of their forward thinking that they did so and not surprising that the University of Texas should select Ray Marshall to fill that chair.

I ask to enter the article into the RECORD at this point.

The article follows:

[From America's Agenda, Spring, 1993]

BUT WHERE ARE THE HIGH-SKILL WORKPLACES?

(By Ray Marshall and Marc Tucker)

For much of this century, and indeed, right up to the present, American enterprise has been organized on the principle that most of us do not need to know much to do the work that has to be done. This system may have worked brilliantly for us until recently, but it will do so no longer.

The future now belongs to societies that organize themselves for learning. What we know and can do holds the key to economic progress, just as command of natural resources once did. Everything depends on what firms can learn from and teach to their customers and suppliers, on what countries can learn from one another, on what workers can learn from each other and the work they do, on the learning environment that families provide, and, of course, on what we learn in school. More than ever before, nations that want high incomes and full employment must develop policies that emphasize the acquisition of knowledge and skills by everyone, not just a select few. The prize will go to those countries that are organized as national learning systems, and where all institutions are organized to learn and act on what they learn.

Our most formidable competitors know this. Many newly industrialized countries know it and are vaulting forward as a result. But the United States does not. Because this country continues to operate on the premise that, for the country to be successful, only a few need to know or be able to do very much, we are poised on the precipice of a steep decline in national income, with all that this implies for our material well-being and the stability of our society.

Bill Brock, co-chair of the Commission on the Skills of the American Workforce, said when its report was released that "the good news is that there is no shortage of skilled labor in the United States. The bad news is that there is no shortage of skilled labor in the United States." The 5 percent of American firms moving toward high-performance work organization is the same 5 percent that is moving toward embracing Total Quality principles. As long as that is so, there will be no real improvement in the education and training of our people, because there will be no effective demand for it.

Five percent is not enough. If 5 percent are struggling to create learning organizations that can compete on quality and productivity and 95 percent are competing on wages and hours, the United States will slip more quickly into relative poverty with every passing year, a course, as we have pointed out, on which it is already well embarked * * *.

It is time for the President and the Congress to engage the nation in a debate about social priorities, and to pass legislation that clearly establishes full employment and high wages as the overarching domestic policy goals of the United States and sets forth a framework for achieving those objectives. We begin with proposals intended to lead to the restructuring of American business for high performance.

Provide incentives to employers to pay high wages, improve productivity, and use high-performance forms of work organization—and disincentives to those who don't: In the past, many states have tried to attract new firms or induce firms to stay or expand by offering free training, subsidized infrastructure or services, tax abatements, and so on. In the future, states could offer such inducements only to high-wage employers, which amounts to a tax on low-wage employers; or to high-productivity employers, which amounts to a tax on low-productivity employers; or to employers using high-performance work organizations, which amounts to a tax on employers using conventional forms of work organization. The point is that whereas in the past, states have focused on the quantity rather than the quality of jobs, federal and state policy can and should shift to policies that favor firms that offer the kind of high-pay, high-productivity jobs on which the future of this country depends.

Provide incentives to employers to invest in the development of their employees: The Commission on the Skills of the American Workforce observed that most of the advanced industrial countries and many of the newly industrialized countries require employers to invest a sum equal to 1 percent of salaries and wages in the continuing education and training of their employees. The United States is the rare exception to this rule. . . . There is, as one would expect, considerable resistance in the business community to the introduction of such a requirement, on the grounds that it is a tax that would further disadvantage American employers in the competitive race by adding to their costs, and that it would allow the government to create yet another bureaucracy, this time to tell firms how to carry out their internal training function. It is not clear to us, however, why a requirement of this sort would make American firms less competitive than those in Singapore, Ireland, France, Germany, Sweden, and many other countries where training set-aside requirements have

been in place for years. Nor is any great bureaucracy required; firms could simply certify on their tax return that they have used the funds in the matter required by law, and their auditors could check that they did so, just as they check other fund flows in the organization as a normal part of the audit procedure.

Establish a technical assistance program to move the management of all kinds of enterprises toward high-performance work organization . . . The sources of assistance might be research universities, land grant colleges . . . other four-year institutions, community colleges, industry associations, federal laboratories, and many others. The aid they provide should be coordinated with the state agencies responsible for economic development and related functions. Technology development and assistance should be coordinated with development of improved methods of organization and management, building on the Total Quality approach, and both should be developed in close collaboration with the people who will have to adopt the new methods. The program will have to embrace not just the fashionable fields of biotechnology and new materials technologies, but everything from fisheries to jewelry, from financial services to laundries.

But the key is the extension system [modeled after that in agriculture]: the people who are out there every day, going from firm to firm explaining what is at stake, what is to be gained by taking another route, what kind of assistance is available, what the firm will have to do, how long it will take and how much effort; and the people who actually do the audits, the training, and the hand-holding. . . . If agriculture is in fact an apt precedent, and high-quality resources are deployed to get to a significant number of firms, then such a policy could effect the practices of many employers in a relatively short time. Development of such a program is probably the single most important policy initiative that could be taken to lead employers toward high-quality, high-productivity, and high-performance forms of work organization.

(Ray Marshall, who was Secretary of Labor in the Carter Administration, currently holds the Audre and Bernard Rapoport Centennial Chair in Economics and Public Affairs at the University of Texas, Austin. Marc Tucker is president of the National Center on Education and the Economy.

(This article was adapted from "Thinking for a Living: Education and the Wealth of Nations" by Ray Marshall and Marc Tucker. Copyright ©1992 by Basic Books. Reprinted with permission of Basic Books, a division of HarperCollins Publishers Inc.)•

CONDITIONS IN BOSNIA AND HERZEGOVINA

• Mr. DECONCINI. Mr. President, I commend President Clinton for his leadership in securing an agreement at NATO to undertake military measures in response to the dire humanitarian situation in Bosnia and Herzegovina and particularly in Sarajevo. Despite the threat of intervention, however, the strangulation of Sarajevo continues. Reports this morning indicate that the Bosnian Serb forces are tightening the noose around the Bosnian capital.

Apparently the Serbs have wrested control of a critical government position in defiance of the NATO threat. If this mountain position indeed falls, the last major Moslem supply line to Sarajevo would be cut and the siege ring around the city and its 380,000 inhabitants would be complete. The fall of this key position would, according to U.N. officials, result in the displacement of as many as 32,000 people. These men, women, and children would likely flee into Sarajevo where the humanitarian situation continues to deteriorate, even as military planners prepare plans for possible action.

Most of the capital is without running water, electricity, and gas. Barely half of the humanitarian aid needed reaches the city these days. Efforts to get desperately needed relief supplies into Sarajevo continue to be hampered. As the commander of U.N. forces in Bosnia and Herzegovina said earlier today, "to deliberately withhold humanitarian aid is unforgivable." His remarks came as Bosnian Croat forces blocked a convoy of diesel fuel for the third day. The convoy has fuel for Sarajevo hospitals, fuel for bread ovens to help feed the starving and fuel for water trucks and pumps.

Mr. President, I ask unanimous consent that the text of a letter from President Izetbegovic to Secretary General Boutros Ghali on current conditions in Bosnia and Herzegovina be included in the RECORD.

Mr. President, any further delays in undertaking resolute action to break the 16-month siege of Sarajevo only plays into the hands of the aggressors. We must act.

REPUBLIC OF BOSNIA AND HERZEGOVINA,
August 3, 1993.

(United Nations Secretary General Boutros Boutros Ghali, President of the Council of Ministers of the European Communities, Minister of Foreign Affairs of Belgium, Mr. Willy Claes)

SIRS: The Delegation of The Republic of Bosnia and Herzegovina is here in Geneva negotiating in good faith in order to seek a settlement in accordance with the United Nations Charter, the relevant Security Council Resolutions, and the Principals of the London Conference. Despite the prior assurances we received from the United Nations and the European Community before coming here, we have just now received information that yesterday, the aggressor forces launched repeated attacks against the towns of Brcko, Maglaj, Tesanj, Olovo, and upon the mountains around the capital of our State, Sarajevo. In the town of Tesanj, the aggressors used ground to ground missiles of the Luna type, with devastating affect upon the civilian population. Moreover, the humanitarian situation for the civilian population living in these areas has deteriorated to sub-human conditions. There is no water, food, or gas supplies for tens of thousands of human beings.

We wish to draw to your attention that here at United Nations Headquarters in Geneva we are repeatedly confronted with diktats and ultimatums that we accept faits accomplis based upon the illegal use of force, war crimes, ethnic cleansing and genocide. This is in explicit violation of the United Nations Charter, the relevant Security Council Resolutions, and the Principles of the London Conference.

The recent initiatives by President Clinton and NATO upholding the Principles of the United Nations Charter and the London Conference have encouraged us to remain here despite all these difficulties. However, in the light of these recent developments, we are asking you to take urgent and necessary action to terminate and reverse these results of aggression and genocide for the purpose of promoting a settlement here in Geneva, and to alleviate the catastrophic suffering of our people at home. On our part, this is to inform you that the Presidency of the Republic of Bosnia and Herzegovina has today issued an Order to our Armed Forces to use force strictly in self-defense.

Please accept the expressions of my highest consideration.

ALIJA IZETBEGOVIN,
President of the Presidency.

STATEMENT BY MIKE FARRELL ON CAPITAL PUNISHMENT

• Mr. SIMON. Mr. President, in my 1984 campaign for the U.S. Senate, I had the chance to meet and campaign with Mike Farrell, an actor who is perhaps best known for his work in the television series, "MASH." I came to know and respect Mike Farrell for his dedication to humanitarian causes.

Recently, he made a speech to the Iowa State Legislature on the issue of capital punishment.

I recognize that his position is not popular, but it is of interest to me that my opponent in my reelection campaign in 1990 used the death penalty issue against me, and I ended up with the biggest plurality of any contested candidate for Senator or Governor of either political party in the Nation.

People who stand up for their convictions are respected by the public.

Mike Farrell's statement, delivered in February of this year, is a call for a more humanitarian response than we now provide.

Canada to the north of us does not have capital punishment. Mexico to the south of us does not have capital punishment. The Western European nations do not have capital punishment. In fact, the United States, China, and Russia are among the few industrial nations that still retain capital punishment.

I would add one other point that Mike Farrell doesn't mention: If you have enough money to hire the best lawyers, you can avoid capital punishment. Capital punishment is a sanction we reserve for people of modest means.

If anyone thinks that makes sense, I do not understand how he or she can reach that conclusion.

I urge my colleagues to read Mike Farrell's statement, and I ask to insert it into the RECORD at this point.

The statement follows:

Thank you for allowing me the opportunity to speak before you this evening. Though I am not a resident of the state, I feel a particular affinity for Iowa and Iowans, having been born not far from here in South St. Paul. I have many friends here, have spent a good deal of time in the area

and, of course, have enjoyed my wife's association with the Donna Reed Festival for the Performing Arts in Denison, to name only a few connections.

The subject this evening is a grave one. The notion that this state, the heart of America, which enjoys the distinction of being one of the thirteen states in the Union with the courage to stand firm against the rising tide of blood lust in this country, would consider changing that status, is a chilling one for those of us who believe that the Founding Fathers gave us a higher purpose to live up to when they said we in this country possessed "certain inalienable rights."

The issue of capital punishment has, tragically, become something of a political football in our country today, as a result of which it is the subject of much rhetorical flourish, a great deal of emotionalism and painfully little serious consideration. That being the case, I particularly appreciate the time given here this evening.

I trust you will hear from others that we now know the death penalty is more expensive than keeping the perpetrator in prison for life, that it is insupportable on moral, religious or ethical grounds, and, importantly, that contrary to the conventional wisdom, polls all over the country now show that the majority of people, when the options are available and clearly explained, choose a maximum sentence of life without possibility of parole or life with a minimum of 25 years plus restitution to the victim's family rather than the death penalty, so I'd like to approach it from a slightly different point of view.

Though many continue to turn away in confusion, unable to face their conflicting emotional responses when 20,000 volts surge through the body of one of our own, cooking his flesh, when he writhes, gasping in pain as the cyanide fumes sear his lungs, strangling him, or dangles, gasping, gagging, kicking at the end of the rope, or feels the firing squad's bullets tearing through his flesh or lies, burning, crucified on a gurney as the poison courses murderously toward his heart, today in the United States of America, of all places, human beings are put to death at the hands of the state. How have we come to the place where we, the world-renowned champion of human rights, can pretend to not understand that the ultimate violation of human rights is taking place in our own back yards, with our consent?

The answer is politics. Not politics as Aristotle described it, "the taking care of the common good of all the people," but the worst kind of politics: the manipulation of people's fears in order to advance one's own political agenda.

About 25 years ago, when we were going through the throes of rediscovering who and what we are as Americans, when the Vietnam war was raging and causing us to ask what we truly stood for, opinion polls on the subject of the death penalty were almost exactly the opposite of what they supposedly say today. At that point, claiming they had a "secret plan" to end the war, Richard Nixon and Spiro Agnew came to power and brought with them a right wing agenda which, I submit, has thrown the country into a tailspin from which it has still not recovered.

The tactics, in retrospect, are painfully, almost embarrassingly obvious. They lied to us, they amassed power and wealth for themselves and their friends and they kept us off balance by inflaming our fears, preaching hatred and racial division through the clever use of code words and terms like "Southern Strategy" and "state's rights" and "forced busing." They sowed seeds of distrust among us by denouncing "permissiveness," by insisting our problems would be solved if we'd only "get tough on crime," by enlisting the media through the use of catchy alliterations about "nattering nabobs of negativism" and by labeling young people in our country "bums" and "traitors" who were "soft on communism" because they disagreed with policies which, as we now know, were in fact murderous breaches of international law and antithetical to everything for which we stand.

After a brief respite during the Carter years, when an attempt was made to articulate a new awareness of human rights, the same old right wing agenda, never much out of the news, was breathed new life through the charming simplicity of Ronald Reagan, whose attacks on fictitious "Cadillac-driving welfare queens," on civil rights laws, on "racial quotas," interwoven with false claims that people are out of work because they're "lazy", eat in soup kitchens because "they like the food" and are homeless by choice, gulled many Americans into accepting the notion that the problem was "those others" and the answer was the same old right wing rhetoric, "get tough on crime."

Being "tough on crime," then, had become the new paradigm for manhood and rough and ready Americanism. And politicians of both parties, ever aware of the value of symbolism for the enhancement of their careers, bought in with a vengeance. Some legislators, though recognizing a moral and ethical disaster in the making, took a low profile on the subject because they felt, incorrectly, I think, that they would otherwise appear soft, weak, or be made politically vulnerable. Others, recognizing an opportunity to make points, chose the most dramatic pose available. How better to show you're tough on crime than to come out for killing people? Kill kidnappers, kill drug abusers, kill "drug kingpins," kill traitors, kill sex criminals, kill killers. Let's at least kill killers. Who could be soft on killers?

President Bush, terrified of being thought a wimp, became a champion of death. He Willie Horton-ed his way into the White House, further proved his mettle by attempting to expand the death penalty through legislation and by appointments to the Supreme Court, then set up a couple of Hitlers abroad to demonize, further implanting the notion that manhood equals patriotism equals a willingness to kill.

President Roosevelt was right about fear and we forget his admonition at our peril. The politics of fear, as manipulated by the right wing, has riven our country. Today, while most of their political and economic agenda has been stripped of its glib cover and exposed for the disaster it is, the primary vestige of their social and cultural agenda still in place is the legacy of the mean-spirited insistence that the way to "get tough on crime" is to punish the poor and minorities, to build more prisons so we can put more of them out of sight, and to kill.

The result?

The prison population in our country has nearly tripled since 1975 without creating a noticeable change in violent crime.

There are more young African-American men in prison in our country today than there are in college.

In a recent study, American high school students were asked if they'd rather be rich or smart. They chose rich.

If you don't see the connection, I'm sorry. Something is dreadfully wrong with the way we've been doing things and authoritarianism is not the answer. It's the problem. People have been told they don't matter in so many ways they're beginning to believe it. And act like it. They need to be reinvested with a sense of their own value and that doesn't come from having the state in the business of killing its citizens. The human wreckage left in the wake of a system of state sanctioned killing reaches far beyond the victim, the condemned and their families. It touches all of us.

Studies have now found over 140 instances where Americans sentenced to death in this country were later proven to be innocent. Unfortunately, two dozen of them had already been executed.

The 2,676 inmates on death rows in our country today are disproportionately poor, members of minority groups, and those who had an inadequate, ill-prepared, often criminally incompetent defense. 10% of them are mentally retarded, an unknown number are seriously mentally ill; one study showed that 9 out of 10 were physically and/or sexually abused as children. Since the fetal alcohol syndrome and its effects on adults behavior are only now coming to be fully understood, only God knows how many of its victims populate this community, or are out there knocking at the door.

Let me give you a few specifics:

Barry Lee Fairchild is soon to be executed in Arkansas for the rape/murder of a white nurse. New evidence in the case shows that he was the fourteenth black man to have been brought into the sheriff's office. Each was told there was proof he had done it. Each was beaten in an attempt to extract a confession. The other thirteen refused to submit. Barry gave in. The difference is that he is mentally retarded.

In January of 1993, Charles Stamper was carried to the electric chair in Virginia after being lifted by three guards out of his wheelchair.

On November 20, 1992, Cornelius Singleton was electrocuted after signing, with his X, a confession he couldn't read. He had an IQ of approximately 61.

In January of 1992, Ricky Rector, who had been effectively lobotomized by a self-inflicted gunshot wound at the time of his crime and had virtually no comprehension of his situation, was led to his execution. He left the dessert from his last meal waiting in his cell for when he returned. (The chaplain at that institution subsequently left, went into psychiatric care and today refers to Ricky's execution as a crime in itself. He says "We're not supposed to execute children.")

In Florida, in 1990, Jesse Tafero's head was set afire during his electrocution.

This month the Supreme Court of the United States, in the Herrera case, held that innocence was not sufficient justification to stop an execution; a decision Justice Blackmun, in dissent, said was "perilously close to simple murder."

Rather than take more of your time, let me urge you to read, in this week's New Yorker magazine, a compelling article on the life and death of Ricky Rector. Also, I recommend a new book by Michael Radelet, Hugo Bedau and Constance Putnam, "In Spite of Innocence—The Ordeal of 400 Americans Wrongly Convicted of Crimes Punishable by Death."

I thank you for your time and attention and urge you to remember the words of John Dewey, who said, "The human power to respond to reason and truth protects democracy." Thoughtful, enlightened, compassionate leadership is what is urgently needed

today, both here in the State of Iowa and in our country at large. State sanctioned killing is neither an acceptable answer to today's problems nor an appropriate lesson for us to be teaching our children.

COMMEMORATING GERMAN-AMERICAN DAY

Mr. D'AMATO. Mr. President, I rise today to honor German-Americans and their contribution to the United States of America. In order to commemorate their accomplishments as citizens of America, I urge the President to designate October 6, 1993 as "German-American Day."

German immigrants first arrived in Jamestown, VA, in October 1608, and founded Germantown, PA, on October 6, 1683. This event has already been commemorated as the "German-American Tricentennial Celebration" and has been designated as such by congressional resolution and Presidential Proclamation. Since the arrival of German immigrants in the 17th century, German-Americans have contributed a great deal as a community. The number of American citizens of German descent has grown to over 50 million. In addition to individual accomplishments, German-Americans have added a great deal to American culture and diversity.

Recently, we have had the fortune to witness the unification of Germany. As the Berlin Wall came down, democracy spread to Eastern Germany. Today, Germany has long been a significant actor in the European arena. Peaceful reunification with East Germany has only enhanced its position. German-Americans are proud of the friendship between the United States and Germany as is evidenced by the creation of the German-American Friendship Garden in Washington, DC.

For the past 6 years, Congress unanimously supported and passed joint resolutions designating October 6 as "German-American Day." It is very important that this tradition continues. It shows our support and appreciation for the accomplishments and contributions of German-Americans in the United States.

AUTHORIZING PRINTING OF A PUBLICATION

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to the consideration of Senate Resolution 138, a resolution introduced earlier today by Senators PELL and BIDEN authorizing the printing of the publication "To Stand Against Aggression: Milosevic, the Bosnian Republic, and the Conscience of the West;" That the resolution be agreed to, the motion to reconsider be laid upon the table and any statements thereon appear in the RECORD at the appropriate place as though read.

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

The resolution (S. Res. 138) was agreed to; as follows:

S. RES. 138

Resolved, That an additional 250 copies of the publication entitled "To Stand Against Aggression: Milosevic, the Bosnian Republic, and the Conscience of the West" be printed for the use of the Committee on Foreign Relations.

GERMAN AMERICAN DAY

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Senate Joint Resolution 121, a bill to designate October 6, 1993 and 1994 as "German American Day," introduced earlier today by Senator RIEGLE and others; that the joint resolution be deemed read three times, passed, and the motion to reconsider laid upon the table; that the preamble be agreed to; and that any statements relating to this measure appear in the RECORD at the appropriate place.

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

The joint resolution (S.J. Res. 121) was deemed read three times and passed.

The preamble was agreed to.

The joint resolution (S.J. Res. 121), with its preamble, is as follows:

S.J. RES. 121

Whereas German immigrants first arrived in America at Jamestown, Virginia, in October 1608, and the 400th anniversary of the arrival of these first Germans will be celebrated in 2008;

Whereas the first German settlement in America was founded on October 6th, 1683 at Germantown, Pennsylvania, and October 6, 1983, was designated as the German-American Tricentennial Celebration by Congressional Resolution and Presidential Proclamation;

Whereas the number of American citizens of German ancestry has grown over 50 million since the first German immigrants arrived in this country;

Whereas German-Americans are proud of the existing friendship and cooperation between the Federal Republic of Germany and the United States;

Whereas the German-American Friendship Garden in Washington, D.C., is evidence of this cooperation;

Whereas German-American support expansion of the existing friendship between Germany and the United States, and will continue to contribute to the culture of the United States, support its government and democratic principles, and help ensure the freedom of all people;

Whereas German unification stands as a symbol of greater international cooperation and has reemphasized the prominent position of Germany in the European community and between the East and the West;

Whereas Congress unanimously passed joint resolutions designating October 6th of 1987, 1988, 1989, 1990, 1991, and 1992, each as "German-American Day": Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That October 6, 1993 and 1994, are each designated as "German-American Day", and the President is authorized and requested to issue a proclamation calling on the people of the United States to observe the days with appropriate ceremonies and activities.

DESIGNATION OF OCTOBER 6, 1993 AND 1994 AS GERMAN-AMERICAN DAY

Mr. RIEGLE. Madam President, I stand before you today not only as an American, but as a proud German-American. Today, I am introducing legislation to designate October 6, 1993 and 1994 as German-American Day. On October 6, we will commemorate the common heritage shared by 1 in every 4 Americans—over 50 million people. In my own State of Michigan, more than 2.5 million residents claim at least partial German ancestry.

For more than three centuries, since the first Germans arrived in America near Germantown, PA on October 6, 1983, Germans have contributed to our Nation's unique blend of cultures. German-Americans have brought their talents to all walks of life and have touched each and every one of us. We have all benefitted from the inventions of German-Americans such as Levi Strauss and George Westinghouse. The achievements of German-American scientist Albert Einstein supply the link which joins the knowledge of the past with the advanced technology of today. German-American leaders, including former President Dwight D. Eisenhower and the labor movement's Robert Wagner, answered our country's call to public service, helping to guide us through critical periods of national change. And of course, we have all experienced the delights of German cuisine—from hot dogs to hamburgers, Black Forest cake to sauerbraten.

Elements of German contributions to American life extend to this day. Our challenge is to ensure that they remain a part of our heritage through the 21st century and beyond. We live in an increasingly interdependent world—a world where relationships are evermore important as we emphasize consensus over conflict. In such a world, it is critical that we reaffirm the special bond between the German and American peoples and the spirit of friendship and cooperation that ties our peoples together.

LAND COMPONENTS OF THE NATIONAL WILDERNESS PRESERVATION SYSTEM

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 176, H.R. 631, an act to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, that the bill be deemed read three

times, passed and the motion to reconsider be laid upon the table; further that any statements relating to this measure appear at the appropriate place in the RECORD.

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

The bill (H.R. 631) was deemed read three times and passed.

Mr. BROWN. Madam President, today we consider H.R. 631, the Colorado Wilderness Act of 1993. Efforts to enact Colorado wilderness legislation have spanned more than a dozen years. This bill is the product of extensive meetings among the Colorado delegation and the House and Senate committee leadership, leading to this compromise. Both Colorado environmental groups and the general public who use Federal property have endorsed this compromise as an acceptable solution. The water issues associated with these proposed wilderness areas were particularly difficult to resolve because of the strong and diametrically opposed views held by many members of the water user and environmental communities. Fortunately, this bill contains water language that is a true compromise that does not injure the fundamental principles that have much value for Colorado—protection of wild lands and protection of Colorado's future ability to develop and use all of its interstate water entitlements.

The issue of the existence of Federal reserved water rights for the upstream areas is moot, because the bill provides that no one can assert a claim for water or water rights based on the designation of these wilderness areas, and no court or agency could ever consider in any fashion such a claim. This ensures that wilderness status will never result in an encroachment on Colorado's ability to use its interstate water allocations. The bill also addresses the difficult issue of downstream wilderness study areas, where there could be conflicts with upstream water storage and diversion. Where potential conflicts exist, the areas are not designated as wilderness areas. This ensures that there will be no effect on existing and future water use. In order to make this intent crystal clear, there is also an explicit disclaimer of a Federal reserved right for these areas, and the existence of these areas cannot be used as a basis to affect upstream activities as a part of any administrative or regulatory program.

As stated in the findings, section 8 is entirely premised on certain specific characteristics of the lands designated as wilderness by section 2(a) of the bill, namely:

First, these lands are located at the headwaters of the streams and rivers located on those lands, with few if any opportunities for diversion, storage, or other uses of water that could occur outside these areas that would adversely affect the wilderness values of the areas;

Second, these lands are not suitable for use for development of new water resources facilities or the expansion of existing water resources facilities; and

Third, therefore, proper management and protection of the wilderness values of the specific areas covered by section 2(a) can be provided for in ways different from those employed with regard to wilderness lands lacking these particular attributes.

This being the case, section 8 is intended to protect the wilderness value of the lands designated by means other than those based on assertion of Federal reserved water rights.

I would like to thank Senator CAMPBELL for his years of working on this legislation, and to ask him to explain how this bill goes about eliminating unnecessary litigation regarding reserved water rights.

Mr. CAMPBELL. I want to thank Senator BROWN for his comments. Subsection 8(b)(1) would prohibit any person, including the Secretary of Agriculture and any other officer, employee, representative, or agent of the United States, from asserting in any court or agency any claim for water or water rights in Colorado based on construing any portion of the bill as construing either an express or implied reservation of water or water rights. It also would deny any court or agency the ability to consider any such claim.

The effect of enactment of paragraph 8(b)(1) will be to deny anyone, including but not limited to a person holding an established office of the national Government, the authority to assert, and to deny a court or agency the jurisdiction to consider, a claim that the bill's designation as wilderness of the lands described in section 2(a) has the effect of reserving any water or water right with respect to those lands. Congress is not consenting to any suit against the United States in State court or to have considered in any other forum any claim that these designations created a basis for a claim to water or water rights.

Mr. BROWN. The explanation of the distinguished Senator is consistent with my own understanding of the provision. I also understand that concern has been raised regarding whether this provision violates the U.S. Constitution in the way it goes about eliminating the threat of unnecessary and burdensome litigation. I think you would agree that the Colorado delegation has considered several issues which have been raised regarding section 8(b)(1) of H.R. 631. First, the preclusion of consideration of any claim to or for water or water right by any court or agency in this section was not intended to and does not address or affect the original jurisdiction of the U.S. Supreme Court under article III, Section 2, clause 2 of the U.S. Constitution.

Second, an act of Congress is required to designate a wilderness area, and Congress is fully aware of its ability to expressly reserve water or water rights for such areas. Congress has considered the issue and has chosen not to assert a Federal reserved water right or claim to water for these areas. Rather, it has decided to protect the resources of these areas in another manner. This legislative decision regarding how best to preserve these areas is within the sole prerogative of Congress. The preclusion of assertion of any claim for water or water rights by any agency or person is a limitation on the assertion of a theoretical cause of action relating to wilderness designation. There cannot be a denial of rights granted under the first amendment to the U.S. Constitution, where, as here, Congress determined that there is no Federal question to be litigated as to the existence of a Federal reserved water right for these areas. Further, the prohibition of any such claim or assertion serves to avoid frivolous litigation while defining the jurisdiction of the courts over Federal questions. In this language, Congress makes clear that it does not want others to assert or claim water or water rights where it has explicitly chosen to not assert a Federal reserved water right or other claim to water for these wilderness areas. Finally, I would like to emphasize that the wilderness areas designated by this act would not have been designated in the absence of this prohibition.

Mr. CAMPBELL. I believe it is clear that the Colorado delegation has adequately considered and addressed these issues. It is my understanding that the committee has also reviewed these issues and have come to the same conclusion.

Mr. BROWN. Looking at paragraph 8(b)(2), I believe this provision is unique in the fact that it clarifies several aspects of the bill's effects with regard to water or water rights. As I read it, subparagraph (b)(2)(A) states that nothing in the bill constitutes or is to be construed as either an express or implied reservation of any water or water right with respect to the Piedra, Robideau, and Tabequache areas identified in section 9, the Bowen Gulch Protection Area identified in section 5, or the Fossil Ridge Recreation Management Area identified in section 6. For this reason, these areas are not designated as wilderness.

Mr. CAMPBELL. I believe Senator BROWN is exactly right. In addition, we should note that subparagraph (b)(2)(B) goes on to state that nothing in the bill is to be construed as a creation, recognition, disclaimer, relinquishment, or reduction of any water rights of the United States in Colorado existing before the bill's enactment, except as provided in subsection 8(g)(2). Thus, with the one exception cited, the bill

would have no effect on any water rights of the United States that may already exist in Colorado. Further, subparagraph (b)(2)(C) provides that with the exception of subsection 8(g)(2), nothing in the bill is to be construed as constituting an interpretation of any other Act and subparagraph (b)(2)(D) provides that nothing in section 8 is to be construed as establishing a precedent with regard to any future wilderness designations.

Mr. BROWN. Key to the protection of the wilderness values in this newly designated wilderness is the provision in subsection 8(c) dealing with water resource facilities. Senator CAMPBELL, could you explain to us exactly how this subsection would work?

Mr. CAMPBELL. I would be happy to discuss this important provision. This subsection would simply prohibit any U.S. officer, employee, or agent, including the President, from funding, assisting, authorizing, licensing, or permitting the development of any new water resource facility or the enlargement of any existing water resource facility within the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, or the lands the bill designates as wilderness areas. This prohibition would apply notwithstanding any other provision of the law.

In addition to the excellent protection for wilderness areas, I understand that protection for existing water facilities is also offered. Is that correct?

Mr. BROWN. Senator CAMPBELL is correct. Subsection 8(d) addresses access to and operation of existing water resource facilities within the areas described in sections 2, 5, 6, and 9 of the bill. Paragraph (d)(1) would direct the relevant Secretary to allow reasonable access to such facilities in existence on the date of enactment of the bill, including motorized access where necessary and customarily employed on routes in existence on that date, subject to the provisions of subsection 8(d).

Paragraph (d)(2) specifies that existing access routes within the areas described in sections 2, 5, 6, and 9 customarily employed as of the date of the bill's enactment may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, so long as the function, design, and serviceable operation of these routes is not modified so as to increase the adverse impacts on these areas.

Paragraph (d)(3) provides that, subject to other provisions in this bill, the relevant Secretary is to allow water resource facilities in existence on the date of the bill's enactment within the areas described I've previously outlined to be used, operated, repaired, maintained, and replaced to the extent necessary for the continued exercise, in accordance with Colorado law, of vested absolute or conditional water rights adjudicated prior to the bill's date of enactment by a court of competent jurisdiction for use in connection with such facilities. The paragraph also specified that the impact of an existing facility within an area previously mentioned on the water resources and values of such an area shall not be increased as a result of any change in the adjudicated type of use of such a facility (as compared with the type of use adjudicated as of the date of enactment of the bill).

This paragraph (d)(3) establishes that the obligation of the relevant Secretary to allow the continued operation, maintenance, and use of water resource facilities is limited to those facilities that are in existence as of the date of this act for the exercise, in accordance with Colorado law, of all water rights adjudicated for use in connection with those facilities prior to enactment of this act. These existing water rights may also be changed under State law so long as the impact on the water resources and values of the wilderness area is not increased as a result of the change. Consequently, by way of example, there would be no barrier to changes in the location or type of use so long as the change did not increase the quantity or time of diversion from these facilities in a manner which increased the impact of the existing facility on the water resources and values of the area. This paragraph does not modify or change Colorado law relating to these water rights in any respect.

Paragraph (d)(4) is a mandatory requirement that water resources facilities, and access routes serving such facilities, in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and value of those areas.

Finally, subsection 8(e) is a savings clause, stating that except as provided in subsections 8(c) and 8(d), neither the provisions of the bill related to the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, and the lands designated as wilderness by section 2(a), nor the wilderness status of the lands so designated by section 2(a), is to be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of the bill's enactment within the boundaries of any of these areas. The intent of subsection 8(e) is to make clear that subsections 8(c) and 8(d) are the only parts of the bill that govern such use, operation, maintenance, repair, modification, or replacement of existing water resource facilities within these areas.

Subsection 8(g) addresses a number of difficult interstate water matters. Senator CAMPBELL has asked to be recognized to disusss this particular matter.

Mr. CAMPBELL. I thank the Senator. Subsection 8(g) has two paragraphs. Paragraph 8(g)(1) provides that nothing in the bill or in any previous act designating any lands as wilderness is to be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. This paragraph also states that except as expressly provided in section 8, nothing in the bill will affect or limit the development or use of Colorado's full apportionment of such waters by existing and future holders of vested water rights.

Paragraph 8(g)(2) relates solely to the Platte River Wilderness established by Public Law 98–550, which is located on the boundary between Colorado and Wyoming. This paragraph provides that no person, including the Secretary of Agriculture or any other officer, employee, or agent of the United States, shall assert in any court or agency any rights, and no U.S. court or agency shall consider any claim or defense based on such rights, which may be determined to have been established for waters of the North Platte River for purposes of such wilderness area, to the extent that such rights would limit the use of development of water within Colorado by present and future holders of vested water rights in the North Platte River and its tributaries to the full extent allowed under interstate compact or applicable U.S. Supreme Court equitable decree. The paragraph also provides that any such U.S. rights are to exercised so as not to prevent the use or development of Colorado's full entitlement to interstate waters of the North Platte and its Colorado tributaries allowed under interstate compact or U.S. Supreme Court equitable decrees.

Mr. BROWN. As has been fully explained, H.R. 631 represents a bipartisan effort on behalf of the Colorado delegation to establish wilderness areas within their State. I would like to commend the committee for allowing the Colorado delegation to determine wilderness issues within their own boundaries. I urge support of H.R. 631.

COLORADO WILDERNESS ACT

Mr. CAMPBELL. Madam President, Senator BROWN and I nearly succeeded in passing this bill in the waning hours of the 102d Congress. Unfortunately, although the Senate passed the bill, the House adjourned before it could be passed by unanimous consent.

Twelve years in the making, crafting this bill has taken Herculean efforts. The delegation first developed a compromise wilderness bill in 1984. The bill

passed the House, but before action could be taken by the Senate in 1985, U.S. District Court Judge Kane decided Congress intended wilderness areas to have water rights, just as previous decisions reserved water for Indian reservations and forests. Judge Kane did not decide the basis on which those rights should be quantified, and was immediately appealed. The decision, however, halted the work of the Colorado congressional delegation to resolve the fate of forested areas that were left in study status following the passage of the first Colorado wilderness bill, Public Law 95-560, in 1980.

In 1980, by enactment of Public Law 96-560, Congress specified the future management of most of the Colorado national forest lands with regard to which the President, pursuant to the Wilderness Act, previously had made recommendations relating to wilderness designation, including recommendations resulting from the Forest Service's RARE II review process.

Regarding 11 other areas in Colorado, however, Public Law 96-560 provided for further study and for the submission of recommendations for their future management as components of the National Wilderness Preservation System or otherwise.

This bill is the product of the Energy and Natural Resources Committee's consideration of the administration's recommendations regarding not only those 11 areas, but also some other portions of Colorado's national forests, and also addresses the future management of some public lands managed by the Bureau of Land Management [BLM], which pursuant to section 603 of the Federal Land Policy and Management Act of 1976 have been studied for possible designation as wilderness. In the bill as reported, some of these public lands would be transferred to management by the Forest Service while others would continue to be managed by the BLM.

WATER RIGHTS

Obviously, the most significant aspect of the bill is the language regarding wilderness reserve water rights. The water related provisions of S. 206 has three basic purposes:

First, to provide for the operation, maintenance, repair and replacement of existing water facilities within the wilderness additions;

Second, to alleviate Federal preemption of Colorado water law as to the newly designated wilderness lands;

Third, to utilize Colorado water law in the protection of wilderness values.

The water language of S. 206 provides explicit recognition of, and protection for, water-related resource values of the wilderness area. This is accomplished by preventing the construction of any new water projects or expansion of existing facilities in the wilderness areas designated by this act. Preservation of the water-related wilderness values of the newly designated headwaters wilderness areas are protected by a prohibition on new facilities—not by restricting Colorado's right to its own water.

The water language in the bill is entirely premised on certain specific characteristics of the lands designated as wilderness by section 2(a) of the bill, namely:

First, these lands are located at the headwaters of the streams and rivers located on those lands, with few if any opportunities for diversion, storage, or other uses of water that could occur outside these areas that would adversely affect the wilderness values of the areas;

Second, these lands are not suitable for use for development of new water resource facilities or the expansion of existing water resource facilities; and

Third, therefore, proper management and protection of the wilderness values of the specific areas covered by section 2(a) can be provided for in ways different from those employed with regard to wilderness lands lacking these particular attributes.

This being the case, section 8 is intended to protect the wilderness values of the lands described in section 2(a) by means other than those based on assertion of Federal reserved water rights.

For instance, subsection 8(b)(1) of the bill would prohibit any person—including the Secretary of Agriculture and any other officer, employee, representative, or agent of the United States—from asserting in any court or agency any claim for water or water rights in Colorado based on construing any portion of the bill—or the designation by the bill of any lands as wilderness—as constituting either an express or implied reservation of water or water rights. It also would deny any court or agency the jurisdiction to consider any such claim.

The effect of enactment of paragraph 8(b)(1) will be to deny anyone—including but not limited to a person holding an established office of the National Government—the authority to assert and to deny a court or agency the jurisdiction to consider, a claim that the bill's designation as wilderness of the lands described in section 2(a) has the effect of reserving any water or water right with respect to those lands. Congress is not consenting to be sued in State court or to have considered in any other forum any claim that a reserved water right exists for these areas.

The preclusion of consideration of any claim to or for water or water right by any court or agency in this section was not intended to and does not address or affect the original jurisdiction of the U.S. Supreme Court under article III, section 2, clause 2 of the U.S. Constitution.

Second, an act of Congress is required to designate a wilderness area, and Congress is fully aware of its ability to expressly reserve water for such areas. Congress has considered the issue and has chosen not to assert a Federal reserved water right for these areas. Rather, it has decided to protect the resources of these areas in another manner. This legislative decision regarding how best to preserve these areas is within the sole prerogative of Congress. The preclusion of assertion of any claim for water or water rights by any agency or person is a limitation on the assertion of a theoretical cause of action relating to wilderness designation. There cannot be a denial of rights granted under the first amendment to the U.S. Constitution, where, as here, Congress determined that there is no Federal question to be litigated as to the existence of a Federal reserved water right for these areas. Further, the prohibition of any such claim or assertion serves to avoid frivolous litigation while defining the jurisdiction of the courts over Federal questions. Congress does not want others to assert or claim water or water rights where it has explicitly chosen to not assert a Federal reserved water right for these wilderness areas. Finally, I wish to emphasize that the wilderness areas designated by this act would not have been designated in the absence of this prohibition.

The language pertaining to water rights found in paragraph 8(b)(2) clarifies several aspects of the bill's effects with regard to water or water rights. Subparagraph (b)(2)(A) states that nothing in the bill constitutes or is to be construed as either an express or implied reservation of any water or water right with respect to the Piedra, Roubideau, and Tabequache areas identified in section 9, the Bowen Gulch Protection Area identified in section 5, or the Fossil Ridge Recreation Management Area identified in section 6. These areas are not designated as wilderness.

The language in subparagraph (b)(2)(C) provides that with the exception of subsection 8(g)(2), nothing in the bill is to be construed as constituting an interpretation of any other act or any designation made by or pursuant thereto; and subparagraph (b)(2)(D) provides that nothing in section 8 is to be construed as establishing a precedent with regard to any future wilderness designations.

The language in subsection 8(c) of the bill deals with water resource facilities—meaning irrigation and pumping facilities, reservoirs, water conservation works, aqueducts, canals, ditches, pipelines, wells, hydropower projects, transmission and other ancillary facilities, and other water diversion, storage, and carriage structures.

This subsection would prohibit any U.S. officer, employee, or agent—including the President—from funding, assisting, authorizing, licensing, or

permitting the development of any new water resource facility or the enlargement of any existing water resource facility within any of the areas described in sections 2, 5, 6, or 9—that is, the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabequache Areas, and the lands the bill designates as wilderness. This prohibition would apply notwithstanding any other provision of law.

The language also directs the relevant Secretary to allow reasonable access to such facilities in existence on the date of enactment of the bill, including motorized access where necessary and customarily employed on routes in existence on that date, subject to the provisions of subsection 8(d).

The language in paragraph 8(d)(2) specifies that existing access routes within the areas described in sections 2, 5, 6, and 9 customarily employed as of the date of the bill's enactment may be used, maintained, repaired, and replaced to the extent necessary to maintain their present function, so long as the function, design, and serviceable operation of these routes is not modified so as to increase the adverse impacts on these areas.

The language in paragraph 8(d)(3) provides that, subject to subsections 8(c) and 8(d), the relevant Secretary is to allow water resource facilities in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 to be used, operated, repaired, maintained, and replaced to the extent necessary for the continued exercise, in accordance with Colorado law, of vested water rights adjudicated prior to the bill's date of enactment by a court of competent jurisdiction for use in connection with such facilities. The paragraph also specifies that the impact of an existing facility within an area described in section 2, 5, 6, or 9 on the water resources and values of such an area shall not be increased as a result of any change in the adjudicated type of use of such a facility—as compared with the type of use adjudicated as of the date of enactment of the bill.

The language of paragraph 8(d)(3) also establishes that the obligation of the relevant Secretary to allow the continued operation, maintenance, and use of water resource facilities is limited to those facilities that are in existence as of the date of this act for the exercise, in accordance with Colorado law, of all water rights adjudicated for use in connection with those facilities prior to enactment of this act. Such a water right may be utilized under State law so long as the impact on the water resources and values of the wilderness area is not increased. Consequently, by way of example, there would be no barrier to changes in the location or type of use so long as the change did not increase the quantity or time of diversions from these facilities in a manner which increased the impact of the existing facility on the water resources and values of the area. This paragraph does not modify or change Colorado law relating to these water rights in any respect.

The language of paragraph 8(d)(4) is a mandatory requirement that water resource facilities, and access routes serving such facilities, in existence on the date of the bill's enactment within the areas described in sections 2, 5, 6, and 9 shall be maintained and repaired when and to the extent necessary to prevent increased adverse impacts on the resources and values of those areas.

Subsection 8(e) of the bill contains a savings clause, stating that except as provided in subsections 8(c) and 8(d), neither the provisions of the bill related to the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra, Roubideau, and Tabeguache Areas, and the lands designated as wilderness by section 2(a), nor the wilderness status of the lands so designated by section 2(a), is to be construed to affect or limit the use, operation, maintenance, repair, modification, or replacement of water resource facilities in existence on the date of the bill's enactment within the boundaries of any of these areas. The intent of subsection 8(e) is to make clear that subsections 8(c) and 8(d) are the only parts of the bill that govern such use, operation, maintenance, repair, modification, or replacement of existing water resource facilities within these areas.

Subsection 8(f) of the bill provides that the Secretaries of Agriculture and the Interior are to monitor the operation of and access to water resource facilities within the areas described in sections 2, 5, 6, and 9 of the bill and are to take all steps which they determine are necessary to implement the provisions of section 8 of the bill.

Subsection 8(g) of the bill has two paragraphs. Paragraph 8(g)(1) provides that nothing in the bill or in any previous act designating any lands as wilderness is to be construed as limiting, altering, modifying, or amending any of the interstate compacts or equitable apportionment decrees that apportion water among and between the State of Colorado and other States. This paragraph also states that except as expressly provided in section 8, nothing in the bill will affect or limit the development or use of Colorado's full apportionment of such waters by existing and future holders of vested water rights.

Paragraph 8(g)(2) relates solely to the Platte River Wilderness established by Public Law 98-550, which is located on the boundary between Colorado and Wyoming. This paragraph provides that no person—including the Secretary of Agriculture or any other officer, employee, or agent of the United States—shall assert in any court or agency—of the United States or other jurisdiction—any rights, and no U.S. court or agency shall consider any claim or defense based on such rights, which may be determined to have been established for waters of the North Platte River for purposes of such wilderness area, to the extent that such rights would limit the use or development of water within Colorado by present and future holders of vested water rights in the North Platte river and its tributaries to the full extent allowed under interstate compact or applicable U.S. Supreme Court equitable decree. The paragraph also provides that any such U.S. rights are to be exercised so as not to prevent the use or development of Colorado's full entitlement to interstate waters of the North Platte and its Colorado tributaries allowed under interstate compact or U.S. Supreme Court equitable decrees. This means that while existing water rights associated with wilderness or other Federal reservations may still be recognized in the North Platte and its tributaries, such rights associated with this specific wilderness area may not be asserted or exercised in a way that would prevent Colorado from using its full entitlement under Federal law to the waters of the North Platte system.

Both water users and environmentalists support this approach. But, this language was an important means to achieve an end—the designation of 17 new wilderness areas comprising more than 611,000 acres of forested land as wilderness.

DESCRIPTION OF THE DESIGNATED WILDERNESS AREAS

American Flats, Bill Hare Gulch/Larson Creek

This 3,390 acre addition to the existing Big Blue Wilderness—which the bill renames as Uncompahgre Wilderness—are located north of Lake City, CO. Bureau of Land Management [BLM] wilderness studies determined these additions would be a logical extension of the wilderness, especially with regard to American Flats, an area above treeline marked by undulating hills that from the watershed divide separating Cow Creek and Wildhorse Creek from Henson Creek. They provide unobstructed views of Wetterhorn and Uncompahgre Peaks and much of the San Juan Mountains. The Bill Hare Gulch and Larson Creek areas are comprised mostly of alpine tundra, some lower elevation ponderosa pine and spruce fir forests and are a summer habitat for several species of big game. Hinsdale and Ouray Counties are popular with tourists and outdoor enthusiasts, including off-road vehicle users who especially enjoy the scenery along the Engineer Pass Road. While the wilderness additions in the bill as reported are greater than in the Senate bill, the increase presents no conflicts with off-road vehicle use, and special care was taken to exclude from wilderness several patented mining claims in the

south portion of the American Flats addition.

Bowen Gulch

This 815 acre wilderness area was considered for wilderness designation during the Forest Service's RARE II review, but was not recommended. The area is adjacent to the Continental Divide and is unusual for Colorado because of its abundant rainfall caused by the effects of the mountains on the prevailing westerly winds, and includes one of the most important stands of old-growth trees in the State—some as large as 5 feet in diameter and more than 600 years old. In 1984, prior to adoption of new policies for protection of old-growth trees, the Forest Service carried out the environmental analysis of a proposed sale of timber in this area, and in 1988 completed a sale contract allowing harvesting of timber in the Bowen Gulch area. However, the Louisiana Pacific Co., in response to controversy about the sale agreed not to log the area if substitute timber was provided, which the committee understands has now been done. The reported bill designates a portion of the Bowen Gulch area as an addition to the existing Never Summer Wilderness. Section 6 of the bill prohibits timber harvest on another portion of the area that is withdrawn from mineral exploration and development and designated as the "Bowen Gulch Protection Area."

Buffalo Peaks

This 43,410 acre wilderness area is located some 10 miles southeast of Leadville, CO, between the South Platte River and Arkansas River drainages, within Lake, Park, and Chaffee Counties. The area's rolling terrain, subalpine meadows and timbered basins provide habitat for bighorn sheep. Roads once existed in the area, but they have been closed since 1971 and there is little, if any, conflict with grazing or off-road vehicle use. The wilderness boundaries have been drawn to avoid most patented mining claims and an electronic site near South Peak.

Davis Peak

This 20,750 acre wilderness area is an addition to the Mt. Zirkel Wilderness Area is a lower-elevation area that includes a portion of the Encampment River. The bill includes in wilderness the Manzanares Lake area, but excludes the Dome Peak area, which is managed for timber production, livestock grazing and motorized recreation, as well as the area which serves as the Big Creek campground water collection system and the South Hog Fork Creek drainage, one of the highest producing watersheds in the State.

Fossil Ridge

The bill designates as wilderness a 33,060 acre portion of the Fossil Ridge Wilderness Study Area—designated in 1980 by Public Law 96-560—between Crested Butte and Gunnison, CO. The Forest Service once identified this as among the highest ranking potential wilderness areas in Colorado, but has failed to manage the area to adequately maintain its wilderness character—mostly by allowing excessive use of mechanized equipment for recreation. Nonetheless, the area remains a very special place, marked by alpine lakes, notable wildlife values—including mountain goats and elk—and the fossil-bearing limestone strata which give the area its name. The remainder of the wilderness study area is included within the Fossil Ridge Recreation Management Area designated by section 5.

Greenhorn Mountain

This rugged, broken and ecologically diverse 22,040 acre wilderness area is in the southern Front Range. It is part of a slightly larger area designated as a Wilderness Study Area by Public Law 96-560 in 1980. At the suggestion of the Forest Service, the boundaries of this area have been drawn to designate as wilderness lands within a "Greenhorn Mountain Cherrystem" that were excluded from wilderness in past proposals. The "Greenhorn Mountain Cherrystem" was closed in 1987 and subsequently ripped and reseeded, leaving only a four-foot-wide hiking trail.

Lost Creek

This 14,700 acre addition to the existing Lost Creek Wilderness Area is directly south of Denver, CO, near Kenosha Pass. The boundaries include South Twin Cone Peak at the northern end of the Platte River Mountains as well as the upper reaches of Rock and Shutetown Creeks and Foster Gulch.

Oh-Be-Joyful

This 5,500 acre wilderness area was considered for wilderness in 1980, but not designated because of the need for further consideration of possible conflicts. While some possible conflicts may still remain, inclusion of the area in wilderness—as an addition to the existing Raggeds Wilderness—will provide protection for important resource values and the area's status as a part of the municipal watershed for the community of Crested Butte. The boundaries include the Oh-Be-Joyful Peak—part of the Ruby Range—Pass and Creek, from which the area takes its name, and the Peeler Lakes.

Powderhorn

Even this 60,100 acre wilderness area's most famous visitor, Alfred Packer, must have been awed by the its expanse of alpine tundra, the largest in the lower-48 States, much of which has been managed by the BLM as the Powderhorn Primitive Area—part of the area bears the name "Cannibal Plateau," a reminder of Packer's notoriety. The boundaries straddle the line between Gunnison and Hinsdale Counties. The portion of the wilderness which has been managed as the Powderhorn Primitive Area will continue to be managed by the Bureau of Land Management, while the remainder will continue under management of the Forest Service.

Sangre de Cristo

The Sangre de Cristo Wilderness is by far the most complex area dealt with in this bill. This 226,455 acre wilderness area is generally located between the towns of Salida and Alamosa, in Custer, Fremont, Saguache, Huerfano, and Alamosa Counties. The mountains themselves rise steeply from the floor of the San Luis Valley, location of some of Colorado's oldest settlements—the name Sangre de Cristo, or "Blood of Christ", is said to have been bestowed by Juan De Onate in 1647 and to refer to the red hues tinting the range at sunset. Extending from northern New Mexico into central Colorado, the range with its 30 peaks rising above 13,000 feet—7 rise above 14,000—forms a natural barrier between southeast and southwest Colorado and causes the wind currents responsible for formation of the remarkable dunes in the Great Sand Dunes National Monument. While the South Colony Lakes road is not included in the Sangre de Cristo Wilderness designated in subsection 2(a), and therefore may be managed to permit motorized use, the committee intends the Forest Service to strictly and universally prohibit—and physically restrict—any motorized access into the lands included in this wilderness area, including the South Colony Lakes and the sensitive alpine tundra areas in the vicinity. The boundary of the southernmost portions of the wilderness area has been drawn so as to exclude from wilderness a number of private holdings—including patented mining claims—in the Como Lake and Blanca Peak areas. The area includes some BLM acreage, administered by the San Luis Resource Area, which is to be transferred to the Forest Service and added to the Rio Grande National Forest.

Service Creek

This 47,140 acre wilderness area—given the name Sarvis Creek Wilderness—is a low-elevation forest, different from most of the State's wilderness areas that are characterized by rugged terrain. It has extraordinary wildlife habitat, and is used for recreation by many Steamboat Springs residents. The boundaries exclude from wilderness Walton Peak in the north because of the need for continued accessibility to an electronic transmission site and a popular snowmobile trail near Forest Road 100. The boundary will not impact the work the Forest Service has been doing to prepare a thorough Environmental Impact Statement [EIS] on the proposed Lake Catamount Ski Area near Steamboat Springs. The Silver Creek Trail is included within the wilderness, but the committee has drawn the northeastern boundary of this area so as to exclude from wilderness the Routt Divide Trail,

partly within wilderness under other proposals, so that it can continue to be managed to permit mechanized use, including use by bicycles, if and as authorized by the Forest Service.

South San Juan Addition

The South San Juan Wilderness is located east of Pagosa Springs, CO. The 31,100 acres that would be added to this existing wilderness area by the bill as reported include the V-Rock and Montezuma Peak Wilderness Study Areas. This is one of the wildest areas in Colorado, and not only attracts fishermen, backpackers, cross-country skiers, rock climbers, hunters and horseback riders, but also is prime habitat for endangered species. The Colorado Division of Wildlife believes the area is suitable habitat for grizzly bears—the last reported sighting of a grizzly in Colorado occurred in the existing South San Juan Wilderness—as well as for wolverines and river otters. According to Forest Service data, less than nine percent of this area's acreage is suitable for timber harvesting, and no sales have been planned. The Committee understands that the Forest Service and the U.S. Geological Survey have noted the presence of oil, gas, and minerals, but consider them too small and isolated for mining.

Spruce Creek

The 8,330 acre Spruce Creek Wilderness Area is surrounded by the existing Hunter-Fryingpan Wilderness Area, northeast of Aspen, and is appropriate for management as an addition to that wilderness. It was considered for wilderness in 1980, but was not designated because of perceived conflicts with timber harvesting that have now been resolved. The bill as reported includes provisions to clarify that the addition of this area to wilderness will not interfere with continued operation of the Fryingpan-Arkansas project.

St. Louis Peak ("Byers Peak Wilderness") and Vasquez Peak

These areas, in Grand County, CO, are a high, rugged expanse of tundra and rock mostly above treeline that straddles the Continental Divide. Because of their proximity to Denver, they are an important recreational resource, attracting many visitors. Their forest provide little commercial timber. Some unpatented mining claims do exist within the areas, but no exploration activities have recently taken place. While the Vasquez Peak Wilderness Study Area [WSA] was recommended for wilderness, the Forest Service felt there were too many "external influences" to recommend such designation for the adjacent St. Louis Peaks area. However, the committee has decided that both areas, comprising 8,095 acres should be designated as wilderness.

Weminuche and the West Needles

This 28,740 acre addition to the existing Weminuche Wilderness Area provide wilderness designation for lands on both sides of the Las Animas River and the famous narrow-gauge railroad from about 4 miles south of Silverton to the Teft Spur, just downstream from the mouth of Crazy Woman Gulch. This is some of the most spectacular mountainous country in Colorado. Some of these lands were originally omitted from National Forests status (remaining public lands were managed by the Bureau of Land Management and its predecessor agencies) because of possible mineral significance. Pursuant to section 603 of the Federal Land Policy and Management Act of 1976 [FLPMA], the Needle Creek, West Needles Contiguous, Whitehead Gulch, and Weminuche Contiguous areas were identified as wilderness study areas subject to interim management pending a Congressional decision as to their possible inclusion in the National Wilderness Preservation System. In December, 1981, then-Secretary of the Interior James G. Watt directed that these areas no longer be subject to such interim management, but by enactment of section 12 of the Public Lands and National Park Act of 1983—Public Law 98–141—Congress added some of these lands to the National Forest System, mandating they be managed as part of the West Needles Wilderness Study Area, and directed that the remainder continue to be managed pursuant to section 603 of FLPMA. The reported bill adds to the existing wilderness acreage within the West Needles Wilderness Study Area.

Wheeler Area (addition to La Garita Wilderness)

This 25,640 acre wilderness area is truly special and offers visitors some spectacular views of a rather unique part of Colorado. High in the La Garita Mountains east of Creede, the pancake rocks and pinnacles of the area have long been recognized as an unusual resource, and were given the administrative designation of geologic area prior to being included within the lands for which a special study status was established by Public Law 96–560 in 1980. The bill includes the area previously designated as the Wheeler Geologic Area—part of the area required to be studied by section 105(b) of Public Law 96–560—within wilderness, and omits from wilderness the road leading to the geologic area itself, recognizing the viewpoint at the end of the road as a popular recreation site for handicapped persons and other users of motorized vehicles. The designation of wilderness in this area will not preclude Forest Service installation of toilets, picnic facilities and similar small structures outside the wilderness boundaries.

Ptarmigan Peak Wilderness

This 13,175 acre wilderness area boasts excellent recreational opportunities in high-altitude terrain within a short hour's drive from Denver. The area stretches from Coon Hill near the portal of the Eisenhower Interstate Highway tunnel, west to Ptarmigan Pass, and then northwest nearly to Ute Peak in the Williams Mountains. The northern and eastern boundaries exclude an operating mine and water rights associated with the Williams Fork Diversion Project.

RELEASE LANGUAGE

The bill also adopts an approach I suggested with regard to release language. Section 4 repeals the provisions of P.L. 96–560 dealing with areas dealt with in this bill. Section 4 acknowledges that this act completes the wilderness study initiated by the act of December 22, 1980, and releases nondesignated acreage to multiple use consistent with the national forest planning process. This section preserves the Act of December 22, 1980, exemption of the Roadless Areas Review [RARE II] environmental impact statement from judicial review. In essence, my language simplifies the issue of releasing areas not designated as wilderness by repealing the provisions of the 1980 Colorado Wilderness Act that direct the Forest Service to conduct studies and manage these areas to preserve their wilderness characteristics. The Forest Service will now manage these lands for multiple use.

OTHER PROTECTED AREAS

The bill also protects six other areas that were not suitable for wilderness because they were either downstream areas or were popular recreation areas. These include the Fossil Ridge Recreation Management Area, the Bowen Gulch Protection Area, the Piedra Area, the Roubideau Area, the Tabequache Area and the Spanish Peaks Further Planning Area. All these areas are to be closed to mineral activities, timber harvesting, developed campgrounds, restricted or closed to motor or mechanized vehicles and no new roads or trails will be built. Of these, the Rubideau and Tabequache Area are especially important to me.

Section 5 would designate 43,900 acres of National Forest lands as the "Fossil Ridge Recreation Management Area." The area would be established to conserve, protect and enhance its scenic, wildlife, recreational and other natural resource values; would be withdrawn—subject to valid existing rights—from mineral entry and from mineral and geothermal leasing; would be closed to timber harvesting, except as permitted by the Wilderness Act for necessary control of fire, insects and diseases for public safety; would be closed to construction of developed campgrounds and new roads or trails; and would be closed to motorized travel except on established trails or roads existing on July 1, 1991. Designation of the area would not prohibit or change the administration of livestock grazing on the lands involved. Section 5 also requires the Secretary to identify such routes and trails and to prepare and make public a map showing these

routes and trails. Consideration was given by the committee as to whether the identification of the trails and routes, and the subsequent publication of the map, ought to be subject to a public-commenting process. Because of the lengthy negotiations surrounding motorized travel in the area, the committee, after conferring with the sponsors of H.R. 631/S. 206 rejected opening up the issue to further debate. Consequently, it is our intent that the identification of routes and trails established as of July 1, 1991, shall be primarily ministerial in nature and shall not constitute an amendment to the Forest Plan for the Gunnison National Forest. It is my understanding that the U.S. Forest Service has begun the identification of these routes and trails, and I encourage the Forest Service to complete this inventory and make public a map at the earliest possible date.

Section 6 would designate 11,600 acres of National Forest lands as the "Bowen Gulch Protection Area". While all of the Bowen Gulch area would be appropriate for management as wilderness, the portion covered by section 6 has been given a different status so as to accommodate snowmobiling and use of mountain bicycles under appropriate regulations. The area is now going to be withdrawn from mineral entry and from mineral and geothermal leasing; would be closed to new developed campgrounds, roads, and trails; would be closed to timber harvesting except as permitted by the Wilderness Act for necessary control of fire, insects and diseases for public safety; and would be closed to motorized travel except on designated trails and routes in existence on July 1, 1991 during periods of adequate snow cover—but open to mechanized, nonmotorized travel. The Forest Service would be required to develop a management plan for the area during revision of the relevant National Forest plan.

Section 7 of the bill provides that nothing in the bill will affect ownership or use of lands not owned by the United States or access to such lands available under other applicable law. Under the Wilderness Act inholdings in National Forest wilderness areas cannot be acquired without the consent of the owner, and that adequate access is to be provided to the owner.

Section 9 of the bill provides management requirements for the Piedra area (62,550 acres) in the San Juan National Forest and for two areas—Roubideau (19,650 acres) and Tabequache (17,240 acres)—in the Gunnison National Forest and the Bureau of Land Management's San Juan Resource Area. Each of these areas is withdrawn from all forms of location, leasing, patent, disposition under the public land laws, the mining laws, and the mineral and geothermal leasing laws.

The Piedra area is characterized by notable mid elevation forest and canyons as well as a stretch of the Piedra River. Located just to the south of the Weminuche Wilderness, the Piedra Area also encompasses several mountain streams and stands of old growth.

The Roubideau Area, like the Tabeguache Roadless Area, was targeted by the Forest Service for timber cutting before public outcry forced the Forest Service to re-evaluate its position. A prime feature of the area located 15 miles west of Montrose, CO, is Roubideau Creek, which has carved one of Colorado's most unique canyons. Named after a French fur trapper, the creek originates in subalpine spruce and aspen forests high on the Uncompahgre Plateau before it flows 20 miles into the Gunnison River. The area is rich in native cutthroat trout, beaver, black bear, deer, bobcat, and cougar, as well as golden eagles and other birds.

Finally, the Forest Service's Tabeguache Roadless Area and an adjacent BLM wilderness study area, both in Montrose County, encompass one of the last pristine canyons of the Uncompahgre Plateau, the higher country that divides the drainage of the Uncompahgre and Gunnison Rivers from that of the Dolores. The areas have exposed geologic strata that represent a time-span of nearly 100 million years and afford opportunities for relatively low-elevation, year-round recreational uses such as horseback riding, hiking, camping, and fishing. The roadless area was recommended for wilderness designation by the Forest Service, while the BLM has suggested that the natural resources and extremely high cultural values—including evidence of both the Anasazi and Fremont cultures—of its portion would be suitable for management as an Outstanding Natural Area.

Section 9 of the bill also specifies that no further study for possible wilderness designations is required for any of these areas, but that until Congress determines otherwise, activities within these areas are to be managed so as to maintain the present wilderness character of the areas and their potential for inclusion in the National Wilderness Preservation System. The section specifies that livestock grazing will be permitted and managed in the areas to the same extent and in the same manner as of the date of the bill's enactment. The section specifies that except as provided elsewhere in the bill—that is, in section 8—mechanized or motorized travel generally will not be permitted in the areas, but that motorized—snowmobile—travel on Trail 535 in the Piedra area may be allowed when there is adequate snow cover. It is the intent of Congress that the Forest Service carefully consider the corridor width necessary to maintain Trail 535 consistent with snowmobile use during periods of adequate snow cover.

With regard to the Spanish Peaks Planning Area, section 10 would require the Secretary of Agriculture to continue to manage the Spanish Peaks Planning Area as provided by the Colorado Wilderness Act of 1980—that is as a wilderness study area—for 3 years after the bill's enactment. It would also require the Secretary, before the end of this 3-year period, to report the location, acreage, and nature of all private property interests located within the Spanish Peaks Planning Area of the Pike-San Isabel National Forest, and report whether the owners of these interests would be willing to transfer these to the United States—by sale or exchange—on a fair-market-value basis if that could be done in the near future. Subsection 9(c) clarifies that nothing in the bill is to be construed as a grant of new authority for acquisition of property by eminent domain.

We have gone to these lengths to protect this area because in 1977, the Spanish Peaks, or Wahyatoya—"Breasts of the World"—were designated as a National Natural Area because its outstanding scenic values. This area has also been inventoried for potential historic recognition because due to two volcanic peaks—easternmost extensions of the Rocky Mountains—which served as a landmark to some of Colorado's early settlers. In fact, the trail between Bent's Old Fort and Taos, NM, passes within sight of Spanish Peaks. Although some private inholdings currently exist within the area, the Forest Service has been working to acquire them through exchanges and acquisition. The western boundary of the Spanish Peaks Planning Area excludes a water right associated with a proposed reservoir on the Cuchares River.

ADMINISTRATIVE PROVISIONS

Finally section 3 of the bill includes a number of administrative provisions. It provides for appropriate management of the areas designated as wilderness—including the management of livestock grazing—clarifies that the bill will not affect the jurisdiction or responsibilities of the State of Colorado relating to wildlife and fish or create any buffer zones around wilderness. The section also changes the name of the Big Blue Wilderness. Subsection 3(a) would transfer to the Forest Service the administration of BLM lands within the Bill Hare/Larson Creek Additions to the Uncompahgre Wilderness and Sangre de Cristo Wilderness Areas. Under subsection 3(f), the Big Blue Wilderness as designated by Public Law 96-560 and as it would be expanded by additions made by this bill, would be renamed as the "Uncompahgre Wilderness," as originally provided in the Senate version of that 1980 legislation and in recognition that much of these lands were part of the Uncompahgre Primitive Area prior to enactment of Public Law 96-560.

CONCLUSION

Some may cry that Congress is "locking up" more Federal lands. But, the lands the congressional delegation have been arguing about have already been withdrawn from most public uses since 1980. The majority of the people of Colorado, and indeed, most Americans, continually express their desire for more wilderness in Colorado.

If wilderness were simply a land management issue, it would be an easy matter to separate the areas that have conflicts from those that do not. Wilderness, however, is a complicated political issue requiring elected officials to make tough choices. Representatives and senators from every State have the opportunity to judge the work we have done and to add areas to the bill that they have heard have "outstanding wilderness values."

Coloradoans have been arguing about wilderness long enough. A significant majority of my constituents want to see more wilderness in the State protected. Compared to other troubling issues that Congress must address—like hunger, homeless, unemployment, the deficit, bank failures, world peace and the like—the hue and cry over designating more wilderness in a state where tourism is the single largest industry, and in areas that have been managed to protect their wilderness characteristics and which remain rugged, remote and roadless, seems ridiculous to me.

It is time to get on with it.

THE COLORADO WILDERNESS ACT OF 1993

Mr. BROWN. Madam President, efforts to enact a Colorado wilderness legislation have spanned more than a dozen years. Senator CAMPBELL and I believe that Colorado Wilderness Act represents a compromise that will benefit both Colorado and the Nation. Many portions of this bill are the same as the bill that passed the Senate last session and received your support and that of the Colorado delegation. Colorado environmental groups and some resource user groups have endorsed this compromise as an acceptable solution.

The Colorado Wilderness Act will designate as wilderness 611,730 acres in 19 areas throughout Colorado. An additional 99,440 acres comprising the Roubideau, Tabeguache, and Piedra areas will be managed as wilderness. Our bill also creates two special management areas, the Fossil Ridge Recreation Management Area and the Bowen Gulch Protection Area, which comprise 55,500 acres. The land management plans for these areas were crafted to allow for recreational activities while enhancing the scenic, wildlife, and other natural resources values of the areas.

It is important to recognize the diligent efforts of countless groups and individuals who worked together for more than a decade to develop the boundaries for these areas. Thousands of conflicts created by private property, mining claims, water rights, oil and gas leases, timber suitable areas and existing access trails were carved out in order to preserve every acre of wilderness that was suitable.

Because of this willingness to negotiate and compromise, Colorado will boast new wilderness additions including over a quarter of a million acres in Colorado's most majestic mountain range, the Sangre de Cristo. Home to three of the State's 14,000-foot peaks, this area contains some of the most beautiful back-country with cascading waterfalls and sparkling trout-filled streams. In addition, the Sangre de Cristo provides winter range for deer, elk, and bighorn sheep. Adjacent to the Great Sand Dunes, this wilderness area will provide the people of Colorado some of the most spectacular recreational opportunities in the State.

Passage of the Colorado Wilderness Act will not only protect more than three-quarters of a million acres of some of Colorado's most beautiful wilderness, it is another way to ensure preservation of the Colorado's past. It is a past rich in history and full of respect for the land that will be given to our children and our children's children.

The Colorado Wilderness Act protects Colorado's ability to divert, store and use water allocated to it under the equitable decrees and interstate compacts. It protects all existing, absolute and conditional water rights and no compromise would have been possible if it did not.

The issue of the existence of Federal reserved water rights for the upstream areas is moot, because the Colorado Wilderness Act provides that no one can assert such a right, and no court or agency could ever consider in any fashion such a claim. This ensures that wilderness status will never result in an encroachment on Colorado's ability to use its interstate water allocations. The bill addresses the difficult issue of downstream wilderness study areas, where there could be conflicts with water storage and diversion. Where conflict exists, the areas are not classified as wilderness areas. This ensures that there will be no effect on existing and future water use.

In order to make this intent crystal clear, there is also an explicit disclaimer of a Federal reserved right for these areas, and the existence of these areas cannot be used as a basis to affect upstream activities as a part of any administrative or regulatory program. At this time, I ask that a copy of a letter signed by 15 Colorado water attorneys, interpreting the language in the water section of this bill, be printed in the RECORD.

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

JANUARY 20, 1993.

Senator HANK BROWN,
Senator BEN NIGHTHORSE CAMPBELL,
U.S. Senate,
Washington, DC.

DEAR SENATORS BROWN and CAMPBELL: We understand that you are considering re-introduction of the October, 1992 version of S. 1029 ("S. 1029"), but that questions have been raised regarding whether this resolution of the wilderness issue presents unacceptable risks to existing and future development of Colorado's interstate water entitlements. We urge you to re-introduce the October, 1992 version of S. 1029 and to work toward its swift enactment into law.

With regard to some of the concerns that have been raised about S. 1029, as you well know, it is impossible to draft, and even more impossible to enact into law, legislation that is entirely free of risk. However, we have reviewed S. 1029, and conclude as follows:

1. FEDERAL RESERVED WATER RIGHTS

This legislation does not create a federal reserved water right. Federal reserved water rights do not exist unless Congress expressly creates them or a court finds that they are necessary to avoid the "entire defeat" of the primary purpose of the reservation.

The recognition of "implied" federal reserved water rights was based on the conclusion of the Supreme Court that Congress would have explicitly reserved such rights had it been aware of and considered the issue. It is no longer possible to assert that Congress is not aware of the issue of federal reserved water rights, and it is clear that if the issue was carefully considered by Congress in the course of its deliberation on the creation of additional wilderness areas in Colorado. Consequently, "implied" federal reserved water rights cannot exist for new federal wilderness reservations or designations.

In the October, 1992 version of S. 1029, Congress explicitly states that no person shall assert, nor shall any agency or court consider, any claim for a federal reserved water right. Therefore, the necessary implication of S. 1029 is that a federal reserved water right is not required to achieve the primary purpose of the wilderness designation. Moreover, in the absence of an explicit Congressional reservation of water, the McCarran Amendment requires that implied water rights only be recognized through judicial proceedings, and S. 1029 precludes a claim of this nature from being asserted in any forum, including federal or state courts.

S. 1029's bar to assertion or consideration of such a claim has been asserted to represent an implication that such a right exists. This conclusion is incorrect—the purpose of this provision is to prevent the assertion of meritless litigation, and the resulting waste of time and financial resources. Simply put, the issue of whether this Act creates a federal reserved water right can never be asserted by anyone or considered by any court or agency. Speculation about what a court might do if it were to ignore this explicit Congressional prohibition requires that one attempt to predict the actions of a court which does not consider itself bound by the law—an inherently illogical exercise.

It has also been argued that S. 1029 bears on the determination of whether implied federal reserved water rights exist for existing wilderness areas. This is also an incorrect

conclusion. First, under *Sierra Club* v. *Yeutter*, an imminent threat of harm to a wilderness area must exist before the courts will consider whether such a water right exists. If such a threat exists, the court will then determine whether a reserved water right is necessary to avoid the entire defeat of the primary purpose of the reservation. Second, Section 8(b)(2)(C) of S. 1029 explicitly provides that it cannot be used to interpret Congressional intent for prior wilderness reservations. Under the applicable law regarding the recognition of implied federal reserved water rights, i.e. *United States* v. *New Mexico*, Congressional intent is to be determined as of the time of the reservation. Accordingly it would be improper for any court to use this bill to interpret the 1964 Wilderness Act.

2. PROTECTION OF EXISTING WATER RIGHTS

The October, 1992 version of S. 1029 provides better protection for existing water rights than any prior version. The original version of S. 1029 which was co-sponsored by Senators Wirth and Brown and passed by the Senate in August, 1991, did not protect access to and use of conditional water rights for existing facilities. In contrast, the October, 1992 version provides explicit protection for access to and use of "vested water rights" as determined under Colorado law. This will allow owners of conditional water rights for existing facilities to assert that the use of these facilities for those conditional rights is protected under this Act. It is ironic that the water users in wilderness areas designated under S. 1029 would have greater protection from attempts by the Forest Service to require by-pass flows than water users located outside of such areas because it explicitly requires the Forest Service to allow the continued use and operation of existing water facilities. However, this demonstrates the strength of the protection accorded to existing water rights by S. 1029.

3. DOWNSTREAM WILDERNESS STUDY AREAS

The October, 1992, version of S. 1029 provides the most favorable political precedent for the future debate on BLM downstream wilderness areas. First, existing wilderness study areas are not designated as wilderness, and are instead designated as something else—an "Area" which is not part of the National Wilderness Preservation System. And while Congress can always act in the future to change the status of these "Areas", their protection under S. 1029 will substantially reduce the need to do so. Second, federal reserved water rights are explicitly disclaimed for these "Areas". Third, the management of these Areas to preserve wilderness characteristics is limited to activities within the areas, which therefore excludes management of upstream activities to protect these wilderness characteristics. Finally, this solution does not require the CWCB to expand the methodology used to quantify its instream flow water rights beyond its present standard.

4. INTERSTATE WATER ALLOCATIONS

We agree with your December 14, 1992 analysis of Section 8(g) of S. 1029, which provides protection of Colorado's interstate compact and equitable apportionment water allocations. This protection is superior to that contained in any other wilderness bill which has been enacted by Congress.

In conclusion, we believe that the October, 1992 version of S. 1029 protects existing and future water development and use in Colorado. We further believe that this legislation represents a legitimate and fair compromise of an extremely complex and divisive issue, and that it would be difficult, if not impossible, to make additional improvements in any future negotiations.

Thank you for your steadfast leadership on this important issue.

SIGNATORIES TO JANUARY 20, 1993 LETTER

Gregory J. Hobbs, Jr.,
Robert V. Trout,
Bennett W. Raley,
William H. Brown,
John Akolt,
Timothy Beaton,
David Robbins,
Jim Lochhead,
Steve Leonhardt,
Jim Witwer,
Frank E. (Sam) Maynes,
William Bohlender,
Hamlet J. (Chips) Barry III,
Thomas R. Sharp,
Mark J. Wagner,
Stan Cazier,
Richard Bratton.

Mr. BROWN. Madam President, if enacted, the water language of the Colorado Wilderness Act will provide explicit recognition of, and protection for, water-related resource values of the wilderness areas. This would be accomplished by preventing the construction of any new water projects or expansion of existing facilities in the wilderness areas designated by this act. Preservation of the water-related wilderness values of newly designated headwaters wilderness areas are protected by a prohibition on new facilities in the wilderness—not by restricting Colorado's right to its own water.

Colorado is at the headwaters of the Colorado, Arkansas, South Platte, North Platte, White, Yampa, Rio Grande, Animas, La Plata, Costilla, and Republican Rivers, to name a few, and each of these rivers is subject to interstate compacts or equitable apportionment decrees of the U.S. Supreme Court. Under these compacts and decrees, Colorado is obligated to pass water through the State so that it can be delivered to and used by downstream States.

Taking the Colorado River as an example, under the 1922 compact, the upper basin States of Colorado, Utah, New Mexico, and Wyoming are obligated to pass by Lee Ferry not less than 7.5 million acre feet for any period of 10 consecutive years of the flows in the Colorado River to lower basin States of Arizona, Nevada, and California. The 7.5 million acre feet was estimated to be half the flows of the Colorado River. Subsequent information has proven that the estimate was inaccurate and overly optimistic. The 1948 Upper Basin Compact further limits Colorado's ability to use water from the Colorado River, as Colorado was allocated 51 percent of the upper basin's 50 percent share of the Colorado River. In other words, Colorado has been allocated in the neighborhood of 25 percent of the Colorado River, and 75 percent must flow downstream to other States. The Mexican Treaty of 1944 also granted Mexico 1.5 million acre feet of water, part of which comes from the upper basins' allocation and may further reduce Colorado's ability to use water from the Colorado River. In addition, claims for Federal Indian reserved water rights under the Winters doctrine may also limit the amount of water which may be used under Colorado law. So even though the Colorado River starts in the Colorado mountains, Federal law limits Colorado's use of water in the river to less than 25 percent of the water in the Colorado River, and guarantees that over 75 percent of the water in the Colorado River will flow through and out of the State.

But that is not the end of the story. Colorado has a very strong instream flow program established under Colorado law. Under this program, the Colorado Water Conservation Board [CWCB] is authorized to appropriate or acquire instream flow water rights to "protect the natural environment to a reasonable degree." There are currently in excess of 7,300 miles of streams in Colorado which are protected by the CWCB instream flow program, including instream flow water rights in the proposed Piedra Wilderness Area, and the CWCB is in the process of obtaining decrees to protect an additional 100 miles of Colorado streams. Most of these instream flow water rights are high in the mountains, and in fact many of them are within the wilderness areas proposed for designation in Colorado Wilderness Act. This recognition of environmental values in Colorado has a cost, however, as each and every one of these instream flow water rights further limits Colorado's ability to appropriate and use water for new projects.

Over 84 percent of the water in the Colorado River now flows out of the State. California gets over 100 percent of the water it contributes to the Colorado River basin. Arizona gets over 100 percent of the water it contributes to the Colorado River. Colorado now uses about 16 percent of the Colorado River water that originates in the State. Compared against the ability of States like Arizona and California to use the water that originates in the State and more from upstream States, Colorado is significantly restricted in its ability to use and develop its own water. Colorado cannot give more without inflicting serious damage to its environment. So, Colorado already makes a greater contribution to in-stream flows than any State on the river. This bill is being enacted only because this measure protects and enhances Colorado's ability to fully utilize all of its water rights under the various interstate water compacts and decrees.

At the present time there is only one downstream wilderness area in Colorado, the Platte River Wilderness on the Colorado/Wyoming State line which was established by the Wyoming Wilderness Act of 1984. One mile of that

wilderness area extends up the North Platte River into North Park in Colorado. The designation of downstream wilderness lands within Colorado, combined with the threat of the 1984 Sierra Club lawsuit that implied reserved water rights at some time in the future may be found to exist, has caused great alarm among water users in North Park and the elected officials of citizens who rely on that water. I am happy to say that with the 1993 Colorado Wilderness Bill, Senator CAMPBELL, Representatives SKAGGS, MCINNIS, SCHROEDER, and I have agreed upon guarantees that present and future water users in Colorado can fully develop Colorado's share of North Platte River waters without any interference that might otherwise arise because of designation of those downstream lands included in the Platte River Wilderness Area.

We have also agreed that interstate compacts and equitable apportionment decrees allocating water among and between Colorado and other States will not be altered or modified by designation of additional Colorado wilderness lands.

No one will have their Colorado water rights taken away from them or extinguished by denial of wilderness access. The language guarantees reasonable access, including motorized access where necessary, to keep existing water facilities and access routes related to the exercise of water rights in serviceable condition.

This bill protects 766,670 acres of Colorado's most pristine lands, and explicitly protects access to and the use of existing water rights in these areas.

Madam President, I would like to take this opportunity to respond to some of the legal challenges made to the water language in this bill. In its June 15, 1993 letter from Acting Assistant Attorney General M. Faith Burton to Chairman BRUCE VENTO of the House Subcommittee on National Parks, Forests and Public Lands, the Department of Justice questions the constitutionality of section 8(b)(1) of the Colorado Wilderness Act of 1993. The Department of Justice raises the same constitutional concerns with respect to section 8(g)(2) of the act. The language of section 8(g)(2) is similar to that of section 8(b)(1). Therefore, the responses in this memorandum to the Department's claims pertaining to section 8(b)(1) apply equally to its claims as to section 8(g)(2). Section 8(b)(1) prohibits the assertion in court or agency of any claim for water or water rights "based on any construction of any portion of this act, or the designation of lands as wilderness by this act, as constituting an express or implied reservation of water or water rights."

The Department claims that section 8(b)(1) may violate the following constitutional provisions:

First, the first amendment right of free speech and the right to petition;

Second, the duty of the President to faithfully execute the laws of the United States; and

Third, the grant of original jurisdiction to the Supreme Court over disputes between States.

The Department's arguments alleging the possible unconstitutionality of the act based upon these three provisions either seriously misstate the law or mischaracterize the legal effect of the language in section 8(b)(1), or both. In addition, the Department alleges that the 1993 act does not provide sufficient protection of the wilderness values of the designated lands.

Section 8(b)(1) does not violate the right of free speech because it does not in any way limit speech; it only prohibits a certain cause of action. The right to sue on a claim is not the same as the right of free speech. Moreover, the act does not violate the right to petition. The right to petition is basically a right of access to judicial procedures to protect legally recognized rights. Section 8(b)(1) is simply an expression of congressional intent not to create a legally recognizable right.

Moreover, the act does not interfere with the duty of the President to execute the laws. The act creates the law which the President then has a duty to execute. Since the act states that no person can assert a claim for water or water rights for the designated lands, the President would then have a duty to avoid making such a claim.

Nor does the act interfere with the Supreme Court's original jurisdiction over disputes between States. Section 8(b)(1) clarifies congressional intent that the act does not create a cause of action that could be the subject of a dispute between States. But the Supreme Court still has original jurisdiction over interstate disputes where there is a valid cause of action.

Finally, the location of the designated lands at headwaters, and other provisions in the act, ensure that wilderness values will be adequately protected without federally reserved water or water rights.

The Department questions the constitutionality of this provision as violating the open access clause of the first amendment. According to the Department, based upon the first amendment rights of free speech and petition, Congress "may not constitutionally prohibit persons from asserting whatever claims they choose in courts or agencies." The Department appears to be arguing that any person has a right of access to the courts—or agencies—to assert claims that have no basis in the Constitution, or statutory or common law. This construction of the open access provision represents a novel, and untenable, interpretation of the constitutional right of access to the courts.

The act clearly does not violate the first amendment right of free speech because it does not prohibit, or even limit, speech in any manner. It does not prohibit certain types of speech. What section 8(b)(1) does is to clarify that a cause of action for Federal reserved water or water rights does not exist. This is not, in any way, a limitation on the right of free speech.

Moreover, section 8(b)(1) does not violate the first amendment right to petition. The right of access to the courts, which is founded primarily on the right to petition, is a guarantee of access to process to protect recognized legal rights.

Federal courts do not automatically possess the authority to hear and determine any claim. Unless there exists a legal cause of action, a legally recognized right, then courts have no jurisdiction to hear a claim, and there can be no violation of the right of access. There is no right of access unless a party has a clause of action.

The right of judicial access, which is founded primarily upon the first amendment right to petition and the fifth amendment right to due process, guarantees access to the courts to enforce or protect constitutional, statutory or common law rights. It is a right of access to judicial process, in courts or agencies, to enforce or protect existing substantive rights. Larry Tribe, in his constitutional law treatise states that it is "a fundamental right of access to a neutral and fair tribunal in which to ventilate such claims of right as one may have under the governing body of substantive law."

Furthermore, private parties have no right to sue to enforce a statute unless Congress provides a private cause of action expressly or by implication. Section 8(b)(1) of the 1993 act disclaims the existence of any claim, including one by a private party, for federally reserved water or water right for lands designated by the act. It puts up no roadblocks to meaningful access to protect any existing claim or right: it says no claim or right exists. The purpose of the provision is to clarify congressional intent that passage of the act does not create a judicially enforceable claim or right because Congress does not want a claim for Federal reserved water or water rights to be implied from the legislation.

The Department also argues that the 1993 act seeks to impede the ability of the President to fulfill his constitutional duties, in contravention of article II, section 3 of the Constitution. While it is true that the President has a duty to "take care that the laws be faithfully executed," The Colorado Wilderness Act of 1993 in no way affects, or seeks to affect, the authority of the President. The "Laws" of the United States to which the provision refers are the Constitution, Federal statutes, and treaties. Unless a Federal statute is unconstitutional, this Executive duty means that the President shall execute

the laws as passed by Congress. Therefore, the act does not prevent the President from fulfilling any constitutional duty. Moreover, the President has no power to claim a Federal reserved water right for lands designated as wilderness by the 1993 act because to make such a claim would not be a faithful execution of the law. And the President, like other persons, has no authority to make baseless claims in court.

Further, contrary to the Department's assertion, the 1993 act does not purport to limit the Court's original jurisdiction over disputes between States. The Department cryptically states that "Federal reserved water rights may be at issue in an interstate stream adjudication before the Supreme Court." Apparently, the Department is asserting that the 1993 act's prohibition against any court considering a claim for water or water rights for the newly added wilderness areas in Colorado is an attempt to limit the Court's jurisdiction over interstate disputes. But the act's provision merely clarifies that it does not intend to create a cause of action for water or water rights in these wilderness areas that could be a cause for dispute between States. It does not withdraw the Court's jurisdiction to hear interstate disputes where there is a valid cause of action.

It is important to emphasize that, although the act precludes a claim for federally reserved water or water rights, the wilderness values of the areas will not be compromised in any way because: First, all of the lands are located on headwaters with few, if any, actual or proposed facilities located upstream, and second the act provides that, in the event water resource facilities are located in the designated lands, the impacts of such existing facilities shall not be allowed to increase beyond current impacts. The Sierra Club has testified before this committee and before the House committee that this is sufficient protection.

For these reasons as well as others, the Justice Department's concerns are baseless and should be disregarded.

This bill breaks a 12-year stalemate in the designation of new Colorado wilderness. The water provisions of this bill are designed to both protect the new wilderness additions, including wilderness water values, and at the same time protect Colorado's ability to develop and use its full water entitlements. And while those on either side who refuse to compromise may object, people who truly value Colorado wilderness and water should support this bill so that we as a State and a Nation can move forward with protection and recognition of these important wilderness lands.

RECOGNIZING THE CONTRIBUTION OF SENATOR BILL ARMSTRONG TO THE COLORADO WILDERNESS ACT OF 1993

Mr. BROWN. Madam President, former U.S. Senator Bill Armstrong fiercely protected property rights during his two terms in the U.S. Senate, especially water rights and administration of water laws at the State level.

In August of 1989, after years of unsatisfactory negotiations, he began his final attempt to secure a reasonable Colorado wilderness bill by eliciting the assistance of hundreds of Coloradans and directing staff to map all proposed wilderness areas. His staff met with every possible organization throughout Colorado to hear ideas on the proposed areas and to learn of every possible private property right potentially included in a proposed wilderness area.

Extensive grassroots discussion revealed numerous water and mining rights and other inholdings and preexisting recreational uses in proposed wilderness. Proposed wilderness boundaries were drawn by Senator Armstrong to emphasize the mandate of the original wilderness bill to preserve "areas where the earth and its community of life are untrammeled by man", but to exclude private property claims. This Armstrong boundary proposal is the foundation upon which this compromise bill is built.

Of key concern to Senator Armstrong was protecting the most important private property right in the West, water rights. Colorado water rights are on streams originating in the Rocky Mountains. To date our wilderness areas have been in the high country of the Rockies. High country reservoirs and ditch systems bring water not only to farmers, but to Colorado's growing municipalities and industries from ski areas to mining to high tech. Federal conditions on those water rights would render them valueless. Imposition of an unquantified federal reserved water right on 100 years of Colorado water law would mean economic chaos and costly takings of private property.

All wilderness areas are designated "subject to valid existing rights". That phrase recognizes the priority of existing land and water rights. Including wilderness language which erodes those rights threatens not only the private property encompassed by wilderness in a particular bill, but sets unfortunate precedent for future bills. For example, while water rights encompassed by Colorado wilderness bills to date are comparatively few, any future lower elevation wilderness bills unavoidably will encompass thousands of water rights.

I am grateful to Senator Armstrong for his outstanding work not only on water rights, but his tireless commitment to develop a balanced proposal which will be a legacy for all Coloradans. I also thank Senator Armstrong's legislative assistants, Christine Kadlub and Denise Malone-Jones, and his chief of staff Howard Propst. They worked tirelessly with other Coloradans to develop the boundaries which are very similar to the ones included in the bill I ask you to vote for today. Without the significant contribution of Senator Armstrong and his staff this bill would not be before us today.

GALLATIN RANGE

Mr. KENNEDY. Madam President, I ask unanimous consent that the Senate proceed to immediate consideration of Calendar No. 180, H.R. 873, an act to provide for the consideration and protection of the Gallatin Range.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (H.R. 873) to provide for the consideration and protection of the Gallatin Range.

AMENDMENT NO. 771

(Purpose: To make technical corrections to the maps in H.R. 873, the "Gallatin Range Consolidation and Protection Act of 1993")

Mr. KENNEDY. Madam President, I send to the desk an amendment by the Senator from Montana [Senator BAUCUS]

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for Mr. BAUCUS, proposes an amendment numbered 771.

Mr. KENNEDY. Madam 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:

In section 3(b)(1), strike "the map entitled Plum Creek Timber and Forest Service Proposed Gallatin Land Exchange, dated May 20, 1988", and insert the following: "two maps entitled 'Proposed BSL Land Acquisitions,' East Half and West Half Gallatin National Forest, dated February, 1993".

In section 3(b)(2), immediately after "as depicted on the maps referred to in paragraph (1)," insert the following: "and the five maps entitled 'H.R. 873, the Gallatin Range Consolidation and Protection Act of 1993,' Lolo and Flathead National Forest,".

In section 4(a), strike "depicted on the map entitled Porcupine Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Porcupine Area,' in the Option."

In section 5(a), strike "depicted on the map entitled Taylor Fork Area, dated September, 1992", and insert the following: "listed as 'Exhibit A, Taylor Fork Area,' in the Option."

In section 6(a), strike "depicted on the map entitled Gallatin Area dated September 1992", and insert the following: "listed as 'Exhibit A, Gallatin Roaded,' in the Option."

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 771) was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to read third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, shall the bill pass?

So the bill (H.R. 873), as amended, was passed.

Mr. KENNEDY. Madam President, I move to reconsider the vote and move to lay that motion on the table.

The motion to lay on the table was agreed to.

SENATE FAIR EMPLOYMENT PRACTICES

Ms. MOSELEY-BRAUN. Madam President, I ask unanimous consent the Senate proceed to the consideration of Senate Resolution 139, a resolution submitted earlier today by Senators MITCHELL and DOLE regarding the procedures followed by the Office of Senate Fair Employment Practices, that the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements thereon appear at the appropriate place in the RECORD as though read.

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

Mr. MITCHELL. Madam President, the purpose of this resolution is to establish procedures for the approval and payment of awards and settlements in cases administered by the Office of Senate Fair Employment Practices under title III of the Civil Rights Act of 1991. As Senators will recall, Congress enacted the provisions of this title, which may be cited as the Government Employee Rights Act of 1991, into law on November 21, 1991. There is, however, no existing procedure in the Senate for the payment of awards and settlements in cases arising under this title.

The purpose of title III is to provide procedures to protect the right of Senate employees, with respect to their public employment, to be free of discrimination on the basis of race, color, religion, sex, national origin, age, or disability. Under these procedures, a Senate employee alleging a violation under this title may commence a four-step process for consideration of allegations that includes: First, counseling; second, mediation; third, a hearing by a hearing board; and fourth, review of a hearing board decision by the Select Committee on Ethics of the Senate and the U.S. Court of Appeals for the Federal Circuit.

With the procedures of title III now in operation, employees of the Senate can bring cases seeking remedies for the alleged violation of laws prohibiting discriminary practices. Also, beginning this August, Senate employees may use title III procedures for cases brought under the Family and Medical Leave Act of 1993.

Among the remedies employees may seek under title III is a hearing board order awarding the payment of money under section 307 of this title. Until recently, however, there was no fund available or procedure in place for the payment of such awards. As a preliminary step to provide an appropriate mechanism for such payments, the Senate established the "Awards and Settlements Reserve Account" in the contingent fund of the Senate by enacting section 1205 of the Supplemental Appropriations Act of 1993 earlier this month.

The same principle is true with respect to section 310 of title III. This section authorizes an employee and the head of an employing office to enter a written settlement agreement if they are able to resolve the issues involved. Such settlements commonly include the payment of money and are encouraged by the Civil Rights Act of 1991 as an economical and expeditious method to resolve disputes. Again, until section 1205 of the Supplemental Appropriations Act was enacted establishing a reserve account, no fund existed for the Senate to pay such settlements.

While the "Awards and Settlements Reserve Account" established by section 1205 provides a source of funds for the Senate to use in these cases, the resolution proposed here establishes procedures necessary for payments to be withdrawn from this account within the contingent fund of the Senate. Under separate statutory authority, the Committee on Rules and Administration of the Senate has oversight of payments from the contingent fund. For this reason, under this resolution the process to approve and make payments of money from this account in the contingent fund will be administered by the Rules Committee. In administering this process, the Rules Committee will rely on information and advice provided by the Director of the Office of Senate Fair Employment Practices and the Senate Legal Counsel.

I wish to add that this resolution has been carefully crafted to provide the proper balance between the efficient administration of claims, the interests of the parties who bring and defend against these claims, and the protection of the Federal Treasury which funds the payment of awards and settlements in these cases. I also believe that it is worth noting in this context that section 118 of the Civil Rights Act of 1991 reads as follows:

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title.

The resolution (S. Res. 139) was agreed to.

The resolution reads as follows:

S. RES. 139

Resolved, (a)(1) If, at any time after a Senate employee (as defined in section 301(c)(1) of the Government Employee Rights Act of 1991 (Public Law 102–166) (hereinafter referred to as the "Act")) files a formal complaint under section 307(a) of the Act with the Office of Senate Fair Employment Practices (hereinafter referred to as the "Office")—

(A) such employee and the head of an employing office (as defined in section 301(c)(2) of the Act) resolve the issues involved and enter into a written settlement agreement requiring the payment of money as provided in subsection (c), and

(B) the agreement is approved by the Director of the Office (hereinafter referred to as the "Director"),

the Director shall submit the agreement, together with a letter of advice by the Director that the agreement is reasonable and appropriate, to the Chairman and Ranking Minority Member of the Committee on Rules and Administration (hereinafter referred to as the "Chairman and Ranking Member") for approval.

(2) Any such settlement agreement that includes any provision regarding Senate payment of a Senate employee's attorney's fees shall be forwarded by the Director to the Senate Legal Counsel who shall also review that provision and advise the Chairman and Ranking Member whether that provision is reasonable and appropriate.

(3) If the Chairman and Ranking Member disapprove the agreement, the agreement shall be returned to the Director with a written explanation for the disapproval. Following such disapproval, a new or revised agreement that is approved by the Director may be submitted by the Director to the Chairman and Ranking Member, and, if appropriate, forwarded to the Senate Legal Counsel, in the same manner as the original. If the Chairman and Ranking Member disapprove such a new or revised agreement, such agreement shall be returned to the Director with a written explanation and such instructions as the Chairman and Ranking Member may deem appropriate.

(4) If the Chairman and Ranking Member approve the agreement, the payment of money under the terms of such agreement may be authorized as provided in subsection (c).

(5) The time necessary to complete the procedures under paragraphs (1)(B), (2), and (3) shall be excluded in calculating the period within which a hearing shall be conducted under section 307(d) of the Act.

(b) Notwithstanding the third sentence of section 307(h) of the Act, if, upon the conclusion of all proceedings conducted pursuant to sections 307, 308, and 309 of the Act, there is a final order requiring the payment of money, the Chairman and Ranking Member may approve and authorize the payment of money as provided in subsection (c). The Senate Legal Counsel shall provide such advice and assistance as the Chairman and Ranking Member may request for the purposes of this subsection.

(c) The payment of any monetary amount approved as part of a settlement agreement

approved under subsection (a) and any payment pursuant to an order under subsection (b) shall be paid from the Contingent Fund of the Senate from the appropriations account "Settlements and Awards Reserve", established by section 1205 of Public Law 103–50, upon vouchers approved by the Chairman and Ranking Member.

(d) The Chairman and Ranking Member, the Senate Legal Counsel, and the Director may review information necessary to carry out the provisions of this resolution notwithstanding the provisions of section 313 of the Act.

(e) The provisions of this resolution shall apply to—

(1) an allegation of a violation as defined in section 301(c)(3) of the Act,

(2) an allegation of an unlawful employment practice under section 312 of the Act, and

(3) an allegation of a violation of a provision of sections 101 through 105 of the Family and Medical Leave Act of 1993.

(f) The first sentence of section 303(e) of the Act is deemed to have inserted the words ", upon the approval of the Committee on Rules and Administration," after "The Director".

ORDERS FOR THURSDAY, AUGUST 5, 1993

Mr. KENNEDY. Madam President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 11 a.m., Thursday, August 5; that following the prayer, the Journal of proceedings be deemed approved to date; and following the time reserved for the two leaders, the Senate then return to executive session to resume consideration of Executive Calendar No. 309, the nomination of Dr. M. Joycelyn Elders to be Surgeon General.

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

RECESS UNTIL 11 A.M. TOMORROW

Ms. MOSELY-BRAUN. Madam President, if there be no further business to come before the Senate today, I now ask unanimous consent the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 10:52 p.m., recessed until 11 a.m., Thursday, August 5, 1993.

NOMINATIONS

Executive nominations received by the Senate August 4, 1993:

DEPARTMENT OF STATE

REGINALD BARTHOLOMEW, 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 ITALY.

ROGER R. GAMBLE, 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 REPUBLIC OF SURINAME.

MARK GREGORY HAMBLEY, OF CALIFORNIA, 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 LEBANON.

WILLIAM DALE MONTGOMERY, OF PENNSYLVANIA, 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 BULGARIA.

EXECUTIVE OFFICE OF THE PRESIDENT

JOHN ROGGEN SCHMIDT, OF ILLINOIS, FOR THE RANK OF AMBASSADOR DURING HIS TENURE OF SERVICE AS THE CHIEF UNITED STATES NEGOTIATOR TO THE URUGUAY ROUND.

FEDERAL COMMUNICATIONS COMMISSION

REED E. HUNDT, OF MARYLAND, TO BE A MEMBER OF THE FEDERAL COMMUNICATIONS COMMISSION FOR A TERM OF 5 YEARS FROM JULY 1, 1993, VICE ALFRED C. SIKES, RESIGNED.

ENVIRONMENTAL PROTECTION AGENCY

JEAN C. NELSON, OF TENNESSEE, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY, VICE E. DONALD ELLIOTT, RESIGNED.

DEPARTMENT OF DEFENSE

JOHN J. HAMRE, OF SOUTH DAKOTA, TO BE COMPTROLLER OF THE DEPARTMENT OF DEFENSE, VICE SEAN CHARLES O'KEEFE, RESIGNED.

NORA SLATKIN, OF MARYLAND, TO BE AN ASSISTANT SECRETARY OF THE NAVY, VICE GERALD A. CANN, RESIGNED.

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF VICE ADMIRAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601:

To be vice admiral

REAR ADM. ROBERT J. SPANE [redacted] U.S. NAVY.

IN THE ARMY

THE FOLLOWING NAMED OFFICER, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE:

To be colonel

WILLIAM C. KIRK [redacted] JUDGE ADVOCATE GENERAL'S CORPS.

HOUSE OF REPRESENTATIVES—*Wednesday, August 4, 1993*

The House met at 10 a.m. and was called to order by the Speaker pro tempore [Mr. MONTGOMERY].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
August 4, 1993.

I hereby designate the Honorable G.V. (SONNY) MONTGOMERY to act as Speaker pro tempore on this day.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Grant us, we pray, O God, the sense of direction that allows us to see more clearly where we ought to direct our lives, the purpose in our actions, and the values we hold dear. Cause us to be honest as we reflect in our own hearts so that we put aside the easy excuses that cloud our vision and weaken our purpose. Enrich us with Your spirit and strengthen us by Your word, so we will pledge our energies and our wills to do justice, love mercy, and ever walk humbly with You. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

Mr. OBEY. Mr. Speaker, pursuant to clause 1, rule I, I demand a vote on agreeing to the Chair's approval of the Journal.

The SPEAKER pro tempore. The question is on the Chair's approval of the Journal.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. OBEY. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 248, nays 156, answered "present" 1, not voting 28, as follows:

[Roll No. 392]

YEAS—248

Abercrombie	Gephardt	Minge
Ackerman	Geren	Mink
Andrews (ME)	Gibbons	Moakley
Andrews (NJ)	Gillmor	Mollohan
Andrews (TX)	Gilman	Montgomery
Applegate	Glickman	Moran
Archer	Gonzalez	Murtha
Bacchus (FL)	Gordon	Myers
Baesler	Gunderson	Nadler
Barca	Gutierrez	Natcher
Barcia	Hall (TX)	Neal (MA)
Barrett (WI)	Hamburg	Oberstar
Bateman	Hamilton	Obey
Becerra	Harman	Olver
Beilenson	Hastings	Ortiz
Berman	Hayes	Orton
Bevill	Hefner	Pallone
Bilbray	Hilliard	Parker
Bishop	Hinchey	Pastor
Blackwell	Hoagland	Payne (NJ)
Bonior	Hochbrueckner	Payne (VA)
Borski	Hoke	Pelosi
Boucher	Holden	Penny
Brewster	Houghton	Peterson (FL)
Brooks	Hoyer	Peterson (MN)
Browder	Hutto	Pickett
Brown (FL)	Inglis	Pickle
Brown (OH)	Inslee	Pombo
Bryant	Jefferson	Pomeroy
Byrne	Johnson (GA)	Poshard
Cantwell	Johnson (SD)	Price (NC)
Cardin	Johnson, E.B.	Rahall
Carr	Johnston	Rangel
Clayton	Kanjorski	Reed
Clement	Kaptur	Reynolds
Clyburn	Kennedy	Richardson
Coleman	Kennelly	Roemer
Collins (IL)	Kildee	Rose
Collins (MI)	Kingston	Rostenkowski
Combest	Kleczka	Rowland
Condit	Klein	Roybal-Allard
Conyers	Klink	Rush
Cooper	Kopetski	Sabo
Coppersmith	Kreidler	Sanders
Costello	LaFalce	Sangmeister
Coyne	Lambert	Santorum
Cramer	Lancaster	Sarpalius
Danner	Lantos	Sawyer
Darden	LaRocco	Schenk
Deal	Laughlin	Schumer
DeLauro	Lehman	Scott
Dellums	Levin	Serrano
Derrick	Lewis (GA)	Sharp
Deutsch	Lipinski	Sisisky
Dicks	Lloyd	Skaggs
Dingell	Long	Skelton
Dixon	Lowey	Slattery
Dooley	Maloney	Slaughter
Durbin	Mann	Smith (IA)
Edwards (CA)	Manton	Stark
Edwards (TX)	Margolies-Mezvinsky	Stenholm
Engel	Markey	Stokes
English (AZ)	Martinez	Strickland
English (OK)	Matsui	Studds
Eshoo	Mazzoli	Stupak
Evans	McCloskey	Swift
Farr	McCollum	Synar
Fazio	McDermott	Tanner
Fields (LA)	McHale	Tejeda
Filner	McInnis	Thompson
Fingerhut	McNulty	Thornton
Fish	Meehan	Thurman
Foglietta	Meek	Torricelli
Ford (MI)	Menendez	Towns
Ford (TN)	Mfume	Traficant
Frank (MA)	Miller (CA)	Tucker
Frost	Miller (FL)	Unsoeld
Furse	Mineta	Valentine
Gejdenson	Vento	Velazquez
	Visclosky	Watt
	Volkmer	Williams
	Waters	Wilson
		Wise
		Woolsey
		Wyden
		Wynn
		Yates

NAYS—156

Allard	Goodling	Paxon
Armey	Goss	Petri
Bachus (AL)	Grams	Porter
Baker (CA)	Grandy	Portman
Baker (LA)	Greenwood	Pryce (OH)
Ballenger	Hancock	Quillen
Barrett (NE)	Hansen	Ramstad
Bartlett	Hastert	Ravenel
Barton	Hefley	Regula
Bentley	Herger	Ridge
Bereuter	Hobson	Roberts
Bilirakis	Hoekstra	Rogers
Bliley	Horn	Rohrabacher
Blute	Huffington	Ros-Lehtinen
Boehlert	Hunter	Roth
Boehner	Hutchinson	Roukema
Bonilla	Hyde	Royce
Bunning	Inhofe	Saxton
Burton	Istook	Schaefer
Buyer	Jacobs	Schiff
Callahan	Johnson (CT)	Schroeder
Calvert	Johnson, Sam	Sensenbrenner
Camp	Kim	Shaw
Canady	King	Shays
Castle	Klug	Shepherd
Clay	Knollenberg	Shuster
Clinger	Kolbe	Skeen
Coble	Kyl	Smith (MI)
Collins (GA)	Lazio	Smith (OR)
Crane	Leach	Smith (TX)
Crapo	Levy	Snowe
Cunningham	Lewis (CA)	Solomon
DeLay	Lewis (FL)	Spence
Diaz-Balart	Lightfoot	Stearns
Dickey	Linder	Stump
Doolittle	Livingston	Sundquist
Dornan	Machtley	Tauzin
Dreier	Manzullo	Taylor (MS)
Duncan	McCandless	Taylor (NC)
Dunn	McCrery	Thomas (CA)
Emerson	McDade	Thomas (WY)
Everett	McHugh	Torkildsen
Ewing	McKeon	Upton
Fawell	McMillan	Vucanovich
Fowler	Meyers	Walker
Franks (CT)	Mica	Walsh
Franks (NJ)	Michel	Weldon
Gallegly	Molinari	Wolf
Gallo	Moorhead	Young (AK)
Gekas	Morella	Young (FL)
Gingrich	Nussle	Zeliff
Goodlatte	Oxley	Zimmer

ANSWERED "PRESENT"—1

Quinn

NOT VOTING—28

Barlow	Hall (OH)	Spratt
Brown (CA)	Hughes	Swett
Chapman	Kasich	Talent
Cox	McCurdy	Torres
de la Garza	McKinney	Washington
DeFazio	Murphy	Waxman
Fields (TX)	Neal (NC)	Wheat
Flake	Owens	Whitten
Gilchrest	Packard	
Green	Smith (NJ)	

☐ 1023

Mr. TRAFICANT changed his vote from "present" to "yea."

So the Journal was approved.

The result of the vote was announced as above recorded.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore (Mr. MONTGOMERY). Will the gentlewoman from Washington [Ms. DUNN] please come forward and lead the House in the Pledge of Allegiance.

Ms. DUNN led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Hallen, one of its clerks, announced that the Senate had passed without amendment a bill of the House of the following title:

H.R. 416. An act to extend the period during which chapter 12 of title 11 of the United States Code remains in effect; and for other purposes.

The message also announced that pursuant to Public Law 102-393, the Chair, on behalf of the Republican leader, after consultation with the ranking member of the Finance Committee, appoints John F. Cogan of California and Carolyn L. Weaver of Virginia, as members of the Commission on the Social Security notch issue.

DEFICIT REDUCTION

(Mr. FROST asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, tomorrow this House will have the opportunity to take a first step down the road to deficit reduction. We have the chance to pass a plan that will reduce the deficit by $496 billion over a 5-year period.

Members on the other side of the aisle refuse to take this first step. If we were to listen to them, this country would never move forward but would remain deadlocked. They have no real answers. All they can do is oppose.

The bill we will vote on tomorrow does not end debate on the deficit; it merely begins the debate. We all know Congress will be asked to do more next year and we should. We owe it to our children and to their children.

We are embarking on a long journey made necessary by the excesses of the last 12 years. To our critics, I can only respond that you must begin somewhere.

The President and Congress have crafted a plan that is fair and that actually attacks the deficit. Let us start down this road together. Let us do it now.

BRADY BILL COMPROMISE IS PART OF NEWLY INTRODUCED ANTICRIME BILL

(Mr. SENSENBRENNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, yesterday, I introduced H.R. 2847, a comprehensive anticrime bill which is paid for by offsets in other programs.

The major difference between my bill and the bill to be introduced today by the gentleman from Florida [Mr. MCCOLLUM] on behalf of the Republican Task Force on Crime is that my bill contains the compromise Brady bill providing for a 5-business-day waiting period for handgun purchases while his bill contains the discredited instant check provisions used by the National Rifle Association and other opponents of the Brady bill to defeat passage of the Brady bill for the past two Congresses.

As the ranking Republican on the Judiciary Subcommittee on Crime and Criminal Justice, I know that no effective anticrime bill can omit provisions dealing with access to guns. I encourage thinking members of both parties to support H.R. 2847.

CLINTON ECONOMIC PLAN MOVES NATION IN NEW DIRECTION

(Ms. DELAURO asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DELAURO. Mr. Speaker, the work is done, the plan is drawn, the President and our negotiators have given us a bold economic initiative that cuts our deficit and creates jobs. They have left to us the responsibility of deciding whether this Nation moves forward toward economic growth or continues to stagnate. Our constituents want growth. They have tired of the rhetoric and games of political diversion. They are ready for action. They are ready for jobs. They are ready for change. The plan offered by the President and constructed by our neighbors represents a new direction for our Nation.

Six months ago the President exercised great leadership and courage in proposing a plan that reduced our deficit by $500 billion. That made bold cuts in Government programs and asked the wealthiest Americans to contribute their fair share to our future and that protected working middle-class families. Today that plan remains intact.

This week we can take charge. We can answer the call for change that still echoes from November. Pass this plan and let's get on with moving America forward.

RECONCILIATION ACT

(Mr. EWING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. EWING. Mr. Speaker, the Reconciliation Act, which we understand will soon be filed, is much improved over the President's early tax package, but it is still not a true deficit reduction plan. We should not call it one.

Let us remember that this is a very large tax increase, 3 to 1 taxes for proposed cuts.

It is a major expansion of social programs, which will consume most of the middle-class tax increase for the payment of these. It has only a hint of cuts to come; 80 percent of these cuts will not come until after the next congressional election or the Presidential election.

And then, Mr. Speaker, we will depend on this body, whose record is not too great, to make those cuts.

If our record were so great, after the 1990 budget agreement, we would not be here today. The deficit will still go up $1 billion every day.

The President has missed the mark. The point the American people want is cuts now, not promises of cuts in the future.

□ 1030

URGING SUPPORT OF THE PRESIDENT'S ECONOMIC PROGRAM

(Ms. PELOSI asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PELOSI. Mr. Speaker, last night the President called on the American people to help address our Nation's most urgent priority: Reviving the American dream by restoring the American economy. Of course, I support the President's plan, and I urge my colleagues to do so. However, do not take my word for it. Last week over 80 CEO's, Democrats and Republicans alike, supported the President's plan. Here is what they said.

The CEO of Xerox:

Successful passage of the budget reconciliation bill is a critical step in restoring long-term economic growth and job creation. The President's economic program is a balanced approach that shifts national policy away from deficit spending and toward job-creating investment.

The CEO of Bethlehem Steel:

* * * [The] President's economic plan must be adopted promptly to get our economy moving.

The chairman of Anheuser-Busch, August Busch III, in his letter to President Clinton said,

* * * We applaud the fundamental fairness of your initial plan as well as the diligence with which you have worked to keep equity a cornerstone of the final product.

Mr. Speaker, I urge my colleagues to follow the lead of the people of our country, as well as the CEO's, and support the plan.

RETROACTIVE TAXES

(Mr. BOEHNER asked and was given permission to address the House for 1 minute.)

Mr. BOEHNER. Mr. Speaker, President Clinton cannot tax the American people enough in these next 4 years to pay for all of his new big-government, wasteful spending programs. He is going to reach back to January 1—when George Bush was still President—and tax the income already earned by the American people, to get money he feels that the Government is entitled to.

Never before has Congress passed a retroactive tax—and never before has an administration demanded we go back in time to get the money to pay for new Government spending.

What does this mean for the budget bill next year—is President Clinton going to send out his National Service Corporation to graveyards to steal the gold fillings from corpses to pay for his future spending increases?

Mr. Speaker, when the American people learn about the retroactive tax, they are going to want to have a retroactive election to send Bill Clinton back to Arkansas.

PASS THE PLAN AND PUT AMERICA'S FUTURE BACK ON TRACK

(Mr. OLVER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OLVER. Mr. Speaker, last night Republican leaders failed their own test on deficit reduction about as dramatically as the debt quadrupled during the 12-year explosion of deficits that started under the Republican-controlled Senate in the 1980's.

The SPEAKER pro tempore (Mr. FRANK of Massachusetts). The Chair is constrained to point out that personal references to Members of the U.S. Senate are not permitted under the rules of the House. The Chair is not permitted to comment on the rules of the House.

Mr. OLVER. I thank the Speaker.

Let's cut through the distortions and irresponsible rhetoric.

The Clinton plan is the largest deficit reduction package in history that will produce low interest rates and in my State alone create 100,000 jobs.

The Clinton plan is tax fairness. Eighty percent of the new taxes fall on people with incomes over $200,000 and millions of working families will see a decrease in taxes with the expanded earned income tax credit.

The Clinton plan has over 200 specific spending cuts and deficit reduction that relies more on cuts in Federal spending than on taxes. That's not rhetoric. It is reality.

Mr. Speaker, I urge this House to join leading CEO's editorial boards from Newspapers across the country, and a rapidly growing number of the American public in supporting the reconciliation. Pass the plan and put our economy, and our very future, back on track.

69-059 O—97 Vol. 139 (Pt. 13) 22

THE CLINTON ECONOMIC PLAN—THE SAME OLD STUFF

(Mr. HEFLEY asked and was given permission to address the House 1 minute.)

Mr. HEFLEY. Mr. Speaker, Clinton went on TV last night to beg for your support for his tax plan. But don't get sucked in by the spin control. Clinton doesn't care about the middle class or the working poor. To him this is just one more public relations stunt in a Presidency riddled with broken promises, empty rhetoric, and flashy gimmicks.

On the campaign trail, Clinton slammed Perot for proposing a gas tax increase; now he endorses one. His campaign stance on taxing Social Security benefits was hands off; now he wants to raise taxes on older Americans who receive these benefits. And, to middle-class America, his promise was a tax cut; what a slap in the face that was. And they called Ronald Reagan an actor.

However Clinton wants to spin his tax plan, the bottom line is this: It will raise your taxes, increase the deficit, and kill over 1 million jobs.

Billy Jeff's TV performance did not work. When he finished our phones lit up and people were furious. This is not the change they voted for—this is the same old stuff.

BUDGET RECONCILIATION BILL PROMISES FAIRNESS IN TAXES AND BENEFITS

(Mr. BLACKWELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BLACKWELL. Mr. Speaker, I intend to vote for the budget reconciliation bill when it comes to the floor tomorrow.

Over the past 12 years, the Federal deficit has grown out of control, while the wealthy have contributed less and the poor and middle income have contributed more. At the same time, poverty and homelessness has increased at alarming rates. The budget reconciliation bill, as agreed to by the conferees, begins the process of balancing burdens and shifting benefits in a manner that is fair and equitable.

I am encouraged by the expansion of the earned income tax credit. We have a fair amount of funding for the Mickey Leland Childhood Hunger Prevention Act. Funding for the Family Preservation Act is vital. The bill includes such funding. And, the bill considers our children, with its funding for child immunizations.

Mr. Speaker, the message of America in the past election was that we were sent here to lead, to make tough choices, to take hard, direct action. President Clinton is seeking to meet that message. This budget bill deserves the support of Members from both sides of the aisle.

For more than a decade, we have lived for today. This Government has mortgaged the future of America in a dangerous way. When we vote on the budget reconciliation bill, we can start down the road of recovery, we can care for our problems today, as we plan for our problems of tomorrow.

AMERICAN TAXPAYER TREATED LIKE THE ENEMY UNDER NEW RETROACTIVE TAX PLAN

(Ms. PRYCE of Ohio asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. PRYCE of Ohio. Mr. Speaker, while the Democrats are popping champagne corks all over Washington, American taxpayers are popping aspirin to try to fend off the tax hangover that they know is coming, especially learning that these taxes are retroactive. That is changing the rules in the middle of the game—changing horses in midstream. While the new taxes are here and now, the so-called spending cuts are put off until 4 years from now. Again, the Democrats have asked the people to sacrifice so the Government won't have to.

However, this plan will accomplish something. It will demonstrate very clearly the difference in philosophy between the two major parties. For the Democrats, it is the American people who have too much money. For us Republicans, it is the Government that has too much.

Let me conclude with this message for my Democrat colleagues: The American taxpayer is not the enemy. Stop treating him like one.

VOTE FOR THE PRESIDENT'S PLAN—VOTE AGAINST "GREEDLOCK"

(Mr. GENE GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GENE GREEN of Texas. Mr. Speaker, I rise today in support of the conference committee report on the reconciliation bill, and I urge my fellow Members to vote for the only credible plan that will create jobs and reduce the deficit.

As a freshman, I came to Washington to end the practice of gridlock because the American people are fed up with inaction. Now that we have ended gridlock, the Republicans have moved on to greedlock. Instead of supporting a plan that protects the middle class from higher income taxes, the Republicans choose to protect the greedy who don't want to pay their fair share.

The President's economic plan will work. It can create 8 million jobs. It will help keep interest rates down and will greatly help our real estate markets and small businesses.

By misleading the public and distorting the truth about the President's plan the Republicans have engaged in greedlock. By voting in favor of this plan we may not be able to put an end to their greed, but we can at least end the greedlock.

A GALLERY OF ROGUES

(Ms. DUNN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. DUNN. Mr. Speaker, what if there were something this House could do that would be supported by Republicans and Democrats, liberals and conservatives, Common Cause, and Ross Perot? If one thing had the support of such a gallery of rogues, it would probably be a pretty good idea. And I am proud to say, Mr. Speaker, we have one.

Today, a bipartisan group is introducing the Congressional Sunshine Act. While Congress closes more meetings to the public than any other American lawmaking body, the Congressional Sunshine Act opens meetings and hearings in the people's House to the people. Only when an open meeting would threaten national security, or defame or incriminate a person could the Members vote that the meeting be closed.

The Congressional Sunshine Act is supported by Republicans and Democrats, liberals and conservatives, Ross Perot, and Common Cause. Mr. Speaker, more importantly, the Congressional Sunshine Act is supported by the American people. As a congressional freshman who was elected to work for change, I want everyone here to understand, the Congressional Sunshine Act is change, change for the better.

□ 1040

CASTING TOUGH VOTES

(Mr. FARR asked and was given permission to address the House for 1 minute.)

Mr. FARR. Mr. Speaker, I rise on the eve of the big, tough vote that we are going to take here in the House tomorrow night. I request my Republican colleagues to rise to the responsibility of office for which they have been elected to this House.

Let me point out that many of your colleagues at the State level, and particularly in California, have made tough votes. They had to raise the gas tax 9 cents, the sales tax three-quarters of a cent, they increased the vehicle license fee, they added two new tax brackets for the wealthy, they taxed jet fuel, they taxed bunker fuel, they taxed magazines, bottled water, candy and booze, and they took away the low-income renters credit, they took away the net loss carry-forward, and they froze COLA's, they ordered management to cut salaries, and they cut all State government across the board. Those were bipartisan votes done by Democrats and Republicans alike.

It is time this Nation joins together in leadership to deal with deficit reduction and enacts the President's tax bill tomorrow night.

CONGRESSIONAL SUNSHINE ACT

(Mr. ZIMMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ZIMMER. Mr. Speaker, I am proud to be introducing today with my colleagues on both sides of the aisle the Congressional Sunshine Act.

Some 20 years ago, as the chairman in New Jersey of Common Cause, I led the fight for New Jersey's Open Public Meetings Act. We were told then that it would not work, but it did work, and it is still working.

Our bill would require Congress to conduct its business under the scrutiny of the people we represent. Earlier this year the largest tax bill in history was created and debated behind the closed doors of the Ways and Means Committee, leaving the American public in the dark. Is it any wonder American taxpayers doubt that their interests were adequately represented?

Sunshine is the best disinfectant. Only when we open our activities to public scrutiny will we be able to restore the public's faith in Congress. I encourage all our colleagues to cosponsor the Congressional Sunshine Act.

HELP OR GET OUT OF THE WAY

(Mr. OBEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBEY. Mr. Speaker, we will hear a steady succession of Dr. No's from the Republican side of the aisle snipe at the President's plan all the way until its passage. I simply want to say to them we are tired of hearing what they have to say. We saw what they did in the 1980's.

The architect of the Republican plan in the 1980's, David Stockman, said this about what they produced:

> By 1984 the White House had become a dreamland. It was holding the American economy hostage to a reckless, unstable fiscal policy based on the politics of high spending and the doctrine of low taxes. Yet rather than acknowledge that the resulting massive buildup of public debt would eventually generate serious economic troubles, the White House proclaimed a roaring economic success. It bragged that its policies had worked as never before when, in fact, they had produced fiscal excesses that had never before been imagined.

You have had your way for 12 years. You have screwed up this country for a decade. If you are not going to help us clean it up, at least get out of the way and quit sniping at the President when he tries to clean up the mess your policies made.

CONGRESSIONAL SUNSHINE ACT

(Mr. POMBO asked and was given permission to address the House for 1 minute.)

Mr. POMBO. Mr. Speaker, walking over to the House floor this morning I could not help but notice how bright the Sun was shining. Unfortunately, the sunlight always disappears behind the Capitol dome.

But I want to say to my colleagues you can help me bring the sunshine back.

Today, I am joining with my colleagues to reintroduce bipartisan legislation to open up the doors and chase away the shadows of congressional secrecy.

This fusion legislation seeks to end the practice of closing out public scrutiny of congressional action by not allowing the closing of congressional committee proceeding to the public or press.

To my colleagues who cosponsored the original open meeting legislation I say thank you. You demonstrated your commitment to the goal of opening up the legislative process. I now urge you to renew this commitment and cosponsor our bipartisan effort.

It will only be through allowing sunshine to reach every aspect of Congress, that we will restore the faith and confidence of the American people in our ability to solve the problems which face our Nation.

APPROVE NOMINATION OF DR. JOYCELYN ELDERS FOR SURGEON GENERAL

(Mr. FOGLIETTA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. FOGLIETTA. Mr. Speaker, I rise to briefly change the subject. But my shift of subjects is not too far afield because I speak of gridlock. It is my hope that Dr. Joycelyn Elders will not be another victim of the gridlock that paralyzes this city. As the Surgeon General, Dr. Elders is poised to wage war on a number of desperate problems that threaten America, especially our younger Americans: AIDS, sexually transmitted diseases, teenage pregnancies. Her weapon in this war is education. Dr. Elders has the promise of bringing the same energy to the office of Surgeon General as Dr. Everett Koop—controversial, yes, but compelling and effective.

But she has been the target of lies, innuendo and, now, a Republican hold on her nomination. From this side of the Capitol, I urge the Senate to break

the gridlock and approve this important nomination before we break for the August recess. Let Joycelyn Elders begin her challenge before the summer is over and before school starts.

PERKS, PRIVILEGES, AND PENSION PLANS

(Mr. COLLINS of Georgia asked and was given permission to address the House for 1 minute.)

Mr. COLLINS of Georgia. Mr. Speaker, I rise today to call upon my colleagues to take a step toward their constituents, and a step away from Washington perks and privileges. I am talking about the lucrative pension program enjoyed by many Members of Congress.

The congressional pension program is a classic example of a Congress that is out of touch with the average American taxpayer. On the eve of the largest tax increase in U.S. history, many Members of Congress are participating in a pension program that costs taxpayers over $10 million a year.

Mr. Speaker, immediately after taking the oath of office, I rejected the congressional pension plan.

As Members of Congress we often talk about the need for leadership and fiscal responsibility in Washington. Well, Members of Congress, if you belong to the lucrative pension program, you can put your money where your mouth is—eliminate the taxpayer contribution to your pension plan or reject the plan completely.

NO SEPARATE SMALL BUSINESS TAX IN PRESIDENT'S PLAN

(Ms. SCHENK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SCHENK. Mr. Speaker, for days I have listened to some Republicans assert there is a small business tax in the proposed budget. It is time that someone stood up and said these simple words: "That is not true." As every Member in this and the other body should know, there is no separate tax on small business, and saying so can only be motivated by a desire to mislead the American public.

The truth is most small business owners are taxed through personal income taxes. The truth is over 90 percent of small businesses do not reach the threshold of personal income tax increases proposed in the budget—over $115,000 for a single taxpayer and over $140,000 for couples.

The truth is, over 95 percent of America's small business owners will not be paying increased taxes and the truth is many will be eligible for tax cuts.

So I say to the critics of this package—speak against it, if you wish vote against it, if you must, but don't distort the facts about it. The American people deserve better from each and every one of us.

CUT SPENDING FIRST TO REDUCE THE DEFICIT

(Mr. CASTLE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CASTLE. Mr. Speaker, We have talked a lot over the last 7 months about the need to enact a budget that truly reduces the budget deficit—But I believe the action taken in the conference budget bill falls far short.

Indeed, I believe the budget bill has it backward. It increases Americans tax burden immediately. It even hikes some taxes retroactive to January first of this year. And the bill instantly will add millions of millions of dollars to the national debt by jacking up Federal spending. But when will the supposed spending cuts take effect? Unfortunately, not until October 1996, if at all.

Delawareans and people across this country want Congress to address the budget deficit by cutting spending first and streamlining the overgrown Federal Government. Last week, visitors at the Delaware State Fair voluntarily filled out a survey on congressional issues—and an overwhelming 92 percent of respondents said Congress should cut Federal spending before raising taxes.

Americans know what it takes to balance a budget. It means making the tough decisions on where to cut spending—not taking the easy way out of raising taxes and pulling out the credit card, charging this country deeper into debt.

□ 1050

IT IS GO TIME

(Mr. TUCKER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TUCKER. Mr. Speaker, a few week ago this House passed the President's reconciliation bill, and at that time, Mr. Speaker, it was show time. It was time for us to belly up to the bar and to do the things that the American people had elected us to do.

But now on the eve of passing the conference report, Mr. Speaker, it is go time. It is time for us to move this Congress and this country forward, to bring down the Federal deficit by $496 billion. It is go time. It is time to dismantle the Republican lies that say, Mr. Speaker, that the taxes are going to be borne by the middle class. They are going to be borne, 80 percent of the taxes, by the richest 6 percent of the people in this country.

It is go time. It is time to move this country forward on a plan, Mr. Speaker, that is pro-family and anti-poverty, $21 billion for earned income tax credits that will move people from poverty into performance. It is go time, $580 million, Mr. Speaker, for child immunizations.

It is time to move forward. If we do nothing, the deficit will go up. If we go forward, the deficit will go down.

It is go time.

MR. PRESIDENT, RELEASE THE ECONOMIC ASSUMPTIONS

(Mr. SMITH of Michigan asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Michigan. Mr. Speaker, last night the President addressed the Nation to urge Congress to adopt the largest tax increase in history. He suggested that the Nation must adopt this package before the economy gets worse.

Mr. Speaker, the President knows that the economy has already gotten worse. He knows that his so-called deficit-reduction numbers are untrue.

He is required by law to publish a midsession review revising economic assumptions on which his budget is based and the assumptions Congress should know before they make this decision on this large tax increase. The purpose of publishing revised economic assumptions midyear is for Congress to have the best information available in order to make decisions affecting job growth, the economy, and jobs.

The President claims that the economy is strong enough to withstand the contractions of the largest tax in history. However, the numbers he is withholding in violation of law would show that the economy is weaker than previously stated.

This tax bill is the wrong plan at the wrong time.

Mr. President, please comply with title 31, section 1106, of the United States Code and give this Congress this information so we have the best possible information when we make this important vote on the reconciliation bill.

THE BUDGET ALTERNATIVE

(Mr. CLYBURN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLYBURN. Mr. Speaker, I rise today in support of President Clinton's plan for deficit reduction and economic growth.

For the past 12 years, the American people have watched the Federal deficit soar and their economic security decline.

The President's plan faces up to the challenges of putting our country's fiscal house in order, establishing equity and fairness for all our citizens, and securing the future for our children and grandchildren.

The benefits are clear.

The President's plan means deficit reduction, nearly $500 billion over the next 5 years.

The President's plan will restore Tax Code fairness, generating 80 percent of all new revenues from those who can best afford to pay.

The President's plan is a win-win situation for the middle class and those who earn less than $30,000 per year. The earned income tax credit [EITC] provision will directly benefit 32.8 percent of the families in my State and 43.5 percent of the households in my congressional district.

The President's plan means job creation. In South Carolina alone over 100,000 jobs will be created in the next 3 years if this package is passed. That's 61 percent more jobs than were created between 1989 and 1992.

President Clinton's plan for deficit reduction and economic growth makes good sense for the American people.

START OVER AND DO IT RIGHT

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, the President's words sounded smooth and truthful last night. You want to believe him but then you realize this is the same person who campaigned for a tax cut, who promised he wouldn't tamper with Social Security, and who said he wanted businesses to grow and create jobs.

Then you look at his economic plan and you see taxes that stifle the same small businessowners who create jobs, and Social Security taxes that hammer anyone over 65 who makes $34,000 or more.

Then you remember the President spoke of tax fairness, which sounds great. Except the top half of income earners already pay 94 percent of the taxes. Tax fairness begins to sound more and more like resentment and envy, and a desire to punish anyone who's successful.

That is not the way to treat honest and hard-working Americans and that's not the way to achieve economic growth.

Americans should oppose this economic plan and tell the President and his party to start over and do it right, this time with the help of Republicans.

A TRIBUTE TO THE ASSYRIAN COMMUNITY

(Mr. GUTIERREZ asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GUTIERREZ. Mr. Speaker, I am proud to rise today and offer my voice in praise of a community that is sometimes overlooked when we talk about the wonderful mosaic of diversity that makes America.

I speak of the Assyrian community—a community that has many important representatives and leaders joining us in Washington today.

I speak of a community that has overcome tremendous odds, and many sadnesses, to persevere and make an overwhelmingly positive difference in our society.

A community with a proud history that dates to the earliest moments of civilization.

A people who have made tremendous contributions to our Nation through their hard work, diligence, sympathy for others, and maintenance of their unique cultural traditions.

A peace-loving people who have been consistent allies of the United States and who are proud of a long history of triumphant memories.

You know, the United States is a nation that has been built on, and continues to thrive because of the strengths and contributions of those who have come to our country from distant shores.

Quite often, it seems as though we forget that here in this body.

So I am proud today to be able to give a small, overdue thanks to a community that has come from distant shores to make tremendous contributions to my congressional district in Illinois, and to neighborhoods all across our country.

THERE THEY GO AGAIN

(Mr. HOKE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HOKE. Mr. Speaker, it is time that we came to a vote on this budget. This debate has lost its zip. It has gone flat. The lines are clearly drawn. We know where we stand, and it is time to vote. It is only punctuated now by occasional ugly partisan shots from both sides of the aisle, like the one you just heard recently from my good friend, the gentleman from Wisconsin.

At the risk of also entering the department of redundancy, allow me to add my 2 cents and remind you of this:

In the immortal words of President Ronald Reagan, "Well, Nancy, there they go again." Candidate Bill Clinton promised to be a fiscal conservative who would reduce taxes on the middle class and cut Government spending.

Now President Clinton wants my vote for a budget with massive tax increases and wasteful new spending programs.

Mr. Speaker, budgets are important because they reflect the values and priorities of a President in stark, objective terms. This budget proves how different are President Clinton's priorities from Candidate Clinton's promises.

Although Candidate Clinton sought to put people first by reducing Government and empowering middle-class Americans, President Clinton wants to put Government first. His budget imposes the biggest tax increase on working families in American history and funds a new wave of massive Government expansion.

Mr. Speaker, let us do what the American people elected us to do—including our President—let us cut spending first.

WESTERN WORLD FINALLY TAKING ACTION IN BOSNIA

(Mr. ENGEL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ENGEL. Mr. Speaker, the shame of the Western World this past year and a half has been that we have allowed ethnic cleansing and genocide to continue in Bosnia.

Finally, President Clinton and the NATO allies are doing something about it by sending a very clear message to the Serbian aggressors that if they continue the siege of Sarejevo, NATO bombing, air strikes, will follow on Serbian positions.

I have called for these air strikes now for more than a year. We cannot allow genocide to continue. The only way to get the Serbians to negotiate in good faith is to let them know the Western World will not continue to stand by, will not allow Sarejevo to fall, will not allow thousands upon thousands more to die.

The gentlewoman from New York [Mrs. MALONEY], the gentlewoman from New York [Ms. MOLINARI], and I are circulating a letter calling on Secretary Christopher to allow more Bosnian refugees to come into this country. The ceiling was 3,000. The State Department cut it to 2,000. We think it should be raised to at least 3,000 to allow those poor, suffering people to come here as refugees.

I am glad the Western World is finally taking action.

THE TAXPAYERS WILL WIN IN 1996

(Mr. KINGSTON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KINGSTON. Mr. Speaker, we hear a lot of rhetoric on the Democrat side of the aisle that the Republicans are doing this, the Republicans are doing that.

Well, let us just go over some facts and cut through the rhetoric.

Fact: There is a bipartisan group who oppose this budget. It is Democrats and Republicans who oppose this budget.

Fact: The President promised the middle class a tax cut, but the middle class will be hurt very hard by this tax increase.

Fact: We have had 5 tax increases in 10 years, and there have not been any deficit reductions as a result of Democrat and Republican action.

Fact: The President's plan increases the national debt $1 trillion over a 5-year period of time, and it still operates the budget at a deficit.

Fact: Big oil and big business do support this plan in part, but small business does not. Call the National Federation of Independent Businesses if you do not believe me. Do not take my word or someone else's word for it.

Fact: The President said he would not mess with Social Security. Tell that to your grandmother when her taxes increase.

Fact: The President will win tomorrow. The taxpayers will win in November 1996.

□ 1100

ENDANGERED SPECIES: AMERICAN-MADE TYPEWRITER AND AMERICAN WORKERS

(Ms. KAPTUR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, let me tell you the story of an endangered species, the American-made typewriter. The last American typewriter company, Smith-Corona Corp., for generations has manufactured typewriters in Cortland, NY. Layoffs begun earlier this year will mean job losses for 875 more American workers.

Later this fall a few of those Cortland workers will begin training workers in Mexico, in anticipation of the proposed NAFTA Treaty, who will be employed in the new Smith-Corona factory in Tijuana, Mexico, where average labor costs plus benefits are $3 an hour. Smith-Corona says this move will save nearly $15 million per year. But it will cost the rest of us dearly.

Mr. Speaker, the U.S. jobs and workers are the real endangered species. This NAFTA Treaty will ensure their extinction. Let us defeat it.

TAX INCREASES THROUGH SPENDING CUTS

(Mr. CUNNINGHAM asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CUNNINGHAM. Mr. Speaker, one of the problems we have in the House is that most of the Members have never signed the front side of a check, and if they did, they bounced it. Most have never been in business. Businesses with 20 members or less, subchapter S, have created over 4 million jobs and will be taxed as independents. This does affect and penalize.

In 1990, when George Bush broke his pledge and raised taxes, only 33 Republicans supported that tax increase. It is not a fight against Mr. Clinton, it is a fight against the increase in taxes. Why did only 33, and the rest not vote? Because they did not believe Congress could control its spending.

Spending cuts in this bill come after 1996. We do not believe that those spending cuts will happen. The only cuts now are in defense by a President who does not support the military.

THE SUNSHINE ACT

(Mr. BACCHUS of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BACCHUS of Florida. Mr. Speaker, there are many, many things on which the Members of this House will disagree. The American people can see and hear that every day. Yet there is one thing on which I believe we all agree, Republicans and Democrats alike, and that is this: This is the people's House. Here we are supposed to do the people's business and, above all, the people themselves should have the right to see and hear us do their business.

That is why I introduced, along with my friend, the gentleman from New Jersey [Mr. ZIMMER], in my first term in this body, the Sunshine Act, and that is why I am introducing again today with Mr. ZIMMER, Ms. DUNN, and others, on a bipartisan basis, the Congressional Sunshine Act. We believe the people have every right to see and hear us as we conduct our business.

We believe we should amend our rules to make certain that in the vast, vast majority of instances, the people will be able to scrutinize what we do so that they can determine whether we are worthy of doing it.

We offer some exceptions. They are realistic. I encourage my colleagues to look at our resolution, look at our bill, and cosponsor this bipartisan effort.

THE RESULTS ARE IN

(Mr. WELDON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WELDON. Mr. Speaker, the snake oil sales pitch that we have heard since last January and February is no longer working. The President told the American people to contact their Representatives. And, boy, have they.

If you look at the polls of last night, you would see the initial response to that speech, and it certainly is not the same as it was earlier this year. But I looked at my own poll; what are my constituents saying?

Let me give you numbers, Mr. Speaker: 72 contacted me and said, "Yes, support the President's plan." Six hundred and sixty-three said, "Absolutely no way do we want you to vote for this monstrosity."

Mr. Speaker, my fax machine in my office right now is working overtime. Let me give you some examples, and I quote: "We listened to President Clinton's speech last night, and we are scared to death. There has not been a decrease in the deficit with raising taxes. Does Clinton believe or forget that raising taxes we have to pay, and this is also going to go up as well."

Another one: "Don't let the fast talkers get to you. Working Americans are suffering from the burden of taxes."

Another: "I cannot believe that $1.3 trillion is not enough to run this Government."

Let us do what the President asked us to do, let us listen to the American people and kill the Clinton tax increase.

LET US KEEP DEMJANJUK OUT

(Mrs. LOWEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, last week the Israeli Supreme Court acquitted John Demjanjuk of being the brutally sadistic Ivan the Terrible of Treblinka, but did find convincing evidence that he served as a Nazi guard at the Sobibor death camp.

Demjanjuk now remains in Israel until it is decided whether he can be tried for his other crimes.

Yesterday, a United States Federal court rules that the Israelis must free this former Nazi guard and return him to the United States. This would be an affront to the countless millions who suffered under Nazi brutality, many of whom now live in this country.

Mr. Speaker, the Department of Justice has already determined that Demjanjuk lied about his Nazi past to enter the United States and has revoked his citizenship.

Earlier this year, I stood with my colleagues at the dedication of the new Holocaust Museum. There we pledged to honor the memory of the 6 million victims of Nazi brutality. The United States may never be a haven for former Nazis. Today I call upon the Attorney General to appeal yesterday's ruling and keep Demjanjuk out.

TAXATION BEFORE REPRESENTATION

(Mr. LIGHTFOOT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LIGHTFOOT. Mr. Speaker, last night we saw the President talk about his tax plan that will be due for a vote here in the Congress this week. I think something interesting that was missed in the discussion last night is, for the first time in the history of our country

we are going to be taxing Americans retroactively to a point 3 weeks prior to the President's own inauguration. The taxes in his plan become effective January 1 of 1993. I do not think, in our history, we have ever had a President who was able to put taxes in place before they even took office.

However, that seems to be the case here.

I suspect the folks who left England 200-plus years ago because of taxation without representation must be rolling over in their graves at this point in time to see that we have taxation before representation.

I urge my colleagues to vote "no" when we get the opportunity later this week.

CONGRESSIONAL SUNSHINE LEGISLATION

(Ms. CANTWELL asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CANTWELL. Mr. Speaker, I rise today to urge support of the bipartisan congressional sunshine proposal. It is time for Congress to throw open its doors and invite the American people back inside.

Here in the United States we have a representative Government. No Member of this Congress enters this Chamber as a single individual. Each of us represents the hearts and minds of thousands upon thousands of Americans. They send us to Congress to be their voice in the Government of this great Nation.

But when we close our meetings to the public and the press, when we go behind closed doors to conduct the people's business, we are speaking with their voice and then asking them not to listen.

Mr. Speaker, we must do all we can to restore the faith of the American people in their elected Representatives and their Government.

I urge my colleagues to support this legislation, open the doors of Congress, and let the sunshine in.

INTEREST RATES?

(Mr. HERGER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HERGER. Mr. Speaker, President Clinton has defended his tax plan by saying the lower interest rates that will accrue from this plan will save small businesses loads of money.

Well, Mr. Speaker, how much lower can the interest rates go? Not much lower.

And why are they so low in the first place? Because of the Bush policies. President Clinton's plan hasn't been implemented yet. Taking credit now for a plan that hasn't even been implemented yet is a little ridiculous.

The simple fact is the Clinton plan will not lower interest rates. It will not lower inflation. It will not create jobs. And it will not lower the deficit.

The Clinton tax plan will spur inflation, lose jobs, increase the deficit, and hurt our economic growth. As most economists now agree, the Clinton plan must go.

Let us start over. Vote against the Clinton plan.

THE MESS AT IRS

(Mr. TRAFICANT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TRAFICANT. Mr. Speaker, while everybody is talking about taxes, I have a little suggestion here today: Why don't we first straighten out the IRS, Congress?

Three hundred and seventy agents have been caught illegally snooping through their friends', neighbors', and other American taxpayers' files.

□ 1110

Unbelievable. How does that yank your computer?

Mr. Speaker, this is disgusting. Congress is overlooking the trespassers and crying to the IRS. The American people are afraid of them, and we keep talking about raising more taxes.

And what do they want? They want a $23 billion computer so they can catch more wrongdoers.

Mr. Speaker, I say these 370 agents should be prosecuted, and if they are convicted, I recommend handcuffing them to a chain link fence and having them flogged.

DEFICIT REDUCTION BILL UNTRUTHS

(Mr. LEVIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LEVIN. Mr. Speaker, it is an old approach. "If you don't have a position of your own, try to poison the other person's position." That is what is happening now on the deficit reduction bill.

Untruth No. 1, that this is the largest tax package in history.

Wrong. The 1982 package was larger in real dollar terms and percentage of the GDP.

Twenty-four Members of the Senate on the Republican side now sitting voted in 1982 on the package; 21 voted "yes," including the minority leader who made the statement last night, and 21 sitting House Republicans voted "yes" on the 1982 bill, including the minority leader.

Untruth No. 2, the only retroactive tax package in history.

Wrong. There was retroactivity in individual tax rates in 1969, 1968, 1942, 1941, 1940, 1935, and 1918.

The truth of the matter is this is the biggest deficit reduction package in history. We have got to get hold of the deficit and the debt. Let us do it tomorrow.

THE LION THAT ROARED

(Mrs. SCHROEDER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. SCHROEDER. Mr. Speaker, I am proud to be following the gentleman from Michigan into the well, because I want to talk about the same thing he was, and that is all the disinformation we have heard here about the President's budget plan.

We hear that it is going to hurt the middle class. We hear that it is going to hurt small business. We hear all sorts of crazy things that are absolutely not true. There does not seem to be anything we can do about it, but let me tell those of you who are spreading all this disinformation a little western story.

It is about a mountain lion who ran upon a bull. He caught the bull and he ate the whole thing. He was so proud of himself, he started roaring and roaring until a hunter saw him and shot him.

The message here is that when you are full of bull, it is better to keep your mouth shut.

I think we should have had more people keeping their mouths shut as we discuss this, unless they get it right.

IN SUPPORT OF THE CONFERENCE REPORT ON RECONCILIATION

(Mrs. MEEK asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MEEK. Mr. Speaker, I rise in support of the conference report on H.R. 2264, the Omnibus Budget Reconciliation Act of 1993. I will vote for this bill today, not because it is a perfect bill, but because it furthers some very important economic and social goals. It takes a big step in the direction of tax fairness. It provides investment incentives without devastating the Tax Code. It will restrain spending in an attempt to get our budget deficit under control. Most important, however, it does not ignore the need for more investment in our children. The earned income tax credit, family support and preservation programs, the Mickey Leland Childhood Hunger Relief Act, and childhood immunization are all programs we need to expand for the sake of our children. Although H.R. 2264 does not accomplish this to the degree I would like to see or to the degree the House originally supported, it is a good start. We will see good results from these expenditures, and we must work in the future to improve these programs further. There are of course

several items in the bill that I am reluctant to support. I believe the Medicare reductions are too high. They are closer to the Senate figures than the House-passed numbers. As someone who represents an area very dependent on the hotel and restaurant business, I am also concerned about reducing the deductibility of business meals. There is plenty in the bill to criticize, but to defeat this legislation because of individual provisions would be irresponsible. We need to look at the big picture and consider what the consequences would be if we were not to pass this legislation.

We must ask ourselves, will our country really be better off if we do nothing? That is the alternative to this bill. We have already struggled for months over these issues. Where can any other kind of reasonable agreement be found?

Last November, we elected a new President. We said we wanted change. This bill represents a very positive change in direction for our country. It puts people first. It seeks fairness for taxpayers. I am not afraid by my vote to take responsibility with the President. He was elected to govern this nation and we owe him the opportunity to implement his economic program for the good of this country. We owe it to our constituents to support the President and break out of the legislative and budgetary gridlock. I urge my colleagues to vote for the conference report.

A RETROACTIVE TAX PACKAGE

(Mr. HASTERT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HASTERT. Mr. Speaker, I agree with the previous speaker right before me. I think we probably ought to look at the big picture. I think we ought to look and see what the big picture does exactly.

I think for the first time probably in the history of this House the President who is in power at this time and brings forth this tax package is bringing forth a tax package that reaches back retroactively and takes out of people's pockets money they have already earned, money that they already thought was theirs.

Interestingly enough, it not only goes back into his administration, but it reaches back into the previous administration and takes money out of people's pockets. It goes back into the Bush administration and takes money out of people's pockets.

I do not think that is something that the people in this country have woke up to.

I just had an interesting phone call from a constituent that says:

I listened to the President's speech last night. This morning I went down and canceled a $3,000 computer purchase so I could upgrade my computer in my small business, because I know that I cannot pay for it because in October I am going to have to back pay.

Mr. Speaker, I think this is a tax bill that is going to be called "The Grinch That Stole Christmas."

THE PRESIDENT'S BUDGET

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, there is a campaign of disinformation going on. Here are the facts.

In this historic deficit reduction package, more than $1 in spending cuts for each $1 in new taxes; $8 in spending cuts for $1 in new taxes on the middle class; $255 billion in spending cuts; for every $10 in deficit reduction, $5 comes from spending cuts, $4 comes from people making over $200,000, and only $1 from all other taxpayers.

We have the lowest interest rates in two decades.

Eighty percent of the tax burden will fall on those making more than $200,000. Only the top 1.2 percent of all taxpayers will experience an increase in their income taxes.

Those who file joint returns and make less than $180,000 will pay higher income taxes.

We repeat, if you are a family and you make under $180,000 of adjusted gross income, you will not pay a penny more in income taxes.

TIME FOR REAL DEBATE, NOT BUZZ WORDS

(Mr. SKEEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SKEEN. Mr. Speaker, I have been listening to these 1-minute speeches, and it has become a war of words, similes and so on. I think it is about time we ended all this ludicrous thing, because the same people who have been accusing this side of being the gridlock are now operating with ziplock. We are going to unzip everybody's pocketbook, rob it, sandbag it and flannelmouth this thing to pass a program that is not going to work.

It is the same folks who have not let it work for the last 12 years, the same ideas, the same flannelmouths, the same sandbaggers, the same ziplockers.

Mr. Speaker, I think it is time we got down to the real business. If we are going to debate this bill, let us debate it on its merits, not on these buzz words.

RECONCILIATION: AN OPPORTUNITY FOR AMERICA TO MOVE FORWARD

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, to some extent I will work on the theme established by my friend, the gentleman from New Mexico, by saying that probably it is time to sort of calm down the rhetoric and to reduce the level of emotion here.

I think it is fair to say that the economic reconciliation plan which I intend to vote for tomorrow in the House, the President's plan, is probably not as positive as we would like it to appear, but certainly it is not as negative or will bring the kind of doom and gloom, as would be predicted by the opponents.

My point here is to say that we have an opportunity to do something. We have an opportunity starting tomorrow to do something for America and for the world, which is to say to move us forward on a new glide path toward less deficits, toward less debt, toward a growing economy, toward more jobs, toward lower unemployment.

What I fear, Mr. Speaker, is that if we fail to take this step tomorrow, if we walk up to that abyss, up to the precipice and we take a step backward, which we are urged to do, I think we will lose all opportunity to ever go forward and make America better economically.

So I would say, Mr. Speaker, despite the fact that the reconciliation plan is not the greatest plan ever to come along, it certainly will not do the harm some predict, and we ought to move with it.

DISPELLING THE FOG OF RETROACTIVITY

(Mr. WISE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WISE. Mr. Speaker, once again there seems to be some fog around here as to who is affected by taxes and particularly the provisions that have been referred to about retroactivity, going back to January 1 of this year. Is it middle America, mom and pop, that will be paying these taxes back to January 1?

Well, unfortunately, there is one fact they have omitted to tell everyone here, and that is that this only applies to the income taxes of those over $180,000 a year. That is right, the family that makes over $180,000 a year. If you are not in that very exalted group, you are out of this picture. You are not retroactive. You are not proactive. You are inactive.

□ 1120

They are not involved in these income taxes. That is No. 1.

No. 2, what they are not saying is that those folks have the ability to carry forward that increased tax liability for 3 years without interest. And

they are not telling us that the tax cuts are retroactive as well. So the tax cuts that small business and the business people will be able to take advantage of will also be retroactive.

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1994

The SPEAKER pro tempore (Mr. FRANK of Massachusetts). Pursuant to House Resolution 229 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2330.

□ 1121

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2330) to authorize appropriations for fiscal year 1994 for intelligence and intelligence-related activities of the U.S. Government and the Central Intelligence Agency retirement and disability system, and for other purposes, with Ms. SLAUGHTER in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee of the Whole rose on Tuesday, August 3, 1993, the amendment offered by the gentleman from Vermont [Mr. SANDERS] had been disposed of, and the bill was open to amendment at any point.

AMENDMENT OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Madam Chairman, I offer an amendment which has been printed on page H5453. The amendment is to page 5, line 11, section 105, a reduction in authorization.

The Clerk read as follows:

Amendment offered by Mr. FRANK of Massachusetts:—Page 5, after line 11, add the following:

(a) IN GENERAL.—Except as provided in subsection (b), the aggregate amounts authorized to be appropriated by this Act, including the amounts specified in the classified Schedule of Authorizations referred to in section 102, are reduced by $500,000,000.

(b) EXCEPTION.—Subsection (a) does not apply to amounts authorized to be appropriated by section 201 for the Central Intelligence Agency Retirement and Disability Fund.

Mr. FRANK of Massachusetts (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. FRANK of Massachusetts. Madam Chairman, we debated yesterday the broad context in which this amendment should be put, but we have here a more moderate version of it. I did support yesterday a much larger cut.

This is a cut of $500 million. It exempts the Retirement and Disability Fund. It would reduce the overall intelligence budget by $500 million, a very small percentage of the overall total. The question is, shall the intelligence apparatus, all of the intelligence apparatus, the CIA, the National Security Agency, and the various military entities, in effect be exempt from any budgetary discipline at all?

Now, the committee did reduce their effort to get an increase. I think the committee has begun a useful process, but that does not go far enough.

We have heard Members all morning, and we will be hearing them all week, talk about the need for cuts. The question now is, does that rhetoric have any impact on Members' actions? We are talking about a cut that is only a couple of percentage points.

The Soviet Union 5 years ago absorbed approximately two-thirds of the budget, at least, in my judgment, of the intelligence apparatus. That threat has disappeared. Members have said, "Oh, there are new threats."

I deny that. There are not new threats. Nuclear proliferation, the North Korean regime? Did anyone 5 years ago think that that was the Kiwanis Club with a somewhat culturally different approach?

Terrorism? Was Iran a vacation spot for people interested in the exotic 5 years ago?

There are no new threats. There has been a substantial reduction in the old threat. And I want to say what I think has to be very clear for this budget and the military budget. People have talked about how the defense budget is taking the largest share of cuts.

Of course it is, because in no other area of this Government's activity has there been such a change in the objective reality which the program seeks to deal with.

We have seen the disappearance of the Soviet Union as an entity and the dismantling of the Warsaw Pact. There is no longer a Poland or a Hungary or a Czechoslovakia or a Bulgaria or an East Germany as part of that threat. The Soviet Union itself has been pieced apart. Yes, there are now a couple more former soviet republics to look at for nuclear proliferation. But nuclear proliferation is no more a problem today than it was 5 years ago.

Can the CIA and its related agencies in the military sustain a half-a-billion-dollar cut in reductions?

Madam Chairman, the problem is that people are confusing necessity with what is convenient and what is useful. Let me give an example.

Thirty-one years ago I went on a CIA mission. I think that secrecy has expired enough now. Anyway that is what the statute of limitations says. I went with some journalists and with Gloria Steinem. We went to Helsinki, Finland. The CIA paid for it. We were not supposed to know that. Anyone who did not know that was too stupid to have gone. We went to infiltrate the Soviet-run youth festival. We went, we argued, and we debated, and I think it was useful. I am glad I went in 1962. I am glad I had a favorable reference from the late and unlamented House Un-American Activities Committee.

But I must say that at no point in my 22-year-old view of the world did I think that what I was doing there, debating and pointing out the horrors of the Hungarian invasion by the Russians and debating and trying to persuade people from Asia and Africa that we had a better way, at no point did I think that the security of the United States rested on the force of my argument. It was useful, it was helpful, but it was not national security at its core.

There has been an argument that we have to improve the technology. A cut of a half a billion dollars can be absorbed by that vast network of agencies, with their vast networks of personnel and their subscriptions and their cars and their analyses and everything else, without impinging in any way on their hardware. This simply says, "Subject yourself to the discipline."

They do some things that are essential for national security. They do some other things that are useful politically and that are interesting economically.

We have a terrible budget deficit. Finally, people have said, "But if you cut this, it goes to the military budget anyway." By what rule? Yes, the walls are still up so we cannot take this half a billion and spend it on domestic purposes, but we can use it for deficit reduction, and Members who tell us how serious they are about deficit reduction are about to have a chance to prove it.

Mr. SKAGGS. Madam Chairman, I rise in opposition to the amendment.

Madam Chairman, I have tremendous respect for the gentleman from Massachusetts [Mr. FRANK], who has offered this amendment, so my opposition comes with some difficulty personally, because I know that he has applied his considerable talent, intelligence, and way with words to this very important subject. But I think there are several reasons why it is not in the national interest to support the gentleman's amendment, and I urge my colleagues to vote against it.

I am serving in my first year on the Permanent Select Committee on Intelligence, and let me say that the committee worked painstakingly and with great pain to produce the bill that is before us which already incorporates a substantial reduction from what the President asked us to authorize for national intelligence purposes for next year. We have already cut over a billion dollars below the President's request, and he has made it very clear, as has his Director of Central Intelligence, that further reductions will

not come without serious incursion on the very important functions of the intelligence community.

The gentleman from Massachusetts seems to be dismissive in his closing comments about the practical effect were we to adopt his amendment. I think the body needs to be well aware that given the point that we are in the appropriations process, given the 602(b) allocations that have been made to the Defense Appropriations Subcommittee which will ultimately decide how much we appropriate in this area, it is in fact the case that whatever might be reduced further in the authorizing phase before us today is highly likely to be absorbed by the appropriators on the Defense Subcommittee.

□ 1130

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. SKAGGS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, I have to correct my good friend from Colorado. He says the Defense Appropriations Subcommittee will decide. No, this House will decide, and the Senate will decide. There is no doubt in my mind that the Defense Appropriations Subcommittee will try to spend it all, but this House will have the ability to impose a little discipline and save half a billion dollars.

Mr. SKAGGS. Madam Chairman, reclaiming my time, the gentleman from Massachusetts [Mr. FRANK] I think is technically correct. As a practical matter, we have all lived through the process often enough to know that the practical outcome is likely to be as I suggested, especially given the severe constraints that have already been imposed on spending within the defense portion of the budget.

But the other effects of the adoption of his amendment are also significant and perhaps go to the merits more than addressing the issue of institutional politics.

We have heard from the Director of Intelligence that it will cost us somewhat more in the near term to effect the long-term savings, particularly in the very sophisticated overhead collection systems the country will continue to depend on. It is one of those realities, that in order to save in the long run from consolidating some of these systems, we will need to spend somewhat more in the short run. And I think we would be deluding ourselves to think that these further proposed reductions would occur without greater costs and difficulties over the long haul.

Finally, I think we can take some real note of the fact that the new President of the United States, who has clearly made a very strong commitment to constraints in the intelligence budget and has pledged the credibility of his administration to do so, has drawn the line at this point and made a very sincere plea to this body not to further reduce the budget in this critical area.

So with great respect for the author of this amendment, I urge my colleagues to oppose it.

Mr. HYDE. Madam Chairman, I move to strike the last word.

Madam Chairman, I rise in opposition to the amendment. The gentleman from Massachusetts [Mr. FRANK] has said that the threat has lessened since the demise of the cold war. I would respectfully suggest that the threat is not less, it is different. The bear is disabled, but there are lots of snakes now loose in the forest.

Our intelligence has to be adequate, adequate to the times we live in. I suggest again with some sorrow that our intelligence has not always been adequate. It certainly was not adequate in Iran, surrounding the abdication of the Shah and the advent of the Ayatollah, and in many other places one could find fault with the adequacy of our intelligence effort.

This country needs more and better intelligence, not less. With the proliferation of chemical warfare and biological warfare, just imagine the ability to bring into this country in a diplomatic pouch vials containing anthrax or containing some chemical substance that would wipe out a city in one fell swoop. They are very portable. You do not need intercontinental ballistic missiles. You need good intelligence, and that is costly and takes time to build up.

There are 22 countries capable within the next 10 years of developing nuclear warheads and the missiles to deliver them. Twenty-two countries. No, the threat is not less, it is different. It is different.

Now, as far as this budget cut is concerned, there are four words why this is a terrible idea: terrorism, narcotics, proliferation, and personnel. It takes years and years and years to develop competency as analysts, as operators in the field, as human intelligence sources, as people who can collect and analyze and evaluate this intelligence.

Madam Chairman, the gentleman from Massachusetts [Mr. FRANK] has asked about the CIA, the intelligence community, should they be exempt from budgetary discipline? Nobody in this town has a greater interest in cutting the deficit than the President. He rises or falls on that, so his interest is supreme.

Madam Chairman, this bill is 4 percent less than last year, and 3.7 percent less than the President asked for. Over the next 5 years the intelligence community will reduce its civilian personnel by 17.5 percent and its military personnel by 25 percent. That is cutting back with a vengeance.

Now, look: on one side you have got the President, the Joint Chiefs of Staff, the National Security Council, the Director of the CIA, two Intelligence Committees, the House and the Senate. You have two Armed Services Committees, the House and the Senate. You have two Appropriations Committees, the House and the Senate. They are all saying, stick with this figure. On the other side you have the distinguished gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. HYDE. It is now a pleasure to yield to the gentleman.

Mr. FRANK of Massachusetts. Madam Chairman, first of all I would say my friend from Illinois [Mr. HYDE] has described the situation we have in every cut. You will have the President, all of the agencies that administer it, and the authorizing and appropriations committees on one side, and others of us on the other side.

Second, I have to say to the gentleman from Illinois [Mr. HYDE], I am surprised when the gentleman says that the threat is now not less.

Mr. HYDE. Madam Chairman, reclaiming my time, if the gentleman would excuse me for just 1 second, on the other side though you usually have people asking for cuts whose competence is based on more than a trip 33 years ago with Gloria Steinem to the Soviet Union.

Mr. FRANK of Massachusetts. Madam Chairman, if the gentleman will yield further, I thank the gentleman. That was not the only purpose. But, as long as the gentleman has pointed it out, I will say that the CIA continues to be interested in other issues, such as immigration and the environment. My point was that some of what they do is national security related, and some is not.

But I want to get back to the central point where I differ with the gentleman from Illinois [Mr. HYDE], and that is the statement that with the collapse of the Soviet Union, the collapse of the Warsaw Pact, the dismantlement of that military apparatus, the threat facing us has not lessened.

Mr. HYDE. Madam Chairman, I would like to reclaim my time.

Mr. FRANK of Massachusetts. I should not have asked the gentleman to yield, since the gentleman will not yield.

Mr. HYDE. Madam Chairman, can we not have a discussion without the gentleman getting upset?

Mr. FRANK of Massachusetts. Madam Chairman, if I could finish my sentence, we might.

Mr. HYDE. I might forget what I wanted to say.

Mr. FRANK of Massachusetts. Madam Chairman, that is one of the hazards the gentleman will have to deal with.

Mr. HYDE. Madam Chairman, when you get my age, it is.

Mr. FRANK of Massachusetts. Madam Chairman, the point is the Soviet Union has been, with the Warsaw Pact and all of its weaponry, an overwhelming threat to our national security. When the gentleman says that the dismantlement of that threat to our national security from the Warsaw Pact and the Soviet Union means that the threat has not lessened, I think he over-argues the point uncharacteristically.

Yes, there are other threats. They have been around for a while.

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

(At the request of Mr. FRANK of Massachusetts and by unanimous consent, Mr. HYDE was allowed to proceed for 2 additional minutes.)

Mr. HYDE. Madam Chairman, I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, this is an example of the kind of overargument we are getting. To say that the dismantlement of the Warsaw Pact, the defection of those countries, the breakup of the Soviet Union, that that has not lessened the threat against us, simply does not bear logical analysis.

Mr. HYDE. Madam Chairman, reclaiming my time, I wish to thank the gentleman from Massachusetts [Mr. FRANK]. If I may respond, there are some 33,000 nuclear warheads aimed at us. They are aimed at us, nobody else, in Russia, in Kazakhstan, in Ukraine, and in Byelarus. They still constitute a threat until they are dismantled and buried in the ground. I do not say they are the threat they used to be. The threat today comes from China, from North Korea, from Angola, from all kinds of places. They come from India, from Punjab, from Nagorno-Karabakh, from the former Yugoslavia. For all of these conflicts we need to know what is going on, who the players are, what our involvement can be, what it ought to be, ought not to be, and that costs money.

Mr. FRANK of Massachusetts. Madam Chairman, if the gentleman will yield further, yes, almost everything the gentleman has mentioned has been a threat all during this period, China, North Korea, et cetera. I am trying to focus on what the gentleman said.

The argument of the gentleman that there has been no diminution in the threat, that it is simply different, I submit that is at variance with what the gentleman knows to be the case.

The disappearance of the Soviet Union and the Warsaw Pact has reduced the threat. When the gentleman denies that, he talks about other threats, they are there today, most of them were there a few days ago and a few years ago. But for the gentleman to say that no longer having the Soviet Union with the Warsaw Pact has not lessened the threat is an example of what I think is the overargument that bolsters the case against even a small cut.

□ 1140

Mr. GLICKMAN. Madam Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Madam Chairman, the difference I have with the gentleman from Massachusetts is that, yes, some of these problem areas were threats, but there is no question, they have clearly been enhanced since the Soviet Union has ended as a collective central power. For example, North Korea, as a potential nuclear power, is much more serious today than it was 5 years ago.

Mr. HYDE. Madam Chairman, does the gentleman think if the Iranians develop a nuclear weapon and the means to deliver it, we are not at risk worse than we were when the Soviet Union, with all its problems, at least the Soviets were rational.

Mr. BILBRAY. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I think it is important to recognize that as a member of the committee, I came on 6 months ago. And for 6 years, I sat out here, where the majority of the Members sit. It is a very small committee, and I listened to the same sort of arguments, not understanding entirely the intelligence budget because of the extreme secrecy that has to be kept in this committee. Most of the Members do not know even the total amount of the budget, of what it does and where the money goes.

Six months of listening to what goes on within the committee and being on the Budget Subcommittee, subcommittee of the committee, I realized that there is a lot of areas far beyond what we have been talking about today that this committee is involved in.

It is involved with every aspect of Government in trying to make sure our national interests in all areas are secure and protected.

We went in there, and we took an axe to this particular program. We cut it in excess of $1 billion.

Prior to that, the President cut it before it came over, over a billion dollars over what President Bush had recommended.

We have cut this budget, not only the fat, not only the muscle, we have cut it to the bone.

I wish that many Members would take the time to go up to the Permanent Select Committee on Intelligence and examine what they do and get a briefing from the committee on some of the aspects they cover, because let me tell my colleagues, I serve on the Committee on Armed Services. I have supported massive cuts in the size of the military, even though that committee is something near and dear to my heart.

But I sit on the Permanent Select Committee on Intelligence and realize that we are jeopardizing not only the national security of our country but the national economic development of our country by cutting this budget. I urge Members to look at this.

I know the inclination in this Congress is to cut everything that comes up. There was a comment by our chairman that in the committee one day that if somebody brought a cutting motion for his mother's hospital bed, this Congress would cut a portion of that hospital bed very quickly. And I think that has been evidence by continual votes that have come before this body.

In our being anxious to please the public that we are here to cut spending, we sometimes are overzealous and cut programs that do affect our national security and our economic viability.

I think it is very important to Members out there to realize, and I am not a hawk, I am not a hawk, I am not a fanatic conservative. I am not one that does not stand with the President. I am voting for his bill tomorrow.

I am one who is firmly entrenched in believing in the Democratic Party and those premises that we stand for. But this is not the place to do it. This is an important vote. It is one that we will live to regret, if we follow the guidance of my good friend from Massachusetts and endorse his amendment.

I ask those that are out there that have not been involved in the intelligence process, please become involved. Study it. Find out what it is. Go up to the committee. Talk to the staff. But do not make this serious, serious mistake of voting for this amendment. In the future, believe me, economically and securitywise, we will regret this vote if we make this cut.

Mr. SANDERS. Madam Chairman, I move to strike the requisite number of words.

Let me begin by thanking the 104 Members who yesterday voted for the Sanders-Owens amendment, which would have reduced the intelligence budget by 10 percent. As Members know, the amendment before us would reduce the intelligence budget by about $500 million, somewhere around 2 percent.

In talking to some Members yesterday, who voted against our amendment, their thought was that the cut that we proposed was too big. My sincere hope is that they will support the amendment of the gentleman from Massachusetts [Mr. FRANK] and allow us to pass this.

Madam Chairman, I think one of the problems that we have in the House, and it is a deep problem, it affects all of us, is that every committee looks at the world from their own committee's viewpoint.

I believe and I understand the sincerity of the gentleman from Kansas [Mr. GLICKMAN] and all the members of his committee, majority and minority. They are here to fight for what they believe is best for the agencies they represent. And that is true, I think, for every subcommittee and every committee in our institution.

Mr. GLICKMAN. Madam Chairman, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Madam Chairman, I do not represent the intelligence community at all. I want to make that clear. I do not think anybody on this committee does.

Second, this is a rotating committee assignment, intentionally done to make sure that there are no vested interests in this thing.

I have this chairmanship about 18 more months, and then I am gone. Hopefully not from the world, but certainly from this committee.

Mr. SANDERS. Madam Chairman, I understand the gentleman's point, but the gentleman understands my point as well. He did not accept his responsibility if he was not prepared to fight as hard as he could.

I think what we have in our institution is every subcommittee and every chairman and every Member is out there fighting for what they believe. They are trying to do a good job. Therefore, what we sometimes lose is a broad sense of priorities.

We are not looking at the whole picture. The chairman and the other Members have said that all of this money is desperately needed. But can we not make the case that there are other desperate needs in this country which, in fact, might even be more desperate than the needs of the intelligence community? Shall we have a debate about morality and philosophy and to say that 10 blocks away from here in the city of Washington or in my own State of Vermont we have children who are hungry, who have no future whatsoever?

Shall we have a debate that another spy satellite for $2 billion is more important for the future of this country, is morally more acceptable than feeding millions and millions of children in this country who are hungry today?

In America today, we have millions of children who have not received their immunization shots. The Third World, in many respects, has done a better job than we have. Shall we have a debate about morality? Whether the CIA or the other intelligence agencies need more money at the expense of the health and welfare of low-income children in this country?

So the broad argument that I want to make is not simply to look at the needs of the intelligence community. That is important. But we have got to look at the broad needs of America.

I would argue, as many have argued before me, that when a nation has a $4 trillion national debt, when we have a $300 billion deficit, when every single day Members of both parties come up here and they say we have got to deal with the deficit, we have got to deal with the deficit, well, today, the gentleman from Massachusetts [Mr. FRANK] is giving us an opportunity to deal with the deficit. And when other Members come up here and they say that the standard of living for working people is in decline, that poor people are hurting, that we have got to pay attention to those needs, which have been ignored for so many years, the amendment of the gentleman from Massachusetts [Mr. FRANK] is giving us an opportunity to do that.

So to paraphrase Shakespeare, we come not to speak so much against the Permanent Select Committee on Intelligence and their request, but we come to speak for the hungry and for the poor and for those people whose needs are perhaps greater than the intelligence community.

Mr. DICKS. Madam Chairman, I move to strike the requisite number of words, and I rise in opposition to the amendment offered by my colleague, the distinguished gentleman from Massachusetts.

Ms. HARMAN. Madam Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentlewoman from California.

Ms. HARMAN. Madam Chairman, I am a new Member. I am not a member of the Permanent Select Committee on Intelligence.

I represent the aerospace center of the country, and I have made it my business, as a member of the Committee on Armed Services and the Committee on Science, Space, and Technology to learn as much as possible about intelligence and the intelligence budget.

□ 1150

I asked for and received a briefing on the intelligence budget by the excellent staff of the Permanent Select Committee on Intelligence. I was briefed by the CIA and the Intelligence agency, and I have in other ways tried to study this issue.

My conclusion, expressed on the floor yesterday, is that intelligence spending is intelligent spending. This budget is sound and I believe that amendments to reduce it should be defeated.

Mr. DICKS. Madam Chairman, I would like to again reiterate that I think our committee has done a good job. We have made a significant reduction in this bill, over $1 billion from the President's budget request. Those cuts have caused some concern in the intelligence community. I think the committee on a bipartisan basis has looked at every aspect of spending here, and we have made significant reductions.

I would urge my colleagues on both sides of the aisle, please stay with us on this amendment. I would say to my friend, the gentleman from Vermont [Mr. SANDERS], I share his compassion and concern for the homeless and for young people who need immunization and for Head Start, but I would argue that that is the issue we ought to debate as Democrats and as Members of Congress when we have the budget resolution up, because it is when we do the budget resolution that we make the divisions between domestic spending and defense and national security spending.

Let us have that debate there. Once we get down to this bill, which is part of the Defense bill, cuts that are made here will wind up probably being utilized in another aspect of defense. It will not get to the people that my colleagues want to help, so let us have this debate next year. I may well share the priorities of both the gentleman from Massachusetts [Mr. FRANK] and the gentleman from Vermont [Mr. SANDERS] when we do the budget resolution, when we allocate the funding. That is when we should talk about our national priorities.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. DICKS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, first I have to reiterate that under the budget walls which are up, the gentleman is correct, this $500 million could not be used for other governmental purposes. It could only be used for deficit reduction.

Now the Subcommittee on Defense of the Committee on Appropriations would have the option of spending it, but the House would have the option of doing it for deficit reduction.

I would also say to my friend, he talked about these other issues. The Washington Post says today that the CIA is about to get into such topics as the setting up of a new office, the environment, migration, refugees, epidemics, and world food supplies. Now the gentleman says this is national security and those are other issues.

The point is that the mandate they have given themselves is so broad that we can make a cut without in any way impinging on these. I do not see nuclear proliferation or terrorism here.

Mr. DICKS. If the gentleman from Massachusetts would just realize that dealing with humanitarian problems of the world is part of national security. We need to do that.

Mr. FRANK of Massachusetts. If the gentleman will continue to yield, I agree, but that ought to be subjected to the same budgetary scrutiny. If this is partly the foreign aid budget, which is what we are being told, then it ought to get the same budgetary scrutiny.

My point simply is that some of what they do is essential to national security. Most of what they do is. That is why my cut leaves 98 percent alone.

However, we are not talking here about that. My point is that the gentleman is not talking about terrorism or nuclear proliferation when we talk about the new areas. What I am trying to do is save some money and say we will deal with the environment, we will deal with these other things in other ways.

The CHAIRMAN. The time of the gentleman from Washington has expired.

(By unanimous consent, Mr. DICKS was allowed to proceed for 2 additional minutes.)

Mr. DICKS. Madam Chairman, in the Defense budget, let us talk about the Defense budget, of which intelligence is a part. I would want to point out to my colleague that there is $11 billion in the Defense budget for environmental restoration. An enormous amount of money is being spent to fix up bases that need to be fixed up, to work on bases that have environmental problems. That is certainly important.

Mr. FRANK of Massachusetts. If the gentleman will yield, I agree.

Mr. DICKS. We also have done about $4 billion on defense conversion. I see our colleague, the gentlewoman from Colorado [Mrs. SCHROEDER], who has been a leader in crafting that part of the bill. Defense conversion is another significant activity funded by the Defense budget.

What I am trying to point out is, for example, in the Defense budget there is aid to the Soviet Union. We are taking a significant amount of money and using it from the Defense budget for aid to the Soviet Union, because we think that is in our national security interests. We are sending our troops to Somalia in a peacekeeping mission to deal with hunger. Those are the new issues of national security as we proceed toward the 21st century.

I think the CIA is totally proper in looking at environment and these other issues as part of the new challenge.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman continue to yield?

Mr. DICKS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. First of all, much of what the gentleman talked about, most of it, is to undo some of the damage that occurred inevitably in the defense process itself, such as the environment conversion, and beyond that, I am not saying this is a waste of money. I am saying that it is a different order of importance from terrorism and nuclear proliferation.

I am saying that the intelligence community does have a wide range of things, some of which are very scary, and we absolutely do not want to even suggest that we interfere, such as nuclear proliferation and terrorism; some of which, however, is exactly in policy terms like the rest of the budget, and therefore, I think Members should not be told that the committee has decided "Don't touch it."

The CHAIRMAN. The time of the gentleman from Washington has expired.

(By unanimous consent, Mr. DICKS was allowed to proceed for 30 additional seconds.)

Mr. DICKS. Madam Chairman, I would say this, that we have a priorities debate when we do the budget. We have the Black Caucus which will present a budget. The gentleman from California [Mr. MILLER] has his "pay-as-you-go" budget. That is where we should argue about these priorities.

We made a decision earlier this year that we were going to allocate a certain amount of money for defense and national security. What we are really talking about here today is how much of that is going to be in the intelligence arena, how much of it is going to be in the defense arena, and the gentleman is quite correct. The Congress could decide to rescind some of the money for deficit reduction.

Mr. DORNAN. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I was listening carefully to the remarks of my colleague, the gentleman from Illinois [Mr. HYDE] and to the remarks of Mr. LEWIS, a new member of the committee, and to the remarks of the gentleman from Nevada [Mr. BILBRAY] today. It occurred to me that maybe I was wrong years ago when I objected to the committee size growing.

At that time we had a gang of eight, the chairman and the Speaker and both the leaders over in the Senate, the majority leader here, the Republican leader; the gang of eight, and then it was a very small committee, and it was constituted originally in 1976 under our distinguished colleague, Eddie Boland.

Now I am beginning to think that maybe we ought to expand the size of the committee, double it, to encourage more Members to come upstairs and do what they can do anyway. That is to read what the Permanent Select Committee on Intelligence accomplishes. There is only a tiny percentage of it which is top secret material, usually code words, that a Congressman cannot have access to.

Who informed me as a freshman here in 1977 that I could have my office swept, the Hill was crawling with more agents in those days, and some willing dupes; that I could have my office swept and get 99 percent of the briefings going on upstairs in the new Committee on Intelligence in my own office, personally; that I could go overseas, and if I had my wits about me, ask to talk to a station chief and get an in-depth briefing?

It should be clear to anybody here today that once they have served on that committee, it may not influence their votes out here on the floor, but no longer do they rise and speak for cuts in our intelligence budget. It just does not happen, by the routine of Members' duties as a member of the Permanent Select Committee on Intelligence. They are forced by attendance and decency to go upstairs and learn how dangerous this world continues to be, and what this committee in trying to do.

Mr. LEWIS of California. Madam Chairman, will the gentleman yield?

Mr. DORNAN. I am glad to yield to the gentleman from California.

Mr. LEWIS of California. Madam Chairman, by way of asking the gentleman a couple of questions, he and I have discussed in the past concerns about the fact that we are shrinking our national defense budget so rapidly that we may be, once again, repeating past mistakes.

Setting that aside, there is a preconceived notice that as we shrink the defense budget, that we automatically ought to shrink at least as much intelligence funding.

I would ask the gentleman, is it not just the reverse, the opposite? If we are going to shrink our defense money, do we not need to make sure that the President has the best information available, and that the appropriate committees around here have the best information available?

Mr. DORNAN. Madam Chairman, I would say to the gentleman from California, it should be an axiom for any country that treasures its existence, going all the way back to Sun-tzu, a millenium ago, that we must increase our intelligence capability if we are drawing down on our defenses. No matter how dry you keep your powder, when you are letting qualified men and women go from our defense structure, you have to have more intelligence.

This is the first day in the well that I have ever had the opportunity, Madam Chairman to say this. This year, this year, coming up, is the year when our deficit spending, the red ink, about $302 billion, will be ahead of what we allocate for national security, which is $294 billion, if we include all of the Department of Energy moneys on atomic affairs.

□ 1200

Mr. LEWIS of California. Will the gentleman yield again?

Mr. DORNAN. I yield to the gentleman from California.

Mr. LEWIS of California. Madam Chairman, in that context then, would the gentleman agree with this: If we were to shrink this budget by this $500 million or this one-half billion, recognizing that we have a several billion

dollar shortfall in the Defense Appropriation Subcommittee, that this half-billion dollars would be gobbled up for more defense spending?

Mr. DORNAN. That is the opening of my remarks, I say to my colleague from California. This is not going to be a savings. This is not going to go to flood relief, not to all of the tragic problems in this country that the distinguished gentleman from Vermont pointed out, not to families with dependent children, not to permit restoration of a better earned income tax credit. It is just going to fall back into defense moneys and be used for some program that does not have nearly the same priority.

Mr. LEWIS of California. I thank the gentleman for that clarification.

Mr. DORNAN. You bet.

I want to discuss briefly the counterterrorism program. But I want to point out something else about people getting in this well and talking about the cold war is over.

First of all, I wish that they would pump a call to the White House because my calls are not answered by Mr. Clinton, and ask him to tell the reason why he had his only good week in the last 6 months in Japan, which was because he was briefed to the nth power over all of the other six, and the visiting Belgium Prime Minister. He was briefed so far beyond them on what was happening in the world that he glowed, and then he came home to more domestic problems.

There is more to this than just counterterrorism.

The CHAIRMAN. The time of the gentleman from California [Mr. DORNAN] has again expired.

(By unanimous consent, Mr. DORNAN was allowed to proceed for 2 additional minutes.)

Mr. COMBEST. Madam Chairman, will the gentleman yield?

Mr. DORNAN. I yield to the gentleman from Texas, and I know what he is going to say is going to be good.

Mr. COMBEST. Madam Chairman, I just cannot let the discussion between the two California colleagues go, leaving any uncertainty of impression. I agree, and you know I agree that at a time of defense reduction intelligence should go up. I want to make certain there is no misunderstanding about the fact, however, that intelligence, in fact, if you put the lines of expenditures of the last 2 years of intelligence and defense, intelligence has actually gone down greater percentage-wise than defense. So it is not that we are spending more money on intelligence percentage-wise. We are actually spending less than we are in defense.

Mr. DORNAN. If C–SPAN tells me correctly, the figures we have is a million or more people are watching, and about half of that is different from yesterday, and the point was emphasized at least 10 times yesterday, and we cannot emphasize it enough. We are going down proportionately more in intelligence than the defense budget.

But before I read something about counterterrorism, let me make an observation here. When people come in this well and say we have won the cold war, the first question that pops in my mind is what did you do, you personally, whoever is standing at this lectern or the other to bring about a victory in what John F. Kennedy called the half a century of twilight struggle against an evil empire? I think that of course if someone was F–1, someone was a woman and we were not drafting women at that time, I am not talking about that, I am talking about service to your State, your country, votes for defense budgets, support for the military, talks at the American Legion, the VFW club. There are a lot of ways to serve other than wearing the uniform. But for people who never wiggled a pinky in their entire adult life, and if anything made the case for the moral equivalency, and sometimes even made the case for the innate goodness of the evil empire, even going so far as to say that Ronald Reagan was the problem with the world, and that Andropov was possibly a closet liberal who maybe listened to classical Western music, and even possibly occasionally to a rock record in his closet in the Kremlin, for people like that to get up here who never get intelligence briefings, never ask the CIA to come to their offices and talk about a victory in the cold war, immediately I think of the Lone Ranger when Tonto said, "What do you mean 'we' White Man?" I would like to know what they did do to win the cold war when they talk about the fruits that we are going to reap from it.

The CHAIRMAN. The time of the gentleman from California [Mr. DORNAN] has again expired.

(By unanimous consent Mr. DORNAN was allowed to proceed for 1 additional minute.)

Mr. DORNAN. I am going to put in the RECORD the counterintelligence programs that the Director of the Central Intelligence Agency, Jim Woolsey, came back and told us about on what is going on in Managua with arms caches, soldier-fired missiles. This is good stuff on Managua, Madam Chairman. Please read it in the RECORD. It was in there yesterday too.

Any deeper cuts will have a devastating effect on our Nation's intelligence and its capabilities, at the very time when we need them the most.

I repeat where would this money go that some would cut today? It wouldn't go for flood relief in the Midwest; not to families with dependent children; not to permit a restoration of better earned-income credits in the budget reconciliation. No, it would just fall back into the Defense authorization bill and be used for some other program that does not have nearly the same priority.

This budget funds major counterterrorism programs, the type of program which helped apprehend the World Trade Center bombers. Terrorism is on the rise, including State-sponsored terrorism. Last March 9, Director of Central Intelligence Jim Woolsey testified before our committee in open session, which is very rare. I asked him about the Nicaraguan passports that had been found in the possession of the alleged perpetrators of the World Trade Center bombings. He didn't have any information at that time. Since that time, however, we have found that elements of the government of President Violetta Chamorro and her son-in-law, Antonio Lacayo, have continued to support terrorism elsewhere abroad. A massive arms cache blew up in Managua on May 23. In that cache, were found sophisticated surface-to-air missiles, shoulderheld SAM missiles, that had been owned by the FMLN Salvadoran guerrilla group. The FMLN organization and the Sandinistas were called boy scouts from that lectern, had solemnly pledged that it had turned in all of its weapons to the United Nations. Shortly thereafter, another faction of the FMLN also admitted to having weapons caches. Now, we are all hopeful that things will continue to go well in El Salvador, and that the violence of the 1980's has changed to an age of rebuilding, with expectations that democracy will flourish, but the FMLN weapons found in Managua argue for us to keep a robust intelligence watch on events there.

Some divisions of the Nicaraguan government are aiding other terrorist organizations, such as the Basque Separatist Movement, the ETA. In fact, three members of that group were deported by Mrs. Chamorro shortly after the May 23 explosion. How are we going to monitor developments such as these in Nicaragua? We are going to monitor them through American intelligence. American intelligence is our first line of defense. It was the FBI's counterterrorism division that quickly found the perpetrators of the World Trade Center bombing, and equally importantly, rounded up the ring that was planning on blowing up several tunnels in New York City, as well as the United Nations headquarters and the Federal building in Manhattan.

I simply cannot understand why someone would be here, standing on this floor, saying, "Let's cut the budget some more." Mr. Chairman, let's act responsibly. I believe we have cut too deeply here, but I will vote for this bill. Every Member who understands history should vote for H.R. 2330.

Mr. GLICKMAN. Madam Chairman, I move to strike the requisite number of words.

Mrs. KENNELLY. Madam Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentlewoman from Connecticut.

Mrs. KENNELLY. Madam Chairman, I would like to say that there are many unsung heroes, those station chiefs all over this world that did a great deal to end the cold war. This debate goes beyond the discussion of reasonable cuts. We have an outstanding intelligence worldwide community. Yes, we all have to cut back, but not to the point of damaging a professional, effective well trained intelligence corp. Yes, the world has changed—but that doesn't

mean the number or locations of problems requiring intelligence analysis is reduced to the point that we relax our guard. While we are less at the risk of nuclear annihilation there are still incredibly dangerous threats to our country and our citizens daily. Need I remind you today of the World Trade Center bombing. The heartbreak of those families of those on the Pan Am flight from Germany. We are a country with a proven and trained intelligence community. If we are to remain the major world leader—yes be fiscally prudent but not fool hardly.

Mr. REED. Madam Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Rhode Island.

Mr. REED. Madam Chairman, I rise in opposition to the amendment.

The gentleman from Massachusetts has long taken a very active role in ensuring that the needs of America are served, and I have supported him in many of these efforts. But I have done so particularly with respect to cutting the troop forces with the understanding that we would maintain a strong, vigilant, and active intelligence operation.

As a member of the committee, I can assure Members in this budget we do. We have looked very closely, very skeptically at all of the programs, and as a result we have reduced that budget by $1 billion, and we present to the House today a budget which is fiscally responsible, but also meets the needs of a very complex and dangerous world.

The presumption of this amendment and other amendments that have been offered is that the world has changed and that we must reduce our spending on intelligence, and this is precisely the presumption that this committee took to a close line-by-line analysis of the budget. The result is the cut that we have announced today in this budget of more than $1 billion.

The world has changed. But it is no less dangerous than it was before the demise of the Soviet Union. It has changed in many different respects. The change can be seen by simply reading the newspapers. A week ago in Kazakhstan the Russian forces killed approximately 100 guerrillas what were flowing into Afghanistan. Two days ago the Russian Governor in Ossetia was assassinated by tribesmen on horseback. If you look at other areas of the world which are turbulent and violent, we have interests and involvements for which we need an active intelligence service.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, I thank the gentleman for yielding. And I thank the gentleman from Rhode Island because he has raised here what clearly is the fundamental difference between me and many of my colleagues. When he says the world has changed, and it is no less dangerous, I acknowledge there are great dangers. I want to leave 98 percent of the budget you have asked for there. But when people tell us that the demise of the Soviet Union, the dismantlement of the Soviet military empire, the ending of the Warsaw Pact, the defection of all of the Eastern European countries, when they tell us the world is now no less dangerous, I think that loses credibility. And I would be glad to have this be a surrogate for that. If you believe that with the collapse of the Soviet threat against our very existence as a Nation we are no safer today, and I am sorry that the Governor of Ossetia was killed by men on horseback, but I do not think that the same magnitude of threat that we faced 5 years ago exists, and that defines the difference between us.

Mr. GLICKMAN. I continue to yield to the gentleman from Rhode Island.

Mr. REED. I thank the gentleman for yielding.

I would note to the gentleman from Massachusetts that in the long course of the cold war the Soviet Union did not manage to destroy a major building in one of our major cities, but in fact terrorists operating apparently, and we are trying to find out the source of their inspiration, managed to do that. So the world indeed is dangerous, and the threats are close to home here in the United States.

We are seeing political revolutions around the world. We are seeing revolts, we are seeing the deployment of American forces. We have forces today in Macedonia. We have forces in Somalia. All of them require the utmost in intelligence to protect them, and also to accomplish the mission which this Congress has authorized. In the case of Somalia it is humanitarian relief. In the case of Macedonia, it is to control a very dangerous situation.

As we read the papers each day, every day this week there has been discussion and debate at least about whether we will conduct air strikes in association with NATO in Bosnia. I hope the President of the United States has access to the highest quality of intelligence available, SIGNIT and HUMINIT, and all of the others to make the very, very difficult decisions which are necessary. I would hate to see a situation where he is facing a decision like this without those resources.

But let me say something else. Not only are we engaged in political revolution around the world, not only do we have that type of knowledge, but we are facing a technological revolution. Today telecommunications is expanding tremendously high-capacity channels, from analog to digital. All of these require a tremendous investment in our technological infrastructure, which is included in this bill.

I see on television commercials by AT&T allowing an American citizen, a citizen of the world to put their baby to bed at night, looking by putting their card in and watching. Those types of telecommunications revolutions also have impacts on our ability to intercept signals, to use SIGNIT effectively. This bill recognizes that. This bill recognizes that we have to not only deal with the political instability of the world, which is much greater in many respects, and different, but also the technological revolution. I thank the gentleman from Kansas for yielding.

Mr. COMBEST. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in opposition to the amendment. In the debate of both today and yesterday, Madam Chairman, I am struck by the proponents' consistent and constant repeated references to the fall of communism and the dissolution of the Soviet Union as though these events had happened yesterday, and that all of a sudden we must this year execute an about-face in our intelligence policy.

□ 1210

I would like to invite those who propose cuts in the intelligence budget this year because of those monumental events to join us here today, August 1993. And when we make the transition to this year, I would remind them that we are discussing the intelligence authorization for 1994.

This may come as a surprise to those who think that the final days of communism in the Soviet Union were yesterday or even last year. I hope they will listen to just two facts. One, the Soviet Union began its unraveling not this decade but in the late 1980's. The Berlin Wall was 4 years ago, not this year, that it began to come down.

While this is obviously news to some, those developments were not lost on the Intelligence Committee or the intelligence community, and I think the vast majority of this House. We took those events into consideration, and we have acted on them accordingly over the past few years. Specifically the Intelligence Committee and the Congress as a whole have, since the beginning of the 1990's, helped the intelligence community totally to begin totally to revamp its priorities, to revamp its collection efforts and its deployment of resources.

It is also for that reason that the Intelligence Committee has for the last 2 years cut the intelligence budget significantly below its cold war levels.

May I throw in another fact here, Madam Chairman: During the 1980's, upward of 60 percent of our intelligence resources were devoted to the Soviet Warsaw Pact threat. Our total resources given to that region and the

former Soviet Union are significantly less than half of that today and are moving downward. Those that remain have been totally redirected. Those that remain have been totally redirected and are concentrating on following the new intelligence issues that are now manifest in that region. Regional instability in the countries of Eastern Europe and Central Asia, the political dynamics of the new fragile governments, the disposition of thousands of nuclear-tipped missiles which may or may not be under the control of sane, central governments, the spread of radical Islamic and other ideologies, so forth and so on, this is not business as usual. This is not the first time that the cold war issue has been addressed.

We are looking at the intelligence budget today, and this is not the issues of the cold war.

Mr. SKELTON. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I am happy to yield to the gentleman from Missouri.

Mr. SKELTON. Madam Chairman, I thank the gentleman for yielding.

It seems that so many people forget the purpose of intelligence. It is so that our country, our Nation, our national security will not be surprised by some unseen event.

We have been surprised in years past, decades past, the shot at Sarajevo that brought us into World War I, the North Koreans and China coming into South Korea, World War II, Hitler's rise, all of these things need to be known about ahead of time, and I might point out to the gentleman that in what used to be the Soviet Union today there are seven armed conflicts going on. Hopefully, we will not get involved or be brought indirectly through the back door in any of them.

But we must, through our intelligence sources, know of these things.

I associate myself with the gentleman's remarks. We cannot cut this any more than the Intelligence Committee already has.

Mr. COMBEST. I would just, Madam Chairman, reiterate one other thing. I think the Congress asked the committees to go and look carefully at where can cuts be made. There are cuts in here beyond where I wish they were, but I think there is a reality that also has to be recognized.

But if this is the continual message that we sent the authorizing committees, that they go up, they do the hard work, make the hard choices, do the hard work and still come to the floor and get further cuts, what is the reason for the authorizing committees to do it. Why not go up, make the budget significantly larger than we know we have to have it because we can anticipate the fact that regardless of how well we do our job, regardless of how deeply we have cut, regardless of the pain that we may have inflicted, we are going to come to the floor and get it cut anyway? We would have been better to come to the floor significantly larger. We could have come to the floor at the President's request, and we would have gotten a cut. We may have gotten away with more than we have gotten away with here, but do not ask the authorizing committees to go and to do the hard work, to make the hard choices and then come to the floor and face the same cuts that we would not be facing otherwise.

The CHAIRMAN. The time of the gentleman from Texas [Mr. COMBEST] has expired.

(By unanimous consent, Mr. COMBEST was allowed to proceed for 2 additional minutes.)

Mr. GEJDENSON. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I am happy to yield to the gentleman from Connecticut.

Mr. GEJDENSON. Madam Chairman, without commenting on the merits of the amendment offered by my friend, the gentleman from Massachusetts, would the gentleman examine his own record? Has the gentleman never voted for a cut of an authorizing committee after it has done its work?

Mr. COMBEST. Absolutely.

Mr. GEJDENSON. You have?

Mr. COMBEST. Absolutely.

Mr. GEJDENSON. And what does the gentleman from Massachusetts propose to do here? He is proposing to amend the good work of the gentleman from Kansas with a cut, and so it seems to me that without the merits of this case being addressed, everybody does this occasionally.

Mr. COMBEST. No. I understand.

Mr. GEJDENSON. Everybody does this occasionally.

Mr. COMBEST. These are arguments we anticipate. Obviously we have to establish priorities, where are our concerns, what are out interests. But I will say to the gentleman this, that in those instances where I have made further reductions, I know specifically where the reductions are coming. I know exactly what the impact is going to be. I know exactly what the program is going to be that is affected by it, and I will indicate that this is a unique committee. Certainly I would think any of us who serve on it find it somewhat unique.

But this is a situation to where we deal with extremely highly classified information. We have tried to make that as available as possible to any of the Members who wish to come up and look at it, and it is not something that is going to simply be known by a wide range of people what the impact of those cuts is going to be.

I know that if I move to cut agriculture or education or something of some other method in the House, that, in fact, what those impacts will be, but it is very difficult to have the information broadly recognized, and we have gone to, I think as it has been noted on the floor, the widest extent ever possible to try to inform as many Members who are interested, and I will admit that the gentleman from Massachusetts went to the committee and looked at what that information is to realize the impact of it.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I am happy to yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, I thank the gentleman for yielding.

The point is that I do have a pretty good idea of what I am talking about. The point is the intelligence community does some things that are essential to national security. It does some things in the area of economics, in the area of the environment, in the area of food supplies, acknowledged facts which are less important.

My point is the gentleman is trying to put it all under the same rubric.

The other thing that I think I do know without having been on the Intelligence Committee, the collapse of the Soviet Union has lessened the danger to the United States.

The CHAIRMAN. The time of the gentleman from Texas [Mr. COMBEST] has again expired.

(By unanimous consent, Mr. COMBEST was allowed to proceed for 1 additional minute.)

Mr. COMBEST. Madam Chairman, to respond to the gentleman's comments, those are not new programs that are being created in the intelligence community, to go out and to look at the environment, to look at agriculture, to look at economics or whatever. That is taking existing resources and making the maximum use. If we are going to have them up there, let us look at the environment, let us see what is happening around the world, let us look at crop reports. I could not come to the floor, in all good conscience, and suggest to the gentleman that we ought to be spending more on creating entirely new satellite programs or whatever to go around the world and look at the environment, but if they are going to be there, let us do it. Let us utilize them to the maximum extent possible, and I think that is exactly what is being done.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. The point is that it takes personnel, and you have to pay to do that. It is simply illogical to say that because we have the physical capacity, therefore, this helps drive more and more budget higher and to hire more people to analyze it.

Mr. COMBEST. Certainly it takes them to analyze it, but they are sitting

there analyzing anyway, and I will remind the gentleman that under the requirements of the Committee on Intelligence, we are forcing the Central Intelligence Agency and other intelligence agencies to reduce by 17½ percent in the next 5 years.

Mr. RICHARDSON. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in opposition to the amendment.

I think that the gentleman from Massachusetts [Mr. FRANK] is one of the more thoughtful Members in this body, and he deserves some answers.

I would give him two. First, one of the reasons that I think is paramount is the fact that President Clinton has basically stated in a letter to the chairman of our committee that he opposes further cuts beyond what has been done by the Intelligence Committee. He states, "Therefore, I will oppose any amendment on the House floor which seeks to reduce intelligence spending beyond the reductions already proposed by the committee."

Now, the reason I say this is some of my colleagues have mentioned the argument about spending in other areas.

The gentleman from Vermont [Mr. SANDERS], a very thoughtful Member, talked about immunizations, children's programs, domestic priorities. And I do not think there is anybody in this body who can question President Clinton's commitment to domestic spending to children. I think it is evident in the reconciliation bill, the very strong commitment that he has had since he has been elected.

But I think the gentleman from Massachusetts [Mr. FRANK] asks a very legitimate question. He says, what is going to be the impact on the Intelligence budget of his cut? And I think he deserves an answer.

Terminated would be a space-based imaging system, terminated also would be the merger of other space-based collectors, certain airborne-sensor programs, there would be a slowdown of signals-intelligence collection modernization, and there would also be a slowdown of the upgrade of computer, communications, and other equipment.

What would also be reduced would be intelligence systems deployment to tactical military units, operations of space and undersea warning sensors, personnel training and military exercise support, equipment and facilities maintenance, research and development on many programs, and a reduction of the work force on all programs.

□ 1220

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I thank the gentleman for yielding.

Madam Chairman, I am impressed with that list, but more by its longitude than anything else. My proposal is for a cut of one-half billion dollars. Could the gentleman tell me, first of all, who decided—first, the half-billion dollars tells the intelligence community that it can allocate that among itself. Nothing in my amendment requires any specific thing other than the half-billion-dollar cut.

Second, I would like to see, if I could, how much approximately was involved there. I will look at it privately. I realize we have the security matter. But I will tell the gentleman that I am quite skeptical. It sounds to me like the Washington Monument syndrome: All those things out of a half a billion dollars? How much? Slow them down? Slow them down by a week? Slow them down by a month?

We have said in this amendment they get to cut half a billion dollars out of a budget that approaches $30 billion any way they want to. I would really like to see the breakdown. I would like to know who decided that is exactly how it would be done.

Mr. RICHARDSON. Reclaiming my time, I think the gentleman has been very industrious in going up to the committee and looking at the exact breakdown of the Intelligence budget. This is information that has been provided to me by the staff of the committee. Let me just remind the gentleman the chairman and the ranking member of our committee already cut close to 4 percent from the initial request and close to 4 percent from last year's authorized level. I think when you look at Intelligence, I think the gentleman will recognize that we have some new threats. We have threats of counterterrorism, nuclear nonproliferation, drugs. We face a very uncertain world, and you cannot all of a sudden just downsize in a dramatic fashion.

They are taking cuts. What we are simply doing, as I have stated before, is supporting the President in his request. The Director of the CIA has been unusually candid and approachable by members of the majority and the minority. He has spoken in our caucus, he has spoken in the Republican caucus. I just think that we should respect that view.

The committee has taken significant cuts. I have told the gentleman in the list that I gave him what specific programs would be hurt, would be terminated. And for that reason, I think my colleagues should be aware that the gentleman's amendment would have an adverse impact, one that I think we should not take. But he deserves answers. He has been very industrious in trying to get these answers. This is a very legitimate debate.

The CHAIRMAN. The time of the gentleman from New Mexico [Mr. RICHARDSON] has expired.

(On request of Mr. COMBEST and by unanimous consent, Mr. RICHARDSON was allowed to proceed for 1 additional minute.)

Mr. COMBEST. Madam Chairman, will the gentleman yield?

Mr. RICHARDSON. I yield to the gentleman from Texas.

Mr. COMBEST. I thank the gentleman for yielding.

Madam Chairman, I just want to further—because the gentleman is making reference to hard cuts, and I do not know whether he is still on the floor or not—but the gentleman from Connecticut questioned where is our voting consistency. I think the gentleman will find that in those instances where there have been significant increases in committee, I have voted to reduce. but when there are instances where committees have come out at a level close to freezing, then I have voted to support.

It is the hard cuts that I am talking about. It is not just that you go in and the committee works its will and whatever the committee comes up with will be what the House accepts; but where you are willing to make the hard cuts and come out with a freeze well beyond what this President has requested, I think we should be very careful that we give those committees credit for doing the hard work, not just simply the fact that they may come out with a significantly larger increase.

Mr. BEREUTER. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I want to divide my remarks into two areas this morning: First of all, to ask the House to think a little bit about the relationship between the leadership and the Intelligence Committee; and to ask them to think about the relationship between the Intelligence Committee and the House.

First of all, I hope all Members will understand that the Speaker, and, with the consent and advice of the minority leader, chooses the members of the Select Committee on Intelligence. If you take a look at the people who serve on that select committee today, they are not of a stripe, a single stripe; they are pretty much across the whole ideological spectrum of the Democratic Party, and we certainly have moderate to very conservative members of the Republican Party serving on the Intelligence Committee.

Furthermore, we are appointed or selected to serve no more than 6 years, 8 in the case of the Senate. That is to assure that, in contrast to what the gentleman from Vermont said, we do not represent an agency. It is to ensure that we do not become coopted by the intelligence community, so that we have a period of time to come in and focus our intellect, our time, and the resources that we can muster on the oversight and authorization functions

for all of these agencies within the intelligence community.

Are we parochial? I suppose everybody is a little bit parochial. But I would like to suggest to you that the way this body is chosen, the select committee, makes us less parochial in what we do in conducting oversight than any other committee. I say this because on both sides of the aisle, we are chosen to represent at least four committees of the House: The Committee on Armed Services; the Committee on Foreign Affairs; the Committee on the Judiciary, for the counterintelligence/counterterrorism functions; and the Committee on Appropriations.

Yes, there are members from other than those committees who serve as well, but those of us from the four committees are asked to be there to bring our perspective from our committees and the service that we have had on those committees to the function of the oversight of the intelligence community. And we are to serve as the liaison with the leadership for those committees from both sides of the aisle.

Those are the functions that we are selected to pursue. That is why I suggest that, while we do not ask the gentleman from Massachusetts [Mr. FRANK] or any other Member to disengage their intellect, to set aside their responsibilities to conduct oversight, there is a special responsibility that we have been given on the Select Committee for the House of Representatives. We do deal with extraordinarily sensitive information at times. In fact, some Members come up to me and to other members of the Select Committee and say, "Is what you deal with really that sensitive, really that secretive?" Ladies and gentleman of the House, sometimes it is.

All of us, I think, having served there a while, come to understand there are many events of terrorism that do not take place, there are equipment or ingredient components for weapons of mass destruction that are not delivered, for example, because our intelligence community has intervened very quietly in a fashion that never reaches the public's attention. I have given you only a couple of examples of many unheralded successes.

So I think it is for some of those reasons that we have come to have a special responsibility for the House and a commitment to assure that we maintain the intelligence necessary to protect our national security and our citizenry. Because of the security classification of the subject matter before the Select Committee, we are at a disadvantage on the House floor in defending in detail the recommendations we bring to you. Likewise the Members are at a disadvantage in attacking the budget suggestions we bring to you. I understand that is a difficulty. But if you can think of a better way for the House to conduct this sensitive oversight, then I would like to hear it.

I think that the challenges offered us by the gentleman from Massachusetts [Mr. FRANK] today and yesterday are appropriate and by the gentleman from Vermont [Mr. SANDERS] for they prompt us to provide to you as much information to the House about the budget for the Intelligence Community as possible. I do think the gentleman from New Mexico [Mr. RICHARDSON] has gone a long way in explaining the impact of the Frank amendment cuts in his recent comments.

One final point about the Select Committee: We cannot take the chance of faking it, of overstating our budget requirements for the Intelligence Committee when we come to you, because we understand we are in some difficulty defending whatever our recommendations are because of the nature and sensitivity of the information with which we are provided and which we utilize.

So, we are more likely than any other authorizing committee to bring you our very best and realistic budgetary effort, without padding and nothing more.

Second, this morning I would like to follow up on a few comments that were offered yesterday when the gentleman from Vermont [Mr. SANDERS] offered his amendment, because I think those comments may underlie some of the arguments and thoughts of people who may be tempted to vote for the Frank amendment here today.

To support their contention that the intelligence budget was fat and supports cold war systems, they made repeated references to a Congressional Budget Office study of February 1993, which is entitled "Reducing the Deficit: Spending and Revenue Options."

□ 1230

The CHAIRMAN. The time of the gentleman from Nebraska has expired.

(By unanimous consent, Mr. BEREUTER was allowed to proceed for 3 additional minutes.)

Mr. BEREUTER. Madam Chairman, I thought at the time perhaps they were reading a different report than the one I remember. In fact, the construction was very different. I have gone back to refresh my memory about that report. I must tell you that they reach a very different conclusion than this Member and a different one than I think you would too, if you looked at the report.

First of all, they said that there was support in the report for a 10-percent budget cut in the fiscal year 1994 Intelligence budget, and that they were being generous to the Intelligence Community in only proposing a 10-percent cut because the CBO report had suggested a 20-percent cut would not hurt the capabilities at all.

First of all, the CBO report attached an incredible string of qualifiers and caveats to their contention and to their figures.

Second and most important, I will point out, the CBO was suggesting the possibility of a 20-percent cut over the next 5 years, not 10 percent in 1 year. And, indeed, we have already brought you a budget that is 3.7 percent less than the President had asked. It is 6 percent less than the baseline from last year, and so we are on a glide path to easily meet the 20-percent cut in 5 years that the CBO says may be possible.

Finally, on the CBO report, let me give you a few additional comments about that CBO report and what it says about some of our satellite and technical programs which are indeed very costly elements of our Intelligence budget and what it says about cold war collection systems.

May I also suggest it also says something about United States-Russian relations that we ought to hear, because it addresses this question of how dangerous the former Soviet Union's republics are to our national interest. Here is the second to last paragraph in chapter 2 of that report:

> Major changes in U.S. intelligence operations, though probably feasible given the dissolution of the Soviet threat, must be made with a good deal of caution. Most intelligence assets cannot be directly and exclusively related to the Soviet threat. Even if that was their primary focus in the past, they generally had other important missions that have lasted beyond the end of the Cold War. Moreover, in a period of increased trust and disarmament between the United States and the former Soviet republics, having very substantial intelligence capabilities—even if they involve some redundancies and some capabilities that may be larger than historical norms—may provide a prudent and economical form of insurance against volatility in central Eurasia. Consequently, reductions in intelligence funding, though they may be feasible, should be attempted only if waste or inefficiency has been clearly identified.

Madam Speaker, this committee has brought you a recommendation that takes into account the need to cut any waste and inefficiencies. If there were any such areas, we have attempted to strike them.

So let me conclude these remarks, my colleagues, by saying that the Intelligence Committee has been fully engaged in specific cuts, as the CBO report suggests we should be. We have taken seriously our responsibilities to make the hard choices, to weigh costs and benefits of specific programs after hearing and exhaustively studying the options and the cautions presented to us by the CBO and other sources.

So I would suggest to my colleagues, it is important that you oppose the Frank amendment today, and I ask you for that vote.

Mr. EDWARDS of California. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, in the work that I do as chairman of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, which

has jurisdiction over the FBI, we collaborate and work very closely with the members of the Intelligence Committee and, of course, their very excellent staff that is very cooperative and helps us a lot and we try to help them, because a lot of the work that the FBI does has to do with espionage and counterespionage and other important intelligence issues.

I think we ought to remember a little bit about the history of both the FBI and the CIA. I have been here a long time. I think that under chairmen like the gentleman from Kansas [Mr. GLICKMAN] and the previous chairmen in the last few years and under the good members from the other side, the CIA has come into a new era. It is a vastly improved organization.

I do not think we should ever forget the bad old days, and let me tell you, they were terrible. The CIA was described as a rogue elephant, and this happened just up to a few years ago when the CIA secretly hired a secret army of several hundred thousand people in Nicaragua and carried on without the knowledge of the American people a very expensive and divisive war. But I cannot blame the CIA today for what they were doing then or the FBI for what it did in the COINTELPRO and all those things, not only immoral, but in many ways illegal. Those days are over, I assure you, for the FBI and they are over, I am happy to say, for the CIA.

But I think it is our job in oversight, and this is a good committee, this is I think the best Intelligence Committee in my experience, I am sure they have in mind that when any agency, and especially a police agency or an intelligence agency, finds that they are running out of work or have less responsibility, and this happened to the FBI, I assure you, and they want to get into some new things, into some new expensive data banks on gangs and things like that we say, "No, you stick to your work. You stick to catching terrorists and crooks and putting them in jail. That is what we hired you for."

I am happy to say that the gentleman from Kansas [Mr. GLICKMAN] has pointed out to me on a number of occasions that he has a narrow view of the responsibilities of the CIA. It is getting those terrorists and doing the things that have to do with the national security of the United States.

So let me come to this, and I hope the chairman of the committee will respond, because it has to do with the excellent debate we have had here, and I think we all should be grateful to the gentleman from Massachusetts [Mr. FRANK] and to the gentleman from Vermont yesterday. I think a lot of important things have been said, and certainly all of us have done more valuable thinking than we have done in a long time about the CIA and Intelligence generally.

I was shocked an hour or so ago to find that the CIA is about or interested in getting into new areas that really do not have very much to do with what I consider the security of the United States.

Somebody had a Washington Post article there, stating the CIA is considering getting into global issues, the environment, immigration, refugees, epidemics, world food supplies.

I know that in this bill there is a provision to help high schools train science students. And industrial espionage. Most of those items, I would say, if the CIA is going to go into these areas, they should be authorized by this committee and they should be subject to debate.

Mr. GLICKMAN. Madam Chairman, will the gentleman yield?

Mr. EDWARDS of California. I am happy to yield to the gentleman from Kansas.

Mr. GLICKMAN. First of all, Madam Chairman, let me just mention that the fact of the matter is that the Intelligence Committee ought to be focusing primarily if not exclusively on those things that directly relate to the national security of the United States. That would mean terrorism, proliferation, the kind of conflicts that could result in military action, and then support of our military forces.

I have done my best to encourage the intelligence community not to venture into other things that do not directly relate to that. I think there is less of that than there used to be.

I have read the same story. I have found out that it is actually the State Department that asked the intelligence community to provide backup for the global issues.

The CHAIRMAN. The time of the gentleman from California has expired.

(At the request of Mr. GLICKMAN, and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 3 additional minutes.)

Mr. GLICKMAN. Madam Chairman, if the gentleman will continue to yield, the State Department asked for intelligence community support for former Senator Writh's new position in the area of epidemics, world food supplies, primarily to get a better collection of intelligence so the State Department would then know more about what they needed to do on those issues.

I submit that this is a very, very small effort. We are going to oversee it quite effectively to make sure that it is not an excessive effort.

I have been somewhat concerned there may be some interest from perhaps the Office of the Vice President and others about environmental work in this area.

The committee vastly reduced those requests as well.

What I am trying to say here is, that unfortunately just because it was in the Washington Post this morning does not mean that that particular reporter understands from whence this came.

□ 1240

As I understand it, it came from policy makers in the State Department and the White House who wanted the intelligence support, but you have my assurance that we are going to do whatever we can to minimize things that do not directly relate to national security.

Mr. BEREUTER. Madam Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. EDWARDS of California. Let me yield first to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Let me say in fairness to the Washington Post reporter, and I do think fairness to reporters ought to be kept to a minimum, but sometimes it is unavoidable, that reporter does say this request came from the State Department, but that is part of my point, why we ought to be reducing it. On the one hand you say this is the CIA, this is the intelligence community, it is unique, and they have to get a greater degree of deference, both the committee and the agency. Then they start subcontracting for the State Department. If the State Department wants it, let the State Department put it in its budget where the Committee on Foreign Affairs and you can, both, look at it where it will get the usual scrutiny. That is my point. You are confusing time and time again in this debate the essential Massachusetts security issues of proliferation and terrorism and then something the State Department finds useful. That does not belong under that rubric.

Mr. GLICKMAN. Madam Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Madam Chairman, I just want to say that when the intelligence community embarks down some of these roads, we do say, "No," or we do say, "Stop it," and in some of the areas we have said——

Mr. FRANK of Massachusetts. They probably did not hear the gentleman this time.

Mr. BEREUTER. Madam Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Madam Chairman, I thank the gentleman from California [Mr. EDWARDS] for yielding to me. I think I can shed a little bit of light here, or perhaps help a little bit.

About 2 or 3 years ago, Madam Chairman, this gentleman was concerned after hearing some scientists from Europe discuss the level of the ecological disaster in the Soviet Union, and I found, with some great astonishment,

that some of the best information in the world on the level of ecological disaster in the former Soviet Union existed within this Central Intelligence Agency. It seemed to me only proper that I urge them to try to release some of that information to policy makers here and in the Soviet Union. In fact, we have better information than they did about some of their ecological problems and about their own morbidity rates related to ecological conditions.

Now that is information which the CIA did not go out and collect for release.

That information was on file, readily available within the CIA. There were analysts that were familiar with it.

The CHAIRMAN. The time of the gentleman from California [Mr. EDWARDS] has expired.

(On request of Mr. BEREUTER and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 1 additional minute.)

Mr. BEREUTER. Madam Chairman, if the gentleman from California would continue to yield, I would like to give him one additional example.

Not too long ago, this gentleman is willing to tell his colleagues, I asked members of the intelligence community, "Have they looked at the potential ramifications of an extraordinary AIDS epidemic in Africa? What would it do to the political institutions of the region? What would it do to the cultural base? What would be the ramifications for the United States of America?" And I think it was appropriate for them to begin to gather information that they had and to make some suggestions about alternatives scenarios and projections—not to make decisions, but to provide it to this Member so that we are assured that we have the intellectual elements on which our policymakers in the State Department, and the President and others, can make related decisions.

So, there are two examples of why it is possible, I think, that we can advantageously use information already available in our intelligence agency for a much broader and salutary effort.

Mr. EDWARDS of California. Madam Chairman, I reclaim my time.

The CHAIRMAN. The time of the gentleman from California [Mr. EDWARDS] has expired.

(By unanimous consent, Mr. EDWARDS of California was allowed to proceed for 30 additional seconds.)

Mr. EDWARDS of California. Madam Chairman, I appreciate the points that the gentleman made, and he is talking about incidental information that the CIA picks up in its regular duties. What I am talking about are new duties that the CIA and the FBI, or any police agency, or bureaucracy, will seek when they are starting to cut back on the work allocated to them by Congress. It is our job to tell the CIA what we want them to do and the FBI, what we want them to do. It is not up to them to decide on the money that we appropriate to pick up a number of new areas of investigation.

Mr. BEREUTER. Madam Chairman, will the gentleman yield?

The CHAIRMAN. The time of the gentleman from California [Mr. EDWARDS] has expired.

(On request of Mr. BEREUTER and by unanimous consent, Mr. EDWARDS of California was allowed to proceed for 30 additional seconds.)

Mr. BEREUTER. Madam Chairman, will the gentleman yield?

Mr. EDWARDS of California. I yield to the gentleman from Nebraska.

Mr. BEREUTER. Madam Chairman, I thank the gentleman from California for yielding.

I understand the distinction that the gentleman is making is entirely appropriate, that for new responsibilities, authorizations should be sought and given before they move into those areas. And I think you can count on this committee to give exactly that kind of scrutiny to proposed new activities to make sure they are authorized, and make recommendations to the Congress for any additional duties.

Mr. LAUGHLIN. Madam Chairman, I move to strike the requisite number of words.

Mr. GLICKMAN. Madam Chairman, will the gentleman yield to me for one quick comment?

Mr. LAUGHLIN. I yield to the gentleman from Kansas.

Mr. GLICKMAN. Mr. Chairman, I am just curious about how many additional speakers there are on this amendment. I am not going to limit them, but I would like to have some idea. There are three over here, and one here, and myself, and perhaps the gentleman from Massachusetts [Mr. FRANK]. He may be in part of the discussion.

I am just trying to get some idea of the time before. We are talking about probably 30 additional minutes before a vote.

Mr. LAUGHLIN. Madam Chairman, I rise in opposition to the amendment offered by the gentleman from Massachusetts [Mr. FRANK], and I would urge all our colleagues to vote against it.

While all Members of this body very seriously take the oath of office to support and defend the Constitution and the United States, I am proud of the experience I have had on the Permanent Select Committee on Intelligence, watching the committee operate under the leadership of our chairman and the ranking member, and I assure the gentleman from Massachusetts [Mr. FRANK] that the gentlewoman from California [Ms. PELOSI] indeed wanted far greater cuts, as did other members of this committee, and there were some of us, like myself, that thought we ought to have greater increase; in fact, increases in the intelligence budget because of the defense cut that this body has done. But we did not reach this budget figure based on averages or compromise. We did not reach this figure based on philosophical beliefs in the strengths or weaknesses of America or the intelligence community. We reached this after scrubbing through a lot of the programs and requiring the director of the CIA, James Woolsey, to come back to the committee several times. We reached this by having the programs that we knew we would cut, if we cut further, evaluated and explained to us, and many of us did not understand some of those programs.

So, Madam Chairman, this decision on this budget was reached through what was a proud moment behind closed doors, as it should have been, by people who are very liberal, and people who are very conservative, and people in between who were doing what they took an oath of office to do, and that is to support and defend our country, and that is how we reached this decision.

It is true, as the gentleman from Massachusetts [Mr. FRANK] has said, and the gentleman from New York yesterday, and the gentleman from Vermont, the Soviet Union does not exist anymore. No one debates that, and the threat is philosophical in our differences. But I would remind the gentlemen that today Libya, Iran, Iraq exist. Today they are funding terrorist groups, and it was not until this year in the history of our country that we had an act of terrorism at the World Trade Center. Nothing in the history of this country has happened to that magnitude, and, yes, there have been other attempts. But we should not know and talk about the successes of the intelligence community. We should talk about their failures because we can only analyze their failures and try to do better.

Madam Chairman, just as the Soviet Union does not exist today, the Abu Nidal organization exists, as does the Islamic Jihad, and the PLO, and the Japanese Red Army, all committed to acts of terrorism against our country and against our people whom we have supported to defend, and in response to one of the gentleman yesterday who made the comment that they got a lot of information out of the Los Angeles Times and the New York Times, not once in the years I have been able to read have I read an ad in the New York Times and the Los Angeles Times where any of these groups have run an advertisement that they were getting ready to commit some act of terrorism against the American people, and I would submit that not once in the future will any of these groups talk about running ads, or even consider running ads, in the New York Times or the Los Angeles Times.

Just today, if we think the Soviet Empire is gone, Madam Chairman, just

today, in the Washington Post which we do not have to rely on all the time, but just today it was reported that Iran has purchased another submarine, and guess what? They bought it from one of the Republics that used to be in the Soviet Empire. Indeed they bought it from the Soviet Union, from Russia, and while the Soviet Union does not exist anymore, certainly the nuclear weapons that were under control of the Soviet Union still exist today, as do the many weapons of mass destruction. Indeed it is worse in some respects. I would suggest that there are arms merchants in some of these countries who indeed are trying to sell some of these weapons to the countries that are pushing the acts of terrorism.

□ 1250

The CHAIRMAN. The time of the gentleman from Texas [Mr. LAUGHLIN] has expired.

(By unanimous consent, Mr. LAUGHLIN was allowed to proceed for 2 additional minutes.)

Mr. LAUGHLIN. Madam Chairman, so we are here today to ask for support of the committee report, from a committee that worked together to ensure the best for America, not for the best of this committee, because the chairman of this committee will be gone in 18 months to the Committee on Agriculture or the Committee on Foreign Affairs and to other good work in the Congress. The ranking member will be on to other congressional assignments. In 6 years every member of this committee will go to other committees. There will not be one member of this committee still on this committee trying to perpetuate the goodness of this committee and the work it does.

So I would ask all of us to respond to the needs of our country and to stand with the Select Committee on Intelligence, who has worked very hard to reach a figure that is good for the defense of America and one that ensures the safety of American citizens as well as their security.

Mr. LEWIS of California. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, we had a very vigorous debate yesterday on the amendment of the gentleman from Vermont [Mr. SANDERS], and it is with no small amount of reluctance that I rise to oppose the amendment of my friend the gentleman from Massachusetts [Mr. FRANK] today. I have an immense respect for the intellectual capability of the gentleman from Massachusetts. On any number of policy issues I find myself very impressed with his quality of evaluation and his options in terms of solving problems. But from time to time, Madam Chairman, even my colleague from Massachusetts is wrong, and today on this matter he is flat wrong.

First, Madam Chairman, this is President Clinton's budget, not George Bush's budget. The President is opposed to any cutting amendments and has stated so in writing.

Madam Chairman, let me quote:

I will oppose any amendment on the House floor which seeks to reduce intelligence spending beyond the reductions already proposed by the committee.

Madam Chairman, in the committee I was one of those who argued that we ought to put additional funding in this package. Not because I was one of those proposing a fat budget for the intelligence community, but because I knew precisely there would be this kind of amendment proposed on the floor. But my chairman and ranking member argued very effectively against that position. They felt a responsibility to go item by item through this budget and to impact those programs in a way that cut at the fat, while at the same time recognizing the reality that as we were shrinking our national defense budget, we absolutely must make sure that the information available to the President is the best possible information in this time of crisis.

Madam Chairman, second, not one penny of the cuts that would be made in this amendment will pass on to programs like those social programs that many are concerned about. I made this point earlier. There is no question with the shortage we have in outlays in the Defense Subcommittee on Appropriations, that if we make this cut, it will be gobbled up like that. The information base needed by the committees in this House and needed indeed by the President will negatively be impacted as the result.

Third, while the budget brought to the floor by the chairman and by the gentleman from Texas [Mr. COMBEST], does reflect 3.7 percent below last year's authorized level, it is also 3.7 percent below that which President Clinton requested. I argued we ought to go to at least the level the President requested. But the chairman and the ranking member prevailed in that connection.

Fourth, let me say that the gentlewoman from California [Ms. PELOSI], in opposing the Sanders amendment yesterday, noted eloquently that as we reduce defense spending, it would be foolhardy to cut intelligence further. We need reliability in our information early in this ever increasingly dangerous world, that is a differently dangerous world.

Lastly, let me make this point, Madam Chairman: it has been suggested time and time again that as the Soviet Union is no more, the KGB is no more. To suggest that that means that Russia does not have an intelligence network would at best be naive. Combining that reality with the fact that there is a whole array of intelligence work and responsibility that involves satellites and the like that you just do not put up there or take down at will, you cannot just lightly cut those budgets without doing long-term serious harm to our most important intelligence network.

Madam Chairman, let me suggest, even though I am hopeful that we are faced with a world in the future of peace for our children and grandchildren, with no East-West confrontation, the difficulties of Somalia are ahead of us, the difficulties of Bosnia are a part of our life, as are the difficulties of the Shining Path in Peru. The challenges of the future in Cuba are ahead of us. We must, Madam Chairman, make certain that the President has the information he needs and the appropriate committees have the information they need to do an adequate job on behalf of this country and free voices throughout the world.

Mr. CARDIN. Madam Chairman, I move to strike the last word.

Madam Chairman, I take this time to explain my opposition to the Frank amendment. As I explained yesterday, I do not serve on the Select Committee on Intelligence. I have had a chance to visit one of the intelligence agencies and talk with and meet the people who are working for gathering the intelligence needs of our Nation, meeting the intelligence needs of our Nation, and I am impressed by their dedication and hard work.

But one point should be underscored, and that is, as we are debating some of the needs of our Nation, those that perhaps have the most expertise in the area are refrained from joining in our debate because of the work that they do. They are not here to defend some of the criticisms that have been made, and they cannot be here to advocate some of the needs.

We have an intelligence community that is going to be called upon to do more as the defense tools of our country are reduced. We have less in defense. We have cut the defense budget. But we need more information in order to be able to deploy our limited defense capacity in a more efficient way. We are going to be calling upon the intelligence community to do more with less.

As has been pointed out on this floor, the committee bill, the authorization that has been reported to this House, already is a cut over last year's authorization. We should reward the committee for the work that it has done and we should support the committee's results.

Madam Chairman, I would urge my colleague's to reject the Frank amendment and stick with the committee's recommendation so that we do not further compromise the intelligence capacity of this country, which will be called upon in a more significant way as we try to meet the needs of the Nation.

Mr. HOAGLAND. Madam Chairman, will the gentleman yield?

Mr. CARDIN. I yield my remaining time to the gentleman from Nebraska.

The CHAIRMAN. The gentleman from Nebraska [Mr. HOAGLAND] is recognized for 3 minutes.

Mr. HOAGLAND. Madam Chairman, I also rise in opposition to the Frank amendment. Let me say initially there have been many persuasive arguments made this morning and yesterday, and I do not want to repeat those. I just want to make three brief points.

First, this is an authorization bill, not an appropriations bill. The Committee on Appropriations and the gentleman from Washington [Mr. DICKS] tell me the appropriators for this particular agency will be the Defense Appropriations Subcommittee.

Madam Chairman, the appropriators can always come in with a lesser amount. All we are doing in this legislation is setting the outer limits. If there is any question about whether there might be enough funds available to fund what we need to do at a national level, why, let us leave the outer limits in place. Savings, if justified, can be shown later. Not just through the appropriations process, but also Mr. Woolsey does not have to spend the funds if he thinks they are not warranted. There are ways he can recommend a rescission to the White House and other methods by which the funds do not have to be spent.

Second, let me emphasize that the President opposes this, as we know, as does the very capable Director of the CIA, Jim Woolsey, a man I have known and greatly respected for many, many years.

I think we should give our new President and the Director an opportunity to implement changes they would like to make, which have been explained to us in confidential sessions in some detail, and which are going to be expensive initially, but which will save dollars in the long run.

□ 1300

Third, this will be a very expensive cut. As others have said, the committee is already setting us 3 percent below last year's budget. I see no point in adopting this amendment. Let us let the process go forward and ratify the committee's decision.

Mr. CUNNINGHAM. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, to the gentleman from Massachusetts [Mr. FRANK], I understand the spirit of the gentleman's amendment. We have supported the gentleman, I think, on the National Endowment for Democracy and some of the other spending cuts, because we did not see a direct correlation on American lives and how it would affect this country.

But let me tell the gentleman why I oppose his amendment more through a personal view and a personal inference and using the intelligence community.

First of all, President Clinton supports the Permanent Select Committee on Intelligence and no cuts in it for a very good reason. And where the President is wrong, we will sure lambaste him on this side. But where he is good, we need to praise President Clinton. I support his position in this.

But there are no points for second place. When we are dealing with the lives of our young American fighting men and women, we are not competing for six gold medals.

Let me tell Members about some specific examples. In North Vietnam, there was a place called Hourglass over the Red River Valley. The intelligence that we had is that the active SA–2 SAM sites were down. We went in over an overcast, and we lost four aircraft in one afternoon because the intelligence was wrong.

Let me give another specific example. There was a place called Operation Proud Deep, in which we had 3 days to strike the supplies over North Vietnam. Our intel told us that most of those SAM sites had not been supplied. Madam Chairman, we lost 37 aircraft in 3 days, many of my very close friends, because of faulty intelligence.

There was another strike called Protective Reaction Strikes, in which we were to strike the enemy in North Vietnam. There also, because of a lack of knowledge of the surface-to-air missile sites, myself was fired at about 37 SA–2 surface-to-air missiles, fired in pairs. The intel said that the MIG's were operating against our B–52's, which was correct. But with the lack of knowledge of the SAM sites, we went in and we lost American lives, because of faulty intel on that.

The Bekaa Valley in the Middle East. We had the Israelis, who lost zero aircraft in the Bekaa Valley, where the opposition lost over 400 aircraft, because of good intelligence.

In 1973, while flying over Mount Hermone, the intelligence that we had in the Middle East saved many, many lives and would today. The President is asking our American pilots, men and women, to fly in Bosnia. We have the technology to tell what real targets are. Since World War I, we have gone into targets and they have had false targets. And if we could go in and strike the real targets, that means that we do not have to go back a second and a third time, which means survivability and less time of exposure over hostile environment for our pilots.

In Top Gun, I was an instructor where we taught pincer tactics, as a direct result of our satellites and monitoring enemy tactics and formations that they would fly against American pilots and our allies. We fly today those tactics at Navy Fighter Weapons School, at the Air Force Aggressor Squadrons and others. And what that is is a direct result. And if we get into a conflict in Bosnia, Serbia, Libya, or wherever it happens to be, we will have the edge on whatever those potential enemies are.

Our priorities should be with the young men and women that we ask to serve. There is a favorite saying, those who fight for life, Madam Chairman, have a special flavor for life that the protected will never know.

On 10 May 1972, I was shot down with an SA–2 missile over North Vietnam. One month ago, I met the Soviet scientist, who is now one of my voters and gives me campaign money, that developed the SA–2 missile that shot me down. Those scientists are all over the world. I have no doubt that Libya and many of our enemies have some of those same scientists.

With $217 billion in cuts in our defense budget is it any wonder that we need more intelligence? This Member has a personal vendetta or maybe not a vendetta but a personal gripe against the CIA. I would love to cut them, but not when it is going to cost the lives of men and women in our armed services.

It is like the movie "Critters," where in the Soviet Union you dissolve one and that one becomes 100. There is an additional need for the CIA and our intelligence community and the information tools that we get to determine what the factors are in the air order of battle and land battles that we could face in the future.

Madam Chairman, this is an example of survival. We need to support our men and women who ask to lay their lives, especially with dwindling military support. I ask to defeat the Frank amendment, and I support the request of the Permanent Select Committee on Intelligence.

Mr. SHAYS. Madam Chairman, I move to strike the requisite number of words.

I rise in support of this amendment.

I have nothing but the highest respect for the members who serve on the Permanent Select Committee on Intelligence and the work of the ranking member and chairman.

But having said that, I have high respect for the members who serve on the Budget Committee or the Committee on Science, Space, and Technology and other committees of Congress. But it doesn't mean I have to agree with them. And the fact is I disagree with a budget that cannot be cut.

I look at this as a budget vote. I am sorry, that is the way I look at it.

I see the President has come in with a budget that significantly increases spending over the next 5 years. But then I see my colleagues, who want no new taxes. We can't have it both ways. We either have to cut spending or raise taxes. I prefer to cut spending.

When I look at the budget presented by the President I see the national debt will increase 42 percent in the next 5 years. And 60 percent of all his spending cuts, happen in the 4th and 5th years.

I think we have to cut the budget. I think we have to cut the budget in every department, in every agency.

So when I look at this authorization, I say, yes, I want an intelligence community that does a better job. I want it to do more. But I want it to do more with less, like we ask everybody else in this Government to do.

I want us to do what is being done in the private sector. Companies are cutting back. And they are becoming more productive, because they do not have the layers of bureaucracy.

I look at this intelligence community, starting out with the Central Intelligence Agency and the Defense Intelligence Agency and the National Security Agency and the Army Intelligence and the Navy Intelligence and the Air Force Intelligence and the Marine Corps Intelligence, the Central Imagery Office, the National Reconnaissance Office and conclude we need to consolidate. Then we have the FBI, the Department of Treasury, the Department of Energy, the Department of State, all getting involved as well. Why should we exempt the intelligence community from downsizing and becoming more efficient?

Taking $500 million on what is reported by the media as, give or take a $28 billion budget, amounts to less than a 2-percent reduction. Every day Members of this great body say we need to cut from this department and that department and from this agency and that agency.

I do not serve on the Permanent Select Committee on Intelligence. I fully acknowledge that. So I do not know what happens behind its closed doors. But the one thing I do know is that a 2-percent cut is not too much to ask in any large department or agency especially when there is so much opportunity for consolidation.

Mr. DICKS. Madam Chairman, will the gentleman yield?

Mr. SHAYS. I yield to the gentleman from Washington.

Mr. DICKS. Madam Chairman, I just want to make sure that the gentleman realizes, last year we cut this budget by 7.6 percent. This year we have cut it by 3.7 percent. So the committee has not been derelict in its responsibilities.

Mr. SHAYS. Let us not have a debate on whether the committee is derelict or not. The issue is, are the spending cuts off the baseline? Are they an actual, absolute decrease or a relative one? Can this authorization be cut by $500,000,000? I think it can.

The bottom line is, this budget, and I have seen the intelligence budget, it is pretty much about the same, give or take a little bit.

Mr. DICKS. Madam Chairman, if the gentleman will continue to yield, as the gentleman realizes, of course, this intelligence authorization is part of the Defense appropriations bill. So any savings in the intelligence arena is going to be utilized for Defense appropriations.

Mr. SHAYS. I want to point out to the gentleman that I have amendments to cut the defense budget as well.

□ 1310

Mr. FRANK of Massachusetts. Madam Chairman, if the gentleman will yield, I would just have to say, the gentleman from Washington has probably got a rule book that none of the rest of us have that says once something is within the general jurisdiction of the Subcommittee on Defense of the Committee on Appropriations, that they have a right to spend every penny of it and no votes take place.

I have to remind the gentleman again that not everyone shares his appetite for spending every last penny that might come within a mile of the Subcommittee on Defense of the Committee on Appropriations.

Mr. SHAYS. Madam Chairman, in conclusion, I just make this point. The private sector is cutting back. We asked our own government departments and agencies to cut back. Efficiencies are taking place. I want to see consolidation in the intelligence community take place as well. I want to see some reductions in this area of government spending.

I recognize, and fully acknowledge, that in some cases it is more difficult to track the parts than the whole. I do not make the argument that because the Soviet Union has broken apart that our job is easier or that we do not need to track what is happening there. I just make the argument that $28 billion, give or take, is a great deal of money that can do a heck of a lot of things.

I think the intelligence community should be able to live with that amount minus the $500 million cut required in Mr. Frank's amendment.

Mr. MCCURDY. Madam Chairman, I move to strike the requisite number of words.

Madam Chairman, I rise in opposition to the Frank amendment, which is probably not a surprise, but I do so just to make a couple of quick points. I want to commend the committee for its actions. It was a very difficult session, and I know there is a great deal of pressure to cut more out of the budget.

In the last Congress, with the collapse of the Soviet Union and the end of the cold war, there was a tremendous debate within the administration, the Bush administration, that was soon to be outgoing, and the Congress regarding the role of intelligence. At that time the chairman of the Senate Intelligence Committee and myself initiated legislation to bring about a major reorganization of the intelligence community. It was somewhat controversial, because we pressed the administration, we pressed the envelope, as they say, in order to help bring about the kinds of organizational changes that would be producing an intelligence community that was more responsive in a post-cold-war environment, and a community that would deal with the threats that were most likely to occur with the changing world.

The Bush administration, to its credit, Director Gates and others, through their review process, initiated, and by Executive action, most of the reforms that the chairman of Senate Intelligence Committee and I had undertaken. We also took action to cut the budget. We cut the budget by over 6 percent. We agreed upon a personnel cut of 17½ percent, which, when we are talking about jobs, we are still talking about people in the intelligence community because it is personnel-intensive. That is because we rely on these people.

Does that mean everything is perfect? No. Director Woolsey has his hands full. He is going to try to bring out additional reforms. He also needs to provide the direction for the community that is most relevant for the future. The intelligence community, unfortunately, in the past was often more known for the so-called failures than it was for the successes.

I wish that Members had the opportunity that the relatively small number of Members in the House and the Senate have had of serving on the Intelligence Committee, because there are a number of successes, but they do not get published. It is hard to put a dollar amount, or it is hard to appreciate the lives saved in Desert Storm by the contributions of intelligence. It is hard to calculate that.

We have actually established a standard in defense these days which is almost no fault, no pain, no loss. The small number of Americans who made the ultimate sacrifice in the war, I believe, was very low because of the information and the ability to know what the adversary was doing.

During the cold war we had a lot of focus, perhaps too much focus, on the former Soviet Union and Warsaw Pact. Today we are shifting that. We are looking at a broader spectrum of problems and challenges, whether it is Bosnia, whether it is Somalia, whether it is the Middle East, or whether it is investments in Asia.

I can guarantee that many of these same people who are today asking us to cut even further from what I consider a prudent downsizing would be here saying, "Why did the CIA miss the estimate on a dictatorship that took over an African country," or "Why would the CIA miss this particular estimate?"

The fact of the matter is, we are talking about improving the analytical capability, improving the type of analysis, so it is relevant for those kinds of challenges, and I believe that will be the appropriate direction. I believe this

budget and the new direction can provide that.

Mr. FRANK of Massachusetts. Will the gentleman yield?

Mr. MCCURDY. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, I would tell the gentleman, he can look at everything I have ever said. He will never find any statement that I have made that I have been second-guessing the CIA. In fact, the gentleman reinforces my point when he talks about military intelligence involved in the gulf. He is absolutely right. We should not touch that a bit.

When we get into questions of political and economic and sociological intelligence, then the case is a very different one. That becomes a case of more or less there, I think, the same budgetary discipline should apply.

I do think it is essential that we provide full military protection to people who are risking their lives, but when it comes to guessing, estimating which African dictator is or is not going to be trouble, then the stakes are far smaller, one, and two, the objectives and standards are very, very different.

The gentleman is very wrong if he is implying that I have ever made any unfair criticism of the CIA in not making that distinction. Indeed, my amendment, with a less-than-2-percent cut, rests on that distinction, so the hard, military-related intelligence is, in fact, not touched.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. DICKS and by unanimous consent, Mr. MCCURDY was allowed to proceed for 2 additional minutes.)

Mr. MCCURDY. Madam Chairman, I would say to my friend and colleague, the gentleman from Massachusetts [Mr. FRANK], that certainly I would not do anything to impugn the integrity or the honor or intentions or motives of my friend, and he is a friend and I respect him.

The point I am trying to make is that because of the different types of challenges we face today, we are having to develop a broader range of abilities in analysis, and I think in many ways it is more challenging than it was just having a clear enemy or potential threat, as we did during the cold war.

Also, one point, I am not so sure that the gentleman and I have very different views on the issues of economic intelligence. I happen to be one of those who urges caution in that area, and believes that there are safeguards that need to be taken. I think the community understands that point as well. I think we are not that far off.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. DICKS and by unanimous consent, Mr. MCCURDY was allowed to proceed for 2 additional minutes.)

Mr. DICKS. Madam Chairman, will the gentleman yield?

Mr. MCCURDY. I yield to the gentleman from Washington.

Mr. DICKS. Madam Chairman, one thing that the gentleman knows, having served with great distinction on this committee as chairman for several years and as a Member for 9 years, is how to be able to talk on the floor about certain aspects of this program. One thing I wanted to just reiterate was, we are this year starting on several modernization efforts as it relates to certain space-based assets.

The problem is, we have to invest some money up front in order to do that modernization. We think that with it we will be able to simplify the architecture. This is Mr. Woolsey's goal and objective, that over the 5-year plan we will save considerable resources, because we will be able to have fewer ground stations. We will need fewer of these satellites. In order to do it, we have to invest some money up front. That is why the budget goes up a little bit this year.

That is why regarding the impact of the so-called Frank amendment, we have taken this down as far as we think is prudent. The additional $500 million will make it impossible for us to do the modernization that is necessary in order to save the money in the longer term.

It is difficult to discuss this, but I feel very strongly that the number that the chairman has reached and the ranking member and the committee have adopted is about the right number. I know that the gentleman, with his experience, understands the difficulty we have in trying to clearly explain this to our colleagues.

□ 1320

Mr. COLEMAN. Madam Chairman, I move to strike the requisite number of words.

Mr. GLICKMAN. Madam Chairman, if the gentleman will yield, I would like to get some idea of time and how many more speakers we have. I note that at this stage there might be a way to limit the time.

Mr. FRANK of Massachusetts. Madam Chairman, if the gentleman will yield, whatever time the gentleman decides is appropriate, I would want a 50–50 split, and I would take the other half.

Mr. GLICKMAN. Madam Chairman, I ask unanimous consent that the debate on this amendment, and all amendments thereto, end in 10 minutes, the time to be divided, one-half to myself—and I will yield to Members on the other side who are standing—and one-half to the gentleman from Massachusetts [Mr. FRANK], providing he gives me some of his time.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The CHAIRMAN. The gentleman from Texas [Mr. COLEMAN] was previously recognized for 5 minutes before the gentleman from Kansas made his unanimous consent request.

The Chair recognizes the gentleman from Texas [Mr. COLEMAN].

Mr. COLEMAN. Madam Chairman, there are some points that I think need to be made.

First of all, this year's bill is not at a cold war high level. We have all discussed that and debated it. Everyone knows that is not the case.

Second, in the debate yesterday as well as this morning we heard oftentimes that there were those who suggested that the Soviet Union's failure of its political system somehow must equate to the disappearance of a number of the problems and concerns that the Soviet target represented. I do not think that is the case.

There are still thousands of nuclear weapons and hundreds of nuclear weapons experts in the former Soviet Union. If these experts are selling their services to Iran or Iraq, how do we know that? Are we going to wait for CNN to tell us? I do not think so.

I do not think that means that we necessarily have to eliminate the intelligence service and our capabilities to inform us of what is going on. In fact, I submit it is arguably more expensive, not less expensive to keep track of proliferation and the monitoring of weapons of mass destruction without the predictability of the former Soviet Union and its political system.

Third, and I think this goes to the heart of some of the arguments we have heard on the economics and the economy of what we are attempting to do with this amendment, and the reason I think the Frank amendment is inappropriate is because of the same infrastructure that was used against the Soviet Union targets is the infrastructure we will use against the targets of terrorism, of proliferation and other national security interests that we want to protect.

Everyone says they do not want to touch those. Everybody gets up and says oh, no, we do not want to cut those, we do not want to do that yet. But that is exactly what this amendment would do.

Intelligence does not consist of sending a swarm of case officers to enemy country. We did not do that in the Soviet Union, and obviously we are not going to do that in other countries that are of critical interest to us today. Good intelligence consists of an infrastructure that is expensive, yes. It is technical, and although it is being reduced by this very budget, by this bill that is before the Congress as we did last year, even though we did that, we know that we cannot reduce it by the same percentage of the intelligence budget that the Soviet Union supposedly represented.

I would say to all Members here this afternoon that I would hope they would review what it is we give up. It is the old question that you are asked in law school early on. You know, to try to prove a negative is very difficult. That question is simple, and I want a specific answer. How many ships did the lighthouse save? Hard to know, is it not? Hard to know.

I submit that it is our responsibility to see to it that we maintain a strong intelligence service for the United States.

Mr. GLICKMAN. Madam Chairman, I yield 2 minutes to my colleague, the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Madam Chairman, I thank the gentleman for yielding the time.

Madam Chairman, I want to say simply as a Member who watches many committees come to the floor, and there is always a call to defer to the credibility and to the work product of the committee, I think of all of the committees that come to the floor, the Intelligence Committee is one committee where truly, in Scoop Jackson's words, partisanship ends at the water's edge. There is an enormous work product put together behind closed doors. There is in this committee I think, in my estimation, less politics, less in terms of outside interests, deferment, less in terms of the political process that we see in all of the other committees, and I think that there is a certain credibility in this committee that Members who are not on the committee should defer to. And I am not a member of the committee, and in the absence of compelling evidence to the contrary, the way that members of this committee, Republican and Democrat are a little like the members in our intelligence agencies who serve throughout the world, who get very little in terms of public relations, they do not get any ticker tape parades down Main Street, but they do a lot of work. They do a very difficult job, and they put together a good product.

Let me just say, to reiterate, what my colleague, DUKE CUNNINGHAM, who was nominated for the Congressional Medal of Honor for his air operations over the skies of North Vietnam, said. He said good intelligence operations save lives. And the world that we have in this post-cold-war environment is a much more complex world than that we dealt with before. Whereas we had one fairly predictable adversary, we now have many. We have four nations where we had one Soviet Union, all holding nuclear weapons, the pink slip of which is somewhat in doubt.

So I would ask my colleagues, unless they think there is compelling evidence that has been offered to support this cut to defer to the good judgment of the committee, and I thank the gentleman for yielding the time.

Mr. GLICKMAN. Madam Chairman, I would inquire if I have the right to close the debate?

The CHAIRMAN. The gentleman from Kansas has the right to close debate.

Mr. GLICKMAN. Madam Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. LIVINGSTON], a former member of this committee.

Mr. LIVINGSTON. Madam Chairman, I thank my friend for yielding the time. And I will not take the full 3 minutes. But as a former member of the Intelligence Committee, I have to say that I would think that the adoption of this amendment would be very, very foolish.

We have cut the defense appropriations since 1985 by an incredible amount. When you factor in inflation, operations, maintenance, training, procurement of ships and planes, tanks and whatnot have been cut tremendously. And if we had to do some of the things we were capable of only a few years ago, we would not be able to do them.

That is all well and good. Times have changed. The Soviet empire has collapsed, and we should declare victory and save the expense of much defense weaponry.

But it would be foolish to believe that because this is now a peaceful world, we could withdraw altogether. I think that when the House voted a couple of weeks ago to repeal the National Endowment for Democracy, we made a great mistake. We need the National Endowment for Democracy. We should be spreading freedom, and peace, and respect for human rights around the world, so we need civilians going out and working toward those goals within that framework. There are some wonderful success stories within the sectors of the National Endowment for Democracy.

But there are also some wonderful success stories that we do not hear about in the intelligence world. And if we start cutting our human intelligence and our capability to understand what potential adversaries are doing, we risk the possibility that all of the many billions of dollars that we saved in defense will be for naught, and that we will have to begin rebuilding our defense posture by spending more billions, many more billions, in what possible could become a full-fledged heated war somewhere in the world, or even in several places in the world.

□ 1330

Intelligence can actually save us the possibility of war at a later date. We need to be increasing our intelligence capability, not decreasing it.

I am totally against this amendment, and if I had thought about it, I might have offered an increase in funding for the intelligence capability of this Nation.

We are not going to do that right now, but I urge the defeat of this amendment.

Mr. FRANK of Massachusetts. Madam Chairman, I yield myself 5 minutes.

Madam Chairman, we are talking here about a cut of less than 2 percent probably of the overall budget.

The committee has said they have done it all and there really is no need for the rest of the House. I do not think it can be sustained that somehow in this situation, unlike every other, the whole House suspend its judgment for the committee. Any vote like this is a combination of factors.

Arguing that this is somehow the result of a finely balanced purely technical judgment in which philosophical values and competing priorities and how much you think the deficit is important do not enter, and simply are not accurate. We have a very large bureaucracy in the intelligence bureaucracy. They have worked hard to persuade people what they need The committee, to its credit, has resisted that some.

But that does not in the slightest reduce the burden on the whole House. In fact, intelligence has many components. I believe that the military intelligence that would have to support actual combat, that terrorism, and that nuclear proliferation are very, very important and, therefore, my amendment would not touch them by talking about a cut of less than 2 percent.

But it is also clear that the intelligence community has been in economic areas. It has been in environmental areas. It has been in other areas. It is seeking to expand. That is a natural rule of bureaucracy is seeking to expand.

The Soviet Union used to take up about two-thirds or so of the budget. People have said on the floor from the committee that they are now doing only about half of that for the Soviet Union. That means about a third of the budget has now been freed up, that 33 percent of what used to be the budget has been freed up to go to these other areas. I am talking about instead of giving them 33 percent for the new areas giving them 31 percent.

The argument has been in part, "Oh, but we need much more," because incredibly to me, I have heard Member after Member say, and not everybody, but Member after Member has said that now that the Soviet Union has collapsed, the world is now more dangerous. I guess if it were not for the fact that this would mean less freedom for all of the people, we should all be working to reconstitute the Soviet Union. I gather the argument is we should long for the good old days when we were secure, when we had a Soviet Union there to protect us. The argument is nonsense.

Nuclear proliferation, terrorism, all of those issues were issues 5 years ago.

But there is a qualitative difference. Five years ago and before, there was an entity capable of physically destroying the United States. That is what drove many of us to say you err greatly on the side of security.

We have a new set of dangers, yes, to other people in the world. We have the old dangers, but they are qualitatively different in that none of them represents the ability to destroy the United States.

Mr. DICKS. Madam Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I am happy to yield to the gentleman from Washington.

Mr. DICKS. Madam Chairman, one point I would make is I think we, in fairness, have entered into some very comprehensive arms control agreements, and I hope we can have START I and START II, but they are not yet ratified.

We now have, instead of one country controlling the 10,000 warheads of the Soviet Union, 4 different Republics, which presents us with some extraordinary challenges.

So I would just say to the gentleman that the 16 Republics of the former Soviet Union present us with 16 new challenges for the intelligence community.

The only point I am making is the world obviously is less dangerous. I agree with you, but there are still significant dangers out there.

Mr. FRANK of Massachusetts. I thank my friend from Washington for separating himself from those who have argued that the defeat of the Soviet Union has made the world more dangerous. He agrees it has made it less dangerous.

The fact, however, is that he understates still the degree to which we have benefited. Yes, there are now four former Soviet countries with nuclear weapons. Not one of them, nor in combination, do they present as much of a threat to the security of the United States. The delivery capacity is gone.

By the way, we have also completely lost the Warsaw Pact, the conventional problem. Remember, we were in Europe, and we were worried about the conventional forces.

Were none of our intelligence assets used to watch the armies of East Germany, Poland, Hungary, Czechoslovakia in those nations? They are all gone.

The fact is this: We will, with my amendment, leave the intelligence community fully empowered to deal with the military threats, with counterterrorism, and with nuclear proliferation, but their tendency to expand in the economic area, to expand in the environmental area, to get into other areas which will be interesting, which will be useful, but which are not of the same order of magnitude of a threat; they will be curtailed, and if the intelligence community cannot take a 2-percent-minus cut and allocate it without wrecking all of their plans, then they are, in fact, confessing a great degree of incompetence.

Madam Chairman, I reserve the balance of my time.

Mr. GLICKMAN. Madam Chairman, I yield 2½ minutes to the gentleman from California [Mr. LANTOS].

Mr. LANTOS. Madam Chairman, I have the highest regard for my friend, the gentleman from Massachusetts, and in all the years we have served in this body together, this is the first time I have reason to speak in opposition to his amendment.

The gentleman from Massachusetts made the point that it is customary in this body to have committees protect their own budget. I am not a member of the Intelligence Committee, but I am chairman of the International Security Subcommittee of the Committee on Foreign Affairs, and if anything has become obvious to me since the collapse of the Soviet Union, it is that our intelligence tasks have become infinitely more complex and multitudinous than they had been during the cold war confrontation.

As a matter of fact, a very strong case could be made for increasing the intelligence budget to deal with this enormously turbulent, unpredictable, fluid international situation.

I take advantage of intelligence briefings. Just today we had an extensive intelligence briefing concerning the tragic situation surrounding the city of Sarajevo. It is a miracle how much valuable, indispensable, preventive material of all types is provided this body by the intelligence community.

An argument can be made that in all the arena of defending the security of the United States, an argument can be made that probably the most effective dollar we spend in the field of providing security to the United States is the funds we spend on our intelligence community.

I ask with all the emphasis at my command all of my colleagues to reject this amendment which I think would be detrimental to the security of the United States of America.

Mr. GLICKMAN. Madam Chairman, I yield 2 minutes to the distinguished gentleman from Florida [Mr. YOUNG], a member of the committee.

Mr. YOUNG of Florida. Madam Chairman, one of our friends and colleagues made the comment that this was a budget vote. This is not an appropriation bill. This is an authorizing bill. You will have an opportunity to make the budget votes when the appropriations bill comes to the floor.

This is pure and simple a vote on national security. It deals with the ability of the United States to recognize a potential threat and to deter that threat before it becomes real.

Yesterday I made the comment that the world in the post-Soviet Union stage was arming itself in a very dramatic fashion, in a drastic fashion, and that is true, and not just arming themselves with rifles and bullets and guns and things of this nature, but weapons of mass destruction.

Because of our effective intelligence, we are aware that some terrorist countries have the ability and the facility to manufacture chemical weapons, for example. We know that the proliferation of nuclear capability, nuclear technology, is expanding throughout the world at an alarming rate.

Our own security demands that we know about this, that we know who is doing it, what their plans are, and how they plan to carry them out. That is in the interests of America.

Now, when the Soviet Union went away, I, like most of our colleagues, breathed a big sigh of relief, and I thought that the world is going to be safe, a generation of peace.

□ 1340

The Berlin Wall came down, the Iron Curtain melted, things changed in the Soviet Union, elections in Russia. And while we were breathing that sigh of relief, up from the sands of the desert came a would-be dictator named Saddam Hussein. We did not expect that, but it happened. We do not know where that might happen again. It is essential that we keep our intelligence capability intact and that we not make a cut that would reduce the capability of the United States to look out into the world and see what people are plotting against us—and believe me, they are there.

I say again this is not a budget vote that we vote here today; this is a vote dealing with the security of the United States of America.

Mr. FRANK of Massachusetts. Madam Chairman, I yield myself 2 minutes.

Madam Chairman, we are at a very important moment in our history. We have succeeded through a united national effort in helping the destruction of the major threat to the world, the Soviet Union. There are still threats to the peace and security of the world. Virtually all of them existed alongside the Soviet Union. The fundamental logic flaw here that we are getting is to equate a threat to our very existence as a society with the other threats that now exist and did then exist. No one is talking about dismantling our intelligence community. This is a cut of less than 2 percent, in a very large bureaucracy which has many, many parts and which has been expanding into new areas, as acknowledged today in the Washington Post, to becoming a new office to advise the State Department on a range of policy issues not related to security in the most direct sense.

The question is: Given the collapse not simply of the largest single component of the threat but the only one

that threatened our national existence, can we make any substantial reduction in the intelligence budget? If in fact Members are correct that a cut of less than 2 percent would cripple the intelligence community, then it is a miracle that we have survived this far because apparently all these threats—counterterrorism, nuclear proliferation, chemicals weapons—have been ignored because with the collapse of the Soviet Union, the end of the Warsaw Pact, billions of dollars of intelligence assets have been freed up for that purpose.

The question is whether they need exactly the same amount or not, because one of the very great coincidences of history is that with the collapse of the Soviet Union, the end of the Warsaw Pact, the defection of all those countries, with that no longer a threat, somehow today they need about exactly the same amount of money that they used to have. Anyone who thinks that is a result of an objective calculation and not bureaucratic inertia at work does not understand the way Government functions.

Madam Chairman, I yield my remaining 3 minutes to the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Madam Chairman, I believe I have 30 seconds remaining on my own time.

The CHAIRMAN. Yes. The gentleman from Kansas [Mr. GLICKMAN] is recognized for 3½ minutes.

Mr. GLICKMAN. First, I long for the day when Mr. MCCURDY and Mr. BEILENSON were in the chair when they had quick debates and no amendments. I do not know if it is me or the world; but I assume it's the world.

First of all, let me make a point: Mr. FRANK is not cutting 2 percent; Mr. FRANK is cutting 2 percent over what the committee cut, which is 3.7 percent under last year, which is one of the few places where this Congress and a congressional committee have cut dramatically under the President. You know, we could have come in, as the gentleman from Texas [Mr. COMBEST] said, with an inflated, or, as Mr. BEREUTER said, fake number so that the Members could cut further because I know there is a cutting zeal on the floor. But we did not do that. We talked about that, and we did not do it. We decided to play this game straight.

So, we cut 3.7 percent. We are under the President's budget by nearly the same amount, and the President believes we should cut no more.

I say to my colleagues on my side of the aisle, while I realize there is another vote he wants tomorrow or Friday, in the area of national security I think you have to give some deference to the President of the United States. The fact of the matter is Mr. FRANK's amendment cuts $500 million; will this make a difference to our national security? I do not know for sure. But the President thinks it will make a difference to our national security. He is out there negotiating with Bosnia and Herzegovina, China, North Korea, Pakistan, and every place else, nuclear weapons proliferation all over the world, 10,000 warheads in the old Soviet Union alone. He thinks, "better not make this additional cut, this might be a threat to America. Can't be sure that it is, but it might be." It might be one less conversation that we pick up, one less picture that you get.

You see, the money is in a system, the infrastructure, and that system has to be preserved for the contingencies of the world: blowing up a tunnel, blowing up a bridge, killing thousands of Americans with a nuclear device that we never had to worry about before.

Let me talk for a moment about a couple of examples of why this is important. In Desert Storm there is no question in my mind that 2,000 to 3,000 American soldiers' lives were saved because we knew, in many cases before the Iraqi commanders knew, where they were going to be. There is no way to actually prove that, but I can tell you this: that we accessed information in an almost surrealistic, miraculous way before they knew it. Our soldiers and sailors need that.

Will this cut by Mr. FRANK make the difference. I do not know for sure, but I do not want to risk it now and neither does the President of the United States want to risk it.

Let us talk about nuclear weapons for a moment. There have been many cases in the last 20 years where our intelligence community have stopped the proliferation of warheads, missiles, and nuclear weapons from bad people getting them, things that could be aimed at the United States. Will Mr. FRANK'S amendment stop that? I do not know if it will or not. But it could. Why risk it now?

Finally, one other point: He says the threat has been reduced. The Soviet threat has been reduced, but the North Korean threat, the threat from Rafsanjani and Iran, that has not been reduced over the last 5 years. These are people that are blowing up buildings in the United States, not the Russians. The threat from Pakistan, the threat from nuclear weapons around the world, these threats have increased. Maybe it is because the big Russian bear isn't there anymore to contain them any longer. But I say to you in a personal way: This vote could affect American lives. There is no reason to take the risk right now. Support the committee on this one.

We cut rather radically, I might say. Support the President of the United States, a Democratic President who says to you any further cuts jeopardize national security.

I urge defeat of the Frank amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Massachusetts [Mr. FRANK].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. FRANK of Massachusetts. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 134, noes 299, not voting 5, as follows:

[Roll No. 393]

AYES—134

Abercrombie	Gonzalez	Quillen
Andrews (ME)	Gutierrez	Rangel
Barca	Hall (OH)	Roemer
Barrett (WI)	Hamburg	Rohrabacher
Becerra	Hilliard	Rostenkowski
Blackwell	Hinchey	Roth
Bonior	Inslee	Roukema
Boucher	Jacobs	Roybal-Allard
Brown (CA)	Kanjorski	Rush
Brown (FL)	Kennedy	Sabo
Brown (OH)	Kennelly	Sanders
Bryant	Kingston	Sawyer
Cantwell	Kleczka	Schenk
Clay	Klink	Schroeder
Clayton	Kopetski	Sensenbrenner
Clyburn	Lambert	Serrano
Coble	Lewis (GA)	Shays
Collins (IL)	Long	Shepherd
Collins (MI)	Manzullo	Slattery
Condit	Markey	Slaughter
Conyers	McDermott	Stark
Coyne	McKinney	Stokes
DeFazio	Meehan	Strickland
DeLauro	Mfume	Studds
Dellums	Miller (CA)	Sundquist
Dooley	Minge	Swett
Duncan	Mink	Synar
Durbin	Moakley	Thompson
Edwards (CA)	Murphy	Thurman
Engel	Nadler	Torres
English (AZ)	Neal (MA)	Towns
Eshoo	Norton (DC)	Tucker
Evans	Nussle	Unsoeld
Farr	Oberstar	Valentine
Fields (LA)	Obey	Velazquez
Filner	Olver	Vento
Fingerhut	Orton	Washington
Flake	Owens	Waters
Foglietta	Pastor	Watt
Ford (MI)	Payne (NJ)	Williams
Ford (TN)	Pelosi	Woolsey
Frank (MA)	Penny	Wyden
Furse	Peterson (MN)	Wynn
Gejdenson	Petri	Yates
Gibbons	Poshard	

NOES—299

Ackerman	Bliley	Coppersmith
Allard	Blute	Costello
Andrews (NJ)	Boehlert	Cox
Andrews (TX)	Boehner	Cramer
Applegate	Bonilla	Crane
Archer	Borski	Crapo
Armey	Brewster	Cunningham
Bacchus (FL)	Brooks	Danner
Bachus (AL)	Browder	Darden
Baesler	Bunning	de la Garza
Baker (CA)	Burton	de Lugo (VI)
Baker (LA)	Buyer	Deal
Ballenger	Byrne	DeLay
Barcia	Callahan	Derrick
Barlow	Calvert	Deutsch
Barrett (NE)	Camp	Diaz-Balart
Bartlett	Canady	Dickey
Barton	Cardin	Dicks
Bateman	Carr	Dingell
Beilenson	Castle	Dixon
Bentley	Chapman	Doolittle
Bereuter	Clement	Dornan
Berman	Clinger	Dreier
Bevill	Coleman	Dunn
Bilbray	Collins (GA)	Emerson
Bilirakis	Combest	English (OK)
Bishop	Cooper	Everett

Ewing	Kyl	Ramstad
Faleomavaega (AS)	LaFalce	Ravenel
Fawell	Lancaster	Reed
Fazio	Lantos	Regula
Fields (TX)	LaRocco	Reynolds
Fish	Laughlin	Richardson
Fowler	Lazio	Ridge
Franks (CT)	Leach	Roberts
Franks (NJ)	Lehman	Rogers
Frost	Levin	Romero-Barcelo (PR)
Gallegly	Levy	Ros-Lehtinen
Gallo	Lewis (CA)	Rose
Gekas	Lewis (FL)	Rowland
Gephardt	Lightfoot	Royce
Geren	Linder	Sangmeister
Gilchrest	Lipinski	Santorum
Gillmor	Livingston	Sarpalius
Gilman	Lloyd	Saxton
Gingrich	Lowey	Schaefer
Glickman	Machtley	Schiff
Goodlatte	Maloney	Schumer
Goodling	Mann	Scott
Gordon	Manton	Sharp
Goss	Margolies-Mezvinsky	Shaw
Grams	Martinez	Shuster
Grandy	Matsui	Sisisky
Green	Mazzoli	Skaggs
Greenwood	McCandless	Skeen
Gunderson	McCloskey	Skelton
Hall (TX)	McCollum	Smith (IA)
Hamilton	McCrery	Smith (MI)
Hancock	McCurdy	Smith (NJ)
Hansen	McDade	Smith (OR)
Harman	McHale	Smith (TX)
Hastert	McHugh	Snowe
Hastings	McInnis	Solomon
Hayes	McKeon	Spence
Hefley	McMillan	Spratt
Hefner	McNulty	Stearns
Herger	Meek	Stenholm
Hoagland	Menendez	Stump
Hobson	Meyers	Stupak
Hochbrueckner	Mica	Swift
Hoekstra	Michel	Tanner
Hoke	Miller (FL)	Tauzin
Holden	Mineta	Taylor (MS)
Horn	Molinari	Taylor (NC)
Hoyer	Mollohan	Tejeda
Huffington	Montgomery	Thomas (CA)
Hughes	Moorhead	Thomas (WY)
Hunter	Moran	Thornton
Hutchinson	Morella	Torkildsen
Hutto	Murtha	Torricelli
Hyde	Myers	Traficant
Inglis	Natcher	Underwood (GU)
Inhofe	Neal (NC)	Upton
Istook	Ortiz	Visclosky
Johnson (CT)	Oxley	Volkmer
Johnson (GA)	Pallone	Vucanovich
Johnson (SD)	Parker	Walker
Johnson, E.B.	Paxon	Walsh
Johnson, Sam	Payne (VA)	Waxman
Johnston	Peterson (FL)	Weldon
Kaptur	Pickett	Wheat
Kasich	Pickle	Whitten
Kildee	Pombo	Wilson
Kim	Pomeroy	Wise
King	Porter	Wolf
Klein	Portman	Young (AK)
Klug	Price (NC)	Young (FL)
Knollenberg	Pryce (OH)	Zeliff
Kolbe	Quinn	Zimmer
Kreidler	Rahall	

NOT VOTING—5

Edwards (TX)	Jefferson	Talent
Houghton	Packard	

□ 1410

Mr. HUTTO and Mrs. MEEK changed their vote from "aye" to "no."

Miss COLLINS of Michigan, Mr. MANZULLO, Ms. LONG, Mr. MOAKLEY, Mrs. KENNELLY, and Mrs. CLAYTON changed their vote from "no" to "aye".

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. MALONEY. Mr. Speaker, on rollcall No. 393, I inadvertently voted in opposition to the amendment. It has been my position to support deeper cuts to H.R. 2330, the intelligence authorization bill and wish to record my support for Mr. FRANK's amendment.

□ 1410

AMENDMENT OFFERED BY MR. GOSS

Mr. GOSS. Madam Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Goss:—Page 30, after line, 3, add the following:

SEC. 306. DISCLOSURE OF CLASSIFIED INFORMATION BY MEMBERS OF CONGRESS.

During the fiscal year 1994, no element of the United States Government for which funds are authorized in this Act may provide any classified information concerning or derived from the intelligence or intelligence related activities of any such element to a Member of the House of Representatives unless and until a copy of the following oath of secrecy has been signed by that Member and has been published in the Congressional Record:

"I do solemnly swear that I will not willfully directly or indirectly disclose to any unauthorized person any classified information received from any department of the Government funded in the Intelligence Authorization Act for Fiscal Year 1994 in the course of my duties as a Member of the United States House of Representatives, except pursuant to the Rules and Procedures of the House.".

Mr. GOSS (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. GOSS. Madam Chairman, this is a simple amendment. It seeks to underscore that all House Members have responsibility to protect classified information by asking them to take a simple oath not to willfully—and I stress willfully—disclose classified information.

When I first came to Congress, I was surprised to learn that no such commitment exists for Members of the House, even though every newcomer to our intelligence organizations is required to take one. Two years ago, the House took another important step in safeguarding classified information when it approved an amendment similar to mine offered by Republican SHUSTER. His amendment extended the oath to members and staff of the Permanent Select Committee on Intelligence. It passed by voice vote.

There's a good reason for such precaution, and for such support. Our ability to gather timely and accurate information is critical to our policymaker's decisionmaking. At times this body has fallen short of the standard it should be setting when it comes to the handling of classified material. The open political forum of the House, and our open political process in general, is one of this Nation's great strengths. But we can never permit this forum or the people who serve it to use this openness to divulge classified material. The costs are too high, both in terms of national security, threats to our sources, and to the credibility of this institution.

That's why, with the help of the distinguished former ranking member of the House Permanent Select Committee on Intelligence, HENRY HYDE, I offer this amendment.

Let me be very clear what this amendment does and does not do. This amendment only addresses willful disclosure of classified information. In effect it simply asks Members who wish to receive classified information transferred by relevant elements of the executive branch to sign a statement that they will not willfully disclose that information, just like anybody else who gets classified material in the United States. Of course any Member who does not wish this responsibility has the option not to get involved with classified material. It does not change any standing rule of the House, nor does it interfere with the constitutional speech and debate protection enjoyed by Members. Should a Member violate this oath, the established investigative procedure of this House could be activated. In short, Madam Chairman, this is a very simple way of raising the consciousness of Members to the serious business of protecting our Nation's legitimate secrets.

As many here know, I was a clandestine services officer for the CIA for 12 years. I can testify firsthand the damage done to our intelligence-gathering capabilities when classified information is compromised. National security is jeopardized, as are the lives of the dedicated members of our intelligence community who risk their lives to advance the causes of freedom and democracy.

I, in fact, knew one such individual who died violently and needlessly, leaving a grieving family because information was released to the wrong person at the wrong time.

This simple and long-overdue reform would also help bolster the confidence of our overseas allies who are sometimes distressed by the leakage within the legislative branch. In addition, I believe such an oath would shore up confidence and trust between our own branches of Government that today's classified briefing won't become tomorrow's headlines. I think that would promote increased readiness to share critical information, which we all need.

Madam Chairman, what this boils down to really is a few simple words of commitment, that do not seem to be a whole lot to ask of our membership, given what is at stake.

Now, I very well know that the distinguished chairman of the committee,

the gentleman from Kansas [Mr. GLICKMAN], is proposing to offer an amendment to my amendment. I believe that it is a well-inspired offer that he is going to make, and I share very much his enthusiasm and the intent of this.

My problem with the Glickman amendment is practical, and I will address that with him, if the gentleman will allow, as to how it will work.

My amendment only goes to Members of the House of Representatives. It does not include Members of the other body as to this oath, and it does not include members of the executive branch, most of whom, frankly, already have to sign disclosures and oaths in the process of receiving classified information. I say that because I do not wish there to be a lot of confusion in the debate.

AMENDMENT OFFERED BY MR. GLICKMAN TO THE AMENDMENT OFFERED BY MR. GOSS

Mr. GLICKMAN. Madam Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. GLICKMAN to the amendment offered by Mr. GOSS: Strike all after "**SEC. 306.**" and insert the following:

DISCLOSURE OF CLASSIFIED INFORMATION BY MEMBERS OF CONGRESA AND EXECUTIVE BRANCH OFFICERS AND EMPLOYEES.

During the fiscal year 1994, no element of the United States Government for which funds are authorized in this Act may provide any classified information concerning or derived from the intelligence or intelligence-related activities of such element to a Member of Congress or to an officer or employee of the executive branch of the United States Government unless and until a copy of the following oath of secrecy has been signed by that member, or officer or employee, as the case may be, and has been published, in an appropriate manner, in the Congressional Record:

"I do solemnly swear that I will not willfully directly or indirectly disclose to any unauthorized person any classified information received from any department of the Government funded in the Intelligence Authorization Act for Fiscal Year 1994 in the course of my duties as a Member of Congress (except pursuant to the rules and procedures of the appropriate House of the Congress), or as an officer or employee in the executive branch of the Government, as the case may be.

As used in this section, the term 'Member of Congress' means a Member of the Senate or a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives."

Mr. GLICKMAN (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

Mr. GLICKMAN. Madam Chairman, quite frankly, I would rather not have to offer this amendment, because I do not think that any additional secrecy oaths are needed. I think Members of the House and the Senate keep matters secret. Virtually all the leaks that take place in this country occur someplace at the executive branch level, and always have. Let me explain my amendment to the Goss amendment.

The Goss amendment requires House Members, all House Members, not just members of the Select Committee on Intelligence, to sign an oath which will be published in the CONGRESSIONAL RECORD. Before a Member has received classified information of any kind, the Member has to sign an oath saying, "I do solemnly swear that I will not willfully disclose anything that I have so received."

□ 1420

The gentleman from Florida [Mr. GOSS] can explain it in more depth.

I think that the secrecy oath mandated by the Goss amendment is not necessary. I particularly object, however, to the fact that the amendment would only require the oath of Members of the House, not the Senate, not the executive branch, but the House only, thereby creating the unfortunate impression that Members of this body are particularly incapable of maintaining the security of classified information. That is absolutely not true.

As a matter of fact, I think that this body over the years has been beyond reproach. Most House committees have rules with respect to the treatment of classified information already.

As an example, members of the Permanent Select Committee on Intelligence are bound by House and committee rules not to disclose classified material. On top of that, we execute an oath pledging not to do what the rules already prohibit us from doing, making unauthorized disclosures of secret information. That is, the rules prohibit it, but we sign another oath to say that we will not do that.

If yet another prohibition against disclosure is going to be established, I want to make sure that it reaches beyond this House to apply to those especially in the executive branch who have historically found it much more difficult than Members of this body to keep secret information secret.

My amendment would do just that. It will make sure that the oath, which would be required under the Goss amendment, will apply to everyone, to Members of the House, Members of the Senate, and members of the executive branch who receive classified information from agencies whose budgets are authorized by this bill.

If we are truly worried about the disclosure of classified information, it would seem to me that we would want to ensure that any security procedures designed to guard against it have the widest possible applicability. That is the purpose of this amendment.

I know there are some concerned about the applicability of this to the executive branch, particularly to members of the intelligence agencies, I want to assure my colleagues that the language of my amendment includes what I call the where appropriate language, which will allow the intelligence community to safeguard against certain people having to disclose their identities.

The bottom line is this. If we are going to put this additional oath of secrecy on every Member of this body who receives classified information, then we ought to demand exactly the same thing of the other body, the U.S. Senate, and we ought to demand the exact same thing of the bureaucrats in this Government who are the ones stamping the documents "top secret" to begin with.

I would urge the adoption of my amendment.

Mr. HEFNER. Madam Chairman, will the gentleman yield?

Mr. GLICKMAN. I yield to the gentleman from North Carolina.

Mr. HEFNER. Madam Chairman, under the Goss amendment, would it be fair to say that if we signed the agreement, that we would be receiving information, classified information from people who had not signed the agreement, who were not bound by the agreement?

Mr. GLICKMAN. Madam Chairman, that is correct.

Mr. HEFNER. Madam Chairman, if the gentleman will continue to yield, if we got some classified information from the executive branch, we would be required to sign for classified but they would be able to give us classified information but they would not be bound by any agreement, that or the other body?

Mr. GLICKMAN. That is correct. Certainly not by the agreement that we would be bound by. They may be bound by general statutes of the Government, but they would not be bound against disclosing that information in the same way that we would be bound, which is ridiculous.

Mr. HYDE. Madam Chairman, I rise in opposition to the amendment offered by the gentleman from Kansas.

Madam Chairman, I am not sure that it is appropriate for us to install security procedures for the Senate, nor for the executive. I am sure they would be resented.

I do know that for this Chamber, for this body, it is appropriate that we require an oath of secrecy from somebody who is going to receive highly classified information. The oath itself ought not to offend anybody. We take an oath, when we are sworn in as Congressmen. We take an oath, when we get married. We take an oath, if we are a witness in a trial. We take an oath, if we are going to be a juror.

As a matter of fact, if we are called as a witness before one of the committees or subcommittees of this body, we are required to take an oath.

I do not see that it is anything to make one bristle about. What it does is

solemnize, emphasize the gravity of the undertaking that we are going to receive information that is classified, that is best kept secret. And sometimes this information is very critical to people's lives, to sources of intelligence, to methods of collection.

It just seems to me, leaks being a major problem, and I do not dispute the characterization of the gentleman from Kansas [Mr. GLICKMAN], most leaks coming from the executive, obviously, they do. There are more people over there to leak. They have access to classified information, some people do, on a regular basis.

But the fact is, it is a serious problem, and the law is a teacher. And if we were to pass this amendment of the gentleman from Florida [Mr. GOSS] requiring people who receive classified information to raise their concern, elevate their consciousness, their sensitivity to the importance of what they are doing by taking an oath of secrecy, it seems to me that is all to the good.

Again, by our example, we might impress the executive. We might impress the other body to follow suit.

Now, insofar as the amendment of the gentleman from Kansas, I see great difficulty with it. It seems to me it requires the printing in the CONGRESSIONAL RECORD of the names of anybody and everybody in the executive branch who receives classified information. That, it would seem to me, could be very dangerous. We might have to reveal the names of people who are receiving classified information who, in the interest of our intelligence, ought not to be revealed, nor identified.

Now, it is true, he says "in an appropriate manner." These are words of art that escape me. I do not know if he means there is a Presidential waiver. I do not know what he means. But I do know if we read his amendment, thousands of names are going to have to be printed in the CONGRESSIONAL RECORD, if Congress is in session and a CONGRESSIONAL RECORD is printed. If Congress is not, and no RECORD is printed, I guess all sharing of classified material must halt.

It is just totally unworkable. It vitiates entirely what the gentleman from Florida [Mr. GOSS] is trying to do with his amendment.

I understand the gentleman's sensitivity to having to take an oath of secrecy, but I appeal to the gentleman that if we set the tone, we can act as role models for the rest of the Government.

But the gentleman's amendment is unworkable, and it negates entirely what the gentleman from Florida [Mr. GOSS] is doing.

I respectfully urge my colleagues to vote no on the amendment of the gentleman from Kansas [Mr. GLICKMAN] and to support the amendment of the gentleman from Florida [Mr. GOSS].

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kansas [Mr. GLICKMAN] to the amendment offered by the gentleman from Florida [Mr. GOSS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GOSS. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. The Chair announces that this will be followed by a 5-minute vote on the Goss amendment, if ordered.

The vote was taken by electronic device, and there were—ayes 262, noes 171, not voting 5, as follows:

[Roll No. 394]

AYES—262

Abercrombie	Faleomavaega (AS)	Maloney
Ackerman	Farr	Mann
Andrews (ME)	Fazio	Manton
Andrews (NJ)	Fields (LA)	Margolies-Mezvinsky
Andrews (TX)	Filner	Markey
Applegate	Fingerhut	Martinez
Bacchus (FL)	Flake	Mazzoli
Baesler	Foglietta	McCandless
Ballenger	Ford (MI)	McCloskey
Barca	Ford (TN)	McCurdy
Barcia	Fowler	McDermott
Barlow	Frank (MA)	McHale
Barrett (WI)	Frost	McKinney
Becerra	Furse	McNulty
Beilenson	Gejdenson	Meehan
Berman	Gephardt	Meek
Bevill	Geren	Menendez
Bilbray	Gibbons	Mfume
Bishop	Glickman	Miller (CA)
Blackwell	Gonzalez	Mineta
Bonior	Gordon	Minge
Borski	Green	Mink
Boucher	Gutierrez	Moakley
Brewster	Hall (OH)	Mollohan
Brooks	Hall (TX)	Montgomery
Browder	Hamburg	Moran
Brown (CA)	Hamilton	Murphy
Brown (FL)	Harman	Murtha
Brown (OH)	Hastings	Nadler
Bryant	Hayes	Natcher
Byrne	Hefner	Neal (MA)
Cantwell	Hilliard	Neal (NC)
Cardin	Hinchey	Norton (DC)
Chapman	Hoagland	Nussle
Clay	Hochbrueckner	Oberstar
Clayton	Holden	Obey
Clement	Hoyer	Olver
Clyburn	Hughes	Ortiz
Coleman	Hutto	Orton
Collins (IL)	Inslee	Owens
Collins (MI)	Jacobs	Pallone
Condit	Jefferson	Parker
Conyers	Johnson (GA)	Pastor
Cooper	Johnson (SD)	Payne (NJ)
Coppersmith	Johnson, E.B.	Payne (VA)
Costello	Johnston	Pelosi
Coyne	Kanjorski	Penny
Cramer	Kaptur	Peterson (FL)
Danner	Kennedy	Peterson (MN)
Darden	Kennelly	Pickett
de la Garza	Kildee	Pomeroy
de Lugo (VI)	Kleczka	Poshard
Deal	Klein	Price (NC)
DeFazio	Klink	Rahall
DeLauro	Kopetski	Rangel
Dellums	Kreidler	Reed
Derrick	LaFalce	Reynolds
Deutsch	Lambert	Richardson
Dicks	Lancaster	Roemer
Dingell	Lantos	Romero-Barcelo (PR)
Dixon	LaRocco	Rose
Dooley	Laughlin	Rostenkowski
Durbin	Lehman	Rowland
Edwards (CA)	Levin	Roybal-Allard
Edwards (TX)	Lewis (GA)	Rush
Engel	Lipinski	Sabo
English (AZ)	Lloyd	Sanders
English (OK)	Long	Sangmeister
Eshoo	Lowey	Sarpalius
Evans	Maloney	Sawyer
Faleomavaega (AS)	Mann	Schenk
Farr	Manton	Schroeder
Fazio	Margolies-Mezvinsky	Schumer
Fields (LA)	Markey	Scott
Filner	Martinez	Serrano
Fingerhut	Mazzoli	Sharp
Flake	McCandless	Shepherd
Foglietta	McCloskey	Sisisky
Ford (MI)	McCurdy	Skaggs
Ford (TN)	McDermott	Skelton
Fowler	McHale	Slattery
Frank (MA)	McKinney	Slaughter
Frost	McNulty	Smith (IA)
Furse	Meehan	Spratt
Gejdenson	Meek	Stark
Gephardt	Menendez	Stenholm
Geren	Mfume	Stokes
Gibbons	Miller (CA)	Strickland
Glickman	Mineta	Studds
Gonzalez	Minge	Stupak
Gordon	Mink	Swett
Green	Moakley	Swift
Gutierrez	Mollohan	Synar
Hall (OH)	Montgomery	Tanner
Hall (TX)	Moran	Tauzin
Hamburg	Murphy	Taylor (MS)
Hamilton	Murtha	Tejeda
Harman	Nadler	Thompson
Hastings	Natcher	Thornton
Hayes	Neal (MA)	Thurman
Hefner	Neal (NC)	Torres
Hilliard	Norton (DC)	Torricelli
Hinchey	Nussle	Towns
Hoagland	Oberstar	Traficant
Hochbrueckner	Obey	Tucker
Holden	Olver	Unsoeld
Hoyer	Ortiz	Valentine
Hughes	Orton	Velazquez
Hutto	Owens	Vento
Inslee	Pallone	Visclosky
Jacobs	Parker	Volkmer
Jefferson	Pastor	Waters
Johnson (GA)	Payne (NJ)	Watt
Johnson (SD)	Payne (VA)	Waxman
Johnson, E.B.	Pelosi	Wheat
Johnston	Penny	Whitten
Kanjorski	Peterson (FL)	Williams
Kaptur	Peterson (MN)	Wilson
Kennedy	Pickett	Wise
Kennelly	Pomeroy	Woolsey
Kildee	Poshard	Wyden
Kleczka	Price (NC)	Wynn
Klein	Rahall	Yates
Klink	Rangel	
Kopetski	Reed	
Kreidler	Reynolds	
LaFalce	Richardson	
Lambert	Roemer	
Lancaster	Romero-Barcelo (PR)	
Lantos	Rose	
LaRocco	Rostenkowski	
Laughlin	Rowland	
Lehman	Roybal-Allard	
Levin	Rush	
Lewis (GA)	Sabo	
Lipinski	Sanders	
Lloyd	Sangmeister	
Long	Sarpalius	
Lowey	Sawyer	
Maloney	Schenk	
Mann	Schroeder	
Manton	Schumer	
Margolies-Mezvinsky	Scott	
Markey	Serrano	
Martinez	Sharp	
Mazzoli	Shepherd	
McCandless	Sisisky	
McCloskey	Skaggs	
McCurdy	Skelton	
McDermott	Slattery	
McHale	Slaughter	
McKinney	Smith (IA)	
McNulty	Spratt	
Meehan	Stark	
Meek	Stenholm	
Menendez	Stokes	
Mfume	Strickland	
Miller (CA)	Studds	
Mineta	Stupak	
Minge	Swett	
Mink	Swift	
Moakley	Synar	
Mollohan	Tanner	
Montgomery	Tauzin	
Moran	Taylor (MS)	
Murphy	Tejeda	
Murtha	Thompson	
Nadler	Thornton	
Natcher	Thurman	
Neal (MA)	Torres	
Neal (NC)	Torricelli	
Norton (DC)	Towns	
Nussle	Traficant	
Oberstar	Tucker	
Obey	Unsoeld	
Olver	Valentine	
Ortiz	Velazquez	
Orton	Vento	
Owens	Visclosky	
Pallone	Volkmer	
Parker	Waters	
Pastor	Watt	
Payne (NJ)	Waxman	
Payne (VA)	Wheat	
Pelosi	Whitten	
Penny	Williams	
Peterson (FL)	Wilson	
Peterson (MN)	Wise	
Pickett	Woolsey	
Pomeroy	Wyden	
Poshard	Wynn	
Price (NC)	Yates	
Rahall		
Rangel		
Reed		
Reynolds		
Richardson		
Roemer		
Romero-Barcelo (PR)		
Rose		
Rostenkowski		
Rowland		
Roybal-Allard		
Rush		
Sabo		
Sanders		
Sangmeister		

NOES—171

Allard	Gingrich	Moorhead
Archer	Goodlatte	Morella
Armey	Goodling	Myers
Bachus (AL)	Goss	Oxley
Baker (CA)	Grams	Paxon
Baker (LA)	Grandy	Petri
Barrett (NE)	Greenwood	Pickle
Bartlett	Gunderson	Pombo
Barton	Hancock	Porter
Bateman	Hansen	Portman
Bentley	Hastert	Pryce (OH)
Bereuter	Hefley	Quillen
Bilirakis	Herger	Quinn
Bliley	Hobson	Ramstad
Blute	Hoekstra	Ravenel
Boehlert	Hoke	Regula
Boehner	Horn	Ridge
Bonilla	Houghton	Roberts
Bunning	Huffington	Rogers
Burton	Hunter	Rohrabacher
Buyer	Hutchinson	Ros-Lehtinen
Callahan	Hyde	Roth
Calvert	Inglis	Roukema
Camp	Inhofe	Royce
Canady	Istook	Santorum
Carr	Johnson (CT)	Saxton
Castle	Johnson, Sam	Schaefer
Clinger	Kasich	Schiff
Coble	Kim	Sensenbrenner
Collins (GA)	King	Shaw
Combest	Kingston	Shays
Cox	Klug	Shuster
Crane	Knollenberg	Skeen
Crapo	Kolbe	Smith (MI)
Cunningham	Kyl	Smith (NJ)
DeLay	Lazio	Smith (OR)
Diaz-Balart	Leach	Smith (TX)
Dickey	Levy	Snowe
Doolittle	Lewis (CA)	Solomon
Dornan	Lewis (FL)	Spence
Dreier	Lightfoot	Stearns
Duncan	Linder	Stump
Dunn	Livingston	Sundquist
Emerson	Machtley	Taylor (NC)
Everett	Manzullo	Thomas (CA)
Ewing	McCollum	Torkildsen
Fawell	McCrery	Upton
Fields (TX)	McDade	Vucanovich
Fish	McHugh	Walker
Franks (CT)	McInnis	Walsh
Franks (NJ)	McKeon	Washington
Gallegly	McMillan	Weldon
Gallo	Meyers	Wolf
Gekas	Mica	Young (AK)
Gilchrest	Michel	Young (FL)
Gillmor	Miller (FL)	Zeliff
Gilman	Molinari	Zimmer

NOT VOTING—5

Matsui	Talent	Underwood (GU)
Packard	Thomas (WY)	

□ 1449

Messrs. LAZIO, DICKEY, and GILMAN changed their vote from "aye" to "no."

Mr. BORSKI, Miss COLLINS of Michigan, Mr. HILLIARD, and Mr. CONYERS changed their vote from "no" to "aye."

So the amendment to the amendment was agreed to.

The result of the vote was announced as above recorded.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Florida [Mr. GOSS], as amended.

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. GOSS. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 341, noes 86, not voting 11, as follows:

[Roll No. 395]

AYES—341

Abercrombie	DeLauro	Huffington
Ackerman	DeLay	Hughes
Andrews (NJ)	Derrick	Hunter
Andrews (TX)	Deutsch	Hutchinson
Applegate	Diaz-Balart	Hutto
Archer	Dickey	Hyde
Armey	Dicks	Inglis
Bacchus (FL)	Dooley	Inhofe
Bachus (AL)	Doolittle	Inslee
Baesler	Dornan	Istook
Baker (CA)	Dreier	Jacobs
Baker (LA)	Duncan	Johnson (CT)
Ballenger	Dunn	Johnson (GA)
Barca	Durbin	Johnson (SD)
Barlow	Edwards (TX)	Johnson, E.B.
Barrett (NE)	Emerson	Johnson, Sam
Barrett (WI)	English (AZ)	Johnston
Bartlett	English (OK)	Kaptur
Barton	Eshoo	Kasich
Bateman	Evans	Kennedy
Bentley	Everett	Kennelly
Bereuter	Ewing	Kim
Bilbray	Faleomavaega (AS)	King
Bilirakis	Farr	Kingston
Bishop	Fawell	Kleczka
Bliley	Fazio	Klein
Blute	Fields (TX)	Klink
Boehlert	Fingerhut	Klug
Boehner	Flake	Knollenberg
Bonilla	Ford (TN)	Kolbe
Bonior	Fowler	Kopetski
Borski	Franks (CT)	Kreidler
Boucher	Franks (NJ)	Kyl
Brewster	Frost	Lambert
Brooks	Gallegly	Lancaster
Brown (CA)	Gallo	Lantos
Brown (FL)	Gekas	LaRocco
Brown (OH)	Gephardt	Laughlin
Bryant	Geren	Lazio
Bunning	Gillmor	Leach
Burton	Gilman	Lehman
Buyer	Gingrich	Levin
Byrne	Goodlatte	Levy
Callahan	Goodling	Lewis (CA)
Calvert	Gordon	Lewis (FL)
Camp	Goss	Lewis (GA)
Canady	Grams	Lightfoot
Cantwell	Grandy	Linder
Cardin	Greenwood	Lipinski
Carr	Gunderson	Livingston
Castle	Hall (OH)	Lloyd
Chapman	Hall (TX)	Long
Clayton	Hamilton	Lowey
Clement	Hancock	Machtley
Clinger	Hansen	Maloney
Coble	Harman	Mann
Collins (GA)	Hastert	Manton
Combest	Hayes	Manzullo
Condit	Hefley	Margolies-Mezvinsky
Cooper	Hefner	Martinez
Coppersmith	Herger	Mazzoli
Costello	Hoagland	McCandless
Cox	Hobson	McCollum
Cramer	Hochbrueckner	McCrery
Crane	Hoekstra	McCurdy
Crapo	Hoke	McHale
Cunningham	Holden	McHugh
Danner	Horn	McInnis
Darden	Houghton	McKeon
de la Garza	Hoyer	McMillan
Deal		

McNulty	Pryce (OH)	Snowe
Meehan	Quinn	Solomon
Menendez	Rahall	Spence
Meyers	Ramstad	Spratt
Mica	Rangel	Stenholm
Michel	Ravenel	Strickland
Miller (FL)	Regula	Stump
Mineta	Richardson	Stupak
Minge	Ridge	Sundquist
Mink	Roberts	Swett
Moakley	Roemer	Swift
Molinari	Rogers	Tanner
Montgomery	Rohrabacher	Tauzin
Moorhead	Romero-Barcelo (PR)	Taylor (MS)
Moran	Ros-Lehtinen	Taylor (NC)
Morella	Rose	Tejeda
Murphy	Roth	Thomas (CA)
Murtha	Roukema	Thornton
Myers	Rowland	Thurman
Natcher	Royce	Torkildsen
Neal (MA)	Sangmeister	Torricelli
Neal (NC)	Santorum	Towns
Nussle	Sarpalius	Traficant
Ortiz	Sawyer	Tucker
Orton	Saxton	Upton
Owens	Schaefer	Valentine
Oxley	Schenk	Velazquez
Pallone	Schiff	Visclosky
Parker	Sensenbrenner	Volkmer
Pastor	Sharp	Vucanovich
Paxon	Shaw	Walker
Payne (VA)	Shays	Walsh
Penny	Shepherd	Weldon
Peterson (FL)	Shuster	Wheat
Peterson (MN)	Sisisky	Whitten
Petri	Skeen	Wilson
Pickett	Skelton	Wise
Pickle	Slattery	Wolf
Pombo	Slaughter	Woolsey
Pomeroy	Smith (MI)	Young (AK)
Porter	Smith (NJ)	Young (FL)
Portman	Smith (OR)	Zeliff
Poshard	Smith (TX)	Zimmer
Price (NC)		

NOES—86

Allard	Gibbons	Quillen
Andrews (ME)	Glickman	Reed
Becerra	Gonzalez	Reynolds
Beilenson	Green	Roybal-Allard
Berman	Gutierrez	Rush
Bevill	Hamburg	Sanders
Blackwell	Hastings	Schroeder
Clay	Hilliard	Schumer
Clyburn	Hinchey	Scott
Coleman	Jefferson	Serrano
Collins (IL)	Kanjorski	Skaggs
Collins (MI)	Kildee	Smith (IA)
Conyers	LaFalce	Stark
Coyne	Markey	Stearns
de Lugo (VI)	Matsui	Stokes
DeFazio	McCloskey	Studds
Dellums	McDade	Synar
Dingell	McDermott	Thompson
Dixon	McKinney	Unsoeld
Edwards (CA)	Meek	Vento
Engel	Mfume	Washington
Fields (LA)	Miller (CA)	Waters
Filner	Mollohan	Watt
Fish	Nadler	Waxman
Foglietta	Norton (DC)	Williams
Ford (MI)	Oberstar	Wyden
Frank (MA)	Obey	Wynn
Furse	Olver	Yates
Gejdenson	Pelosi	

NOT VOTING—11

Barcia	Payne (NJ)	Thomas (WY)
Browder	Rostenkowski	Torres
Gilchrest	Sabo	Underwood (GU)
Packard	Talent	

□ 1459

Messrs. WYDEN, BLACKWELL, and RUSH changed their vote from "aye" to "no."

So the amendment, as amended, was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT OFFERED BY MR. FRANK OF MASSACHUSETTS

Mr. FRANK of Massachusetts. Madam Chairman, I offer an amendment. It is the amendment to section 306.

The Clerk read as follows:

Amendment offered by Mr. FRANK of Massachusetts: Page 30, after line 3, add the following:

SEC. 306. DISCLOSURE OF ANNUAL INTELLIGENCE BUDGET.

Beginning in 1995, and in each year thereafter, the aggregate amounts requested and authorized for, and spent on, intelligence and intelligence-related activities shall be disclosed to the public in an appropriate manner.

Mr. FRANK of Massachusetts (during the reading). Madam Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

□ 1500

Mr. FRANK of Massachusetts. Madam Chairman, I yield to the chairman of the full committee, the gentleman from Kansas [Mr. GLICKMAN].

Mr. GLICKMAN. Madam Chairman, this is the last amendment to this bill.

I ask unanimous consent that debate on this amendment and all amendments thereto be limited to 40 minutes, 20 minutes controlled by the gentleman from Massachusetts [Mr. FRANK], and 20 minutes controlled by the gentleman from Texas [Mr. COMBEST].

The CHAIRMAN. Is there objection to the request of the gentleman from Kansas?

There was no objection.

The CHAIRMAN. The gentleman from Massachusetts [Mr. FRANK] will be recognized for 20 minutes, and the gentleman from Texas [Mr. COMBEST] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. Madam Chairman, I yield myself 2 minutes.

Madam Chairman, this is a very straightforward amendment. We have all been acting all day almost as if it was in effect. Under the law, it is illegal to mention the gross total of the appropriation. People have hinted at it, danced around it, said it while mumbling, implied it, suggested it, and probably the law inadvertently nudged, kneaded, and bruised. People have argued that if those who are the targets of our intelligence know too much about our intelligence, they will frustrate it.

That has a lot of merit. I do not believe that if they knew the absolute total of the appropriation, an amount which had been alluded to on this floor, which has been written about in the newspapers, perhaps not with exactitude but with a near enough degree

so that they could know about it, it would not make—we already know about this.

What this will do would comply the practice with the law.

Mr. COLEMAN. Madam Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Texas.

Mr. COLEMAN. I thank the gentleman for yielding.

I guess my question is, and I do not think everybody has made up their mind on this completely, but the question is whether or not, having gotten that number, that would be sufficient for the Members? Or do you now believe that following that we will have more requests from Members about the amounts that we spend on specific programs?

Mr. FRANK of Massachusetts. First of all, let me say it has been my experience when, say, Oh, that will lead to this, around here Tuesday does not always lead to Wednesday.

Second, this is the end of the amendment process for this bill. There are no other amendments filed. We are going to finish it. If a year from now somebody might come up with that, I have no control over that. But I do not believe, frankly, whether or not we go forward with this is going to lead to that.

My guess is people are going to be finding out it is not a big deal and not go any further.

Mr. COMBEST. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, this amendment, on the surface, I think looks innocent. I do not imply in that that there is anything beyond that in the mind of the gentleman from Massachusetts [Mr. FRANK] in offering it. But let me express what my concerns are and why I think this amendment would be ill advised.

First, I want to indicate for the record so that Members are certain that they understand that the director of Central Intelligence, Jim Woolsey, has stated on numerous occasions that he is vigorously opposed to the effect of this amendment as well as the administration's official position, and I am quoting from the statement of administration policy, "The administration opposes any change to H.R. 2330 that would disclose or require the disclosure of the aggregate amount of funds authorized for intelligence activity."

So the director of Central Intelligence and the administration are opposed to this amendment.

Now, I do not think there is a rush of American people out there who are beating on our doors saying, "We want to know how much is in the intelligence budget." In fact, I think the American people understand that we have secrets in this country. I think they expect us to have, and I think they expect us to continue.

In fact, I think if we really could get to it, they are probably more concerned about the inability of people to keep those secrets than they are about the fact that the secrets exist.

But the gentleman mentioned, and we all read the articles in the papers, where numbers are presumed by the media. But if you will notice, those stories are on some other subject, such as the one that was mentioned a number of times yesterday, erroneously, I might say for the record, about the cost of the loss of the rocket and the satellite. But in those stories appears a presumed amount. I will not confirm or deny that is correct. But that is what it is. But that is only part of a story which is on some other subject matter.

If in fact we make this specific, "this is the line item, this is how much we spend," that becomes the story. Well, it does not end there. If that was all that would be required, it probably would not be much of a problem. But then there comes, "How is it expended? What purposes is this money being expended for in the intelligence budget?" When we know in fact that it is x number of billions of dollars.

There are times that we find, due to threat assessments and other threat changes, that we have to make changes either in the total amount up and down or in various portions of it. And it is the various portions of the intelligence that then will become the subject, "This is the total amount. How much are they expending on the various programs?"

If that is a public document, then we prenotify those that we are attempting to protect against when we make a change in the appropriations or in the budget for intelligence that would impact those particular people.

Again, I do not think it is the American people who are concerned about the fact that this is still a classified number. I think this will be something that a lot of other countries of the world that we may be focusing on as targets would be very interested in knowing. In fact, it does not help the membership.

Some 140 Members of the House and the Senate this year have gone to the Intelligence Committees as well as a number of very highly qualified and cleared staff members to look at the intelligence budget, to know what that figure is. Making that number public does not have any difference on the amount of information available to any Member today who wishes to go and find out what that number is. It does not change that debate at all. We can find out exactly what it is. That is information that any Member of this House or any Member of the Senate can go and discover. Basically, what we would be doing is providing this information, in effect, providing it to the people who really might end up being a target of it.

So, then, that goes forward, "Well, this year we have x plus $4 billion and next year we will have x plus $8 billion," people want to know what is that increase for? What has been built up within that budget? And that becomes the focus of the discussion, that becomes the focus of the article rather than the fact that it is simply mentioned in a hypothetical or guessing manner that is always indicated in the article when it is talking about some other subject.

Madam Chairman, I am very much opposed to this. Again, I reiterate the fact that the Director of Central Intelligence is opposed as well as the administration.

Madam Chairman, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Chairman, I yield 3 minutes to the gentlewoman from Colorado [Mrs. SCHROEDER].

□ 1510

Mrs. SCHROEDER. Madam Chairman, I thank the gentleman from Massachusetts for his very, very difficult day here on the floor; but I think this amendment is very important if we are ever going to have an intelligent debate about this.

I had wanted to engage the gentleman earlier about the interesting position we are in. Yesterday we had votes to cut 10 percent of this unknown number that we do not dare utter or go to jail.

Today the gentleman had an amendment to cut $500 million, but we could not say what percent because then you may be able to do the math to figure out what this unknown number is.

Now, really, are we not mature enough to know what this number is? We ought to be able to fill it in to engage in any kind of debate about different priorities.

I heard many people here today say, "Oh, but this debate on the gentleman's amendment to do cuts, this is the wrong place. It should have happened when we talked about budget priorities," except you cannot do it when you have budget priorities, either, because you cannot say that number, or you have gone against the United States of America.

Now, I think it is very important that we get that number out there, because I must say every time I pick up a national magazine there is the CIA telling me something more they would like to get into. One day they are going to go out and be spies for American industries overseas. The next day they are going to get into refugees. Then they are going to look at the world's weather system.

It looks to me like an agency out there trying to justify their budget in the New World. I am sorry. I have listened to this rhetoric all day long, but we cannot put any reality to this rhetoric because we cannot say the number.

Much too often in this body we are talking in shadows, but this is real darkness.

So I must say for all the people who are wearing little sunshine buttons today and for all the people who believe in sunshine, and I, too, believe in sunshine, government is not a fungus. It can operate in the sunshine, and we can certainly know at least how much of our precious tax dollars are going to the CIA so we can track it year after year to find out whether it is going up or down in accordance with how we think it is doing its job; but I do not know how you measure it, how you know it is doing its job or how you even attempt to do your oversight job here in any way, shape or form with any kind of respectability if you cannot at least write a number in the blank.

So the gentleman is absolutely correct. I certainly hope that we put a little sunshine on this number. I think we also know it must be very high, or they would not be working in high gear and overtime 24 hours a day to try to find a mission to justify the number in case we happen to be able to say what the number is.

Mr. COMBEST. Madam Chairman, I yield myself such time as I may consume.

I would just say to the gentlewoman that probably before the vote comes on this bill, the gentlewoman can run up to the Intelligence Committee and find out exactly what it is, if she has not been up there.

Mrs. SCHROEDER. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I am happy to yield to the gentlewoman from Colorado.

Mrs. SCHROEDER. Madam Chairman, the gentlewoman knows what the number is.

The issue is the American people cannot find out what the number is.

When we talk about balancing priorities, going through the difficult budget debates and things like we are doing tomorrow and we talk about the debt, it is unbelievable to think that the American people cannot know how much of their tax dollars are being allocated; so I do know. I have seen that. I want the gentleman to be assured of that. I am shocked by it, and I hope the gentleman's amendment passes.

Mr. COMBEST. I will tell the gentlewoman that I feel comfortable to find out what it is. I am glad the gentlewoman has done that.

Again, I do not think the American people are clamoring to find out what it is. I think in fact they are more concerned about the problem that many people cannot keep it secret.

Madam Chairman, I yield 2 minutes to the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Madam Chairman, I thank the gentleman for yielding this time to me.

It may surprise my friend, the gentlewoman from Colorado, to know that most Americans understand we have a representative democracy. Most Americans understand there are some things that are best kept classified and confidential, and most Americans trust the two Intelligence Select Committees in the House and in the Senate.

Most Americans trust the two subcommittees of the Committee on Appropriations in the House and in the Senate, and most Americans trust the two Armed Services Committees in the House and in the Senate.

Most Americans have trust in the President as Commander in Chief, in the National Security Council, and understanding that we have a representative democracy and understanding that there are some things that are best kept secret, most Americans are comfortable with the fact that we have an abundance of effective oversight.

I also would like to point out the number is meaningless unless you know what it is spent for. A number is just a couple digits, three digits or five digits, who knows; but what it is spent for is the relevant information, and that indeed is classified.

Our intelligence services depend upon the cooperation of other intelligence services around the globe. If they think their sources, their methods are going to be compromised, they are not going to cooperate with us.

I trust everybody on all those committees that have oversight over that sum of money, that expenditure, and as far as I am concerned, in trusting them I do not really need to know the aggregate amount because there are adequate numbers of people who know that.

Besides, I can go upstairs and look at it.

So I suggest this is a bad amendment, harmful to our national security, and I hope it is resoundingly defeated.

Mrs. SCHROEDER. Madam Chairman, will the gentleman yield?

Mr. HYDE. I yield to my dear friend, the gentlewoman from Colorado.

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. COMBEST. Madam Chairman, I yield 1 additional minute to the gentleman from Illinois [Mr. HYDE].

Mrs. SCHROEDER. Madam Chairman, if the gentleman will continue to yield, I just want to say to the gentleman from Illnois, we are only asking that the gross amount of the number be put out there, because I think budget considerations are so serious, you want to see how they are allocated.

I also want to say to the gentleman, on the Armed Services Committee we marked up practically the entire bill in the open this year because we have been very, very mindful of the fact that we want to justify in public how these different expenditures are being allocated; so 13 of the 15 hours we did in open session.

I think the people understand more where their tax money would go if they can see what is happening.

Mr. HYDE. Is the gentlewoman satisfied with the product that emerged from her committee?

Mrs. SCHROEDER. Absolutely.

Mr. HYDE. So am I.

Mrs. SCHROEDER. They can have full sunshine at the end just by knowing the numbers. We are not asking to go to the committee hearings or opening up the whole process.

Mr. HYDE. The gentlewoman can learn that number. Why do your constituents need to know? Are you not their Representative?

Mrs. SCHROEDER. My constituents want to know because every time they pick up a magazine they see the CIA trying to find some new jobs, so they think they may be trying to get too much money.

Mr. HYDE. Does the gentlewoman not think the number is meaningless without understanding what it is spent for?

The CHAIRMAN. The time of the gentleman from Illinois [Mr. HYDE] has expired.

Mr. FRANK of Massachusetts. Madam Chairman, I yield 2 minutes to the gentleman from California [Mr. EDWARDS].

Mr. EDWARDS of California. Madam Chairman, I thank the gentleman from Massachusetts [Mr. FRANK] for yielding me this time.

I think this argument is rather unnecessary. I think most of us have taken American history No. 1 in grammar school.

Article I of the Constitution is very clear. It says explicitly that all expenditures of the Federal Government must be made public. For the last 42 years we have thumbed our nose at that particular provision in the Constitution.

Now, let me also remind my colleagues that Robert Gates, certainly no radical, he was Bush's and Reagan's electee for Director of the CIA, testified publicly that he was in favor of making the budget public.

Also, I might add that this House and the Congress in 1991 in a nonbinding resolution voted to make the total figure public and again we did it in 1992.

Unfortunately, both President Bush and now President Clinton, and I do not think President Clinton has thought about it, I think when he does he will approve what we are trying to do; so in other words, we have already voted on this twice, and I cannot imagine why we are starting to back up now on a very clear constitutional issue.

Lastly, our founders more than 200 years ago were not stupid. They did not do anything reckless. The lived in a lot more perilous age than we do. They had the British, they had the French, they had an Indian war going on. They

did not have much of a military, and yet they went ahead and not only passed the Bill of Rights, but they put this in the Constitution, that all expenditures shall be made public. That is what the amendment of the gentleman from Massachusetts [Mr. FRANK] offers, and I think that we certainly should approve it.

Let us stick with article I of the Constitution. We have done very well by it for a long time.

Mr. COMBEST. Madam Chairman, I yield 3 minutes to the gentleman from Texas [Mr. LAUGHLIN].

Mr. LAUGHLIN. Madam Chairman, I rise in opposition to the amendment of the gentleman from Massachusetts.

I want to say there is good reason why we do not reveal the aggregate number, because just as the gentlewoman from Colorado said, there will be questions about the numbers. When you get to asking questions about the numbers, then you have got to start specifying about the advantages of the intelligence activity. You have got to reveal what the methods and procedures are and the sources. That would certainly dry up the ability of our Nation to gather intelligence, to carry out the sole purpose of the intelligence community, and that is to insure that the Commander in Chief, the director of all the Armed Forces of this Nation, is well informed before decisions are made.

□ 1520

No other government in the world releases its intelligence budget number.

When I thought about what my good friend, the gentleman from Massachusetts [Mr. FRANK] has said, I tried to figure out an analogy, and the only one I come up with that is close is our own campaign funds. None of us, before we start election campaigning, tell our opponents what our number is. We do not tell them how much we are going to put into the TV. We do not tell them how much into the newspapers. We do not tell them how much into the consultants and staff workers and how many ads we are going to run in a particular area.

That is exactly, in my mind, what we will do if we adopt this figure because next, after the amendment offered by the gentleman from Massachusetts [Mr. FRANK] on the aggregate number, then we will come and we will find out that the other side wants more. They will want to know the details.

My colleagues, we do not tell our opponents which advertising markets we are going to put our ads in or how many dollars we are going to spend to run, and the last thing that I think is important is the men and women of this Nation that our Government hires to put into the intelligence world, we should not do anything to run the risk of their lives and the lives of the men and women that we expect to defend this Nation, and it is for these reasons I strongly oppose the gentleman's amendment.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. LAUGHLIN. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Well, the gentleman says his analogy was not close, and I certainly subscribe to that, but let me ask him, even given his distant analogy:

We do under the election laws require that the amount spent in the last election be published. So is the gentleman then saying he does not want it published now in advance, but as soon as the fiscal year is over——

Mr. LAUGHLIN. No.

Mr. FRANK of Massachusetts. Or does his not close analogy break down what is not suitable for him?

Mr. LAUGHLIN. Well, that is why I said the only analogy I could come even close to, and it is not even a good one, I say to the gentleman——

Mr. FRANK of Massachusetts. I would agree with the gentleman. It is not a good one.

Mr. LAUGHLIN. I say to the gentleman, "Thank you."

Mr. FRANK of Massachusetts. Madam Chairman, I yield 3 minutes to the gentleman from Connecticut [Mr. SHAYS].

Mr. SHAYS. Madam Chairman, I thank the gentleman from Massachusetts [Mr. FRANK] for yielding this time to me.

The bottom line for me is: I believe our enemies know what our overall budget numbers are. I believe our allies and friends, the Germans, the French, the British, the Japanese and so on know what our overall budget spending is for intelligence. The only people, I think, we do not know are the American people, and they are the ones who pay the bill.

I have not heard one credible reason why the taxpayers of the United States should not know the overall spending for intelligence in this country, and I would just add another point.

Madam Chairman, we try to funnel all this money through a variety of different departments, to hide our intelligence expenditure levels artificially inflating the budgets of some departments. We artificially inflate the budgets of some departments that should not have to be held accountable for an expenditure that is not truly theirs.

What this amendment seeks to do is something very simple. It seeks to let the American people know what the rest of the world already knows.

Mr. LEWIS of California. Madam Chairman, will the gentleman yield?

Mr. SHAYS. I yield to the gentleman from California.

Mr. LEWIS of California. If I presume that my colleague were correct in his presumption that everybody else in the world knows, I would very likely support his position. But the gentleman is not correct.

Mr. SHAYS. Let me ask the gentleman a question, Madam Chairman:

"Are you saying to this body that you do not think that the Soviet Union knows what our overall budget is?"

Mr. LEWIS of California. I am suggesting the gentleman is not correct if he presumes that.

Mr. SHAYS. Well, I do presume that. I presume it based on what I read, and what I see, and what I can gather myself, and I think others have the ability——

Mr. LEWIS of California. Madam Chairman, if the gentleman would yield further, I must suggest to the gentleman that that is precisely why the very intelligent comments of my colleague, the gentleman from Illinois [Mr. HYDE], were so much on target. The American public does believe that there are some areas where we must have, for the benefit of our country and for freedom in the world, some items that are——

Mr. SHAYS. Reclaiming my time, Madam Chairman, I agree with my colleague, the gentleman from Illinois [Mr. HYDE], that the individual amounts should be kept from the American people and from the rest of the world. I believe very strongly however that the total amount of spending should be known, and that is what this amendment does.

Madam Chairman, this amendment does not seek to describe how, when or where we spend our money. It just seeks to let the American people know the total aggregate amount of our intelligence expenditures. I contend with anyone in this Chamber that that number is known to most already. Why shouldn't it be known by all who ultimately pay the bill—the American taxpayer.

Mr. COMBEST. Madam Chairman, I yield 3 minutes to the gentleman from Texas [Mr. COLEMAN].

Madam Chairman, I thank my colleague, the gentleman from Texas [Mr. COMBEST] for yielding this time to me.

Let me answer the question that was just posed.

So, we have got a number. All America knows the number. So, what do we do with a number? Well, the first thing we do is what we did here today and yesterday and, some hope, tomorrow. We attempt to amend that number.

Well, certainly everyone understands it is going to be much harder not to state publicly then the reasons for the proposed changes in that budget level. But we got to tell them; do we not? I mean the gentleman is recommending a cut of $500 million from the number that everybody now knows. I suppose we are going to have to defend what it is that went into that overall number.

Well, now we are getting a little bit more specific. I think any discussion

69-059 O—97 Vol. 139 (Pt. 13) 23

about how we acquire intelligence and what the funding is for needs to remain secret in order for us to continue to acquire that intelligence.

I do not understand the thinking of those who suggest that we are not headed down some slippery slope here. Of course we are. I suggest that doing this in the statutes is wrong, as my colleagues know, and, besides that, we are not going to get just one number.

Now, Madam Chairman, I serve on the Committee on Appropriations. Let me tell my colleagues what the number is they are asking for. They are asking for three numbers. They want the amount that was requested, they want the amount that is going to be authorized, they want the amount spent on intelligence and intelligence related activities. I think those are normal questions to ask. We can ask them. As has been pointed our over and over again, every Member of this House is entitled to each and every one of those numbers.

Madam Chairman, I think the disclosure of those three numbers will not improve the public debate on the intelligence budget. How can it? As Members of Congress, as I said, we have access. We can and do discuss in the open a great deal of information without reference to budget totals. We can and do discuss in the open the underlying policy considerations. We have, just today, about the threats, the former threats and the ones that we think are coming. This will be no different after the release of those three numbers because we will be able to go no further in specifically explaining the change in the numbers. What will occur is greater pressure, I submit, for more disclosures, or unwise or inadvertent disclosures, of sensitive information.

Why are we concerned about that kind of information? Because it is, after all, the men and women who work for you and me, who work for the American public, whom we must remain and try to keep safe, and so those kinds of disclosures are unwise. If they take countermeasures, those who are enemies, and there are some, believe it or not, in the world, our investment could be wasted in some new technology that they may determine we either are or are not working on, and I think that is the kind of funding that we make in vain.

The United States already has the most open intelligence community in the world. Our constituents are not clamoring for this information, and, therefore, this amendment should be defeated.

Mr. FRANK of Massachusetts. Madam Chairman, I yield 2 minutes to the gentleman from Colorado [Mr. SKAGGS], a member of the Permanent Select Committee on Intelligence.

Mr. SKAGGS. Madam Chairman, I thank the gentleman from Massachusetts [Mr. FRANK] for yielding this time to me.

Clearly a fundamental tenet in our free society and our form of government is that the public should be presumed to have a right to know about the operations of its government. It is not an absolute presumption, but it is the starting point for an issue like this.

This proposal is not without some risk, but it is a risk that I do not think poses a serious danger to important national security considerations. There is always a push and a pull between these legitimate national security considerations and the right of the people of this country to know what their government is about.

I doubt that many of us have a clamor from our constituents about this issue. However, Madam Chairman, that is not the issue. We do not make decisions like this based upon whether we are getting cards and letters urging the disclosure of the total amount of spending on intelligence. Nonetheless, I think it is important, whenever possible, for the people of this country, for the press, for those that are engaged in debate about the course that the Nation is on, to have access to government information—at least to a gross number like this that gives a sense of the order of magnitude. Madam Chairman, for those reasons I will be supporting the amendment offered by the gentleman from Massachusetts [Mr. FRANK].

I want to say also that we ought to be in a position to defend this total number, and, if we cannot, then efforts like his previous amendment would likely pass. I opposed that. I think it was defensible for us to stick to the number, as we did, that the committee came out with.

This is, in fact, a slope. I do not think it needs to be a slippery slope. And I say to the gentleman in supporting his amendment this year: "I will resist," and I think many of us who support him this year would resist taking the next step down the slope.

□ 1530

But this is the step that we can properly take. It is one that does honor to the right of the people of this country to know about their government.

The CHAIRMAN. The gentleman from Texas [Mr. COMBEST] has 6 minutes remaining.

Mr. COMBEST. Madam Chairman, might I inquire, who would have the right to close?

The CHAIRMAN. The gentleman from Texas [Mr. COMBEST] will have the right to close.

Mr. COMBEST. Madam Chairman, I yield 3 minutes to the gentleman from Florida [Mr. YOUNG].

Mr. YOUNG of Florida. Madam Chairman, releasing the overall budget of the intelligence community of the United States will not mean a whole lot to anyone except those involved in intelligence, and there are a lot of hostile intelligence services out there.

Having had the opportunity and privilege to serve on this committee for some time, you get to learn a lot about how the intelligence community operates. Madam Chairman, I can tell Members that while most of us, if we get a picture puzzle and set it down on a table or a desk, we take days to work at it to find out where the pieces go. But a good intelligence officer or a good intelligence analyst can take two or three pieces of that puzzle, lay them on the desk, and they can build the rest of the puzzle.

Madam Chairman, it is amazing, unbelievable, what a good intelligence analyst is able to do with a little bit of information.

So if we release the overall budget of our intelligence community, the next step is, as has been admitted, to describe what it means, how does it work, how does it relate to this or to that or to something else. And those are the pieces of the puzzle that a good intelligence officer would have to have before they knew about all they wanted to know about our intelligence activities.

Madam Chairman, I want to read this statement from Stanfield Turner, the Director of the Central Intelligence Agency under President Jimmy Carter, made in January 1978. He said, "In short, the detailed intelligence budget in the hands of our enemies would be a powerful weapon with which they could make our collection efforts more difficult, more hazardous to life, and more costly. The way we spend our intelligence money in this country, then, is one of our necessary secrets."

Madam Chairman, I think the statement that Admiral Turner made then is just as effective today as it was in 1978.

Mr. FRANK of Massachusetts. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, let me say that when the gentleman from Florida [Mr. YOUNG] quoted Admiral Turner saying that the detailed intelligence budget in the hands of our enemies would be a problem, I agree. And if an amendment comes up that would do that, I hope the gentleman would repeat that speech, because it would be a shame to waste it on an amendment to which it was wholly irrelevant.

No one is talking about a detailed release. In fact, Madam Chairman, as Members of this body, we understand that when Members fail to object to the proposition that is before them and spend all their time arguing about the propositions that are not before them, it is because they cannot come up with any good reasons for what they are arguing.

The gentleman from Florida [Mr. YOUNG] said "the detailed budget." This is not a detailed budget. This

says, and it is clear in the amendment, only the total.

Now, the notion, and this is very interesting, that you know a lot from the total has been simultaneously derided and advocated by people opposing this amendment. On the one hand, they say knowing the total is useless, knowing the total means nothing, knowing the total is a total waste, but it will betray the security of the United States.

It cannot simultaneously be of no value to the American people and terribly damaging. And I think that shows the hollowness of the argument. We are not talking about the specifics, we are not talking about the details. About 98 percent of the arguments against this amendment have been against an amendment that has not been offered.

Madam Chairman, perhaps Members misread the CONGRESSIONAL RECORD. Perhaps thee is some other amendment coming up. Maybe, because this is a matter of secrecy, maybe there is a secret amendment on the floor that nobody told me about, and maybe that is what all the Members of the Committee on Intelligence are debating.

But for those of us who think we are debating the amendment before us, almost none of what they said has any relevance to the proposition under consideration at all.

Madam Chairman, I yield such time as she may consume to the gentlewoman from California [Ms. PELOSI], an exception among members of the Committee on Intelligence so far today.

Ms. PELOSI. Madam chairman, since the gentleman mentioned the CONGRESSIONAL RECORD, I did want to read from the RECORD.

Madam Chairman, the amendment of the gentleman from Massachusetts [Mr. FRANK] says, "Beginning in 1996 and in each year thereafter, the aggregate amounts," with an "s," "requested and authorized for and spent on intelligence and intelligence-related activities, shall be disclosed to the public in an appropriate manner."

Madam Chairman, I would ask the gentleman from Massachusetts [Mr. FRANK], when he says "aggregate amounts," what is the plural?

Mr. FRANK of Massachusetts. Madam Chairman, the aggregate amounts, it is because there is a request for amount requested and the amount voted. It is simply the gross total. If there is any question about that, we could make it clear. It is just the gross total. This is not dealing with any subtotals.

Madam Chairman, one of the Members who is going to speak on it got disgusted when he heard that is all it did, and he walked away. This is only the gross total, only the overall amount, which Members against it have said is of no value to anybody, but if we release it, it could be damaging.

Madam Chairman, let me address what they have been saying. The gentleman from Illinois said to the gentlewoman from Colorado, "Why do your constituents have to know that? They have you."

That is a touching tribute by the gentleman from Illinois to the gentlewoman from Colorado. For the gentleman from Illinois to tell the gentlewoman from Colorado that her constituents need not go beyond her say-so is very much an example of good fellowship, but it is not the way the democratic society works.

Madam Chairman, the problem we have is this: From understanding, and the Members who have said this does not tell you right. For the purpose of understanding how the intelligence community functions, knowing the gross number is not useful at all. For knowing what percentage of America's public resources are going to Intelligence, then it is useful. For knowing whether we think we can go up or down in the absence of the Soviet Union or the presence of new threats, it is useful. So it is a useful datum for people who care about public expenditures, who care about how we spend public money, and that is the only information that people here seek to deny to the public.

Ms. PELOSI. Madam Chairman, if the gentleman will yield further, I rise in support of the gentleman's amendment. I believe that we should disclose the aggregate amount and that we should move toward more openness, not only in doing that, but in the work of our Intelligence Committee.

Extensive and timely clearance of historical material, more unclassified publications on intelligence studies, more work with academic institutions, the Security Commission reforms of classification and compartmentation and more open hearings with Congress all demonstrate a new openness.

Madam Chairman, some of that started with our chairman, the gentleman from Kansas [Mr. GLICKMAN]. I commend the gentleman for it. I did yesterday, too, in commending him for the open hearing with Mr. Woolsey this year and the briefing for Members, which I think was unprecedented.

Madam Chairman, with that, once again I say that in the spirit of openness, I support the gentleman's amendment.

Mr. FRANK of Massachusetts. Madam Chairman, I yield myself such time as I may consume.

Madam Chairman, to close, let me say that Members had these buttons on about sunshine. I guess they are going to have to go back and print a little eclipse on them. What it means is when it comes to one very significant chunk of the budget, we are not going to tell the American people whether it is going up or down. We are not going to tell them what that overall total is.

Madam Chairman, I agree with those that say that knowing the gross total tells you nothing about the way in which we could do intelligence. What it tells you is what has been the judgment of the elected Representatives of how much overall we should spend.

The gentleman from Connecticut said, and I am sure he is right, our main enemies know that gross total. What we now have is a situation in which the American people will be given correct and precise information about one very important number.

I do not believe it is inconsistent with democratic practice to say that the percentage of our overall resources which go to the intelligence function ought to be withheld from the public. Yes, we as Members know it, but people here have not held that knowledge on our part is a total substitute for knowledge in the public.

Basically what people are saying is this: When it comes to the question of whether or not intelligence ought to be up or down in gross amounts, what the overall percentage ought to be, that is none of the public's business. The specifics and the details have to be withheld.

□ 1540

But to tell the public that the overall amount we spend and the direction we go in is none of their business is a very grave error. And if we do not give them the overall number, they do not know that. I hope that the amendment is agreed to.

Mr. COMBEST. Madam Chairman, I yield myself the balance of my time.

I appreciate the gentlewoman's indulgence through these 2 days. I would just simply state, rather than reiterate all the arguments, the administration and Director of Central Intelligence Woolsey are opposed to this amendment. I would urge that my colleagues support that position and vote no on the Frank amendment.

The fact that this is the end of the debate, all of the general debate has ended, I would like to commend the gentlewoman from New York for an exemplary job in the chair. It was as fair and smoothly run as any I have seen.

I would like to thank my chairman for a wonderful job. I would like to thank the Members. There was never any intent in this debate to cut off the time any Member wished to discuss the subjects at length whatever. We wanted to make certain every Member felt the opportunity to do that.

There was a tremendous amount, I think, of decorum on the floor. There was a tremendous amount of patience on the floor. With very few exceptions, there was a tremendous amount of silence on the floor.

I think this has been a very good debate. This is exactly how it should be.

I commend the Members on all sides of the issues for the work which we have just completed. I am sure they are as glad as we are that we are about finished.

Mr. FRANK of Massachusetts. Madam Chairman, will the gentleman yield?

Mr. COMBEST. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Madam Chairman, I just want to say that I hope Members will not put me at a disadvantage because I am debating all these Members who are nicer than I am.

Mr. COMBEST. Madam Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Massachusetts [Mr. FRANK].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. COMBEST. Madam Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 169, noes 264, not voting 5, as follows:

[Roll No. 396]

AYES—169

Abercrombie
Andrews (ME)
Bacchus (FL)
Baesler
Barrett (WI)
Becerra
Beilenson
Berman
Blackwell
Bonior
Brooks
Brown (CA)
Brown (OH)
Byrne
Cantwell
Clay
Clayton
Clement
Clyburn
Collins (IL)
Collins (MI)
Condit
Conyers
Coppersmith
Coyne
Danner
de Lugo (VI)
DeFazio
DeLauro
Dellums
Derrick
Dicks
Dooley
Duncan
Durbin
Edwards (CA)
Engel
English (AZ)
Eshoo
Evans
Faleomavaega (AS)
Farr
Fazio
Fields (LA)
Filner
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Furse
Gejdenson
Gephardt
Gibbons
Glickman
Gonzalez
Gutierrez
Hamburg
Hamilton
Harman
Hastings
Hefner
Hinchey
Holden
Inslee
Istook
Jacobs
Jefferson
Johnson (SD)
Kanjorski
Kildee
Klink
Kopetski
Kreidler
LaRocco
Levin
Lewis (GA)
Long
Lowey
Maloney
Margolies-Mezvinsky
Markey
Martinez
Mazzoli
McCloskey
McDermott
McHale
McKinney
Meehan
Meek
Mfume
Miller (CA)
Minge
Mink
Moakley
Moran
Murphy
Nadler
Neal (MA)
Neal (NC)
Norton (DC)
Nussle
Oberstar
Obey
Olver
Owens
Pastor
Payne (NJ)
Pelosi
Penny
Peterson (MN)
Pickle
Pomeroy
Price (NC)
Rangel
Reed
Reynolds
Richardson
Roemer
Rohrabacher
Romero-Barcelo (PR)
Rose
Rostenkowski
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sawyer
Schroeder
Schumer
Scott
Serrano
Sharp
Shays
Shepherd
Skaggs
Slattery
Spratt
Stark
Stokes
Strickland
Studds
Stupak
Swett
Swift
Synar
Thurman
Torres
Torricelli
Towns
Tucker
Underwood (GU)
Unsoeld
Valentine
Velazquez
Vento
Washington
Waters
Watt
Waxman
Wheat
Williams
Woolsey
Wyden
Wynn
Yates
Zimmer

NOES—264

Ackerman
Allard
Andrews (NJ)
Andrews (TX)
Applegate
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barca
Barcia
Barlow
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Borski
Boucher
Brewster
Browder
Brown (FL)
Bryant
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Cardin
Carr
Castle
Clinger
Coble
Coleman
Collins (GA)
Combest
Cooper
Costello
Cox
Cramer
Crane
Crapo
Cunningham
Darden
de la Garza
Deal
DeLay
Deutsch
Diaz-Balart
Dickey
Dingell
Dixon
Doolittle
Dornan
Dreier
Dunn
Edwards (TX)
Emerson
English (OK)
Everett
Ewing
Fawell
Fields (TX)
Fish
Fowler
Franks (CT)
Franks (NJ)
Frost
Gallegly
Gallo
Gekas
Geren
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Gordon
Goss
Grams
Grandy
Green
Greenwood
Gunderson
Hall (OH)
Hall (TX)
Hancock
Hansen
Hastert
Hayes
Hefley
Herger
Hilliard
Hoagland
Hobson
Hochbrueckner
Hoekstra
Hoke
Horn
Houghton
Hoyer
Huffington
Hughes
Hunter
Hutchinson
Hutto
Hyde
Inglis
Inhofe
Johnson (CT)
Johnson (GA)
Johnson, E.B.
Johnson, Sam
Johnston
Kaptur
Kasich
Kennedy
Kennelly
Kim
King
Kingston
Kleczka
Klein
Klug
Knollenberg
Kolbe
Kyl
LaFalce
Lambert
Lancaster
Lantos
Laughlin
Lazio
Leach
Lehman
Levy
Lewis (CA)
Lewis (FL)
Lightfoot
Linder
Lipinski
Livingston
Lloyd
Mann
Manton
Manzullo
Matsui
McCandless
McCollum
McCrery
McCurdy
McDade
McHugh
McInnis
McKeon
McMillan
McNulty
Menendez
Meyers
Mica
Michel
Miller (FL)
Mineta
Molinari
Mollohan
Montgomery
Moorhead
Morella
Murtha
Myers
Natcher
Ortiz
Orton
Oxley
Pallone
Parker
Paxon
Payne (VA)
Peterson (FL)
Petri
Pickett
Pombo
Porter
Portman
Poshard
Pryce (OH)
Quillen
Quinn
Rahall
Ramstad
Ravenel
Regula
Ridge
Roberts
Rogers
Ros-Lehtinen
Roth
Roukema
Rowland
Royce
Santorum
Sarpalius
Saxton
Schaefer
Schenk
Schiff
Sensenbrenner
Shaw
Shuster
Sisisky
Skeen
Skelton
Slaughter
Smith (IA)
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stenholm
Stump
Sundquist
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Tejeda
Thomas (CA)
Thomas (WY)
Thornton
Torkildsen
Traficant
Upton
Visclosky
Volkmer
Vucanovich
Walker
Walsh
Weldon
Whitten
Wilson
Wise
Wolf
Young (AK)
Young (FL)
Zeliff

NOT VOTING—5

Chapman
Machtley
Packard
Talent
Thompson

□ 1601

Mr. ENGLISH of Oklahoma changed his vote from "aye" to "no."

Messrs. SPRATT, ROHRABACHER, KREIDLER, SCHUMER, NEAL of North Carolina, and SWIFT changed their vote from "no" to "aye."

So the amendment was rejected.

The result of the vote was announced as above recorded.

Mr. SAM JOHNSON of Texas. Madam Chairman, I rise today in support of this measure with no additional cuts, because I believe it shows fiscal responsibility while still enabling our intelligence community to work without sacrificing the security network we so painstakingly put in place.

We are in an ever-changing world. During the 1980's almost 60 percent of the intelligence budget was spent on monitoring the Soviet Union. That was a time when Soviet communism was our greatest fear.

Now, less than half that amount is spent in that region of the world. Our greatest fears are now terrorism, nuclear weapon proliferation, and regional hot spots which directly threaten American lives here and abroad. Our intelligence community must be flexible in order to adapt to the changing times in the world—and that flexibility comes at price.

Regional hot spots include: Bosnia, Somalia, Middle East, Haiti, Cuba, Nicaragua, and parts of the former Soviet Union. The list changes daily.

These agencies are already undergoing reorganizations in response to a reduced budget and new geopolitical forces.

These changes in their mission are requiring the agencies to make a series of changes in their operations.

Some of the changes are:

Focus on terrorism, weapons proliferation, regional instability;

Reorganize the CIA and DIA in order to streamline costs and structure;

Canceling numerous overseas operations and activities; and

Reducing and restructuring our satellite collecting systems.

But, we can only cut so much. Any further reductions would truly jeopardize the effectiveness and safety of our intelligence programs.

The Intelligence Committee, under the exemplary leadership of Mr. GLICKMAN and Mr. COMBEST, have carefully analyzed each program and objective of our intelligence budget. This is a time when we must trust their judgment.

I urge all of my colleagues to support this measure with no additional cuts.

The CHAIRMAN. Are there other amendments to the bill?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. MCNULTY] having assumed the chair, Ms.

SLAUGHTER, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2330) to authorize appropriations for fiscal year 1994 for intelligence and intelligence-related activities of the U.S. Government and the Central Intelligence Agency retirement and disability system, and for other purposes, pursuant to House Resolution 229, she reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole?

Mr. SOLOMON. Mr. Speaker, I demanded a separate vote on the so-called Goss amendment as amended by the Glickman amendment.

The SPEAKER pro tempore. Is a separate vote demanded on any other amendment?

If not, the Clerk will report the amendment on which a separate vote has been demanded.

The Clerk read as follows:

Amendment: At the end of title III, add the following new section:

SEC. 307. DISCLOSURE OF CLASSIFIED INFORMATION BY MEMBERS OF CONGRESS AND EXECUTIVE BRANCH OFFICERS AND EMPLOYEES.

During the fiscal year 1994, no element of the United States Government for which funds are authorized in this Act may provide any classified information concerning or derived from the intelligence or intelligence-related activities of such element to a Member of Congress or to an officer or employee of the executive branch of the United States Government unless and until a copy of the following oath of secrecy has been signed by that Member, or officer or employee, as the case may be, and has been published, in an appropriate manner, in the Congressional Record:

"I do solemnly swear that I will not willfully directly or indirectly disclose to any unauthorized person any classified information received from any department of the Government funded in the Intelligence Authorization Act for Fiscal Year 1994 in the course of my duties as a Member of Congress (except pursuant to the rules and procedures of the appropriate House of the Congress), or as an officer or employee in the executive branch of the Government, as the case may be.

As used in this section, the term "Member of Congress' means a Member of the Senate or a Representative in, or a Delegate or Resident Commissioner to, the House of Representatives."

Mr. SOLOMON (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. SOLOMON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 342, noes 85, not voting 6, as follows:

[Roll No. 397]

AYES—342

Abercrombie	Dooley	Johnson, Sam
Ackerman	Doolittle	Johnston
Andrews (NJ)	Dornan	Kanjorski
Andrews (TX)	Dreier	Kaptur
Applegate	Duncan	Kasich
Archer	Dunn	Kennedy
Armey	Durbin	Kennelly
Bacchus (FL)	Edwards (TX)	Kim
Bachus (AL)	Emerson	King
Baesler	English (AZ)	Kingston
Baker (CA)	English (OK)	Kleczka
Baker (LA)	Eshoo	Klein
Ballenger	Evans	Klink
Barca	Everett	Klug
Barcia	Ewing	Knollenberg
Barlow	Farr	Kolbe
Barrett (NE)	Fawell	Kopetski
Barrett (WI)	Fazio	Kreidler
Bartlett	Fields (TX)	Kyl
Barton	Fingerhut	Lambert
Bateman	Flake	Lancaster
Bentley	Ford (TN)	Lantos
Bereuter	Fowler	LaRocco
Bevill	Franks (CT)	Laughlin
Bilbray	Franks (NJ)	Lazio
Bilirakis	Frost	Leach
Bishop	Furse	Lehman
Bliley	Gallegly	Levin
Blute	Gallo	Levy
Boehlert	Gekas	Lewis (CA)
Boehner	Gephardt	Lewis (FL)
Bonilla	Geren	Lightfoot
Bonior	Gilchrest	Linder
Borski	Gillmor	Lipinski
Boucher	Gilman	Livingston
Brewster	Gingrich	Lloyd
Brooks	Goodlatte	Long
Browder	Goodling	Lowey
Brown (OH)	Gordon	Maloney
Bryant	Goss	Mann
Bunning	Grams	Manton
Burton	Grandy	Manzullo
Buyer	Green	Margolies-Mezvinsky
Byrne	Greenwood	Martinez
Callahan	Gunderson	Mazzoli
Calvert	Hall (OH)	McCandless
Camp	Hall (TX)	McCollum
Canady	Hamilton	McCrery
Cantwell	Hancock	McCurdy
Cardin	Hansen	McDade
Carr	Harman	McHale
Castle	Hastert	McHugh
Chapman	Hayes	McInnis
Clayton	Hefley	McKeon
Clement	Hefner	McMillan
Clinger	Herger	McNulty
Coble	Hoagland	Meehan
Collins (GA)	Hobson	Menendez
Combest	Hochbrueckner	Meyers
Condit	Hoekstra	Mica
Cooper	Hoke	Michel
Coppersmith	Holden	Miller (FL)
Costello	Horn	Mineta
Cox	Houghton	Minge
Cramer	Hoyer	Mink
Crane	Huffington	Moakley
Crapo	Hughes	Molinari
Cunningham	Hunter	Montgomery
Danner	Hutchinson	Moorhead
Darden	Hutto	Moran
de la Garza	Hyde	Morella
Deal	Inglis	Murphy
DeLauro	Inhofe	Murtha
DeLay	Inslee	Myers
Derrick	Istook	Natcher
Deutsch	Jacobs	Neal (MA)
Diaz-Balart	Johnson (CT)	Neal (NC)
Dickey	Johnson (GA)	Nussle
Dicks	Johnson (SD)	Ortiz
Orton	Roth	Swett
Owens	Roukema	Swift
Oxley	Rowland	Tanner
Pallone	Royce	Tauzin
Parker	Sangmeister	Taylor (MS)
Pastor	Santorum	Taylor (NC)
Paxon	Sarpalius	Tejeda
Payne (VA)	Sawyer	Thomas (CA)
Penny	Saxton	Thomas (WY)
Peterson (FL)	Schaefer	Thornton
Peterson (MN)	Schenk	Thurman
Petri	Schiff	Torkildsen
Pickett	Sensenbrenner	Torres
Pickle	Sharp	Torricelli
Pombo	Shaw	Traficant
Pomeroy	Shays	Tucker
Porter	Shepherd	Upton
Portman	Shuster	Valentine
Poshard	Sisisky	Visclosky
Price (NC)	Skeen	Volkmer
Pryce (OH)	Skelton	Vucanovich
Quinn	Slattery	Walker
Rahall	Slaughter	Walsh
Ramstad	Smith (IA)	Weldon
Ravenel	Smith (NJ)	Wheat
Regula	Smith (OR)	Whitten
Richardson	Smith (TX)	Wilson
Ridge	Snowe	Wise
Roberts	Solomon	Wolf
Roemer	Spence	Woolsey
Rogers	Spratt	Young (AK)
Rohrabacher	Stenholm	Young (FL)
Ros-Lehtinen	Strickland	Zeliff
Rose	Stump	Zimmer
Rostenkowski	Stupak	
	Sundquist	

NOES—85

Allard	Glickman	Reynolds
Andrews (ME)	Gonzalez	Roybal-Allard
Becerra	Gutierrez	Rush
Beilenson	Hamburg	Sabo
Berman	Hastings	Sanders
Blackwell	Hilliard	Schroeder
Brown (CA)	Hinchey	Schumer
Brown (FL)	Jefferson	Scott
Clay	Johnson, E.B.	Serrano
Clyburn	Kildee	Skaggs
Coleman	LaFalce	Stark
Collins (IL)	Lewis (GA)	Stearns
Collins (MI)	Markey	Stokes
Conyers	Matsui	Studds
Coyne	McCloskey	Synar
DeFazio	McDermott	Thompson
Dellums	McKinney	Towns
Dingell	Meek	Unsoeld
Dixon	Mfume	Velazquez
Edwards (CA)	Miller (CA)	Vento
Engel	Mollohan	Washington
Fields (LA)	Nadler	Waters
Filner	Oberstar	Watt
Fish	Obey	Waxman
Foglietta	Olver	Wyden
Ford (MI)	Payne (NJ)	Wynn
Frank (MA)	Pelosi	Yates
Gejdenson	Quillen	
Gibbons	Reed	

NOT VOTING—6

Machtley	Rangel	Talent
Packard	Smith (MI)	Williams

□ 1623

Mr. VENTO and Mr. JEFFERSON changed their vote from "aye" to "no."

Mrs. KENNELLY changed her vote from "no" to "aye."

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. MCNULTY). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. GLICKMAN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 400, nays 28, not voting 5, as follows:

[Roll No. 398]

YEAS—400

Abercrombie	Costello	Hall (OH)
Ackerman	Cox	Hall (TX)
Allard	Coyne	Hamilton
Andrews (ME)	Cramer	Hancock
Andrews (NJ)	Crane	Hansen
Andrews (TX)	Crapo	Harman
Applegate	Cunningham	Hastert
Archer	Danner	Hastings
Armey	Darden	Hayes
Bacchus (FL)	de la Garza	Hefley
Bachus (AL)	Deal	Hefner
Baesler	DeLauro	Herger
Baker (CA)	DeLay	Hinchey
Baker (LA)	Derrick	Hoagland
Ballenger	Deutsch	Hobson
Barca	Diaz-Balart	Hochbrueckner
Barcia	Dickey	Hoekstra
Barlow	Dicks	Hoke
Barrett (NE)	Dingell	Holden
Barrett (WI)	Dixon	Horn
Bartlett	Dooley	Houghton
Barton	Doolittle	Hoyer
Bateman	Dornan	Huffington
Beilenson	Dreier	Hughes
Bentley	Dunn	Hunter
Bereuter	Durbin	Hutchinson
Berman	Edwards (CA)	Hutto
Bevill	Edwards (TX)	Inglis
Bilbray	Emerson	Inhofe
Bilirakis	Engel	Inslee
Bishop	English (AZ)	Istook
Blackwell	English (OK)	Jacobs
Bliley	Eshoo	Jefferson
Blute	Evans	Johnson (CT)
Boehlert	Everett	Johnson (GA)
Boehner	Ewing	Johnson (SD)
Bonilla	Farr	Johnson, E.B.
Bonior	Fawell	Johnson, Sam
Borski	Fazio	Johnston
Boucher	Fields (LA)	Kaptur
Brewster	Fields (TX)	Kasich
Brooks	Filner	Kennedy
Browder	Fingerhut	Kennelly
Brown (CA)	Fish	Kildee
Brown (FL)	Flake	Kim
Brown (OH)	Foglietta	King
Bryant	Ford (MI)	Kingston
Bunning	Fowler	Kleczka
Burton	Franks (CT)	Klein
Buyer	Franks (NJ)	Klink
Byrne	Frost	Klug
Callahan	Furse	Knollenberg
Calvert	Gallegly	Kolbe
Camp	Gallo	Kopetski
Canady	Gejdenson	Kreidler
Cantwell	Gekas	Kyl
Cardin	Gephardt	LaFalce
Carr	Geren	Lambert
Castle	Gibbons	Lancaster
Chapman	Gilchrest	Lantos
Clay	Gillmor	LaRocco
Clayton	Gilman	Laughlin
Clement	Gingrich	Lazio
Clinger	Glickman	Leach
Clyburn	Goodlatte	Lehman
Coble	Goodling	Levin
Coleman	Gordon	Levy
Collins (GA)	Goss	Lewis (CA)
Collins (IL)	Grams	Lewis (FL)
Collins (MI)	Grandy	Lewis (GA)
Combest	Green	Lightfoot
Condit	Greenwood	Linder
Cooper	Gunderson	Lipinski
Coppersmith	Gutierrez	Livingston
Lloyd	Pelosi	Smith (OR)
Long	Penny	Smith (TX)
Lowey	Peterson (FL)	Snowe
Machtley	Peterson (MN)	Solomon
Maloney	Pickett	Spence
Mann	Pickle	Spratt
Manton	Pombo	Stark
Manzullo	Pomeroy	Stearns
Margolies-Mezvinsky	Porter	Stenholm
	Portman	Stokes
Markey	Poshard	Strickland
Martinez	Price (NC)	Studds
Matsui	Pryce (OH)	Stump
Mazzoli	Quillen	Stupak
McCandless	Quinn	Sundquist
McCloskey	Rahall	Swett
McCollum	Ramstad	Swift
McCrery	Rangel	Synar
McCurdy	Ravenel	Tanner
McDade	Reed	Tauzin
McHale	Regula	Taylor (MS)
McHugh	Reynolds	Taylor (NC)
McInnis	Richardson	Tejeda
McKeon	Ridge	Thomas (CA)
McMillan	Roberts	Thomas (WY)
McNulty	Roemer	Thompson
Meehan	Rogers	Thornton
Meek	Ros-Lehtinen	Thurman
Menendez	Rose	Torkildsen
Meyers	Rostenkowski	Torres
Mica	Roth	Torricelli
Michel	Roukema	Towns
Miller (CA)	Rowland	Traficant
Miller (FL)	Roybal-Allard	Tucker
Mineta	Royce	Unsoeld
Mink	Rush	Upton
Moakley	Sabo	Valentine
Molinari	Sangmeister	Vento
Mollohan	Santorum	Visclosky
Montgomery	Sarpalius	Volkmer
Moorhead	Sawyer	Vucanovich
Moran	Saxton	Walker
Morella	Schaefer	Walsh
Murtha	Schenk	Waters
Myers	Schiff	Watt
Nadler	Schumer	Waxman
Natcher	Scott	Weldon
Neal (MA)	Sharp	Whitten
Neal (NC)	Shaw	Williams
Oberstar	Shepherd	Wilson
Olver	Shuster	Wise
Ortiz	Sisisky	Wolf
Orton	Skaggs	Wyden
Oxley	Skeen	Wynn
Pallone	Skelton	Yates
Parker	Slattery	Young (AK)
Pastor	Slaughter	Young (FL)
Paxon	Smith (IA)	Zeliff
Payne (NJ)	Smith (MI)	Zimmer
Payne (VA)	Smith (NJ)	

NAYS—28

Becerra	McDermott	Sanders
Conyers	McKinney	Schroeder
DeFazio	Mfume	Sensenbrenner
Dellums	Minge	Serrano
Duncan	Murphy	Shays
Frank (MA)	Nussle	Velazquez
Gonzalez	Obey	Washington
Hamburg	Owens	Woolsey
Hilliard	Petri	
Kanjorski	Rohrabacher	

NOT VOTING—5

Ford (TN)	Packard	Wheat
Hyde	Talent	

□ 1640

Messrs. KANJORSKI, SERRANO, and MFUME changed their vote from "yea" to "nay."

So the bill was passed.

The result of the vote was announced as above recorded.

TITLE AMENDMENT OFFERED BY MR. GLICKMAN

Mr. GLICKMAN. Mr. Speaker, I offer an amendment to the title:

The Clerk read as follows:

Title amendment offered by Mr. GLICKMAN:

Amend the title so as to read: "A bill to authorize appropriations for fiscal year 1994 for the intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.".

The SPEAKER pro tempore. Without objection, the amendment to the title is agreed to.

There was no objection.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. WHEAT. Mr. Speaker, I was absent during rollcall 398 as a result of arriving in the Chamber late. Had I been present, Mr. Speaker, I would have voted "aye."

□ 1640

AUTHORIZING CORRECTIONS IN ENGROSSMENT OF H.R. 2330, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1994

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 2330, the Clerk be authorized to make such technical and conforming changes as may be necessary to correct such things as spelling, punctuation, cross-referencing, and section numbering.

The SPEAKER pro tempore. (Mr. MCNULTY). Is there objection to the request of the gentleman from Kansas?

There was no objection.

GENERAL LEAVE

Mr. GLICKMAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on H.R. 2330, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Kansas?

There was no objection.

ANNOUNCEMENT OF INTENTION TO OFFER MOTION TO INSTRUCT CONFEREES ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

(Mr. ROHRABACHER asked and was given permission to address the House for 1 minute.)

Mr. ROHRABACHER. Mr. Speaker, pursuant to clause 1(c) of rule XXVIII, I hereby announce to the House my intention to offer a motion to instruct House conferees as follows:

Mr. ROHRABACHER moves that the managers on the part of the House on the disagreeing votes of the two Houses on the Senate Amendment to H.R. 2264, the Omnibus Budget Reconciliation Act, be instructed to insist on the House's disagreement to all provisions of the Senate Amendment increasing the level of federal tax on motor

fuels, to recede to the Senate Amendment's absence of provisions corresponding to the energy tax provisions of the House bill, and to reject any other increase in energy taxes.

PARLIAMENTARY INQUIRY

Mr. TRAFICANT. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore. The gentleman will state his parliamentary inquiry.

Mr. TRAFICANT. Mr. Speaker, there are Democrats in the House of Representatives who do not favor the taxes in the budget bill. There is no opportunity for those Members to be heard, the way the distribution of time has been awarded.

Mr. Speaker, I would ask if those in opposition can be given a representative share of the time to be able to be heard, and, if that is possible, I would ask to be able to control that time.

The SPEAKER pro tempore. There is no rule governing that debate yet, so the Chair will not entertain the inquiry of the gentleman from Ohio.

APPOINTMENT OF CONFEREES ON H.R. 2010, NATIONAL SERVICE TRUST ACT OF 1993

Mr. FORD of Michigan. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2010) to amend the National and Community Service Act of 1990 to establish a Corporation for national Service, enhance opportunities for national service, and provide national service educational awards to persons participating in such service, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

MOTION TO INSTRUCT OFFERED BY MR. GOODLING

Mr. GOODLING. Mr. Speaker, I offer a motion to instruct conferees.

The Clerk read as follows:

Mr. GOODLING moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill H.R. 2010, be instructed to include in their report section 301 of the House passed bill in so far as it adds a new subsection (d) to section 501 of the National and Community Service Act of 1990.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. GOODLING] will be recognized for 30 minutes, and the gentleman from Michigan [Mr. FORD] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. GOODLING].

Mr. GOODLING. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, for obvious reasons, I strongly support the motion offered by the gentleman from Pennsylvania [Mr. GOODLING] to instruct conferees to insist on the Solomon amendment to this national service bill.

As my colleagues will recall, my amendment was initially adopted in the Committee of the Whole on July 21 by a vote of 259 to 171. It was then readopted in the House on July 28 by an overwhelming margin of 385 to 38.

What the amendment does is quite simple. It says that these national service educational and service benefits shall be considered part of budget function 500, which covers education, training, employment, and social services. As such they shall be considered as related to the programs of the Departments of Labor, Health and Human Services, and Education for budgetary purposes.

Mr. Speaker, while this amendment might seem to be self-evident and unnecessary, the fact is that the new National Service Program was being forced into competition with veterans programs in a completely different Appropriations Subcommittee and section 602(b) budget suballocation, than other education and volunteer programs.

Why was this being done? The answer is that some of the powers that be in this Congress did not want one of President Clinton's major education initiatives to compete with existing higher education programs for dollars.

So, they figured, why not shuffle this off to another Appropriations subcommittee where it can compete for dollars with veterans rather than other education, labor, and social service programs where it belongs.

This is not merely idle speculation on my part. It was already done in this year's HUD, VA bill. Moreover, while the President's national service initiative was budgeted at $384 million in fiscal 1994, the same budget was cutting back veterans' educational benefits by $340 million.

Well, our national veterans' organizations will have no part of this little shell game being played at the expense of our Nation's veterans. They are 100 percent behind my amendment to ensure that we keep these programs in distinct budget categories, subcommittees, and suballocations.

Mr. Speaker, let these new, nonveterans education programs compete with existing nonveteran education programs for funding. That's the only way we are going to make hard decisions on spending priorities in related areas.

We cannot afford to simply pile new programs on top of old ones without sorting these things out and determining what is needed and what is not.

In conclusion, Mr. Speaker, I urge overwhelming support for this motion to instruct conferees so that they will have no doubt as to the ironclad will of this House that our veterans be protected against this attempted encroachment, and that the Solomon amendment not be dropped in conference.

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, Members of the House may remember that at the time that the gentleman from New York [Mr. SOLOMON] first offered his amendment that I attempted to accept it, and that did not fit with what somebody had in mind over there about how to make a fight out of this. I am not sure. I would have to check the RECORD. But I think I voted for the gentleman's amendment, and I believe I voted for it when it came back into the House, and I did that mainly because I do not believe the gentleman's amendment does anything.

Mr. Speaker, I say to the gentleman, "I believe that your amendment has, as its purpose, to try to create the impression with some people that there is a peculiar sort of a threat to veterans programs by national service."

It is true, in a purer sense, that any money allocated in the budget to the National Service Program out of discretionary funds in the budget is in competition with every program that is in the discretionary part of the budget, and that includes some of the sacred cows, to me, like Head Start, and students aid, and all the rest of them. If I truly believed that we were setting up something directly in competition with any one of those programs, I would not be here with the bill, and moreover, Mr. Speaker, as a veteran two times over, I would not under any circumstances support anything that was a threat to veterans benefits. That would be the height of hypocrisy. The Veterans' Administration sent me to college and turned me into a lawyer instead of an autoworker.

□ 1650

I will be ever grateful for that, and I know that some people, not all, but some people in America will be glad that my life took that turn as a result of the Veterans' Administration. I have been their friend for almost 29 years in this body, and will continue to be their friend. And I will protect them. But if it makes the gentleman from New York [Mr. SOLOMON] feel better with his amendment, I have no objection to it. I recommend that anybody that feels they want to say they did something for veterans, because they have some doubt about whether they are perceived as a friend of veterans, go ahead and call for a vote and vote for it.

Mr. GOODLING. Mr. Speaker, I yield such time as he may consume to the gentleman from New York [Mr. SOLOMON].

Mr. SOLOMON. Mr. Speaker, let me just say to my good friend, the gentleman from Michigan [Mr. FORD], that we have great respect for the gentleman. The gentleman knows his committee and he knows his stuff.

Likewise, I was a member of the Committee on Veterans' Affairs for 10 years and served as a ranking member on that committee. For years we had to fight, even under Reagan and Bush administrations, for every nickel of the money we spent on veterans hospital health care benefits. And we really took a beating in all those years.

We are still taking those beatings. I am just concerned that the benefits in the National Service Act are benefits which take in education, which take in labor, which take in social services. Those are the benefits that are being provided in the National Service Act to these young people that would take advantage of the program.

Therefore, I just want to make sure, and I am very sincere about it, I am not playing games, I am very sincere about wanting to make sure those funds do come out of the relevant departments and the 602(b) allocations of the Departments of Education, Labor, and Social Services.

So it merely is a strong clarification so there will not be any question about it when the appropriators—and, Mr. Speaker, the gentleman from Michigan [Mr. FORD] knows the fight we have all had with the appropriators—get into the authorizing committees. So there will not be any question at all.

Mr. Speaker, that is why we are offering this, and that is why I appreciate the consideration of the gentleman from Michigan [Mr. FORD].

Mr. FORD of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, will the gentleman from New York [Mr. SOLOMON] stipulate for the RECORD that it is probable that I stood with the gentleman every time either the Reagan or Bush budget tried to cut veterans benefits, and particularly from veterans hospitals, and voted against them on that issue with the veterans?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, it was not just those administrations, it was also the Congress and the appropriators that we had to fight.

Mr. FORD of Michigan. Mr. Speaker, will the gentleman from New York [Mr. SOLOMON] concede I voted with the gentleman for the veterans?

Mr. SOLOMON. The gentleman from Michigan [Mr. FORD] is a strong supporter of veterans benefits in this Congress, always has been, and I hope always will be.

Mr. GOODLING. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FORD of Michigan. Mr. Speaker, I have no further request for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. MCNULTY). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. WALKER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 422, nays 7, not voting 4, as follows:

[Roll No. 399]

YEAS—422

Abercrombie	Cooper	Goodling
Ackerman	Coppersmith	Gordon
Allard	Costello	Goss
Andrews (ME)	Cox	Grams
Andrews (NJ)	Coyne	Grandy
Andrews (TX)	Cramer	Green
Applegate	Crane	Greenwood
Archer	Crapo	Gunderson
Armey	Cunningham	Gutierrez
Bacchus (FL)	Danner	Hall (OH)
Bachus (AL)	Darden	Hall (TX)
Baesler	de la Garza	Hamburg
Baker (CA)	Deal	Hamilton
Baker (LA)	DeFazio	Hancock
Ballenger	DeLauro	Hansen
Barca	DeLay	Harman
Barcia	Dellums	Hastert
Barlow	Derrick	Hastings
Barrett (NE)	Deutsch	Hayes
Barrett (WI)	Diaz-Balart	Hefley
Bartlett	Dickey	Hefner
Barton	Dicks	Herger
Bateman	Dingell	Hilliard
Becerra	Dixon	Hinchey
Beilenson	Dooley	Hoagland
Bentley	Doolittle	Hobson
Bereuter	Dornan	Hochbrueckner
Berman	Dreier	Hoekstra
Bevill	Duncan	Hoke
Bilbray	Dunn	Holden
Bilirakis	Durbin	Horn
Bishop	Edwards (CA)	Houghton
Blackwell	Edwards (TX)	Hoyer
Bliley	Emerson	Huffington
Blute	Engel	Hughes
Boehlert	English (AZ)	Hunter
Boehner	English (OK)	Hutchinson
Bonior	Eshoo	Hutto
Borski	Evans	Hyde
Boucher	Everett	Inglis
Brewster	Ewing	Inhofe
Brooks	Farr	Inslee
Browder	Fawell	Istook
Brown (CA)	Fazio	Jacobs
Brown (FL)	Fields (LA)	Jefferson
Brown (OH)	Fields (TX)	Johnson (CT)
Bryant	Filner	Johnson (GA)
Bunning	Fingerhut	Johnson (SD)
Burton	Fish	Johnson, E.B.
Buyer	Flake	Johnson, Sam
Byrne	Ford (MI)	Kanjorski
Callahan	Ford (TN)	Kaptur
Calvert	Fowler	Kasich
Camp	Frank (MA)	Kennedy
Canady	Franks (CT)	Kennelly
Cantwell	Franks (NJ)	Kildee
Cardin	Frost	Kim
Carr	Furse	King
Castle	Gallegly	Kingston
Chapman	Gallo	Kleczka
Clayton	Gejdenson	Klein
Clement	Gekas	Klink
Clinger	Gephardt	Klug
Clyburn	Geren	Knollenberg
Coble	Gibbons	Kolbe
Coleman	Gilchrest	Kopetski
Collins (GA)	Gillmor	Kreidler
Collins (IL)	Gilman	Kyl
Collins (MI)	Gingrich	LaFalce
Combest	Glickman	Lambert
Condit	Gonzalez	Lancaster
Conyers	Goodlatte	Lantos
LaRocco	Oberstar	Shepherd
Laughlin	Obey	Shuster
Lazio	Olver	Sisisky
Leach	Ortiz	Skaggs
Lehman	Orton	Skeen
Levin	Owens	Skelton
Levy	Oxley	Slattery
Lewis (CA)	Pallone	Slaughter
Lewis (FL)	Parker	Smith (MI)
Lewis (GA)	Pastor	Smith (NJ)
Lightfoot	Paxon	Smith (OR)
Linder	Payne (NJ)	Smith (TX)
Lipinski	Payne (VA)	Snowe
Livingston	Pelosi	Solomon
Lloyd	Penny	Spence
Long	Peterson (FL)	Spratt
Lowey	Peterson (MN)	Stark
Machtley	Petri	Stearns
Maloney	Pickett	Stenholm
Mann	Pickle	Strickland
Manton	Pombo	Studds
Manzullo	Pomeroy	Stump
Margolies-Mezvinsky	Porter	Stupak
	Portman	Sundquist
Markey	Poshard	Swett
Martinez	Price (NC)	Swift
Matsui	Pryce (OH)	Synar
Mazzoli	Quillen	Talent
McCandless	Quinn	Tanner
McCloskey	Rahall	Tauzin
McCollum	Ramstad	Taylor (MS)
McCrery	Rangel	Taylor (NC)
McCurdy	Ravenel	Tejeda
McDade	Reed	Thomas (CA)
McDermott	Regula	Thomas (WY)
McHale	Reynolds	Thompson
McHugh	Richardson	Thornton
McInnis	Ridge	Thurman
McKeon	Roberts	Torkildsen
McKinney	Roemer	Torres
McMillan	Rogers	Torricelli
McNulty	Rohrabacher	Towns
Meehan	Ros-Lehtinen	Traficant
Meek	Rose	Tucker
Menendez	Rostenkowski	Unsoeld
Meyers	Roth	Upton
Mfume	Roukema	Valentine
Mica	Rowland	Velazquez
Michel	Roybal-Allard	Vento
Miller (CA)	Royce	Volkmer
Miller (FL)	Rush	Vucanovich
Mineta	Sabo	Walker
Minge	Sanders	Walsh
Mink	Sangmeister	Waters
Moakley	Santorum	Waxman
Molinari	Sarpalius	Weldon
Mollohan	Sawyer	Wheat
Montgomery	Saxton	Whitten
Moorhead	Schaefer	Williams
Moran	Schenk	Wilson
Morella	Schiff	Wise
Murphy	Schroeder	Wolf
Murtha	Schumer	Woolsey
Myers	Scott	Wyden
Nadler	Sensenbrenner	Wynn
Natcher	Serrano	Young (AK)
Neal (MA)	Sharp	Young (FL)
Neal (NC)	Shaw	Zeliff
Nussle	Shays	Zimmer

NAYS—7

Clay	Visclosky	Yates
Smith (IA)	Washington	
Stokes	Watt	

NOT VOTING—4

Bonilla	Johnston
Foglietta	Packard

□ 1718

Mr. STOKES changed his vote from "yea" to "nay."

So the motion to instruct was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

The SPEAKER pro tempore (Mr. MCNULTY). Without objection, the Chair appoints the following conferees:

From the Committee on Education and Labor: Messrs. FORD of Michigan, MURPHY, KILDEE, MARTINEZ, OWENS, GOODLING, Mrs. ROUKEMA, and Mr. GUNDERSON.

From the Committee on Government Operations: Mr. CONYERS, Mrs. COLLINS of Illinois, and Messrs. WAXMAN, CLINGER, and MCCANDLESS.

From the Committee on the Judiciary: Messrs. BROOKS, BRYANT, SCOTT, FISH, and MOORHEAD.

From the Committee on Natural Resources: Messrs. MILLER of California, VENTO, and YOUNG of Alaska.

From the Committee on Post Office and Civil Service: Mr. CLAY, Mrs. SCHROEDER, Mr. MCCLOSKEY, Mr. MYERS of Indiana, and Mrs. MORELLA.

From the Committee on Public Works and Transportation: Messrs. MINETA, RAHALL, TRAFICANT, SHUSTER, and PETRI.

There was no objection.

□ 1720

PROVIDING FOR CONSIDERATION OF H.R. 2401, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

Mr. FROST. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 233 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 233

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 2401) to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill and shall not exceed two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services. After general debate the Committee shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Texas [Mr. FROST] is recognized for 1 hour.

Mr. FROST. Mr. Speaker, I yield the customary 30 minutes to the gentleman from New York [Mr. SOLOMON] for the purpose of debate only, pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 233 provides for the initial consideration of H.R. 2401, the National Defense Authorization Act for Fiscal Year 1994. This resolution provides for 2 hours of general debate, equally divided and controlled by the chairman and ranking minority member of the Armed Services Committee. General debate shall be confined to the bill and the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill.

The resolution waives all points of order against consideration of the bill. After general debate the committee shall rise without motion. Finally, the resolution provides that no further consideration of the bill shall be in order except as subsequently ordered by the House.

Mr. Speaker, with adoption of this resolution we can begin the important debate on our Nation's defense policy. H.R. 2401 authorizes $262.8 billion for defense and for Department of Energy national security programs. This is $10.2 billion less than what was appropriated in fiscal year 1993, and $600 million less than requested by the Clinton administration.

H.R. 2401 provides funding authorizations for our Nation's defense activities, including procurement, research, development, test and evaluation, operation and maintenance, military personnel, defense conversion, and other items necessary to our national defense efforts.

The changes that have taken place in the world, particularly in the former Soviet Union and Eastern Europe, have necessitated a major review of our defense policy. It is no longer a time of escalating defense expenditures, but rather a time to bring defense spending to a level more in line with the threats facing the United States in today's world.

Mr. Speaker, all the changes in the world have led to a need to review the entire basis for the configuration of our national security apparatus. Secretary of Defense Aspin has ordered a long-term review of our national defense needs in light of shifting international security environment. This bottom-up review of our defense needs and programs is expected to be completed later this year.

Because this review is ongoing and is expected to better inform us on how we should structure our national defense, H.R. 2401 defers making dramatic policy shifts pending the completion of the Defense Department's evaluation.

Another important provision of H.R. 2401 continues the efforts we initiated last year to help those individuals and communities who will suffer as a result of declining defense expenditures. As defense contracts are terminated and military bases are closed, assistance will be required to help defense workers and businesses adjust. This defense authorization bill provides $3.054 billion for defense conversion, reinvestment, and transition assistance. We cannot forget the millions of Americans whose work helped make our country strong and secure. This assistance will help in the economic adjustment to the post-cold-war world.

H.R. 2401 also will permit the House to engage in a debate on the military policy toward gays. President Clinton recently announced his "don't ask, don't tell, don't pursue" policy on gays serving in the military. The bill reported by the Armed Services Committee codifies a modified version of the President's policy. We will have the opportunity to fully discuss the issue of gays in the military.

Mr. Speaker, the Rules Committee will be meeting later this week to fashion a second rule that will allow for the consideration of amendments to H.R. 2401. We may take up this second rule and begin the next phase of the defense debate shortly after the August recess.

Mr. Speaker, the world remains a dangerous place. We cannot deceive ourselves into thinking that, just because the former Soviet Union has broken up, we can let down our guard. Armed conflict can arise at any time, at any place, requiring the use of American power to protect our national security interests. We must remain prepared to deal with those threats.

H.R. 2401 provides the authorizations to ensure that we have the resources necessary to respond to threats to our national security. It ensures that the men and women who serve our Nation are well trained, and have the equipment and systems required to protect our shores and advance our interests in the world.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume.

Colleagues back in your offices, if you are worried about the possibility of America going to war while we are on recess, I would ask you to listen to this debate a little bit here in the next hour.

As the gentleman from Texas has just indicated, we now have before us a rule that simply provides for 2 hours of general debate on the defense authorization bill. No amendments to this bill will be considered today under the terms of this rule.

Mr. Speaker, it is my understanding that the Rules Committee is likely to meet later this week in order to grant a second rule which would provide for the consideration of amendments to the bill. It is further my understanding that this second rule will most likely be brought to the floor in September, after the August recess. In other words, no amendment to this bill will be considered on the floor today, and it is exceedingly unlikely that any will be considered this week at all.

Having said all of that, Mr. Speaker, I must also say that I am compelled to oppose this rule. I have no objection to holding off the amendment process until September. Indeed, I believe that a bill of this size and this importance

should be debated in an orderly fashion, without interruption, and without delays. The chairman of the Armed Services Committee and the ranking member feel the same way.

But there are a couple of issues that should be taken up before the August recess. First, there are several amendments dealing with the issue of homosexuals in the military. We were led to believe, the other day, that these amendments were to be considered this week, and that is what I would have preferred and most of the Members of this House would have preferred. But I was taken aback to hear some of my friends on the other side of the aisle suggest that Members should not be required to vote on that kind of an issue during the same week that we are also having to vote on the budget reconciliation bill. That attitude, Mr. Speaker, really surprises me, and I would simply say to my friends on the other side of the aisle that the American people did not send us here to dodge the tough issues. They expect us to take a stand, not to establish a quota system whereby the House of Representatives votes on only one controversial issue per week. I mean, what is going on around here?

And believe me, the decisions we are being called on to make are not going to get any easier in the months ahead. They are going to get harder.

Mr. Speaker, if we start putting off votes on all of these though calls, there is no possible way the public's business can go forward. And the public would be well advised to send people to Washington who are ready and who are willing and able to stand up for their convictions.

□ 1730

Thinking about making hard decisions leads me, Mr. Speaker, to my second reason for opposing this rule. I believe very strongly that every Member of this House should have the obligation of voting on the question of whether or not United States troops should be deployed in Bosnia or Macedonia. It is imperative that this vote take place before, not after, the August recess.

Three weeks ago today the Republican leadership of the House sent a letter to the Secretary of State, to the President of the United States, and to the Secretary of Defense asking for a briefing for all Members of this Congress on United States policy concerning the war in the former Yugoslavia. Only last night, under intense pressure, did the administration finally agree to hold a briefing.

Mr. Speaker, after attending that briefing this morning, I concluded, as did I think everybody there on both sides of the aisle, why the administration has been so reluctant to brief Congress on its policy in the Balkans. There is no policy. A chronology of events does not constitute a policy, but a chronology is all that we heard this morning. It is all that was given to us at the briefing this morning, and Democrats as well as Republicans came away scratching their heads in disbelief.

Mr. Speaker, 300 American troops are already on the ground in Macedonia, and the administration is contemplating air strikes over Bosnia. All of this is taking place when Congress is preparing to leave town for a district work period which will last nearly 5 weeks. By that time, by the time we get back, it could be too late. Our country could find itself embroiled in a war from which there is no extricating ourselves.

Mr. Speaker, the conflict in the former Yugoslavia, I think, defies rational analysis. But here we are ready to go in with troops and planes, and the President of the United States cannot or will not answer four basic questions that Congress and the American people have been asking now for weeks.

No. 1: What are our objectives, and what is our strategic interest in Bosnia?

No. 2: Is there a strong likelihood of success in achieving our defined objectives, if we find out what they are?

No. 3: Do we have an exit strategy defining both how and when we get out?

And, No. 4: Do we have the support of the American people for what could be a long campaign, one that could last for years, ladies and gentlemen?

Mr. Speaker, I ask Members to vote against this rule so that it can be sent back to the Committee on Rules.

The distinguished Republican whip, the gentleman from Georgia [Mr. GINGRICH], who will be here in a few minutes, filed two amendments to this bill which must be considered by the time this House leaves the day after tomorrow. Each of the amendments is very simple. One would prohibit the deployment of United States troops in Macedonia. We have 300 troops there now.

The other amendment would prohibit the deployment of United States troops in Bosnia, and that includes air strikes.

Mr. Speaker, did this Nation learn anything in Lebanon a decade ago? I was one of those that was here, and I was one of those who voted to put Americans into Beirut; and I was one of those who voted not to take the marines out, and they came out in body bags. I will never forget the mistake I made on that vote. It is the lesson that our troops should never ever be committed into a hostile situation without having a clearly defined mission to perform in support of a clearly defined national objective and national policy.

And where is that policy on the Balkans today? And where is that national objective?

More than that, my friends, never ever should our troops be sent into a hostile situation without having the right and the means to defend themselves against any and all eventualities. My blood ran cold the other day when a Danish general said over in Macedonia that our United States troops there would have to lay down their arms if and when they were fired upon. Did you ever hear of anything like that? Lay down your arms if you are fired upon? That is just plain nonsense. There is foreign control of our military personnel for the first time in the history of this Nation.

Now, we all had better think about that. These are the issues we ought to be debating on this floor instead of having 2 hours of general debate and then going home for 5 weeks and God knows what is going to happen.

This rule should be defeated. It should be sent back to the Committee on Rules so the two Gingrich amendments can be made in order, not after the August recess, but right now.

We are derelict in our duty as the representatives of the American people if we leave town before taking a stand on the ongoing disaster in the Balkans. It is already a catastrophe for the people who live there. Let us not make it a catastrophe and a responsibility for America as well. We are going to regret it, Mr. Speaker, if we do.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Mississippi [Mr. MONTGOMERY].

Mr. MONTGOMERY. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I rise in support of the rule for H.R. 2401, the fiscal year 1994 DOD authorization bill. It is a balanced bill that meets the minimum needs of the military while recognizing the realities of the changing world order and the realities of the Federal budget.

It has many provisions that are good for the military and I support them. It approves the strength levels requested in the budget, it establishes in law the "don't ask, don't tell" policy on gays in the military, it sets a minimum force structure for the Army National Guard, it establishes separate commands for the reserve components, it provides for about $1 billion in procurement authorization to modernize the Guard and Reserves, and it expands the Reserve GI bill to authorize use for graduate studies.

Mr. Speaker, I want to go on record to say this bill represents the minimum level of funding that I can support for the Defense Department. I have believed for some time now that we are going too far too fast in cutting our defense spending. The severe cuts proposed in the future are not right and will seriously damage our capability to provide for our national security.

Defense is the only Federal department that has been reduced in the past

few years. We cannot continue to cut defense to pay for other programs. Defense is not a bottomless pot of money to be cut and cut. The attacks on the Defense budget come from many sides. The firewalls are gone that protected defense cuts from being used for anything except the budget deficit. In addition, there are several items that eat up defense funds that are not strictly defense items, such as $3 billion for defense conversion, $11.4 billion for environmental cleanup, $1 billion in aid to the former Soviet Union, and $1.1 billion for counter-drug activities. When you combine these programs with the required funding for the humanitarian relief operations such as in Somalia, Bosnia, and so forth, the real spending power of the Defense budget is greatly reduced. At some point we must draw a line below which we will not take the Defense budget.

Mr. Speaker, I believe we have reached that line with this year's budget. We have begun working to maintain the Defense budget at or above the current level. I urge my colleagues who share our beliefs to work with us in the coming year and years on preserving our national security.

Mr. Speaker, in closing I urge my colleagues to support H.R. 2401, the DOD authorization bill for fiscal year 1994.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the very distinguished member of the Committee on Rules from Los Angeles, the gentleman from California [Mr. DREIER].

Mr. DREIER. Mr. Speaker, I thank my friend from Glens Falls, the gentleman from New York, for yielding me this time.

Mr. Speaker, our great new ranking Republican member of the Committee on Armed Services, the gentleman from South Carolina [Mr. SPENCE], testified before the Committee on Rules and stated it very clearly. He said that the Director of Central Intelligence, Mr. Woolsey, said that we may have successfully slain the dragon, but there are a lot of snakes out there.

I was just looking at a list that my friend from San Diego, the gentleman from California [Mr. HUNTER], had of some of the trouble spots that remain in the world. We have the statement from the gentleman from New York [Mr. SOLOMON] concerning Bosnia and Macedonia, and I strongly support our attempt to try and make these amendments in the order that they are offered by the gentleman from Georgia [Mr. GINGRICH].

But there are many other trouble spots that we need to look to. North Korea is just one of them. It is a very delicate and challenging situation for us.

Mr. Speaker, now, this rule is one which does something that I have consistently opposed, and that is it establishes this two-part procedure. This schedule calls for us to have 2 hours of general debate as we proceed with this measure. And then we leave for 4 weeks.

Needless to say, there are going to be a lot of very, very varying schedules over the next 4 weeks that Members will have.

□ 1740

And then we are to come back, have a complete understanding of what took place in early August on this measure and then proceed with the process of amendments. That is not the way the system should work. We should not have two-part rules.

So, for that reason, along with the others outlined by the gentleman from New York [Mr. SOLOMON], I urge a "no" vote on this rule. Let us go back upstairs into our Committee on Rules, make the Gingrich amendments in order, come back and proceed with a process which would be more balanced. Better yet, let us have the entire debate on the Armed Services bill considered together in one rule.

Mr. Speaker, I thank my friend from Glens Falls for yielding.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 6 minutes to the gentleman from Washington [Mr. DICKS].

Mr. DICKS. Mr. Speaker, I rise in strong support of this rule and urge my colleagues in the House to vote for the rule after this debate. And it is clearly going to be a very spirited debate. I want to compliment my colleague from Mississippi, Congressman SONNY MONTGOMERY, for his speech which he just gave the House on the defense budget and our overall defense policy and defense strategy. I think sometimes the American people believe that we just have been throwing money at defense, we have been spending money in a reckless fashion. Much has been made, of course, about the buildup during the Reagan years and the buildup in defense spending. But I want to remind my colleagues that that buildup ended in fiscal year 1985. Since then we have been systematically cutting back our Defense Establishment, our defense bases, defense spending. On procurement alone we have reduced spending by about $70 billion a year in real terms. If we keep going the direction we are headed, by fiscal year 1997—and we are using here constant fiscal year 1993 dollars—we will have reduced the defense budget from a high of $360 billion in fiscal year 1985 down to $233 billion, or a reduction of $127 billion. We all know that defense spending should be reduced because of the change in the threat. The issue is how sharply, how deeply are we going to cut the budget.

I must tell my colleagues here today and the American people that I am concerned about this sharp decline in defense spending. I am concerned about what I first heard about when I came to the Congress, when I was first put on the defense subcommittee back in 1979. I listened to Gen. Shy Meyers and Adm. Tom Hayworth talk about a hollow force, a hollow Navy and a hollow Army where we did not have units fully staffed, fully manned; where we were not able to retain personnel; where we were unable to recruit people with high school educations; where the training levels got so low that we frankly were not prepared to deploy the force.

Like many of my colleagues here on the floor, we worked during the 1980's to turn that around. We worked to make certain that we had the finest people possible in the military. We tried to give them the best equipment, made sure they had the spare parts, made sure that they had the O&M for their training and readiness.

Now, today, with this sharp decline in defense spending, I am afraid we are headed back to the days of the hollow force. And what a shame, because the troops we sent out into the gulf just a few years ago did an extraordinary job. It probably was the finest military operation ever conducted by our Government. We had outstanding people.

I went out to the gulf twice with the distinguished chairman of the Subcommittee on Defense of the Committee on Appropriations, the gentleman from Pennsylvania, Congressman MURTHA. We had an extraordinary force that did a great job. They were well equipped, well trained, were ready to do their job.

I am just concerned as we keep cutting down defense spending, as we keep reducing the training and the readiness, that we are going to be back and have that same hollow force again.

I urge our colleagues here in the House to take a very serious look at the direction in which we are headed, and I urge our former colleague, the new Secretary of Defense, Les Aspin, to come forth and explain the new administration's defense policy. We need to know from this so-called bottom-up review what we are going to be spending in the near future and whether we are going to be protecting readiness and training and the key essentials to a good military force.

I think it is a challenge for this Congress and for the new administration.

I have been concerned about the loss of jobs all over this country, many in the State of California, where we have had thousands and thousands of people lose their jobs in the defense industry. I worry about whether we are going to have the industrial base in the future to build the defense systems that we relied on so heavily in the gulf. These people are going to go into other activities.

We talk so much about conversion, and it is a worthy concept, but we are in a market economy and when you change your products you have to be able to sell that product or you have to go into another area of activity.

So, I think we need to seriously think about the future here. I look forward to the debate in the fall on the defense authorization bill and debate on the defense appropriations bill. Most importantly, we need, as a Congress—and we have under the Constitution ultimate responsibility for raising the military forces of our country—we need to make certain that we are not letting a great force decline and become second rate and hollow as it did after the Vietnam War.

I know that there are a group of Members of this Congress, many of them on my side of the aisle, who have been meeting recently,

who are concerned about this. We want to make it clear to Secretary Aspin and the President that there is a solid group of Democrats who are prepared to stand up and defend the defense budget. You are going to hear more from us in the future.

Mr. SOLOMON. Mr. Speaker, I yield myself such time as I may consume. I associate myself with the remarks of the gentleman from Washington. He has been an outstanding member of the Subcommittee on Defense of the Committee on Appropriations.

Mr. Speaker, I yield 2½ minutes to a distinguished member of the Committee on Armed Services, the gentleman from California [Mr. HUNTER].

Mr. HUNTER. I thank the gentleman for yielding this time to me.

Mr. Speaker, I am happy to follow my friend, the gentleman from Washington, because he laid out the mistakes of the past that we made that he saw in 1979 and I saw, coming in as a new Member, in 1980; the hollow Army, the fact that we had 2,000 petty officers a month leave the Navy, the people who actually operate the Navy; military families on food stamps. And we said, as we said before, never again.

My colleague has pointed out the problems that we have had, the fact that defense spending has declined, not since last year or the year before, but since 1986 it has been in real decline.

I just wanted to take a moment to match up the threat with this decline in dollars and see the reduced threat that will meet this reduced budget.

Despite the fall of the Soviet Union or the dissolution of the Soviet Union, we have more complex problems than we had beforehand. We have the Soviet Union that now, instead of consisting of one Soviet Government that has nuclear weapons under tight control, we now have four former Soviet States, all of which have nuclear weapons in their possession. The pink slips on those nuclear weapons are in doubt. We have some changing situations that are based on politics. We do not know which way those politics are going to go. We are not sure that we are going to be able to follow through on disarmament of those systems.

In North Korea we have a government that is charging straight ahead on the development of a nuclear device and the means to carry that device into the territories of our allies and our own military.

□ 1750

We are not able to stop North Korea from doing that. They are marching ahead strongly.

Let me just say, I think this is the start of a downward slide. It is the first of a 5-year plan that is going to take this Nation back to unpreparedness. We should be asking the hard questions now, not putting them off for 30 days. We are avoiding those hard questions and those tough issues.

Mr. Speaker, I would urge a "no" vote on the rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 2 minutes to the gentleman from Indiana [Mr. MCCLOSKEY].

Mr. MCCLOSKEY. Mr. Speaker, I thank the gentleman from Texas for yielding me this time.

Mr. Speaker, I rise in strong support of the rule, and particularly to my good friend, the gentleman from New York [Mr. SOLOMON], I would say the Bosnian situation and the fact that opportunities for amendments as to a Bosnian-Balkan policy were rejected in the DOD bill is no reason in essence to be against the rule.

I, for one, and the gentleman from New York [Mr. SOLOMON] think the time for a detailed debate and the give and take of that, the education that would be involved, is long overdue in this House. I hope we do get it, but I think it would be a mistake to use an argument on the DOD bill to arbitrarily tie the President's hands on foreign policy.

The simple fact is that I do not recall this was ever done on the Republican side or attempted in 12 years of Republican Presidential action or proposals in the international arena.

Even as we talk, the news is coming over the AP wire of Reuters that if anything, given the more assertive actions on the part of the west, the Serbs are picking up their offensive. They have taken Mount Igman. They have cut off in essence supplies going in and out of Sarajevo, and if anything, are really saying that a full-scale final onslaught on Sarajevo is imminent.

If that happens, we can see hundreds of thousands more dead, millions more refugees and real international security problems for us throughout Eastern Europe and elsewhere.

I would note this is not a partisan issue. Such noble Republican leaders as Senator DOLE and the gentleman from Illinois [Mr. HYDE], our dear colleague in the House, I think generally in regard to how the gentleman from Illinois [Mr. HYDE] would vote on this rule would share my concerns.

So I would just say this should not be used as a vehicle to tie the President's hands.

Mr. Speaker, I am in strong support of the rule, and hopefully this issue will be resolved within a matter of days, not weeks or months.

Mr. SOLOMON. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Wisconsin [Mr. ROTH], who came to this Congress with me 15 years ago and who has been an outstanding member of the Committee on Foreign Affairs.

Mr. ROTH. Mr. Speaker, I thank the gentleman for yielding this time to me, but 2 minutes is not a very long time when we are here to debate a very important issue.

We have a duty and a responsibility, each and every one of us, because each and every one of us has an oath registered in heaven that we will uphold the Constitution of the United States.

By all accounts, the President is poised to begin military operations in the Balkans, to begin bombing in the Balkans.

This is serious business. Our Air Force, our Navy, our ground troops are assembled in the Adriatic. The British, the French, the Germans, all have been consulted. This Congress has not been consulted.

When you read the Constitution, only Congress can declare war. The President can ask for a declaration, but only Congress can declare war.

We are not meeting our obligations. Make no mistake about it, the first time a bomb drops, we are involved in that bloody civil war.

Congress has an obligation, yet Congress is mute, mute as a tomb.

If air strikes begin and they are not successful, what is the next step? Escalation.

What took place? We have 300 troops in Macedonia. Were any of you consulted? There was not a single Congressman who said yes, put in 300 troops in Macedonia; but yet when our troops are on the border and they enforce the embargo, the Serbs will go after them.

And what has the President said? In a letter to me the President said:

> Let me assure you that I will not send our American forces anywhere without protecting them, if necessary. Our contingency plans provide for their full protection if needed and requested.

What does that mean? That is like trying to decipher what they had to decipher the day before Pearl Harbor. Our contingency plans provide for their full protection. Is there anyone in Congress who knows what these contingency plans are?

The SPEAKER pro tempore (Mr. MCNULTY). The time of the gentleman from Wisconsin has expired.

Mr. SOLOMON. Mr. Speaker, I yield 30 additional seconds to the gentleman from Wisconsin [Mr. ROTH].

Mr. ROTH. Mr. Speaker, I ask all of you to just take a look at the classic Barbara Tushman's "Guns of August." It concludes:

> Afterwards there was no turning back. The nations were caught in a trap made during the first 30 days out of the battles that failed to be decisive, a trap from which there was no exit, no escape.

This is history talking, friends. This is serious business. Do not close your eyes to it.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 5 minutes to the gentleman from Maine [Mr. ANDREWS].

Mr. ANDREWS of Maine. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I stand in support of this rule. I think as many can gather from the comments made already that we are in for a robust and very important debate on our national defense and our national defense priorities.

This Nation needs such a debate.

Let me just say, Mr. Speaker, as a member of the Committee on Armed Services, I am quite excited about the prospect of this debate because we have had at the helm of our committee a new chairman, the gentleman from California [Mr. DELLUMS], who has exercised tremendous leadership and vision in bringing all sides of this issue together, calling for an opening of minds and a complete and thorough analysis of not only what we are going to be spending in terms of defense, but also the threats and the concerns that we are facing as a nation, and to put this debate in the most solid context possible and look forward to rebuilding this Nation's economic strength as we rebuild the strength of our Nation's security.

It was the former Director of the Office of Management and Budget who quipped that the cold war ended up being a race to bankruptcy between the Soviet Union and the United States. He concluded that fortunately the Soviet Union won.

Well, Mr. Speaker, they might have won, but they did not win by very much.

We have to recognize in this country that the strength and security of this Nation and our ability to be leaders in the world is going to be based more upon our economic strength and the security of our people here at home more than anything else. Unless we recognize and address the priorities that we need to address as a nation with respect to that economic strength and the great needs that have gone unmet in this country, then we are not going to have the security. We are not going to have the capacity for international leadership. We are not going to have the kind of Nation that our children deserve. So that is what this debate, Mr. Speaker, is all about.

I am very pleased that the Armed Services Committee looked very carefully at the issue of the economic strength of this Nation, particularly when it comes to economic conversion. That is going out to all the industries and all the people and all the communities and states across this country who were there when our Nation asked them to be there, to provide for the Nation's defense and are now finding themselves without hope, in some cases without opportunity, without a place to turn.

This committee has looked very carefully at this issue and will bring before this House a debate and a proposal for economic conversion that addresses the fundamental foundation of this country's economic strength. Much of the industrial base that helped to serve this Nation in terms of defense is there as a resource to help this Nation rebuild its economic foundation and become competitive, in fact become leaders in the world then it comes to critical technologies and critical areas that this Nation can invest in and take advantage of in the years to come.

One example, Mr. Speaker, is in the area of shipbuilding. We have a tremendous opportunity as a Nation, a shipbuilding opportunity that provides this country with an enormous opportunity to take advantage of the growing amount of shipbuilding orders that we can expect over the next few years. Ninety-five percent of the goods and services that are imported and exported in this Nation are on ships, but we have watched over the last 12 years our commercial shipbuilding industry go from an international power to virtual nonexistence, to the point where because our competitor nations have subsidized and assisted their commercial shipbuilding industries and because our Nation has turned its back on commercial shipbuilding, we have watched virtually 100 percent of our market share in this vital industry go overseas, along with 120,000 shipbuilding jobs.

□ 1800

This bill before us, Mr. Speaker, will provide a specific program that addresses that critical ship building industrial base, seeks to level the playing field, seeks to make a tremendous investment in our people and our ship building industries to give us the chance to level the playing field and provide for jobs and opportunities for ship builders and shipyards across this country.

My colleagues, the time has come for this Congress and for this Nation to look at our national security and our national defense, not just in terms of missile systems, or tanks, or even personnel, but in terms of our economic strength, in terms of the security of our people, in terms of our ability to be influential, because this Nation has come together and grappled with its problems at home.

That is what we are going to see in this debate, those are the issues that this particular bill is addressing, and, my colleagues, I do hope that we support this rule and this bill coming before us.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Minnesota [Mr. RAMSTAD], an outstanding Member of this House.

Mr. RAMSTAD. Mr. Speaker, I thank the gentleman from New York [Mr. SOLOMON] for yielding this time to me.

Mr. Speaker, it is essential that the Congress address further United States military involvement in the Yugoslav civil war now—not after the August recess. There is a full-scale war waiting to happen in the Balkans involving U.S. troops and Congress is asleep at the switch. It is also essential that the Clinton administration start consulting Congress before they haphazardly insert the U.S. Armed Forces into the worst quagmire in the world today.

Mr. Speaker, it is highly unfortunate that we have not found an appropriate forum to discuss this matter in the House until now.

Back on June 10—2 months ago—the Clinton administration announced that the United States would send 300 of our troops to join U.N. peacekeeping forces in the former Yugoslav Republic of Macedonia.

On June 24, 85 Members of this House—from both sides of the aisle—joined me in sending a letter to President Clinton expressing our "strong concerns and reservations about the lack of a well-defined mission" for this troop deployment.

On July 5, the first contingent of United States troops arrived in Macedonia. Now, more than a month later, we are finally asking—what exactly are they doing there?

Despite the fact that no clear mission has yet been defined for these ground forces, they are under United Nations command as peacekeepers and are the first U.S. combat troops to wear the blue helmets in our Nation's history.

The Danish commander of our troops clearly revealed that our troops will serve essentially as a tripwire when he said, "if the Serbs attack, then I want the Americans there."

Mr. Speaker, it is clear that 300 United States troops, and a total U.N. force of 1,000, are no match for a Serbian assault. They are simply not in a position to defend—or even effectively monitor—the 260-mile border which separates Macedonia from Serbia and Albania.

As Gen. Colin Powell has stated, the first rule of U.S. military engagement should be this: Before deploying U.S. forces anywhere and putting American lives at risk, it is absolutely imperative to first define their mission.

Equally important is the critical question of whether U.S. troops can complete that mission and how we can get them out if they get into trouble.

In a letter to me dated July 19, President Clinton said:

> Let me assure you that I would not send American forces anywhere without ensuring that we would be able to protect them if necessary. Our contingency plans provide for their full protection if needed and requested.

But, last month, the Macedonia Defense Minister said that "if war erupted, Macedonia would appeal for 5,000 to 10,000 more American troops."

Mr. Speaker, we need to ask how would the United States respond to such a request? Are we prepared to send thousands of young men and women to the Balkans if needed?

Mr. Speaker, the lessons of Vietnam should be clear. Our commitment of 300 ground troops in Macedonia and 20,000 United States troops for the NATO operation in Bosnia clearly threatens to escalate our military involvement in the Balkans. Our presence will not solve the intractable Balkan puzzle but will only expand the fighting there.

It is high time President Clinton consulted the Congress and it is high time the Congress let him know that American troops must not be used as symbolic sitting ducks anywhere in the world.

I urge my colleagues, especially the 85 who signed my letter to the President and have cosponsored my resolution disapproving of the United States troop deployment to Macedonia, to oppose this rule and give us a vote on the important amendments offered by Mr. GINGRICH now.

Let us get United States ground troops out of Macedonia and out of the Balkans before its too late.

Mr. SOLOMON. Mr. Speaker, I yield 3 minutes to the gentleman from Florida [Mr. MICA], a distinguished, outstanding new Member of this House, the brother of a former Member, Dan Mica.

Mr. MICA. Mr. Speaker, I come here this afternoon to urge my colleagues to defeat this rule because I, too, offered an amendment to the Committee on Rules that will not be heard, and I think it is an important amendment and an important question that needs to be resolved before this Congress recesses and does not return for another month.

Along with my colleagues, every one of us supported, very strongly, the humanitarian effort when we provided aid to the suffering in Somalia. I was proud to be supportive of that effort. The original intention of that effort was to have our troops there from December to January. The estimated cost was $200 to $300 million.

My colleagues, we will not get an opportunity to debate what is happening there now. This is August, and let me say to my colleagues what we have done:

We have spent almost a billion dollars, and we are about to spend another half a billion dollars. Just a few days ago, we stood on the floor of this House of Representatives and agonized for days about spending $3 billion aid for our flood victims, and we cannot spend a few minutes here to discuss and debate this issue intelligently?

Let me tell my colleagues what the situation is: There are 20,000 troops in Somalia today. Four thousand of those troops are American, American sitting ducks. But is there a big conflict there? The latest reports are that there are 300 rebels. They are down to 300 hardcore rebels. We are now spending $10 for military aid for every $1 of humanitarian aid. Now, we are going to spend another half billion dollars of the taxpayers' hard-earned money there, and because of this rule, we will not have an opportunity to discuss this important issue before we leave.

The former Ambassador of the United States to Somalia told a House committee very recently that we are turning triumph into tragedy.

This Congress has a responsibility to act, not to react.

My colleagues heard about the body bags that my distinguished colleague from New York [Mr. SOLOMON] just mentioned in his tragic personal experience. That should not be the experience of the United States, one to lose lives or one to waste money.

I have a quote from a nurse serving in Somalia, Mr. Speaker. Let me repeat the words of an American nurse who recently wrote and said:

"We are not wanted in Somalia."

"Nor can we solve Somalia's political problems."

Unfortunately, that is what this situation has evolved into—a civil and political question. But we will not get an opportunity to debate that matter here because this rule denies me the opportunity to bring that question before the House, and I urge the defeat of this rule.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from California [Mr. DELLUMS], the distinguished chairman of the Committee on Armed Services.

Mr. DELLUMS. Mr. Speaker, I have been listening very carefully to the debate, and I am troubled on the procedural issue, and I would like to comment on the substantive question.

Mr. Speaker, Members, I take second to not one person in this body concerned about maintaining the integrity of Congress' ability to engage in the process of declaring war. I am one of the few Members on this side of the aisle that voted against the War Powers Act on the grounds that I felt that it was a permanent Gulf of Tonkin resolution, that it diluted Congress' ability to engage in the declaration of war, if that would be the wisdom of this body.

This gentleman felt so strongly about that, when the President of the United States, former President Bush, was saying to the American people that he saw no need to come to the Congress for any support to use violence in the conduct of Desert Storm, this gentleman felt so strongly about that, that I took the President of the United States to court to maintain the integrity of the Constitution of the United States.

So, I understand the gentleman's arguments, but now let us go to process.

As this gentleman understands it, Mr. Speaker, all we are debating here is a rule that governs general debate. As I understand it, theoretically the Committee on Rules, and I am not a member, and I am certainly not part of the leadership of this body, but the Committee on Rules has not turned down any amendments that have been introduced and at least theoretically could come back to the Committee on Rules and determine a second rule. This gentleman was always told that there would be more than one rule. So what I am having great difficulty understanding is why we are importuning this particular rule, that has nothing to do with anything except general debate.

□ 1810

Mr. Speaker, I would be happy to yield to my colleague, the gentleman from New York [Mr. SOLOMON], so I can understand.

Mr. SOLOMON. Mr. Speaker, I want to commend the gentleman from California [Mr. DELLUMS] because we have such great respect for the chairman of the Committee on Armed Services. He has been a very, very fair chairman, although we do not always agree.

But let me say the reason for this debate is that we are not going to have an opportunity to discuss this issue. The gentleman is right, this is a simple rule which offers 2 hours of general debate. But it does not offer any opportunity for us to have a vote on the issues that are of such great concern to our constituents back home, and those concerns are Bosnia and Macedonia. Our young men and women are serving in that part of the world today.

That is the problem. Perhaps, we are going to put out another rule tomorrow which might make in order these amendments that we want to consider on the floor, but we will be denied the right to vote on them before we recess this coming Friday. We will not take them up until we come back 5 weeks from now.

We are concerned that President Clinton, or whomever, may institute some air strikes and commit some ground forces during that period of time. We ought to at least have the right to be in a consultative position in at least working with the President on these issues. We are going to be denied that under the present procedure.

Mr. DELLUMS. Mr. Speaker, reclaiming my time, I thank the gentleman from New York [Mr. SOLOMON]. I listened very carefully to the gentleman. As the gentleman well knows, this gentleman feels very strongly about the prerogatives of Congress. I came here as an advocate of peace, and feel very strongly about Congress' role in warmaking.

But the gentleman from New York [Mr. SOLOMON] would agree with me that at this particular moment, this particular rule is not controversial in that regard because the Committee on Rules can come back with a second rule and, at least theoretically, make those amendments in order.

Mr. Speaker, I would ask the gentleman from New York [Mr. SOLOMON], am I not correct?

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield, the gentleman is not correct in that sense, because this is the only vote that we will be able to have in which we will be able to bring back to the floor the amendment that we want. If we do not get a new rule, then there is no opportunity to meet this issue later on this week.

Mr. DELLUMS. Mr. Speaker, reclaiming my time, as this gentleman understood it, I was told that the gentleman probably would bring back a second rule that would be voted on before we leave here that would govern a number of amendments.

Mr. SOLOMON. Mr. Speaker, if the gentleman will yield further, I would say to the gentleman from California [Mr. DELLUMS] that, no, that policy has been changed by his leadership on that side of the aisle. Now they say that if the Committee on Rules produces another rule tomorrow, we will not bring that rule to the floor until the week that we return from the August recess.

Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Michigan [Mr. UPTON].

Mr. UPTON. Mr. Speaker, I come tonight to oppose the rule, and I come tonight to oppose the rule because of the failure of the Committee on Rules to offer an amendment that would do very much along the lines of what we did in the gulf war back in 1991.

Back in 1991 I supported an amendment to a resolution offered by the gentleman from Illinois [Mr. DURBIN] and the gentleman from Florida, Mr. Bennett, that the adoption of this concurrent resolution expressed the sense of Congress that the Constitution vests the power to declare war in Congress and the President must gain congressional approval before any offensive military action can be taken against Iraq. It was adopted in this House by a vote of 302 to 131.

Mr. Speaker, I might note in looking at the Congressional Quarterly from that day back in 1991, all of the current Democratic members of the Committee on Rules voted for this resolution.

The reason that I bring this up tonight is that we have a very similar situation with what is happening in Bosnia today, and it is my understanding that a number of Members wanted to bring a similar resolution up before any action might take place in Bosnia.

Mr. Speaker, if I might inquire of the gentleman from Texas [Mr. FROST] as to what his reaction might be to a similar amendment when it might be offered, knowing that in fact the gentleman voted for the same resolution when it came up in the situation with Iraq. I note that this is along the same circumstances of what we had in the war with Iraq.

Mr. Speaker, when Members, myself and others, would go back to our districts, it seemed like wherever we went, church, the grocery store, any place we went, people were asking us for a number of months what might happen in Iraq, and they would hope that Congress would take some type of action before we do so.

Mr. Speaker, I was among the 41 Republicans that supported this Durbin-Bennett resolution back in January 1991. I note that the gentleman from Texas [Mr. FROST] voted for it on the floor as well.

Mr. Speaker, it seemed to me as I was watching this debate on TV in my office that we are sort of under the same type of parallel circumstance here.

Mr. Speaker, I would inquire of the gentleman from Texas [Mr. FROST] what his reaction might be.

Mr. FROST. Mr. Speaker, will the gentleman yield?

Mr. UPTON. I yield to the gentleman from Texas.

Mr. FROST. Mr. Speaker, in response to the gentleman, on his time, my recollection of the events leading up to the invasion and then the war against Saddam Hussein was that then President Bush, of course, committed troops into Saudi Arabia and had them on the ground for a sustained period of time. There was a lot of discussion as to whether or not there would be a vote in the House.

Ultimately the President, in agreement with our leadership, and I recall it was the leadership on both sides, agreed that there would be a series of votes, and there in fact were a series of votes. I voted with the President, with President Bush, even though he was from the other party. I voted with him to authorize the use of force.

Mr. UPTON. Mr. Speaker, reclaiming my time, I also recall that on the Bennett-Durbin resolution, which came prior to the resolution authorizing the President to send troops and to use force, that we had this resolution which in fact required that the Congress take some action before we had that resolution. I know that the gentleman from Texas [Mr. FROST] supported it on the floor. I would suspect that the gentleman supported it in the Committee on Rules as well.

Mr. Speaker, it seems to me as we enter this same debate now with Bosnia, not having the ability to offer a similar amendment, that we ought to have the same type of resolution.

What I would like to know from the gentleman from Texas [Mr. FROST], with his good work on the Committee on Rules, is if we might have something similar.

Mr. FROST. Mr. Speaker, for purposes of debate only, I yield 4 minutes to the gentleman from Virginia [Mr. PICKETT].

Mr. PICKETT. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise in support of the rule. I think it is way past time that we begin the debate on the defense authorization bill for 1994. As my colleague, the gentleman from Washington [Mr. DICKS], said in his remarks a few moments ago we are on the verge of getting a hollow force for our Nation.

Mr. Speaker, I would like to read a letter that was directed to me just a few days ago, prior to the time that we marked up the defense authorization bill for 1994.

This letter from a master chief aviation ordnanceman presently on active duty in the U.S. Navy.

He says:

DEAR MR. PICKETT: Let me preface this by saying that I have never before corresponded with a senior outside my immediate chain of command and it is only because I have reached the limit of my endurance that I feel compelled to do so now.

I am a Master Chief Aviation Ordnanceman currently serving in a Command Master Chief billet in Attack Squadron EIGHTY-FIVE (the liaison point between the enlisted men and the Commanding Officer) and deploy aboard USS AMERICA (CV-66). My career encompasses over 20 years of Naval service, 13 of which have been served in various tours of sea duty or in overseas commands. My two shore duty (continental United States) tours have been on the prestigious staffs of COMTRALANT and COMNAVAIRLANT.

I have been awarded three (3) Navy Commendation Medals, and two (2) Navy Achievement Medals among my many awards and accolades. My motivation in giving you this background information is to assure you that I am a dedicated career Master Chief Petty Officer vice a disgruntled sailor looking for a new venue to express a grievance.

I am writing to you due the genuine concern I have for the safety of the crew aboard USS AMERICA (CV-66). This ship is scheduled to deploy in 4 weeks to the Mediterranean/Adriatic Sea and may very well be called into action. While I am proud to serve in the United States Navy and do my part to protect United States interest I am greatly distressed that the deplorable condition of this ship may prevent a well trained crew from being able to defend themselves.

As I write this we sit in the Virginia Capes Operating Area on only two generators, a fire in the number four switchboard, without radar, and unable to pump fuel, thus impairing our ability to launch aircraft and "wage war". This has been the status quo throughout our workup cycle. Other problems we have experienced previously and routinely include: major steam leaks (on one occasion with temperatures reaching 1200F in some spaces and literally melting electrical cables, warping bulkheads and scorching paint), main space fuel oil leaks, generator losses, insufficient fresh feed water requiring the ship to go on water hours, and the loss of catapults. The ship limped in off Refresher Training (REFTRA) with only one of four catapults operational. The fact that the ship recently failed its Operational Propulsion Plant Examination (OPPE) is not surprising.

I want to make it very clear that I do not attribute this state of degradation to any member of the crew. Quite the contrary, there are 5,000 men aboard, from the Commanding Officer down to the most junior airman, who continually give 110% effort. I do attribute it largely to insufficient funding

that prevents us from procuring the vital parts and spares necessary to keep this "Old Lady" steaming and our aircraft flying, and the very, very demanding operational tempo that this ship and Air Wing has sustained over the almost three years that I have currently served aboard.

Sir, I, and every man and woman on active duty in the United States military have sworn an oath to support and defend the Constitution of the United States and to obey the orders of the Officers appointed over us. This we gladly accept. Send us to sea, send us to war, but don't send us to our deaths aboard crippled ships that cannot adequately defend themselves.

□ 1820

Mr. Speaker, the time has come to remedy the hollow force that we are facing in our Nation.

Mr. SOLOMON. Mr. Speaker, I yield the balance of my time to the gentleman from Georgia [Mr. GINGRICH], our minority whip, soon to be majority whip, we hope.

The SPEAKER pro tempore (Mr. MCNULTY). The gentleman from Georgia [Mr. GINGRICH] is recognized for 4 minutes.

Mr. GINGRICH. Mr. Speaker, I thank the gentleman from New York for yielding time to me.

Let me say that I think it is important for this Congress to have a debate, for this House to have a debate before we leave town. We are going to be gone during most of August and the beginning of September.

It is clear from the newspaper accounts and from various briefings that there is a very serious possibility of military action in Bosnia involving, at a minimum, the area around Sarajevo and involving, at a minimum, air strikes by American aircraft. There is a possibility that something could happen in the Kosovo region involving the area around Skopje and the potential where 300 American troops have now been sent to a landlocked country and where they are potentially faced with 20,000 Serbians.

All of this is going on, frankly, with very inadequate consultation with the Congress. But I want to raise a deeper point. I want to be very candid.

I, frankly, believe that, I do not mean this in a partisan sense, I mean it only in terms of observing what has been happening so far, that this administration's approach to the issue of military and diplomatic planning is exactly backward.

Let me explain what I mean. I believe when we are faced with a problem around the world, we first turn to our professional military and we ask them to develop a contingency plan.

We say to them, if we take step A and the other side does not agree and they do something we do not like, what is step B? And if we take step B and the other side does not agree and they do something we do not like, what is step C?

The great virtue of Desert Shield/Desert Storm was that we amassed overwhelming power in the region and were capable of crushing the Iraqi military with minimum loss of American lives in a 4-day ground campaign preceded by a 6-week air campaign. That is a decisive, militarily defined contingent plan that allows the United States to impose its will.

In that kind of correct professional approach, our military first tells us what we are capable of. Then we tell the diplomats what risks we are willing to take, and we ask the diplomats to use America's negotiating leverage to achieve our end. But we are prepared, once we have staked our national prestige, to execute a professionally thought-out military campaign.

What we have today is the opposite. We have diplomats, just as in Vietnam and elsewhere, dragging us down a road, just as in South Korea in 1950, saying things without adequate planning. We have American troops being put at the point without logistics, without support, without a capability of immediate reinforcement.

We have a situation around Sarajevo where we basically have a Dien Bien Phu type of environment.

The only air field is covered by direct fire by the Serbians. We are in a situation where the mountains look straight down into the city, and there is a desperate danger that the Serbians could take actions which we would be currently unable to respond to, only with air power.

My only point to the House is that with no consultation with the Congress, with no understanding of the contingency plans, with no preparation for the downside on the military side, the administration has gone off to our NATO allies, where they are actually first negotiating the diplomatic side, and then asking the military questions.

They are saying "Gee, what do you diplomats think we might get 16 countries to agree to?"

And then they are saying to the military, "Could you execute item A?"

And the answer is, technically, yes, we can execute item A.

But no one is then saying, gee, what if the Serbians do not agree to item A? Or what if the Bosnian Serbs do not agree to item A?

Finally, we have the question of the United Nations rules of engagement. The Danish general assigned by the United Nations to Macedonia suggested to the Americans that the correct response on being confronted was to surrender.

Now, I would just suggest that it is in the Congress' interest to have this debate before we go home. I would ask for a no vote on the rule so we have an opportunity to thoroughly explore this.

Mr. FROST. Mr. Speaker, to conclude debate, I yield the balance of my time to the gentleman from California [Mr. DELLUMS], chairman of the Committee on Armed Services.

The SPEAKER pro tempore. The gentleman from California [Mr. DELLUMS] is recognized for 2 minutes.

Mr. DELLUMS. Mr. Speaker, first, to the substantive issue, as I have said before, I take second to no person in this Congress preserving the integrity of the prerogatives of the Congress when it comes to the incredible notion of the use of force anywhere in the world. But now let us go to the process.

The bill that is before us is the 1994 authorization bill. That will probably not go to conference until October. And even if the amendments passed, this is a symbolic act. This is a 1994 authorization.

If they did, indeed, go into Bosnia, 1993 dollars would be used.

Let us deal honestly with each other. This is simply a symbolic act. If we really want to raise the policy issue, then raise the issue on policy terms.

The House Committee on Armed Services does not have jurisdiction over the War Powers Act. That is the business of the Committee on Foreign Affairs.

I would suggest that not one Member on the other side of the aisle went to the Committee on Rules and asked for a point of order waiving jurisdiction of the Committee on Foreign Affairs.

If we want to talk policy, then bring a policy resolution. This is an inappropriate vehicle to raise the issues.

If we want to stop war in the context of Bosnia, then do not engage in a symbolic act of a 1994 authorization bill. Have the courage to stand up and bring a policy matter to the floor of this Congress, and we can debate.

As an advocate of peace, I will stand there saying we should not introduce ourselves violently in other places in the world. And as a mature Nation, we ought to find a way to solve our problems politically and diplomatically.

My colleagues, this act today is impotent. It is symbolic. It is meaningless. Let us get on with discussing and debating the fiscal year 1994 DOD authorization.

If we really want to stop policy, bring the War Powers Act to the floor.

□ 1830

The SPEAKER pro tempore (Mr. MCNULTY). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SOLOMON. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 250, nays 175, not voting 8, as follows:

[Roll No. 400]

YEAS—250

Abercrombie
Ackerman
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Bacchus (FL)
Baesler
Barca
Barcia
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bevill
Bilbray
Bishop
Blackwell
Bonior
Borski
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Carr
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Cooper
Coppersmith
Costello
Coyne
Cramer
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Edwards (TX)
Engel
English (AZ)
English (OK)
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Gordon
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Harman
Hastings
Hayes
Hefner
Hilliard
Hinchey
Hoagland
Hochbrueckner
Holden
Hoyer
Hughes
Hutto
Inslee
Jefferson
Johnson (GA)
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kennedy
Kennelly
Kildee
Kleczka
Klein
Klink
Kopetski
Kreidler
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lehman
Levin
Lewis (GA)
Lipinski
Lloyd
Long
Lowey
Maloney
Mann
Manton
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCurdy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Moran
Murtha
Nadler
Natcher
Neal (MA)
Neal (NC)
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reed
Reynolds
Richardson
Roemer
Rose
Rostenkowski
Rowland
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Schenk
Schroeder
Schumer
Scott
Serrano
Sharp
Shepherd
Sisisky
Skaggs
Skelton
Slattery
Slaughter
Smith (IA)
Spratt
Stark
Stenholm
Stokes
Strickland
Studds
Stupak
Swett
Swift
Synar
Tanner
Tauzin
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Unsoeld
Valentine
Velazquez
Vento
Visclosky
Volkmer
Washington
Waters
Watt
Waxman
Wheat
Wise
Woolsey
Wyden
Wynn
Yates

NAYS—175

Allard
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Clinger
Coble
Collins (GA)
Combest
Cox
Crane
Crapo
Cunningham
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier
Duncan
Dunn
Emerson
Everett
Ewing
Fawell
Fields (TX)
Fish
Fowler
Franks (CT)
Franks (NJ)
Gallegly
Gallo
Gekas
Gilchrest
Gillmor
Gilman
Gingrich
Goodlatte
Goodling
Goss
Grams
Grandy
Greenwood
Gunderson
Hancock
Hansen
Hastert
Hefley
Herger
Hobson
Hoekstra
Hoke
Horn
Houghton
Huffington
Hunter
Hutchinson
Hyde
Inglis
Inhofe
Istook
Jacobs
Johnson (CT)
Johnson, Sam
Kasich
Kim
King
Kingston
Klug
Knollenberg
Kolbe
Kyl
Lazio
Leach
Levy
Lewis (CA)
Lewis (FL)
Lightfoot
Linder
Livingston
Machtley
Manzullo
McCandless
McCollum
McCrery
McDade
McHugh
McInnis
McKeon
McMillan
Meyers
Mica
Michel
Miller (FL)
Molinari
Moorhead
Morella
Myers
Nussle
Oxley
Paxon
Petri
Pombo
Porter
Portman
Pryce (OH)
Quillen
Quinn
Ramstad
Ravenel
Regula
Ridge
Roberts
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Santorum
Saxton
Schaefer
Schiff
Sensenbrenner
Shaw
Shays
Shuster
Skeen
Smith (MI)
Smith (NJ)
Smith (OR)
Smith (TX)
Snowe
Solomon
Spence
Stearns
Stump
Sundquist
Taylor (MS)
Taylor (NC)
Thomas (CA)
Thomas (WY)
Torkildsen
Upton
Vucanovich
Walker
Walsh
Weldon
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NOT VOTING—8

Boucher
Chapman
Miller (CA)
Murphy
Packard
Whitten
Williams
Wilson

□ 1851

Mr. McINNIS and Mr. TAYLOR of Mississippi changed their vote from "yea" to "nay."

Ms. McKINNEY changed her vote from "nay" to "yea."

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. McNULTY). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. FROST. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 248, noes 173, not voting 12, as follows:

[Roll No. 401]

AYES—248

Abercrombie
Ackerman
Andrews (ME)
Andrews (NJ)
Andrews (TX)
Applegate
Bacchus (FL)
Baesler
Barca
Barcia
Barlow
Barrett (WI)
Becerra
Beilenson
Berman
Bevill
Bilbray
Bishop
Blackwell
Bonior
Borski
Brewster
Brooks
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Bryant
Byrne
Cantwell
Cardin
Carr
Chapman
Clay
Clayton
Clement
Clyburn
Coleman
Collins (IL)
Collins (MI)
Condit
Conyers
Coppersmith
Costello
Coyne
Cramer
Danner
Darden
de la Garza
Deal
DeFazio
DeLauro
Dellums
Derrick
Deutsch
Dicks
Dingell
Dixon
Dooley
Durbin
Edwards (CA)
Edwards (TX)
Engel
English (AZ)
English (OK)
Eshoo
Evans
Farr
Fazio
Fields (LA)
Filner
Fingerhut
Flake
Foglietta
Ford (MI)
Ford (TN)
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Geren
Gibbons
Glickman
Gonzalez
Green
Gutierrez
Hall (OH)
Hall (TX)
Hamburg
Hamilton
Harman
Hastings
Hayes
Hefner
Hilliard
Hinchey
Hoagland
Hochbrueckner
Holden
Hoyer
Hughes
Hutto
Inslee
Jacobs
Jefferson
Johnson (GA)
Johnson (SD)
Johnson, E.B.
Johnston
Kanjorski
Kaptur
Kasich
Kennedy
Kennelly
Kildee
Klein
Klink
Kopetski
Kreidler
LaFalce
Lambert
Lancaster
Lantos
LaRocco
Laughlin
Lehman
Levin
Lewis (GA)
Lipinski
Lloyd
Long
Lowey
Maloney
Mann
Manton
Margolies-Mezvinsky
Markey
Martinez
Matsui
Mazzoli
McCloskey
McCurdy
McDermott
McHale
McKinney
McNulty
Meehan
Meek
Menendez
Mfume
Mineta
Minge
Mink
Moakley
Mollohan
Montgomery
Moran
Murtha
Nadler
Natcher
Neal (MA)
Neal (NC)
Oberstar
Obey
Olver
Orton
Owens
Pallone
Parker
Pastor
Payne (NJ)
Payne (VA)
Pelosi
Penny
Peterson (FL)
Peterson (MN)
Pickett
Pickle
Pomeroy
Poshard
Price (NC)
Rahall
Rangel
Reed
Reynolds
Richardson
Roemer
Rose
Rostenkowski
Rowland
Roybal-Allard
Rush
Sabo
Sanders
Sangmeister
Sarpalius
Sawyer
Schenk
Schroeder
Schumer
Scott
Serrano
Sharp
Shepherd
Sisisky
Skaggs
Skelton
Slattery
Slaughter
Smith (IA)
Spratt
Stark
Stenholm
Stokes
Strickland
Studds
Stupak
Swett
Swift
Synar
Tanner
Tauzin
Taylor (MS)
Tejeda
Thompson
Thornton
Thurman
Torres
Torricelli
Towns
Traficant
Tucker
Unsoeld
Valentine
Velazquez
Vento
Visclosky
Volkmer
Washington
Waters
Watt
Waxman
Wheat
Woolsey
Wyden
Wynn
Yates

NOES—173

Allard
Archer
Armey
Bachus (AL)
Baker (CA)
Baker (LA)
Ballenger
Barrett (NE)
Bartlett
Barton
Bateman
Bentley
Bereuter
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bunning
Burton
Buyer
Callahan
Calvert
Camp
Canady
Castle
Clinger
Coble
Collins (GA)
Combest
Cooper
Cox
Crane
Crapo
Cunningham
DeLay
Diaz-Balart
Dickey
Doolittle
Dornan
Dreier

Duncan	Kim	Ravenel
Dunn	King	Regula
Emerson	Kingston	Ridge
Everett	Klug	Roberts
Ewing	Knollenberg	Rogers
Fawell	Kolbe	Rohrabacher
Fields (TX)	Kyl	Ros-Lehtinen
Fish	Lazio	Roth
Fowler	Leach	Roukema
Franks (CT)	Levy	Royce
Franks (NJ)	Lewis (CA)	Santorum
Gallegly	Lewis (FL)	Saxton
Gallo	Lightfoot	Schaefer
Gekas	Linder	Schiff
Gilchrest	Livingston	Sensenbrenner
Gillmor	Machtley	Shaw
Gilman	Manzullo	Shays
Gingrich	McCandless	Shuster
Goodlatte	McCollum	Skeen
Goodling	McCrery	Smith (MI)
Goss	McDade	Smith (NJ)
Grams	McHugh	Smith (OR)
Grandy	McInnis	Smith (TX)
Greenwood	McKeon	Snowe
Gunderson	McMillan	Solomon
Hancock	Meyers	Spence
Hansen	Mica	Stearns
Hastert	Michel	Stump
Hefley	Miller (FL)	Sundquist
Herger	Molinari	Talent
Hobson	Moorhead	Taylor (NC)
Hoekstra	Morella	Thomas (CA)
Hoke	Myers	Thomas (WY)
Horn	Nussle	Torkildsen
Houghton	Oxley	Upton
Huffington	Paxon	Vucanovich
Hunter	Petri	Walker
Hutchinson	Pombo	Walsh
Hyde	Porter	Weldon
Inglis	Portman	Wolf
Inhofe	Pryce (OH)	Young (AK)
Istook	Quillen	Zeliff
Johnson (CT)	Quinn	Zimmer
Johnson, Sam	Ramstad	

NOT VOTING—12

Boucher	Murphy	Williams
Gordon	Ortiz	Wilson
Kleczka	Packard	Wise
Miller (CA)	Whitten	Young (FL)

□ 1908

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

Mr. SABO submitted the following conference report and statement on the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994:

CONFERENCE REPORT (H. REPT. 103-213)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

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

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Budget Reconciliation Act of 1993".

SEC. 2. TABLE OF CONTENTS.

The table of contents is as follows:

TITLE I—AGRICULTURE AND RELATED PROVISIONS

TITLE II—ARMED SERVICES PROVISIONS

TITLE III—BANKING AND HOUSING PROVISIONS

TITLE IV—STUDENT LOANS AND ERISA PROVISIONS

TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION PROVISIONS

TITLE VII—NUCLEAR REGULATORY COMMISSION PROVISIONS

TITLE VIII—PATENT AND TRADEMARK OFFICE PROVISIONS

TITLE IX—MERCHANT MARINE PROVISIONS

TITLE X—NATURAL RESOURCES PROVISIONS

TITLE XI—CIVIL SERVICE AND POST OFFICE PROVISIONS

TITLE XII—VETERANS' AFFAIRS PROVISIONS

TITLE XIII—REVENUE, HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, CUSTOMS AND TRADE PROVISIONS, FOOD STAMP PROGRAM, AND TIMBER SALE PROVISIONS

TITLE XIV—BUDGET PROCESS PROVISIONS

TITLE I—AGRICULTURAL PROGRAMS

SEC. 1001. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This title may be cited as the "Agricultural Reconciliation Act of 1993".

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

Sec. 1001. Short title and table of contents.

Subtitle A—Commodity Programs

Sec. 1101. Upland cotton program.
Sec. 1102. Wheat program.
Sec. 1103. Feed grain program.
Sec. 1104. Rice program.
Sec. 1105. Dairy program.
Sec. 1106. Tobacco program.
Sec. 1107. Sugar program.
Sec. 1108. Oilseeds program.
Sec. 1109. Peanut program.
Sec. 1110. Honey program.
Sec. 1111. Wool and mohair program.

Subtitle B—Rural Electrification

Sec. 1201. Refinancing and prepayment of FFB loans.

Subtitle C—Agricultural Trade

Sec. 1301. Acreage reduction requirements.
Sec. 1302. Market promotion program.

Subtitle D—Miscellaneous

Sec. 1401. Admission, entrance, and recreation fees.
Sec. 1402. Environmental conservation acreage reserve program amendments.
Sec. 1403. Federal crop insurance.

Subtitle A—Commodity Programs

SEC. 1101. UPLAND COTTON PROGRAM.

(a) IN GENERAL.—Section 103B of the Agricultural Act of 1949 (7 U.S.C. 1444-2) is amended—

*(1) in the section heading, by striking "**1995**" and inserting "**1997**";*

(2) in subsections (a)(1), (b)(1), (c)(1)(A), (c)(1)(B)(ii), and (o), by striking "1995" each place it appears and inserting "1997";

(3) in subparagraphs (B)(i), (D)(i), (E)(i), and (F)(i) of subsection (a)(5), by striking "1996" each place it appears and inserting "1998";

(4) in subsection (c)(1)(D)—

(A) in the subparagraph heading, by striking "50/92 PROGRAM" and inserting "50/85 PROGRAM";

(B) by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (v)(II))."; and

(C) in clause (v)—

(i) by striking "(v) PREVENTED PLANTING.—If" and inserting the following:

"(v) PREVENTED PLANTING AND REDUCED YIELDS.—

"(I) 1991 THROUGH 1993 CROPS.—In the case of each of the 1991 through 1993 crops of upland cotton, if"; and

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

"(II) 1994 THROUGH 1997 CROPS.—In the case of each of the 1994 through 1997 crops of upland cotton, producers on a farm shall be eligible to receive deficiency payments as provided in clause (iii) if an acreage limitation program under subsection (e) is in effect for the crop and—

"(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster) and the producers elect to devote a portion of the maximum payment acres for upland cotton (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the upland cotton acreage, to conservation uses; or

"(bb) the producers elect to devote a portion of the maximum payment acres for upland cotton (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the upland cotton acreage, to alternative crops as provided in subparagraph (E).."; and

(5) in subsection (e)(1)(D), by inserting after "30 percent" the following: "for each of the 1991 through 1994 crops, 29½ percent for each of the 1995 and 1996 crops, and 29 percent for the 1997 crop".

(b) PROVISIONS NECESSARY TO THE OPERATION OF THE PROGRAM.—

(1) DEFICIENCY AND LAND DIVERSION PAYMENTS.—Section 114 of the Agricultural Act of 1949 (7 U.S.C. 1445j) is amended by striking "1995" each place it appears in subsections (a)(1) and (c) and inserting "1997".

(2) ACREAGE BASE AND YIELD SYSTEM.—Title V of such Act (7 U.S.C. 1461 et seq.) is amended—

(A) in section 503 (7 U.S.C. 1463)—

(i) in subsection (c)(3)—

(I) by striking "0/92 or 50/92"; and

(II) by striking "1995" and inserting "1997"; and

(ii) in subsection (h)(2)(A), by striking "1995" each place it appears and inserting "1997";

(B) in paragraphs (1) and (2) of section 505(b) (7 U.S.C. 1465(b)), by striking "1995" each place it appears and inserting "1997"; and

(C) in section 509 (7 U.S.C. 1469), by striking "1995" and inserting "1997".

(3) PAYMENT LIMITATIONS.—The Food Security Act of 1985 (Public Law 99-198; 99 Stat. 1354) is amended—

(A) in paragraphs (1)(A), (1)(B), and (2)(A) of section 1001 (7 U.S.C. 1308), by striking "1995" each place it appears and inserting "1997"; and

(B) in section 1001C(a) (7 U.S.C. 1308-3(a)), by striking "1995" both places it appears and inserting "1997".

SEC. 1102. WHEAT PROGRAM.

Section 107B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1445b-3a(c)(1)(E)) is amended—

(1) in the subparagraph heading, by striking "0/92 PROGRAM" and inserting "0/85 PROGRAM";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each

of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (vii))."; and

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

"(vii) EXCEPTIONS TO 0/85.—In the case of each of the 1994 through 1997 crops of wheat, producers on a farm shall be eligible to receive deficiency payments as provided in clause (ii) if an acreage limitation program under subsection (e) is in effect for the crop and—

"(I)(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster); and

"(bb) the producers elect to devote a portion of the maximum payment acres for wheat (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the wheat acreage, to conservation uses; or

"(II) the producers elect to devote a portion of the maximum payment acres for wheat (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the wheat acreage, to alternative crops as provided in subparagraph (F).".

SEC. 1103. FEED GRAIN PROGRAM.

Section 105B(c)(1)(E) of the Agricultural Act of 1949 (7 U.S.C. 1444f(c)(1)(E)) is amended—

(1) in the subparagraph heading, by striking "0/92 PROGRAM" and inserting "0/85 PROGRAM";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (vii))."; and

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

"(vii) EXCEPTIONS TO 0/85.—In the case of each of the 1994 through 1997 crops of feed grains, producers on a farm shall be eligible to receive deficiency payments as provided in clause (ii) if an acreage limitation program under subsection (e) is in effect for the crop and—

"(I)(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster); and

"(bb) the producers elect to devote a portion of the maximum payment acres for feed grains (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the feed grain acreage, to conservation uses; or

"(II) the producers elect to devote a portion of the maximum payment acres for feed grains (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the feed grain acreage, to alternative crops as provided in subparagraph (F).".

SEC. 1104. RICE PROGRAM.

Section 101B(c)(1)(D) of the Agricultural Act of 1949 (7 U.S.C. 1441–2(c)(1)(D)) is amended—

(1) in the subparagraph heading, by striking "50/92 PROGRAM" and inserting "50/85 PROGRAM";

(2) in clause (i), by inserting after "8 percent" both places it appears the following: "for each of the 1991 through 1993 crops, and 15 percent for each of the 1994 through 1997 crops (except as provided in clause (v)(II))."; and

(3) in clause (v)—

(A) by striking "(v) PREVENTED PLANTING.—If" and inserting the following:

"(v) PREVENTED PLANTING AND REDUCED YIELDS.—

"(I) 1991 THROUGH 1993 CROPS.—In the case of each of the 1991 through 1993 crops of rice, if"; and

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

"(II) 1994 THROUGH 1997 CROPS.—In the case of each of the 1994 through 1997 crops of rice, producers on a farm shall be eligible to receive deficiency payments as provided in clause (iii) if an acreage limitation program under subsection (e) is in effect for the crop and—

"(aa) the producers have been determined by the Secretary (in accordance with section 503(c)) to be prevented from planting the crop or have incurred a reduced yield for the crop (due to a natural disaster) and the producers elect to devote a portion of the maximum payment acres for rice (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the rice acreage, to conservation uses; or

"(bb) the producers elect to devote a portion of the maximum payment acres for rice (as calculated under subparagraph (C)(ii)) equal to more than 8 percent of the rice acreage, to alternative crops as provided in subparagraph (E).".

SEC. 1105. DAIRY PROGRAM.

(a) IN GENERAL.—Section 204 of the Agricultural Act of 1949 (7 U.S.C. 1446e) is amended—

(1) in the section heading, by striking "1995" and inserting "1996";

(2) in subsections (a), (b), (d)(1)(A), (d)(2)(A), (d)(3), (g)(1), and (k), by striking "1995" each place it appears and inserting "1996";

(3) in subsection (c)(3)—

(A) in the first sentence of subparagraph (A), by striking "The Secretary" and inserting "Subject to subparagraph (B), the Secretary";

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

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

"(B) GUIDELINES.—In the case of purchases of butter and nonfat dry milk that are made by the Secretary under this section on or after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, in allocating the rate of price support between the purchase prices of butter and nonfat dry milk under this paragraph, the Secretary may not—

"(i) offer to purchase butter for more than $0.65 per pound; or

"(ii) offer to purchase nonfat dry milk for less than $1.034 per pound.";

(4) in subsection (h)(2)—

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

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

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

"(C) during each of calendar years 1996 and 1997, 10 cents per hundredweight of milk marketed, which rate shall be adjusted on or before May 1 of the respective calendar year in the manner provided in subparagraph (B)."; and

(5) in subsection (g)(2), by striking "1994" and inserting "1996".

(b) PROVISIONS NECESSARY TO THE OPERATION OF THE PROGRAM.—Section 101(b) of the Agriculture and Food Act of 1981 (7 U.S.C. 608c note) is amended by striking "1995" and inserting "1996".

(c) REDUCTION IN PRICE RECEIVED.—

(1) DEFINITIONS.—As used in this subsection:

(A) BOVINE GROWTH HORMONE.—The term "bovine growth hormone" means a synthetic growth hormone produced through the process of recombinant DNA techniques that is intended for use in bovine animals.

(B) DATE OF APPROVAL.—The term "date of approval" means the date the Food and Drug Administration, pursuant to authority under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b), first approves an application with respect to the use of bovine growth hormone.

(2) REDUCTION IN PRICE RECEIVED.—In order to offset the economic effects of the sale of bovine growth hormone, the Secretary of Agriculture shall decrease the amount of the reduction in price received by producers specified in subparagraph (B) or (C) (as appropriate) of section 204(h)(2) of the Agricultural Act of 1949 (7 U.S.C. 1446e(h)(2)) by 10 percent during the period beginning on the date of approval and ending 90 days after the date of approval and, during the period, it shall be unlawful for a person to sell bovine growth hormone for commercial agricultural purposes.

SEC. 1106. TOBACCO PROGRAM.

(a) DOMESTIC MARKETING ASSESSMENT.—Part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 et seq.) is amended by adding at the end the following new section:

"SEC. 320C. DOMESTIC MARKETING ASSESSMENT.

"(a) CERTIFICATION.—A domestic manufacturer of cigarettes shall certify to the Secretary, for each calendar year, the percentage of the quantity of tobacco used by the manufacturer to produce cigarettes during the year that is produced in the United States.

"(b) PENALTIES.—

"(1) IN GENERAL.—Subject to subsection (f), a domestic manufacturer of cigarettes that has failed, as determined by the Secretary after notice and opportunity for a hearing, to use in the manufacture of cigarettes during a calendar year a quantity of tobacco grown in the United States that is at least 75 percent of the total quantity of tobacco used by the manufacturer, or to comply with subsection (a), shall be subject to the requirements of subsections (c), (d), and (e).

"(2) FAILURE TO CERTIFY.—For purposes of this section, if a manufacturer fails to comply with subsection (a), the manufacturer shall be presumed to have used only imported tobacco in the manufacture of cigarettes produced by the manufacturer.

"(3) REPORTS AND RECORDS.—

"(A) IN GENERAL.—The Secretary shall require manufacturers of domestic cigarettes to make such reports and maintain such records as are necessary to carry out this section. If the reports and records are insufficient, the Secretary may request other persons to provide supplemental information.

"(B) EXAMINATIONS.—For the purpose of ascertaining the correctness of any report or record required under this section, or of obtaining further information required under this section, the Secretary and the Office of Inspector General may examine such records, books, and other materials as the Secretary has reason to believe may be relevant. In the case of a manufacturer of domestic cigarettes, the Secretary may charge a fee to the manufacturer to cover the reasonable costs of any such examination.

"(C) PENALTIES.—Any person who fails to provide information required under this paragraph or who provides false information under this paragraph shall be subject to section 1001 of title 18, United States Code.

"(D) CONFIDENTIALITY.—Section 320A(c) shall apply to information submitted by manufacturers of domestic cigarettes and other persons under this paragraph.

"(E) DISCLOSURE.—Notwithstanding any other provision of law, information on the percentage or quantity of domestic or imported tobacco in cigarettes or on the volume of cigarette production that is submitted under this section shall be exempt from disclosure under section 552 of title 5, United States Code.

"(c) DOMESTIC MARKETING ASSESSMENT.—

"(1) IN GENERAL.—A domestic manufacturer of cigarettes described in subsection (b) shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in accordance with this subsection.

"(2) AMOUNT.—The amount of an assessment imposed on a manufacturer under this subsection shall be determined by multiplying—

"(A) the quantity by which the quantity of imported tobacco used by the manufacturer to

produce cigarettes during a preceding calendar year exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year; by

"(B) the difference between—

"(i) ½ of the sum of—

"(I) the average price per pound received by domestic producers for Burley tobacco during the preceding calendar year; and

"(II) the average price per pound received by domestic producers for Flue-cured tobacco during the preceding calendar year; and

"(ii) the average price per pound of unmanufactured imported tobacco during the preceding calendar year, as determined by the Secretary.

"(3) COLLECTION.—An assessment imposed under this subsection shall be—

"(A) collected by the Secretary and transmitted to the Commodity Credit Corporation; and

"(B) enforced in the same manner as provided in section 320B.

"(d) PURCHASE OF BURLEY TOBACCO.—

"(1) IN GENERAL.—A domestic manufacturer of cigarettes described in subsection (b) shall purchase from the inventories of the producer-owned cooperative marketing associations for Burley tobacco described in section 320B(a)(2), at the applicable list price published by the association, the quantity of tobacco described in paragraph (2).

"(2) QUANTITY.—Subject to paragraph (3), the quantity of Burley tobacco required to be purchased by a manufacturer during a calendar year under this subsection shall equal ½ of the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year.

"(3) LIMITATION.—If the total quantity of Burley tobacco required to be purchased by all manufacturers under paragraph (2) would reduce the inventories of the producer-owned cooperative marketing associations for Burley tobacco to less than the reserve stock level for Burley tobacco, the Secretary shall reduce the quantity of tobacco required to be purchased by manufacturers under paragraph (2), on a pro rata basis, to ensure that the inventories will not be less than the reserve stock level for Burley tobacco.

"(4) NONCOMPLIANCE.—If a manufacturer fails to purchase from the inventories of the producer-owned cooperative marketing associations the quantity of Burley tobacco required under this subsection, the manufacturer shall be subject to a penalty of 75 percent of the average market price (calculated to the nearest whole cent) for Burley tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(5) PURCHASE REQUIREMENTS.—Tobacco purchased by a manufacturer under this subsection shall not be included in determining the quantity of tobacco purchased by the manufacturer under section 320B.

"(e) PURCHASE OF FLUE-CURED TOBACCO.—

"(1) IN GENERAL.—A domestic manufacturer of cigarettes described in subsection (b) shall purchase from the inventories of the producer-owned cooperative marketing association for Flue-cured tobacco described in section 320B(a)(2), at the applicable list price published by the association, the quantity of tobacco described in paragraph (2).

"(2) QUANTITY.—Subject to paragraph (3), the quantity of Flue-cured tobacco required to be purchased by a manufacturer during a calendar year under this subsection shall equal ½ of the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the quantity of all tobacco used by the manufacturer to produce cigarettes during the preceding calendar year.

"(3) LIMITATION.—If the total quantity of Flue-cured tobacco required to be purchased by all manufacturers under paragraph (2) would reduce the inventories of the producer-owned cooperative marketing association for Flue-cured tobacco to less than the reserve stock level for Flue-cured tobacco, the Secretary shall reduce the quantity of tobacco required to be purchased by manufacturers under paragraph (2), on a pro rata basis, to ensure that the inventories will not be less than the reserve stock level for Flue-cured tobacco.

"(4) NONCOMPLIANCE.—If a manufacturer fails to purchase from the inventories of the producer-owned cooperative marketing association the quantity of Flue-cured tobacco required under this subsection, the manufacturer shall be subject to a penalty of 75 percent of the average market price (calculated to the nearest whole cent) for Flue-cured tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(5) PURCHASE REQUIREMENTS.—Tobacco purchased by a manufacturer under this subsection shall not be included in determining the quantity of tobacco purchased by the manufacturer under section 320B.

"(f) CROP LOSSES DUE TO DISASTERS.—

"(1) IN GENERAL.—If the Secretary, in consultation with producer-owned cooperative marketing associations, determines that because of drought, insect or disease infestation, or other natural disaster, or other condition beyond the control of producers, the total quantity of a crop of domestic Burley tobacco or Flue-cured tobacco that is harvested and suitable for marketing is substantially less than the expected yield for the crop, and that pool inventories for the kind of tobacco involved have been depleted, effective for the calendar year following the year in which the crop loss occurs, the Secretary may reduce the minimum percentage of domestic tobacco specified in subsection (a) to a percentage below 75 percent, as determined by the Secretary, that reflects the reduced availability of domestic supplies of the kind of tobacco involved.

"(2) DETERMINATION OF EXPECTED YIELD.—For purposes of paragraph (1), the Secretary shall determine the expected yield for a crop of Burley tobacco or Flue-cured tobacco by taking into consideration—

"(A) the total acreage planted to the crop (including acreage that the producers were prevented from planting because of a condition referred to in paragraph (1)); and

"(B) normal farm yields established for the crop.

"(3) DEADLINE FOR DETERMINATIONS.—The Secretary shall make determinations under paragraph (1) about crop losses and announce the reduced percentage of the domestic tobacco pool not later than November 30 of the year in which the applicable crop of Burley tobacco or Flue-cured tobacco is harvested.".

(b) BUDGET DEFICIT ASSESSMENT.—

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

"(h)(1) Effective only for each of the 1994 through 1998 crops of tobacco, an importer of tobacco that is produced outside the United States shall remit to the Commodity Credit Corporation a nonrefundable marketing assessment in an amount equal to the product obtained by multiplying—

"(A) the number of pounds of tobacco that is imported by the importer; by

"(B) the sum of—

"(i) the per pound marketing assessment imposed on purchasers of domestic Burley tobacco pursuant to subsection (g); and

"(ii) the per pound marketing assessment imposed on purchasers of domestic Flue-cured tobacco pursuant to subsection (g).

"(2) An assessment imposed under this subsection shall be paid by the importer.

"(3)(A) The importer shall remit the assessment at such time and in such manner as may be prescribed by the Secretary.

"(B) If the importer fails to comply with subparagraph (A), the importer shall be liable, in addition, for a marketing penalty at a rate equal to 37.5 percent of the sum of the average market price (calculated to the nearest whole cent) of Flue-cured and Burley tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.

"(C) This subsection shall be enforced in the same manner as subparagraphs (B) and (C) of paragraph (1), and paragraphs (2) and (3), of section 106A(h).

"(4) Any penalty collected by the Secretary under this subsection shall be deposited for use by the Commodity Credit Corporation.".

(2) IMPORTER ASSESSMENTS FOR NO NET COST TOBACCO FUND.—Section 106A of such Act (7 U.S.C. 1445–1) is amended—

(A) in subsection (c), by inserting "and importers" after "purchasers";

(B) in subsection (d)(1)(A)—

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

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

"(iii) each importer of Flue-cured or Burley tobacco shall pay to the appropriate association, for deposit in the Fund of the association, an assessment, in an amount that is equal to the product obtained by multiplying—

"(I) the number of pounds of tobacco that is imported by the importer; by

"(II) the sum of the amount of per pound producer contributions and purchaser assessments that are payable by domestic producers and purchasers of Flue-cured and Burley tobacco under clauses (i) and (ii); and";

(C) in subsection (d)(2)—

(i) by inserting "or importer" after "or purchaser";

(ii) by striking "and" at the end of subparagraph (B);

(iii) by inserting "and" at the end of subparagraph (C); and

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

"(D) if the tobacco involved is imported by an importer, from the importer."; and

(D) in subsection (h)(1)—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

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

"(B) Each importer who fails to pay to the association an assessment as required by subsection (d)(2) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, for a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.".

(3) IMPORTER ASSESSMENTS TO NO NET COST TOBACCO ACCOUNT.—Section 106B of such Act (7 U.S.C. 1445–2) is amended—

(A) in subsection (c)(1), by striking "producers and purchasers" and inserting "producers, purchasers, and importers";

(B) in subsection (d)(1)—

(i) by designating the first and second sentences as subparagraphs (A) and (B), respectively; and

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

"(C) The Secretary shall also require (in lieu of any requirement under section 106A(d)(1)) that each importer of Flue-cured and Burley tobacco shall pay to the Corporation, for deposit in the Account of the association, an assessment, as determined under paragraph (2) and collected under paragraph (3), with respect to purchases of all such kinds of tobacco imported by the importer.";

(C) in subsection (d)(2), by adding at the end the following new subparagraph:

"(C) The amount of the assessment to be paid by importers shall be an amount that is equal to the product obtained by multiplying—

"(i) the number of pounds of tobacco that is imported by the importer; by

"(ii) the sum of the amount of per pound producer and purchaser assessments that are payable by domestic producers and purchasers of the respective kind of tobacco under this paragraph.";

(D) in subsection (d)(3), by adding at the end the following new subparagraph:

"(D) If Flue-cured or Burley tobacco is imported by an importer, any importer assessment required by subsection (d) shall be collected from the importer."; and

(E) in subsection (j)(1)—

(i) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

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

"(B) Each importer who fails to pay to the Corporation an assessment as required by subsection (d) at such time and in such manner as may be prescribed by the Secretary, shall be liable, in addition to any amount due, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of tobacco for the immediately preceding year on the quantity of tobacco as to which the failure occurs.".

(c) FEES FOR INSPECTING IMPORTED TOBACCO.—The second sentence of section 213(d) of the Tobacco Adjustment Act of 1983 (7 U.S.C. 511r(d)) is amended by inserting before the period at the end the following: ", and which shall be comparable to fees and charges fixed and collected for services provided in connection with tobacco produced in the United States".

(d) EXTENSION OF QUOTA REDUCTION FLOORS.—

(1) BURLEY TOBACCO.—Section 319(c)(3)(C)(ii) of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1314e(c)(3)(C)(ii)) is amended—

(A) by striking "1993" and inserting "1996"; and

(B) by inserting before the period at the end the following: ", except that, in the case of each of the 1995 and 1996 crops of Burley tobacco, the Secretary may waive the requirements of this clause if the Secretary determines that the requirements would likely result in inventories of the producer-owned cooperative marketing associations for Burley tobacco described in section 320B(a)(2) to exceed 150 percent of the reserve stock level for Burley tobacco".

(2) FLUE-CURED TOBACCO.—Section 317(a)(1)(C)(ii) of such Act (7 U.S.C. 1314c(a)(1)(C)(ii)) is amended—

(A) by striking "1993" and inserting "1996"; and

(B) by inserting before the period at the end the following: ", except that, in the case of each of the 1995 and 1996 crops of Flue-cured tobacco, the Secretary may waive the requirements of this clause if the Secretary determines that the requirements would likely result in inventories of the producer-owned cooperative marketing association for Flue-cured tobacco described in section 320B(a)(2) to exceed 150 percent of the reserve stock level for Flue-cured tobacco".

SEC. 1107. SUGAR PROGRAM.

(a) IN GENERAL.—Section 206 of the Agricultural Act of 1949 (7 U.S.C. 1446g) is amended—

(1) in the section heading, by striking "**1995**" and inserting "**1997**";

(2) in subsections (a), (c), (d)(1), and (j), by striking "1995" each place it appears and inserting "1997"; and

(3) in subsection (i)—

(A) in paragraph (1), by striking "equal to" and all that follows through the period at the end and inserting the following: "equal to—

"(A) in the case of marketings during each of fiscal years 1992 through 1994, 1.0 percent of the loan level established under subsection (b) per pound of raw cane sugar (but not more than .18 cents per pound of raw cane sugar), processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing); and

"(B) in the case of marketings during each of fiscal years 1995 through 1998, 1.1 percent of the loan level established under subsection (b) per pound of raw cane sugar (but not more than .198 cents per pound of raw cane sugar), processed by the processor from domestically produced sugarcane or sugarcane molasses, that has been marketed (including the transfer or delivery of the sugar to a refinery for further processing or marketing).";

(B) in paragraph (2), by striking "equal to" and all that follows through the period at the end and inserting the following: "equal to—

"(A) in the case of marketings during each of fiscal years 1992 through 1994, 1.0722 percent of the loan level established under subsection (b) per pound of beet sugar (but not more than .193 cents per pound of beet sugar), processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed; and

"(B) in the case of marketings during each of fiscal years 1995 through 1998, 1.1794 percent of the loan level established under subsection (b) per pound of beet sugar (but not more than .2123 cents per pound of beet sugar), processed by the processor from domestically produced sugar beets or sugar beet molasses, that has been marketed."; and

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

"(6) EXCESS MARKETINGS.—In addition to the assessment required under paragraph (1) or (2), a processor who knowingly markets sugar in excess of the allocated allotment of the processor under section 359d of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359dd) shall pay an assessment in an amount that is double the applicable assessment required under paragraph (1) or (2) per pound of sugar marketed.".

(b) PROVISIONS NECESSARY TO THE OPERATION OF THE PROGRAM.—Section 359b of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1359bb) is amended—

(1) in subsection (a)(1), by striking "1996" and inserting "1998"; and

(2) in subsection (d)—

(A) by striking paragraph (1) and inserting the following new paragraph:

"(1) IN GENERAL.—During any fiscal year or portion thereof for which marketing allotments have been established, no processor of sugar beets or sugarcane shall market a quantity of sugar in excess of the allocation established for such processor, except to enable another processor to fulfill an allocation established for such other processor or to facilitate the exportation of such sugar."; and

(B) in paragraph (3), by inserting "knowingly" after "who" each place it appears.

SEC. 1108. OILSEEDS PROGRAM.

Section 205 of the Agricultural Act of 1949 (7 U.S.C. 1446f) is amended—

(1) in subsection (c)—

(A) in paragraph (1), by inserting after "$5.02 per bushel" the following: "for each of the 1991 through 1993 crops and $4.92 per bushel for each of the 1994 through 1997 crops"; and

(B) in paragraph (2), by inserting after "$0.089 per pound" the following: "for each of the 1991 through 1993 crops and $0.087 per pound for each of the 1994 through 1997 crops";

(2) in subsection (h), by striking "mature on the last day of the 9th month following the month the application for the loan is made." and inserting the following: "mature—

"(1) in the case of each of the 1991 through 1993 crops, on the last day of the 9th month following the month the application for the loan is made; and

"(2) in the case of each of the 1994 through 1997 crops, on the last day of the 9th month following the month the application for the loan is made, except that the loan may not mature later than the last day of the fiscal year in which the application is made."; and

(3) in subsection (m), by adding at the end the following new paragraph:

"(3) APPLICABILITY.—This subsection shall apply only to each of the 1991 through 1993 crops of oilseeds.".

SEC. 1109. PEANUT PROGRAM.

(a) IN GENERAL.—Section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3) is amended—

(1) in the section heading, by striking "**1995**" and inserting "**1997**";

(2) in subsections (a)(1), (a)(2), (b)(1), (g)(1), and (h), by striking "1995" each place it appears and inserting "1997"; and

(3) in subsection (g)—

(A) in paragraph (1), by inserting after "1 percent" both places it appears the following: "for each of the 1991 through 1993 crops, 1.1 percent for each of the 1994 and 1995 crops, 1.15 percent for the 1996 crop, and 1.2 percent for the 1997 crop,"; and

(B) in paragraph (2)(A), by striking clauses (i) and (ii) and inserting the following new clauses:

"(i) collect from the producer a marketing assessment equal to the quantity of peanuts acquired multiplied by—

"(I) in the case of each of the 1991 through 1993 crops, .5 percent of the applicable national average support rate;

"(II) in the case of each of the 1994 and 1995 crops, .55 percent of the applicable national average support rate;

"(III) in the case of the 1996 crop, .6 percent of the applicable national average support rate; and

"(IV) in the case of the 1997 crop, .65 percent of the applicable national average support rate;

"(ii) pay, in addition to the amount collected under clause (i), a marketing assessment in an amount equal to the quantity of peanuts acquired multiplied by—

"(I) in the case of each of the 1991 through 1993 crops, .5 percent of the applicable national average support rate; and

"(II) in the case of each of the 1994 through 1997 crops, .55 percent of the applicable national average support rate; and".

(b) ASSESSMENT UNDER PEANUT MARKETING AGREEMENT.—Section 8b(b)(1) of the Agricultural Adjustment Act (7 U.S.C. 608b(b)(1)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, is amended—

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

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

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

"(C) any assessment (except with respect to any assessment for the indemnification of losses on rejected peanuts) imposed under the agreement shall—

"(i) apply to peanut handlers (as defined by the Secretary) who have not entered into such an agreement with the Secretary in addition to

those handlers who have entered into the agreement; and

"(ii) be paid to the Secretary.".

(c) PROVISIONS NECESSARY TO THE OPERATION OF THE PROGRAM.—Part VI of subtitle B of title III of the Agricultural Adjustment Act of 1938 is amended—

(1) in section 358–1 (7 U.S.C. 1358–1)—

(A) in the section heading, by striking "**1995**" and inserting "**1997**"; and

(B) in subsections (a)(1), (b)(1)(A), (b)(1)(B), (b)(2)(A), (b)(2)(C), (b)(3)(A), and (f), by striking "1995" each place it appears and inserting "1997"; and

(2) in section 358e (7 U.S.C. 1359a)—

(A) in the section heading, by striking "**1995**" and inserting "**1997**"; and

(B) in subsection (i), by striking "1995" and inserting "1997".

SEC. 1110. HONEY PROGRAM.

Section 207 of the Agricultural Act of 1949 (7 U.S.C. 1446h) is amended—

(1) by striking "1995" each place it appears in subsections (a), (c)(1), and (j) and inserting "1998";

(2) in subsection (a), by striking "than 53.8 cents per pound." and inserting "than—

"(1) 53.8 cents per pound for each of the 1991 through 1993 crop years;

"(2) 50 cents per pound for each of the 1994 and 1995 crop years;

"(3) 49 cents per pound for the 1996 crop year;

"(4) 48 cents per pound for the 1997 crop year; and

"(5) 47 cents per pound for the 1998 crop year.";

(3) in subsection (e)(1)—

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

(B) by striking subparagraph (D) and inserting the following new subparagraphs:

"(D) $125,000 in the 1994 crop year;

"(E) $100,000 in the 1995 crop year;

"(F) $75,000 in the 1996 crop year; and

"(G) $50,000 in each of the 1997 and 1998 crop years."; and

(4) in subsection (i)(1), by striking "1995" and inserting "1993".

SEC. 1111. WOOL AND MOHAIR PROGRAM.

The National Wool Act of 1954 (7 U.S.C. 1781 et seq.) is amended—

(1) in section 703 (7 U.S.C. 1782), by striking "1995" both places it appears in subsections (a) and (b)(2) and inserting "1997";

(2) in section 704 (7 U.S.C. 1783)—

(A) in subsection (b)(1)—

(i) by striking "and" at the end of subparagraph (C); and

(ii) by striking subparagraph (D) and inserting the following new subparagraphs:

"(D) $125,000 for the 1994 marketing year;

"(E) $100,000 for the 1995 marketing year;

"(F) $75,000 for the 1996 marketing year; and

"(G) $50,000 for the 1997 marketing year."; and

(B) in subsection (c), by striking "through 1995" and inserting "and 1992"; and

(3) in section 706 (7 U.S.C. 1785), by inserting after the second sentence the following new sentence: "In determining the net sales proceeds and national payment rates for shorn wool and shorn mohair, the Secretary shall not deduct marketing charges for commissions, coring, or grading.".

Subtitle B—Rural Electrification

SEC. 1201. REFINANCING AND PREPAYMENT OF FFB LOANS.

(a) IN GENERAL.—Title III of the Rural Electrification Act of 1936 (7 U.S.C. 931 et seq.) is amended by inserting after section 306B (7 U.S.C. 936b) the following new section:

"SEC. 306C. REFINANCING AND PREPAYMENT OF FFB LOANS.

"(a) IN GENERAL.—A borrower of a loan made by the Federal Financing Bank and guaranteed under section 306 may, at the option of the borrower, refinance or prepay the loan or an advance on the loan, or any portion of the loan or advance.

"(b) PENALTY.—

"(1) DETERMINATION OF PENALTY.—A penalty shall be assessed against a borrower that refinances or prepays a loan or loan advance, or any portion of a loan or advance, under this section. Except as provided in paragraph (2), the penalty shall be equal to the lesser of—

"(A) the difference between the outstanding principal balance of the loan being refinanced and the present value of the loan discounted at a rate equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid;

"(B) 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced, multiplied by the ratio that—

"(i) the number of quarterly payment dates between the date of the refinancing or prepayment and the maturity date for the loan advance; bears to

"(ii) the number of quarterly payment dates between the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced was advanced and the maturity date of the loan advance; and

"(C)(i) the present value of 100 percent of the amount of interest for 1 year on the outstanding principal balance of the loan or loan advance, or any portion of the loan or advance, being refinanced or prepaid; plus

"(ii) for the interval between the date of the refinancing or prepayment and the first quarterly payment date that occurs 12 years after the end of the year in which the amount being refinanced or prepaid was advanced, the present value of the difference between—

"(I) each payment scheduled for the interval on the loan amount being refinanced or prepaid; and

"(II) the payment amounts that would be required during the interval on the amounts being refinanced or prepaid if the interest rate on the loan were equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to the loan being refinanced or prepaid.

"(2) LIMITATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty provided by paragraph (1)(A) shall be required for refinancing or prepayment under this section.

"(B) EXCEPTION.—In the case of a loan advanced under an agreement that permits the refinancing or prepayment of the loan advance based on the payment of 1 year of interest on the outstanding principal balance of the loan advance, a borrower may, in lieu of the penalty required by paragraph (1)(A), pay a penalty as provided by—

"(i) paragraph (1)(B), if the loan advance has reached the 12-year maturity required under the loan agreement for the refinancing or prepayment; or

"(ii) paragraph (1)(C), if the loan advance has not reached the 12-year maturity required under the loan agreement for the refinancing or prepayment.

"(3) FINANCING OF PENALTY.—

"(A) IN GENERAL.—In the case of a refinancing under this section, a borrower may, at the option of the borrower, meet the penalty requirements of paragraph (1) by—

"(i) making a payment in the amount of the required penalty at the time of the refinancing; or

"(ii) increasing the outstanding principal balance of the loan advance guaranteed by the Administrator that is being refinanced under this section by the amount of the penalty.

"(B) INCREASED PRINCIPAL.—If a borrower meets the penalty requirements of paragraph (1) by increasing the outstanding principal balance of the loan advance that is being refinanced, the borrower shall make a payment at the time of the refinancing equal to 2.5 percent of the amount of the penalty that is added to the outstanding principal balance of the loan.

"(c) LOAN TERMS AND CONDITIONS AFTER REFINANCING.—

"(1) IN GENERAL.—On the payment of a penalty as provided by subsection (b), the loan or loan advance, or any portion of the loan or advance, shall be refinanced at the interest rate described in paragraph (2) for a term selected by the borrower pursuant to paragraph (3), except that this paragraph shall not apply if the loan advance, or any portion of the advance, is prepaid by the borrower.

"(2) INTEREST RATE.—The interest rate on a loan refinanced under this section shall be determined to be equal to the then current cost of funds to the Department of the Treasury for obligations of comparable maturity to a term selected by the borrower pursuant to paragraph (3).

"(3) LOAN TERM.—Subject to paragraph (4), the borrower of a loan that is refinanced under this section—

"(A) shall select the term for which an interest rate shall be determined pursuant to paragraph (2); and

"(B) at the end of the term (and any succeeding term selected by the borrower under this paragraph), may renew the loan for another term selected by the borrower.

"(4) MAXIMUM TERM.—The borrower may not select a term pursuant to paragraph (3) that ends after the maturity date set for the loan before the refinancing of the loan under this section.

"(5) EXISTING LOANS.—In the case of the refinancing of a loan of a borrower pursuant to this section and the inclusion of a penalty in the outstanding principal balance of the refinanced loan pursuant to subsection (b)(3)—

"(A) the refinancing and inclusion of the penalty shall not be subject to appropriations or limited by the amount provided during a fiscal year for new loans, loan guarantees, or other credit activity;

"(B) the request of the borrower for the refinancing under this section may not be denied or delayed; and

"(C) the borrower may not be limited in the selection of any refinancing or prepayment option provided by this section to the borrower.".

(b) REGULATIONS.—Not later than 45 days after the date of enactment of this section, the Administrator of the Rural Electrification Administration shall issue interim final regulations to carry out the amendment made by subsection (a).

Subtitle C—Agricultural Trade

SEC. 1301. ACREAGE REDUCTION REQUIREMENTS.

(a) IN GENERAL.—Section 1104 of the Omnibus Budget Reconciliation Act of 1990 (7 U.S.C. 1445b–3a note) is amended—

(1) in subsection (a), by striking paragraph (2) and inserting the following new paragraph:

"(2) corn under which the acreage planted to corn for harvest on a farm would be limited to the corn crop acreage base for the farm for the crop reduced by not less than 7½ percent."; and

(2) in subsection (b)(2), by striking "grain sorghum, and barley,".

(b) READJUSTMENT OF SUPPORT LEVELS.—Section 1302 of such Act (7 U.S.C. 1421 note) is amended—

(1) in subsection (b)—

(A) by striking paragraph (1); and

(B) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(2) in subsection (c), by striking "and other programs"; and

(3) in subsection (d)—

(A) in paragraph (1)—

(i) by striking subparagraph (A); and

(ii) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively;

(B) in paragraph (2), by striking "(A), (B), and (C)" and inserting "(A) and (B)"; and

(C) in paragraph (3)—

(i) by striking "measures specified in subparagraph (A) of paragraph (1) and"; and

(ii) by striking "(B) or (C)" and inserting "(A) or (B)".

SEC. 1302. MARKET PROMOTION PROGRAM.

(a) REDUCTION OF FUNDING LEVEL.—Section 211(c)(1) of the Agricultural Trade Act of 1978 (7 U.S.C. 5641(c)(1)) is amended by striking "through 1995" and inserting "through 1993, and not less than $110,000,000 for each of the fiscal years 1994 through 1997,".

(b) SECRETARIAL ACTIONS TO ACHIEVE SAVINGS.—In order to enable the Secretary of Agriculture to achieve the savings required in the market promotion program established by section 203 of the Agricultural Trade Act of 1978 (7 U.S.C. 5623) as a result of the amendments made by this section:

(1) UNFAIR TRADE PRACTICES.—Paragraph (2) of section 203(c) of such Act is amended to read as follows:

"(2) UNFAIR TRADE PRACTICES.—

"(A) REQUIREMENT.—Except as provided in subparagraph (B), the Secretary shall provide assistance under this section only to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country.

"(B) EXCEPTION.—The Secretary shall waive the requirements of this paragraph in the case of activities conducted by small entities operating through the regional State-related organizations.".

(2) GUIDELINES.—The Secretary of Agriculture should implement changes in the market promotion program established by section 203 of such Act, beginning with fiscal year 1994, in order to improve the effectiveness of the program and to meet the following objectives:

(A) PRIORITY.—In providing assistance for branded promotion, the Secretary should give priority to small-sized entities.

(B) GRADUATION.—The Secretary should not provide assistance under the program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the program.

(C) CONTRIBUTION LEVEL.—

(i) IN GENERAL.—The Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion.

(ii) INCREASES IN CONTRIBUTION LEVEL.—The Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion.

(D) ADDITIONALITY.—The Secretary should require each participant in the program to certify that any Federal funds received supplement, but do not supplant, private or third party participant funds or other contributions to program activities.

(E) INDEPENDENT AUDITS.—If as a result of an evaluation or audit of activities of a participant under the program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the program, the Secretary should require the participant to contract for an independent audit of the program activities, including activities of any subcontractor.

(3) TOBACCO.—No funds made available under the market promotion program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

(c) REGULATIONS.—Not later than 90 days after the date of enactment of this Act, the Secretary of Agriculture shall issue regulations to implement this section and the amendments made by this section.

Subtitle D—Miscellaneous

SEC. 1401. ADMISSION, ENTRANCE, AND RECREATION FEES.

(a) DEFINITIONS.—As used in this section:

(1) AREA OF CONCENTRATED PUBLIC USE.—The term "area of concentrated public use" means an area administered by the Secretary that meets each of the following criteria:

(A) The area is managed primarily for outdoor recreation purposes.

(B) Facilities and services necessary to accommodate heavy public use are provided in the area.

(C) The area contains at least 1 major recreation attraction.

(D) Public access to the area is provided in such a manner that admission fees can be efficiently collected at 1 or more centralized locations.

(2) BOAT LAUNCHING FACILITY.—The term "boat launching facility" includes any boat launching facility, regardless of whether specialized facilities or services, such as mechanical or hydraulic boat lifts or facilities, are provided.

(3) CAMPGROUND.—The term "campground" means any campground where a majority of the following amenities are provided, as determined by the Secretary:

(A) Tent or trailer spaces.

(B) Drinking water.

(C) An access road.

(D) Refuse containers.

(E) Toilet facilities.

(F) The personal collection of recreation use fees by an employee or agent of the Secretary.

(G) Reasonable visitor protection.

(H) If campfires are permitted in the campground, simple devices for containing the fires.

(4) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(b) AUTHORITY TO IMPOSE FEES.—The Secretary may charge—

(1) admission or entrance fees at national monuments, national volcanic monuments, national scenic areas, and areas of concentrated public use administered by the Secretary; and

(2) recreation use fees at lands administered by the Secretary in connection with the use of specialized outdoor recreation sites, equipment, services, and facilities, including visitors' centers, picnic tables, boat launching facilities, and campgrounds.

(c) AMOUNT OF FEES.—The amount of the admission, entrance, and recreation fees authorized to be imposed under this section shall be determined by the Secretary.

SEC. 1402. ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM AMENDMENTS.

(a) ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM.—Section 1230(b) of the Food Security Act of 1985 (16 U.S.C. 3830(b)) is amended by striking "to place in" and all that follows through "acres".

(b) CONSERVATION RESERVE PROGRAM.—Section 1231(d) of such Act (16 U.S.C. 3831(d)) is amended—

(1) by striking "may" and inserting "shall";

(2) by striking "the amount of acres specified in section 1230(b)" and inserting "a total of 38,000,000 acres during the 1986 through 1995 calendar years"; and

(3) by striking "each of calendar years 1994 and 1995" and inserting "the 1995 calendar year".

(c) WETLANDS RESERVE PROGRAM.—Section 1237 of such Act (16 U.S.C. 3837) is amended—

(1) by striking subsection (b) and inserting the following new subsection:

"(b) MINIMUM ENROLLMENT.—The Secretary shall enroll into the wetlands reserve program—

"(1) a total of not less than 330,000 acres by the end of the 1995 calendar year; and

"(2) a total of not less than 975,000 acres during the 1991 through 2000 calendar years."; and

(2) in subsection (c), by striking "1995" and inserting "2000".

SEC. 1403. FEDERAL CROP INSURANCE.

(a) ACTUARIAL SOUNDNESS.—Section 506 of the Federal Crop Insurance Act (7 U.S.C. 1506) is amended by adding at the end the following new subsection:

"(n) ACTUARIAL SOUNDNESS.—The Corporation shall take such actions as are necessary to improve the actuarial soundness of Federal multiperil crop insurance coverage made available under this title to achieve, on and after October 1, 1995, an overall projected loss ratio of not greater than 1.1, including—

"(1) instituting appropriate requirements for documentation of the actual production history of insured producers to establish recorded or appraised yields for Federal crop insurance coverage that more accurately reflect the associated actuarial risk, except that the Corporation may not carry out this paragraph in a manner that would prevent beginning farmers from obtaining adequate Federal crop insurance, as determined by the Corporation;

"(2) establishing in counties, to the extent practicable, a crop insurance option based on area yields in a manner that allows an insured producer to qualify for an indemnity if a loss has occurred in a specified area in which the farm of the insured producer is located;

"(3) establishing a database that contains the social security account and employee identification numbers of participating producers and using the numbers to identify insured producers who are high risk for actuarial purposes and insured producers who have not documented at least 4 years of production history, to assess the performance of insurance providers, and for other purposes permitted by law; and

"(4) taking any other measures authorized by law to improve the actuarial soundness of the Federal crop insurance program while maintaining fairness and effective coverage for agricultural producers.".

(b) CONFORMING AMENDMENTS.—

(1) REINSURANCE.—Section 508(h) of such Act (7 U.S.C. 1508(h)) is amended by striking the fifth sentence and inserting the following new sentence: "The Corporation shall also pay operating and administrative costs to insurers of policies on which the Corporation provides reinsurance in an amount determined by the Corporation.".

(2) AREA YIELD PLAN.—Section 508 of such Act (7 U.S.C. 1508) is amended by adding at the end the following new subsection:

"(n) AREA YIELD PLAN.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, the Corporation may offer, only as an option to individual crop insurance coverage available under this Act, a crop insurance plan based on an area yield that allows an insured producer to qualify for an indemnity if a loss has occurred in an area, as specified by the Corporation, in which the farm of the producer is located.

"(2) LEVEL OF COVERAGE.—Under a plan offered under paragraph (1), an insured producer shall be allowed to select the level of production at which an indemnity will be paid consistent with terms and conditions established by the Corporation.".

(3) YIELD COVERAGE.—Section 508A of such Act (7 U.S.C. 1508a) is amended—

(A) in subsection (a)(1), by striking "may" and inserting "shall"; and

(B) in subsection (b)—

(i) in paragraph (1)(A)—

(I) by striking "A crop insurance contract" and all that follows through "producer—" and inserting "Under regulations issued by the Corporation, a crop insurance contract offered under this title to an eligible insured producer of a commodity with respect to which the Corporation provides crop insurance coverage shall make available to the producer either—";

(II) by striking "or" at the end of clause (i);

(III) in clause (ii)—

(aa) by striking "5" and inserting "4 building to 10"; and

(bb) by striking the period at the end and inserting "; or"; and

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

"(iii) yield coverage based on—

"(I) not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), as specified in regulations issued by the Corporation based on production history requirements; or

"(II) the area yield under section 508(n) for the crop established under the program for the commodity involved.";

(ii) in paragraph (1)(B)—

(I) by striking "two" and inserting "3"; and

(II) by inserting after "subparagraph (A)" the following: ", where available (as determined by the Corporation),";

(iii) in paragraph (2)—

(I) by striking "5" and inserting "4 building to 10"; and

(II) by inserting after "previous crops," the following: "not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), or the area yield,"; and

(iv) in paragraph (3)(A)(i), by inserting after "farm program yield" the following: ", not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual experience), as specified in regulations issued by the Corporation based on production history requirements, or the area yield under section 508(n), whichever is applicable,".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section and the amendments made by this section shall become effective on October 1, 1993.

(2) REGULATIONS.—Not later than 30 days after the date of enactment of this Act, the Secretary of Agriculture shall publish, for public comment, proposed regulations to implement the amendments made by this section.

TITLE II—ARMED SERVICES PROVISIONS

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

Section 1401a(b) of title 10, United States Code, is amended—

(1) in paragraph (2), by striking out "The Secretary" and inserting in lieu thereof "Except as provided in paragraph (6), the Secretary"; and

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

"(6) SPECIAL RULES FOR PARAGRAPH (2) FOR FISCAL YEARS 1994 THROUGH 1998.—

"(A) FISCAL YEAR 1994.—In the case of an increase in the retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1, 1993, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be March 1994.

"(B) FISCAL YEARS 1995 THROUGH 1998.—In the case of an increase in retired pay of a member or former member referred to in paragraph (2) that, pursuant to paragraph (1), becomes effective on December 1 of 1994, 1995, 1996, or 1997, the initial month for which such increase is payable as part of such retired pay shall (notwithstanding such December 1 effective date) be September of the following year.

"(C) INAPPLICABILITY TO DISABILITY RETIREES.—Subparagraphs (A) and (B) do not apply with respect to the retired pay of a member retired under chapter 61 of this title.".

TITLE III—BANKING AND HOUSING PROVISIONS

SEC. 3001. NATIONAL DEPOSITOR PREFERENCE.

(a) IN GENERAL.—Section 11(d)(11) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(11)) is amended to read as follows:

"(11) DEPOSITOR PREFERENCE.—

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

"(i) Administrative expenses of the receiver.

"(ii) Any deposit liability of the institution.

"(iii) Any other general or senior liability of the institution (which is not a liability described in clause (iv) or (v)).

"(iv) Any obligation subordinated to depositors or general creditors (which is not an obligation described in clause (v)).

"(v) Any obligation to shareholders or members arising as a result of their status as shareholders or members (including any depository institution holding company or any shareholder or creditor of such company).

"(B) EFFECT ON STATE LAW.—

"(i) IN GENERAL.—The provisions of subparagraph (A) shall not supersede the law of any State except to the extent such law is inconsistent with the provisions of such subparagraph, and then only to the extent of the inconsistency.

"(ii) PROCEDURE FOR DETERMINATION OF INCONSISTENCY.—Upon the Corporation's own motion or upon the request of any person with a claim described in subparagraph (A) or any State which is submitted to the Corporation in accordance with procedures which the Corporation shall prescribe, the Corporation shall determine whether any provision of the law of any State is inconsistent with any provision of subparagraph (A) and the extent of any such inconsistency.

"(iii) JUDICIAL REVIEW.—The final determination of the Corporation under clause (ii) shall be subject to judicial review under chapter 7 of title 5, United States Code.

"(C) ACCOUNTING REPORT.—Any distribution by the Corporation in connection with any claim described in subparagraph (A)(v) shall be accompanied by the accounting report required under paragraph (15)(B).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 11(c)(13) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(13)) is amended—

(A) in subparagraph (A), by striking "subject to subparagraph (B),";

(B) by inserting "and" after the semicolon at the end of subparagraph (A);

(C) by striking subparagraph (B); and

(D) by redesignating subparagraph (C) as subparagraph (B).

(2) Section 11(g)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1921(g)(4)) is amended by striking "If the Corporation" and inserting "Subject to subsection (d)(11), if the Corporation".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to insured depository institutions for which a receiver is appointed after the date of the enactment of this Act.

SEC. 3002. TRANSFER OF FEDERAL RESERVE SURPLUSES.

(a) IN GENERAL.—The 1st undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 289) is amended to read as follows:

"(a) DIVIDENDS AND SURPLUS FUNDS OF RESERVE BANKS.—

"(1) STOCKHOLDER DIVIDENDS.—

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

"(B) DIVIDEND CUMULATIVE.—The entitlement to dividends under subparagraph shall be cumulative.

"(2) DEPOSIT OF NET EARNINGS IN SURPLUS FUND.—That portion of net earnings of each Federal reserve bank which remains after dividend claims under subparagraph (A) have been fully met shall be deposited in the surplus fund of the bank.

"(3) PAYMENT TO TREASURY.—During fiscal years 1997 and 1998, any amount in the surplus fund of any Federal reserve bank in excess of the amount equal to 3 percent of the total paid-in capital and surplus of the member banks of such bank shall be transferred to the Board for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury.".

(b) ADDITIONAL TRANSFERS FOR FISCAL YEARS 1997 AND 1998.—

(1) IN GENERAL.—In addition to the amounts required to be transferred from the surplus funds of the Federal reserve banks pursuant to section 7(a)(3) of the Federal Reserve Act, the Federal reserve banks shall transfer from such surplus funds to the Board of Governors of the Federal Reserve System for transfer to the Secretary of the Treasury for deposit in the general fund of the Treasury, a total amount of $106,000,000 in fiscal year 1997 and a total amount of $107,000,000 in fiscal year 1998.

(2) ALLOCATION BY FED.—Of the total amount required to be paid by the Federal reserve banks under paragraph (1) for fiscal year 1997 or 1998, the Board of Governors of the Federal Reserve System shall determine the amount each such bank shall pay in such fiscal year.

(3) REPLENISHMENT OF SURPLUS FUND PROHIBITED.—No Federal reserve bank may replenish such bank's surplus fund by the amount of any transfer by such bank under paragraph (1) during fiscal years 1997 and 1998.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) The penultimate undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 290) is amended by striking "The net earnings derived" and inserting "(b) USE OF EARNINGS TRANSFERRED TO THE TREASURY.—The net earnings derived".

(2) The last undesignated paragraph of section 7 of the Federal Reserve Act (12 U.S.C. 531) is amended by striking "Federal reserve banks" and inserting "(c) EXEMPTION FROM TAXATION.—Federal reserve banks".

SEC. 3003. USE OF RETURN DATA FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS.

Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) is amended as follows:

(1) DEFINITION.—In subsection (a), by adding at the end the following:

"(4) PROGRAM OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.—The term 'program of the Department of Housing and Urban Development' includes Indian housing programs assisted under title II of the United States Housing Act of 1937.".

(2) CONSENT FORMS.—In subsection (b)—

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

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

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

"(3) sign a consent form approved by the Secretary authorizing the Secretary to request the

Commissioner of Social Security and the Secretary of the Treasury to release information pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 with respect to such applicant or participant for the sole purpose of the Secretary verifying income information pertinent to the applicant's or participant's eligibility or level of benefits."; and

(D) in the last sentence, by striking "This" and inserting the following: "Except as provided in this subsection, this".

(3) APPLICANT, PARTICIPANT, AND PUBLIC HOUSING AGENCY PROTECTIONS.—In subsection (c)(2)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by inserting after "compensation law" the following: "or pursuant to section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 from the Commissioner of Social Security or the Secretary of the Treasury"; and

(II) by inserting "(in the case of information obtained pursuant to such section 303(i))" before "representatives"; and

(ii) in clause (ii), by inserting "or public housing agency" after "owner" each place it appears; and

(B) in subparagraph (B), by inserting after "wages" each place it appears the following: ", other earnings or income,".

(4) PENALTY.—In subsection (c)(3)—

(A) in subparagraph (A), by inserting "or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 without consent pursuant to subsection (b) of this section or" after "Social Security Act"; and

(B) in the first sentence of subparagraph (B)—

(i) by striking clause (i) and inserting the following: "(i) a negligent or knowing disclosure of information referred to in this section, section 303(i) of the Social Security Act, or section 6103(l)(7)(D)(ix) of the Internal Revenue Code of 1986 about such person by an officer or employee of any public housing agency or owner (or employee thereof), which disclosure is not authorized by this section, such section 303(i), such section 6103(l)(7)(D)(ix), or any regulation implementing this section, such section 303(i), or such section 6103(l)(7)(D)(ix), or for which consent, pursuant to subsection (b) of this section, has not been granted, or"; and

(ii) in clause (ii), by inserting "such section 6103(l)(7)(D)(ix)," after "303(i),".

(5) CONFORMING AMENDMENT.—The heading of subsection (c) of section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 is amended by striking "STATE EMPLOYMENT".

SEC. 3004. GNMA REMIC GUARANTEE FEES.

Section 306(g)(3) of the National Housing Act (12 U.S.C. 1721(g)(3)) is amended by adding at the end the following new subparagraph:

"(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after the date of the enactment of this subparagraph.

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

"(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

"(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after the effective date of this subparagraph) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.".

SEC. 3005. MUTUAL MORTGAGE INSURANCE FUND PREMIUMS.

To improve the actuarial soundness of the Mutual Mortgage Insurance Fund under the National Housing Act, the Secretary of Housing and Urban Development shall increase the rate at which the Secretary earns the single premium payment collected at the time of insurance of a mortgage that is an obligation of such Fund (with respect to the rate in effect on the date of the enactment of this Act). In establishing such increased rate, the Secretary shall consider any current audit findings and reserve analyses and information regarding the expected average duration of mortgages that are obligations of such Fund and may consider any other information that the Secretary determines to be appropriate.

TITLE IV—STUDENT LOAN AND ERISA PROVISIONS

SEC. 4001. TABLE OF CONTENTS.

The table of contents for this title is as follows:

TITLE IV—STUDENT LOAN AND ERISA PROVISIONS

Sec. 4001. Table of contents.

Subtitle A—Direct Student Loan Provisions

Sec. 4011. Short title; references.

CHAPTER 1—FEDERAL DIRECT STUDENT LOAN PROGRAM

Sec. 4021. Federal direct student loan program.

CHAPTER 2—CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

Sec. 4041. Preserving loan access.
Sec. 4042. Guaranty agency reserves.
Sec. 4043. Terms of loans.
Sec. 4044. Assignment of loans.
Sec. 4045. Termination of guaranty agency agreements; assumption of guaranty agency functions by the Secretary.
Sec. 4046. Consolidation loans.
Sec. 4047. Consolidation of programs.

Subtitle B—Additional Savings From The Student Loan Programs

Sec. 4101. Reduction of borrower interest rates.
Sec. 4102. Reduction in loan fees paid by students.
Sec. 4103. Loan fees from lenders.
Sec. 4104. Offset fee.
Sec. 4105. Elimination of tax exempt floor.
Sec. 4106. Reduction in interest rate for consolidation loans; rebate fee.
Sec. 4107. Reinsurance fees and administrative cost allowance.
Sec. 4108. Risk sharing.
Sec. 4109. Plus loan disbursements.
Sec. 4110. Secretary's equitable share.
Sec. 4111. Reduction in the special allowance payment.
Sec. 4112. Supplemental preclaims assistance.

Subtitle C—Cost Sharing by States

Sec. 4201. Cost sharing by States.

Subtitle D—Group Health Plans

Sec. 4301. Standards for group health plan coverage.

Subtitle A—Direct Student Loan Provisions

SEC. 4011. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This subtitle may be cited as the "Student Loan Reform Act of 1993".

(b) REFERENCES.—References in this subtitle and subtitles B and C to "the Act" are references to the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.).

CHAPTER 1—FEDERAL DIRECT STUDENT LOAN PROGRAM

SEC. 4021. FEDERAL DIRECT STUDENT LOAN PROGRAM.

Part D of title IV (20 U.S.C. 1087a) is amended to read as follows:

"PART D—FEDERAL DIRECT STUDENT LOAN PROGRAM

"SEC. 451. PROGRAM AUTHORITY.

There are hereby made available, in accordance with the provisions of this part, such sums as may be necessary to make loans to all eligible students (and the eligible parents of such students) in attendance at participating institutions of higher education selected by the Secretary, to enable such students to pursue their courses of study at such institutions during the period beginning July 1, 1994. Such loans shall be made by participating institutions, or consortia thereof, that have agreements with the Secretary to originate loans, or by alternative originators designated by the Secretary to make loans for students in attendance at participating institutions (and their parents).

"SEC. 452. FUNDS FOR ORIGINATION OF DIRECT STUDENT LOANS.

"(a) IN GENERAL.—The Secretary shall provide, on the basis of the need and the eligibility of students at each participating institution, and parents of such students, for such loans, funds for student and parent loans under this part—

"(1) directly to an institution of higher education that has an agreement with the Secretary under section 454(a) to participate in the direct student loan programs under this part and that also has an agreement with the Secretary under section 454(b) to originate loans under this part; or

"(2) through an alternative originator designated by the Secretary to students (and parents of students) attending institutions of higher education that have an agreement with the Secretary under section 454(a) but that do not have an agreement with the Secretary under section 454(b).

"(b) FEES FOR ORIGINATION SERVICES.—

"(1) FEES FOR INSTITUTIONS.—The Secretary shall pay fees to institutions of higher education (or a consortium of such institutions) with agreements under section 454(b), in an amount established by the Secretary, to assist in meeting the costs of loan origination. Such fees—

"(A) shall be paid by the Secretary based on all the loans made under this part to a particular borrower in the same academic year;

"(B) shall be subject to a sliding scale that decreases the per borrower amount of such fees as the number of borrowers increases; and

"(C)(i) for academic year 1994–1995, shall not exceed a program-wide average of $10 per borrower for all the loans made under this part to such borrower in the same academic year; and

"(ii) for succeeding academic years, shall not exceed such average fee as the Secretary shall establish pursuant to regulations.

"(2) FEES FOR ALTERNATIVE ORIGINATORS.—The Secretary shall pay fees for loan origination services to alternative originators of loans made

under this part in an amount established by the Secretary in accordance with the terms of the contract described in section 456(b) between the Secretary and each such alternative originator.

"(c) NO ENTITLEMENT TO PARTICIPATE OR ORIGINATE.—No institution of higher education shall have a right to participate in the programs authorized by this part, to originate loans, or to perform any program function under this part. Nothing in this subsection shall be construed so as to limit the entitlement of an eligible student attending a participating institution (or the eligible parent of such student) to borrow under this part.

"(d) DELIVERY OF LOAN FUNDS.—Loan funds shall be paid and delivered to an institution by the Secretary prior to the beginning of the payment period established by the Secretary in a manner that is consistent with payment and delivery of basic grants under subpart 1 of part A of this title.

"SEC. 453. SELECTION OF INSTITUTIONS FOR PARTICIPATION AND ORIGINATION.

"(a) PHASE-IN OF PROGRAM.—

"(1) GENERAL AUTHORITY.—The Secretary shall enter into agreements pursuant to section 454(a) with institutions of higher education to participate in the direct student loan program under this part, and agreements pursuant to section 454(b) with institutions of higher education, or consortia thereof, to originate loans in such program, for academic years beginning on or after July 1, 1994. Alternative origination services, through which an entity other than the participating institution at which the student is in attendance originates the loan, shall be provided by the Secretary, through 1 or more contracts under section 456(b) or such other means as the Secretary may provide, for students attending participating institutions that do not originate direct student loans under this part. Such agreements for the academic year 1994–1995 shall, to the extent feasible, be entered into not later than January 1, 1994.

"(2) TRANSITION PROVISIONS.—In order to ensure an expeditious but orderly transition from the loan programs under part B of this title to the direct student loan program under this part, the Secretary shall, in the exercise of the Secretary's discretion, determine the number of institutions with which the Secretary shall enter into agreements under subsections (a) and (b) of section 454 for any academic year, except that the Secretary shall exercise such discretion so as to achieve the following goals:

"(A) for academic year 1994–1995, loans made under this part shall represent 5 percent of the new student loan volume for such year;

"(B) for academic year 1995–1996, loans made under this part shall represent 40 percent of the new student loan volume for such year;

"(C) for academic years 1996–1997 and 1997–1998, loans made under this part shall represent 50 percent of the new student loan volume for such years; and

"(D) for the academic year that begins in fiscal year 1998, loans made under this part shall represent 60 percent of the new student loan volume for such year.

"(3) EXCEPTION.—The Secretary may exceed the percentage goals described in subparagraphs (C) or (D) of paragraph (2) if the Secretary determines that a higher percentage is warranted by the number of institutions of higher education that desire to participate in the program under this part and that meet the eligibility requirements for such participation.

"(4) NEW STUDENT LOAN VOLUME.—For the purpose of this subsection, the term 'new student loan volume' means the estimated sum of all loans (other than consolidation loans) that will be made, insured or guaranteed under this part and part B in the year for which the determination is made. The Secretary shall base the estimate described in the preceding sentence on the most recent program data available.

"(b) SELECTION CRITERIA.—

"(1) APPLICATION.—Each institution of higher education desiring to participate in the direct student loan program under this part shall submit an application satisfactory to the Secretary containing such information and assurances as the Secretary may require.

"(2) SELECTION PROCEDURE.—The Secretary shall select institutions for participation in the direct student loan program under this part, and shall enter into agreements with such institutions under section 454(a), from among those institutions that submit the applications described in paragraph (1), and meet such other eligibility requirements as the Secretary shall prescribe, by, to the extent possible—

"(A)(i) categorizing such institutions according to anticipated loan volume, length of academic program, control of the institution, highest degree offered, size of student enrollment, geographic location, annual loan volume, and default experience; and

"(ii) beginning in academic year 1995–1996 selecting institutions that are reasonably representative of each of the categories described pursuant to clause (i); and

"(B) if the Secretary determines it necessary to carry out the purposes of this part, selecting additional institutions.

"(c) SELECTION CRITERIA FOR ORIGINATION.—

"(1) IN GENERAL.—The Secretary may enter into a supplemental agreement with an institution (or a consortium of such institutions) that—

"(A) has an agreement under subsection 454(a);

"(B) desires to originate loans under this part; and

"(C) meets the criteria described in paragraph (2).

"(2) TRANSITION SELECTION CRITERIA.—For academic year 1994–1995, the Secretary may approve an institution to originate loans only if such institution—

"(A) made loans under part E of this title in academic year 1993–1994 and did not exceed the applicable maximum default rate under section 462(g) for the most recent fiscal year for which data are available;

"(B) is not on the reimbursement system of payment for any of the programs under subpart 1 or 3 of part A, part C, or part E of this title;

"(C) is not overdue on program or financial reports or audits required under this title;

"(D) is not subject to an emergency action, or a limitation, suspension, or termination under section 428(b)(1)(T), 432(h), or 487(c);

"(E) in the opinion of the Secretary, has not had significant deficiencies identified by a State postsecondary review entity under subpart 1 of part H of this title;

"(F) in the opinion of the Secretary, has not had severe performance deficiencies for any of the programs under this title, including such deficiencies demonstrated by audits or program reviews submitted or conducted during the 5 calendar years immediately preceding the date of application;

"(G) provides an assurance that such institution has no delinquent outstanding debts to the Federal Government, unless such debts are being repaid under or in accordance with a repayment arrangement satisfactory to the Federal Government, or the Secretary in the Secretary's discretion determines that the existence or amount of such debts has not been finally determined by the cognizant Federal agency; and

"(H) meets such other criteria as the Secretary may establish to protect the financial interest of the United States and to promote the purposes of this part.

"(3) REGULATIONS GOVERNING APPROVAL AFTER TRANSITION.—For academic year 1995–1996 and subsequent academic years, the Secretary shall promulgate and publish in the Federal Register regulations governing the approval of institutions to originate loans under this part in accordance with section 457(a)(2).

"(d) ELIGIBLE INSTITUTIONS.—The Secretary may not select an institution of higher education for participation under this section unless such institution is an eligible institution under section 435(a).

"(e) CONSORTIA.—Subject to such requirements as the Secretary may prescribe, eligible institutions of higher education (as determined under subsection (d)) with agreements under section 454(a) may apply to the Secretary as consortia to originate loans under this part for students in attendance at such institutions. Each such institution shall be required to meet the requirements of subsection (c) with respect to loan origination.

"SEC. 454. AGREEMENTS WITH INSTITUTIONS.

"(a) PARTICIPATION AGREEMENTS.—An agreement with any institution of higher education for participation in the direct student loan program under this part shall—

"(1) provide for the establishment and maintenance of a direct student loan program at the institution under which the institution will—

"(A) identify eligible students who seek student financial assistance at such institution in accordance with section 484;

"(B) estimate the need of each such student as required by part F of this title for an academic year, except that, any loan obtained by a student under this part with the same terms as loans made under section 428H (except as otherwise provided in this part), or a loan obtained by a parent under this part with the same terms as loans made under section 428B (except as otherwise provided in this part), or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

"(C) provide a statement that certifies the eligibility of any student to receive a loan under this part that is not in excess of the annual or aggregate limit applicable to such loan, except that the institution may, in exceptional circumstances identified by the Secretary, refuse to certify a statement that permits a student to receive a loan under this part, or certify a loan amount that is less than the student's determination of need (as determined under part F of this title), if the reason for such action is documented and provided in written form to such student;

"(D) set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G; and

"(E) provide timely and accurate information—

"(i) concerning the status of student borrowers (and students on whose behalf parents borrow under this part) while such students are in attendance at the institution and concerning any new information of which the institution becomes aware for such students (or their parents) after such borrowers leave the institution, to the Secretary for the servicing and collecting of loans made under this part; and

"(ii) if the institution does not have an agreement with the Secretary under subsection (b), concerning student eligibility and need, as determined under subparagraphs (A) and (B), to the Secretary as needed for the alternative origination of loans to eligible students and parents in accordance with this part;

"(2) provide assurances that the institution will comply with requirements established by the Secretary relating to student loan information with respect to loans made under this part;

"(3) provide that the institution accepts responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

"(4) provide that students at the institution and their parents (with respect to such students) will be eligible to participate in the programs under part B of this title at the discretion of the Secretary for the period during which such institution participates in the direct student loan program under this part, except that a student or parent may not receive loans under both this part and part B for the same period of enrollment;

"(5) provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with institutions of higher education, to ensure that the institution is complying with program requirements and meeting program objectives;

"(6) provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under this part, or any benefits associated with such loan; and

"(7) include such other provisions as the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of this part.

"(b) ORIGINATION.—An agreement with any institution of higher education, or consortia thereof, for the origination of loans under this part shall—

"(1) supplement the agreement entered into in accordance with subsection (a);

"(2) include provisions established by the Secretary that are similar to the participation agreement provisions described in paragraphs (1)(E)(ii), (2), (3), (4), (5), (6), and (7) of subsection (a), as modified to relate to the origination of loans by the institution or consortium;

"(3) provide that the institution or consortium will originate loans to eligible students and parents in accordance with this part; and

"(4) provide that the note or evidence of obligation on the loan shall be the property of the Secretary.

"(c) WITHDRAWAL AND TERMINATION PROCEDURES.—The Secretary shall establish procedures by which institutions or consortia may withdraw or be terminated from the program under this part.

"SEC. 455. TERMS AND CONDITIONS OF LOANS.

"(a) IN GENERAL.—

"(1) PARALLEL TERMS, CONDITIONS, BENEFITS, AND AMOUNTS.—Unless otherwise specified in this part, loans made to borrowers under this part shall have the same terms, conditions, and benefits, and be available in the same amounts, as loans made to borrowers under sections 428, 428B, and 428H of this title.

"(2) DESIGNATION OF LOANS.—Loans made to borrowers under this part that, except as otherwise specified in this part, have the same terms, conditions, and benefits as loans made to borrowers under—

"(A) section 428 shall be known as 'Federal Direct Stafford Loans';

"(B) section 428B shall be known as 'Federal Direct PLUS Loans'; and

"(C) section 428H shall be known as 'Federal Direct Unsubsidized Stafford Loans'.

"(b) INTEREST RATE.—

"(1) RATES FOR FDSL AND FDUSL.—For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.1 percent,

except that such rate shall not exceed 8.25 percent.

"(2) IN SCHOOL AND GRACE PERIOD RULES.—(A) Notwithstanding the provisions of paragraph (1), but subject to paragraph (3), with respect to any Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

"(i) prior to the beginning of the repayment period of the loan; or

"(ii) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under subparagraph (B).

"(B) For the purpose of subparagraph (A), the rate determined under this subparagraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(i) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(ii) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) OUT-YEAR RULE.—Notwithstanding paragraphs (1) and (2), for Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(A) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

"(4) RATES FOR FDPLUS.—(A) For Federal Direct PLUS Loans for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(i) the bond equivalent rate of 52-week Treasury bills auctioned at final auction held prior to such June 1; plus

"(ii) 3.1 percent,

except that such rate shall not exceed 9 percent.

"(B) For Federal Direct PLUS loans made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(i) the bond equivalent rate of the security with a comparable maturity as established by the Secretary; plus

"(ii) 2.1 percent,

except that such rate shall not exceed 9 percent.

"(5) PUBLICATION.—The Secretary shall determine the applicable rates of interest under this subsection after consultation with the Secretary of Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(c) LOAN FEE.—The Secretary shall charge the borrower of a loan made under this part an origination fee of 4.0 percent of the principal amount of loan.

"(d) REPAYMENT PLANS.—

"(1) DESIGN AND SELECTION.—Consistent with criteria established by the Secretary, the Secretary shall offer a borrower of a loan made under this part a variety of plans for repayment of such loan, including principal and interest on the loan. The borrower shall be entitled to accelerate, without penalty, repayment on the borrower's loans under this part. The borrower may choose—

"(A) a standard repayment plan, with a fixed annual repayment amount paid over a fixed period of time, consistent with subsection (a)(1) of this section;

"(B) an extended repayment plan, with a fixed annual repayment amount paid over an extended period of time, except that the borrower shall annually repay a minimum amount determined by the Secretary in accordance with section 428(b)(1)(L);

"(C) a graduated repayment plan, with annual repayment amounts established at 2 or more graduated levels and paid over a fixed or extended period of time, except that the borrower's scheduled payments shall not be less than 50 percent, nor more than 150 percent, of what the amortized payment on the amount owed would be if the loan were repaid under the standard repayment plan; and

"(D) an income contingent repayment plan, with varying annual repayment amounts based on the income of the borrower, paid over an extended period of time prescribed by the Secretary, not to exceed 25 years, except that the plan described in this subparagraph shall not be available to the borrower of a Federal Direct PLUS loan.

"(2) SELECTION BY SECRETARY.—If a borrower of a loan made under this part does not select a repayment plan described in paragraph (1), the Secretary may provide the borrower with a repayment plan described in subparagraph (A), (B), or (C) of paragraph (1).

"(3) CHANGES IN SELECTIONS.—The borrower of a loan made under this part may change the borrower's selection of a repayment plan under paragraph (1), or the Secretary's selection of a plan for the borrower under paragraph (2), as the case may be, under such terms and conditions as may be established by the Secretary.

"(4) ALTERNATIVE REPAYMENT PLANS.—The Secretary may provide, on a case by case basis, an alternative repayment plan to a borrower of a loan made under this part who demonstrates to the satisfaction of the Secretary that the terms and conditions of the repayment plans available under paragraph (1) are not adequate to accommodate the borrower's exceptional circumstances. In designing such alternative repayment plans, the Secretary shall ensure that such plans do not exceed the cost to the Federal Government, as determined on the basis of the present value of future payments by such borrowers, of loans made using the plans available under paragraph (1).

"(5) REPAYMENT AFTER DEFAULT.—The Secretary may require any borrower who has defaulted on a loan made under this part to—

"(A) pay all reasonable collection costs associated with such loan; and

"(B) repay the loan pursuant to an income contingent repayment plan.

"(e) INCOME CONTINGENT REPAYMENT.—

"(1) INFORMATION AND PROCEDURES.—The Secretary may obtain such information as is reasonably necessary regarding the income of a borrower (and the borrower's spouse, if applicable) of a loan made under this part that is, or may be, repaid pursuant to income contingent repayment, for the purpose of determining the annual repayment obligation of the borrower. Returns and return information (as defined in section 6103 of the Internal Revenue Code of 1986) may be obtained under the preceding sentence only to the extent authorized by section 6103(l)(13) of such Code. The Secretary shall establish procedures for determining the borrower's repayment obligation on that loan for such year, and such other procedures as are necessary to implement effectively income contingent repayment.

"(2) REPAYMENT BASED ON ADJUSTED GROSS INCOME.—A repayment schedule for a loan made under this part and repaid pursuant to income

contingent repayment shall be based on the adjusted gross income (as defined in section 62 of the Internal Revenue Code of 1986) of the borrower or, if the borrower is married and files a Federal income tax return jointly with the borrower's spouse, on the adjusted gross income of the borrower and the borrower's spouse.

"(3) ADDITIONAL DOCUMENTS.—A borrower who chooses, or is required, to repay a loan made under this part pursuant to income contingent repayment, and for whom adjusted gross income is unavailable or does not reasonably reflect the borrower's current income, shall provide to the Secretary other documentation of income satisfactory to the Secretary, which documentation the Secretary may use to determine an appropriate repayment schedule.

"(4) REPAYMENT SCHEDULES.—Income contingent repayment schedules shall be established by regulations promulgated by the Secretary and shall require payments that vary in relation to the appropriate portion of the annual income of the borrower (and the borrower's spouse, if applicable) as determined by the Secretary.

"(5) CALCULATION OF BALANCE DUE.—The balance due on a loan made under this part that is repaid pursuant to income contingent repayment shall equal the unpaid principal amount of the loan, any accrued interest, and any fees, such as late charges, assessed on such loan. The Secretary may promulgate regulations limiting the amount of interest that may be capitalized on such loan, and the timing of any such capitalization.

"(6) NOTIFICATION TO BORROWERS.—The Secretary shall establish procedures under which a borrower of a loan made under this part who chooses or is required to repay such loan pursuant to income contingent repayment is notified of the terms and conditions of such plan, including notification of such borrower—

"(A) that the Internal Revenue Service will disclose to the Secretary tax return information as authorized under section 6103(l)(13) of the Internal Revenue Code of 1986; and

"(B) that if a borrower considers that special circumstances, such as a loss of employment by the borrower or the borrower's spouse, warrant an adjustment in the borrower's loan repayment as determined using the information described in subparagraph (A), or the alternative documentation described in paragraph (3), the borrower may contact the Secretary, who shall determine whether such adjustment is appropriate, in accordance with criteria established by the Secretary.

"(f) DEFERMENT.—

"(1) EFFECT ON PRINCIPAL AND INTEREST.—A borrower of a loan made under this part who meets the requirements described in paragraph (2) shall be eligible for a deferment, during which periodic installments of principal need not be paid, and interest—

"(A) shall not accrue, in the case of a—

"(i) Federal Direct Stafford Loan; or

"(ii) a Federal Direct Consolidation Loan that consolidated only Federal Direct Stafford Loans, or a combination of such loans and Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or

"(B) shall accrue and be capitalized or paid by the borrower, in the case of a Federal Direct PLUS Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct Consolidation Loan not described in subparagraph (A)(ii).

"(2) ELIGIBILITY.—A borrower of a loan made under this part shall be eligible for a deferment during any period—

"(A) during which the borrower—

"(i) is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible institution (as such term is defined in section 435(a)) the borrower is attending; or

"(ii) is pursuing a course of study pursuant to a graduate fellowship program approved by the Secretary, or pursuant to a rehabilitation training program for individuals with disabilities approved by the Secretary,

except that no borrower shall be eligible for a deferment under this subparagraph, or a loan made under this part (other than a Federal Direct PLUS Loan or a Federal Direct Consolidation Loan), while serving in a medical internship or residency program;

"(B) not in excess of 3 years during which the borrower is seeking and unable to find full-time employment;

"(C) not in excess of 3 years during which the Secretary determines, in accordance with regulations prescribed under section 435(o), that the borrower has experienced or will experience an economic hardship.

"(g) FEDERAL DIRECT CONSOLIDATION LOANS.—A borrower of a loan made under this part may consolidate such loan with the loans described in section 428C(a)(4) only under such terms and conditions as the Secretary shall establish pursuant to section 457(a)(1) or regulations promulgated under this part. Loans made under this subsection shall be known as 'Federal Direct Consolidation Loans'.

"(h) BORROWER DEFENSES.—Notwithstanding any other provision of State or Federal law, the Secretary shall specify in regulations (except as authorized under section 457(a)(1)) which acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under this part, except that in no event may a borrower recover from the Secretary, in any action arising from or relating to a loan made under this part, an amount in excess of the amount such borrower has repaid on such loan.

"(i) LOAN APPLICATION AND PROMISSORY NOTE.—The common financial reporting form required in section 483(a)(1) shall constitute the application for loans made under this part (other than a Federal Direct PLUS loan). The Secretary shall develop, print, and distribute to participating institutions a standard promissory note and loan disclosure form.

"(j) LOAN DISBURSEMENT.—

"(1) IN GENERAL.—Proceeds of loans to students under this part shall be applied to the student's account for tuition and fees, and, in the case of institutionally owned housing, to room and board. Loan proceeds that remain after the application of the previous sentence shall be delivered to the borrower by check or other means that is payable to and requires the endorsement or other certification by such borrower.

"(2) PAYMENT PERIODS.—The Secretary shall establish periods for the payments described in paragraph (1) in a manner consistent with payment of basic grants under subpart 1 of part A of this title.

"(k) FISCAL CONTROL AND FUND ACCOUNTABILITY.—

"(1) IN GENERAL.—(A) An institution shall maintain financial records in a manner consistent with records maintained for other programs under this title.

"(B) Except as otherwise required by regulations of the Secretary, or in a notice under section 457(a)(1), an institution may maintain loan funds under this part in the same account as other Federal student financial assistance.

"(2) PAYMENTS AND REFUNDS.—Payments and refunds shall be reconciled in a manner consistent with the manner set forth for the submission of a payment summary report required of institutions participating in the program under subpart 1 of part A, except that nothing in this paragraph shall prevent such reconciliations on a monthly basis.

"(3) TRANSACTION HISTORIES.—All transaction histories under this part shall be maintained using the same system designated by the Secretary for the provision of basic grants under subpart 1 of part A of this title.

"SEC. 456. CONTRACTS.

"(a) CONTRACTS FOR SUPPLIES AND SERVICES.—

"(1) IN GENERAL.—The Secretary shall, to the extent practicable, award contracts for origination, servicing, and collection described in subsection (b). In awarding such contracts, the Secretary shall ensure that such services and supplies are provided at competitive prices.

"(2) ENTITIES.—The entities with which the Secretary may enter into contracts shall include only entities which the Secretary determines are qualified to provide such services and supplies and will comply with the procedures applicable to the award of such contracts. In the case of awarding contracts for the origination, servicing, and collection of loans under this part, the Secretary shall enter into contracts only with entities that have extensive and relevant experience and demonstrated effectiveness. The entities with which the Secretary may enter into such contracts shall include, where practicable, agencies with agreements with the Secretary under sections 428(b) and (c), if such agencies meet the qualifications as determined by the Secretary under this subsection and if those agencies have such experience and demonstrated effectiveness. In awarding contracts to such State agencies, the Secretary shall, to the extent practicable and consistent with the purposes of this part, give special consideration to State agencies with a history of high quality performance to perform services for institutions of higher education within their State.

"(3) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as a limitation of the authority of any State agency to enter into an agreement for the purposes of this section as a member of a consortium of State agencies.

"(b) CONTRACTS FOR ORIGINATION, SERVICING, AND DATA SYSTEMS.—The Secretary may enter into contracts for—

"(1) the alternative origination of loans to students attending institutions of higher education with agreements to participate in the program under this part (or their parents), if such institutions do not have agreements with the Secretary under section 454(b);

"(2) the servicing and collection of loans made under this part;

"(3) the establishment and operation of 1 or more data systems for the maintenance of records on all loans made under this part;

"(4) services to assist in the orderly transition from the loan programs under part B to the direct student loan program under this part; and

"(5) such other aspects of the direct student loan program as the Secretary determines are necessary to ensure the successful operation of the program.

"SEC. 457. REGULATORY ACTIVITIES.

"(a) NOTICE IN LIEU OF REGULATIONS FOR FIRST YEAR OF PROGRAM.—

"(1) NOTICE IN LIEU OF REGULATIONS FOR FIRST YEAR OF PROGRAM.—The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part, the Secretary, in consultation with members of the higher education community, determines are reasonable and necessary to the successful implementation of the first year of the direct student loan program authorized by this part. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.

"(2) NEGOTIATED RULEMAKING.—Beginning with academic year 1995–1996, all standards, criteria, procedures, and regulations implementing this part as amended by the Student Loan Reform Act of 1993 shall, to the extent practicable,

be subject to negotiated rulemaking, including all such standards, criteria, procedures, and regulations promulgated from the date of enactment of such Act.

"(b) CLOSING DATE FOR APPLICATIONS FROM INSTITUTIONS.—The Secretary shall establish a date not later than October 1, 1993, as the closing date for receiving applications from institutions of higher education desiring to participate in the first year of the direct loan program under this part.

"(c) PUBLICATION OF LIST OF PARTICIPATING INSTITUTIONS.—Not later than January 1, 1994, the Secretary shall publish in the Federal Register a list of the institutions of higher education selected to participate in the first year of the direct loan program under this part.

"SEC. 458. FUNDS FOR ADMINISTRATIVE EXPENSES.

"(a) IN GENERAL.—Each fiscal year, there shall be available to the Secretary of Education from funds available pursuant to section 422(g) and from funds not otherwise appropriated, funds to be obligated for administrative costs under this part, including the costs of the transition from the loan programs under part B to the direct student loan programs under this part (including the costs of annually assessing the program under this part and the progress of the transition) and transition support (including administrative costs) for the expenses of guaranty agencies in servicing outstanding loans in their portfolios and in guaranteeing new loans, not to exceed (from such funds not otherwise appropriated) $260,000,000 in fiscal year 1994, $345,000,000 in fiscal year 1995, $550,000,000 in fiscal year 1996, $595,000,000 in fiscal year 1997, and $750,000,000 in fiscal year 1998. If in any fiscal year the Secretary determines that additional funds for administrative expenses are needed as a result of such transition or the expansion of the direct student loan programs under this part, the Secretary is authorized to use funds available under this section for a subsequent fiscal year for such expenses, except that the total expenditures by the Secretary (from such funds not otherwise appropriated) shall not exceed $2,500,000,000 in fiscal years 1994 through 1998. The Secretary is also authorized to carry over funds available under this section to a subsequent fiscal year.

"(b) AVAILABILITY.—Funds made available under subsection (a) shall remain available until expended.

"(c) BUDGET JUSTIFICATION.—No funds may be expended under this section unless the Secretary includes in the Department of Education's annual budget justification to Congress a detailed description of the specific activities for which the funds made available by this section have been used in the prior and current years (if applicable), the activities and costs planned for the budget year, and the projection of activities and costs for each remaining year for which administrative expenses under this section are made available.

"(d) NOTIFICATION.—In the event the Secretary finds it necessary to use the authority provided to the Secretary under subsection (a) to draw funds for administrative expenses from a future year's funds, no funds may be expended under this section unless the Secretary immediately notifies the Committees on Appropriations of the Senate and of the House of Representatives, and the Labor and Human Resources Committee of the Senate and the Education and Labor Committee of the House of Representatives, of such action and explain the reasons for such action.".

CHAPTER 2—CONFORMING AMENDMENTS TO THE HIGHER EDUCATION ACT OF 1965

SEC. 4041. PRESERVING LOAN ACCESS.

(a) ADVANCES TO GUARANTY AGENCIES FOR LENDER-OF-LAST-RESORT SERVICES.—

(1) AMENDMENT.—Section 428(j) of the Act (20 U.S.C. 1078(j)) is amended by striking paragraph (3) and inserting the following:

"(3) ADVANCES TO GUARANTY AGENCIES FOR LENDER-OF-LAST-RESORT SERVICES DURING TRANSITION TO DIRECT LENDING.—(A) In order to ensure the availability of loan capital during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title, the Secretary is authorized to provide a guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as are determined appropriate by the Secretary, in order to ensure that the guaranty agency will make loans as the lender-of-last-resort. Such agency shall make such loans in accordance with this subsection and the requirements of the Secretary.

"(B) Notwithstanding any other provision in this part, a guaranty agency serving as a lender-of-last-resort under this paragraph shall be paid a fee, established by the Secretary, for making such loans in lieu of interest and special allowance subsidies, and shall be required to assign such loans to the Secretary on demand. Upon such assignment, the portion of the advance represented by the loans assigned shall be considered repaid by such guaranty agency.".

(2) CONFORMING AMENDMENTS.—

(A) ADVANCES TO GUARANTEE AGENCIES.—Section 422(c)(7) of the Act (20 U.S.C. 1072(c)(7)) is amended by striking all beginning with "to a guaranty agency" through the period and inserting "to a guaranty agency—

"(A) in accordance with section 428(j), in order to ensure that the guaranty agency shall make loans as the lender-of-last-resort during the transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title; or

"(B) if the Secretary is seeking to terminate the guaranty agency's agreement, or assuming the guaranty agency's functions, in accordance with section 428(c)(10)(F)(v), in order to assist the agency in meeting its immediate cash needs, ensure the uninterrupted payment of claims, or ensure that the guaranty agency shall make loans as described in subparagraph (A);".

(B) RULES AND OPERATING PROCEDURES.—Section 428(j)(2) of the Act (20 U.S.C. 1078(j)(2)) is amended—

(i) in subparagraph (A), by inserting before the semicolon at the end the following: "and ensure a response within 60 days after the student's original complete application is filed under this subsection";

(ii) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively; and

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

"(B) consistent with standards established by the Secretary, students applying for loans under this subsection shall not be subject to additional eligibility requirements or requests for additional information beyond what is required under this title in order to receive a loan under this part from an eligible lender, nor be required to receive more than two rejections from eligible lenders in order to obtain a loan under this subsection;".

(b) LENDER REFERRAL SERVICES.—Section 428(e) of the Act (20 U.S.C. 1078(e)) is amended—

(1) in paragraph (1)—

(A) by amending the paragraph heading to read as follows: "IN GENERAL; AGREEMENTS WITH GUARANTY AGENCIES.—";

(B) by inserting the subparagraph designation "(A)" immediately before "The Secretary";

(C) by striking "in any State" and inserting "with which the Secretary has an agreement under subparagraph (B)"; and

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

"(B)(i) The Secretary may enter into agreements with guaranty agencies that meet standards established by the Secretary to provide lender referral services in geographic areas specified by the Secretary. Such guaranty agencies shall be paid in accordance with paragraph (3) for such services.

"(ii) The Secretary shall publish in the Federal Register whatever standards, criteria, and procedures, consistent with the provisions of this part and part D of this title, the Secretary determines are reasonable and necessary to provide lender referral services under this subsection and ensure loan access to student and parent borrowers during the transition from the loan programs under this part to the direct student loan programs under part D of this title. Section 431 of the General Education Provisions Act shall not apply to the publication of such standards, criteria, and procedures.";

(2) in paragraph (2)—

(A) in the matter preceding subparagraph (A), by striking "in a State" and inserting "with which the Secretary has an agreement under paragraph (1)(B)";

(B) by amending subparagraph (A) to read as follows:

"(A)(i) such student is either a resident of, or is accepted for enrollment in, or is attending, an eligible institution located in a geographic area for which the Secretary (I) determines that loans are not available to all eligible students, and (II) has entered into an agreement with a guaranty agency under paragraph (1)(B) to provide lender referral services; and";

(3) in paragraph (3), by striking "The" and inserting "From funds available for costs of transition under section 458 of the Act, the"; and

(4) by striking paragraph (5).

(c) LENDER-OF-LAST-RESORT FUNCTIONS OF STUDENT LOAN MARKETING ASSOCIATION.—Subsection (q) of section 439 of the Act (20 U.S.C. 1087–2(q)) is amended to read as follows:

"(q) LENDER OF LAST RESORT.—

"(1) ACTION AT REQUEST OF SECRETARY.—(A) Whenever the Secretary determines that eligible borrowers are seeking and are unable to obtain loans under this part, the Association or its designated agent shall, not later than 90 days after the date of enactment of the Student Loan Reform Act of 1993, begin making loans to such eligible borrowers in accordance with this subsection at the request of the Secretary. The Secretary may request that the Association make loans to borrowers within a geographic area or for the benefit of students attending institutions of higher education that certify, in accordance with standards established by the Secretary, that their students are seeking and unable to obtain loans.

"(B) Loans made pursuant to this subsection shall be insurable by the Secretary under section 429 with a certificate of comprehensive insurance coverage provided for under section 429(b)(1) or by a guaranty agency under paragraph (2)(A) of this subsection.

"(2) ISSUANCE AND COVERAGE OF LOANS.—(A) Whenever the Secretary, after consultation with, and with the agreement of, representatives of the guaranty agency in a State, or an eligible lender in a State described in section 435(d)(1)(D), determines that a substantial portion of eligible borrowers in such State or within an area of such State are seeking and are unable to obtain loans under this part, the Association or its designated agent shall begin making such loans to borrowers in such State or within an area of such State in accordance with this subsection at the request of the Secretary.

"(B) Loans made pursuant to this subsection shall be insurable by the agency identified in

subparagraph (A) having an agreement pursuant to section 428(b). For loans insured by such agency, the agency shall provide the Association with a certificate of comprehensive insurance coverage, if the Association and the agency have mutually agreed upon a means to determine that the agency has not already guaranteed a loan under this part to a student which would cause a subsequent loan made by the Association to be in violation of any provision under this part.

"(3) TERMINATION OF LENDING.—The Association or its designated agent shall cease making loans under this subsection at such time as the Secretary determines that the conditions which caused the implementation of this subsection have ceased to exist.".

SEC. 4042. GUARANTY AGENCY RESERVES.

Section 422 of the Act (20 U.S.C. 1072) is amended by adding at the end the following new subsection:

"(g) PRESERVATION AND RECOVERY OF GUARANTY AGENCY RESERVES.—

"(1) AUTHORITY TO RECOVER FUNDS.—Notwithstanding any other provision of law, the reserve funds of the guaranty agencies, and any assets purchased with such reserve funds, regardless of who holds or controls the reserves or assets, shall be considered to be the property of the United States to be used in the operation of the program authorized by this part or the program authorized by part D of this title. However, the Secretary may not require the return of all reserve funds of a guaranty agency to the Secretary unless the Secretary determines that such return is in the best interest of the operation of the program authorized by this part or the program authorized by part D of this title, or to ensure the proper maintenance of such agency's funds or assets or the orderly termination of the guaranty agency's operations and the liquidation of its assets. The reserves shall be maintained by each guaranty agency to pay program expenses and contingent liabilities, as authorized by the Secretary, except that—

"(A) the Secretary may direct a guaranty agency to return to the Secretary a portion of its reserve fund which the Secretary determines is unnecessary to pay the program expenses and contingent liabilities of the guaranty agency;

"(B) the Secretary may direct the guaranty agency to require the return, to the guaranty agency or to the Secretary, of any reserve funds or assets held by, or under the control of, any other entity, which the Secretary determines are necessary to pay the program expenses and contingent liabilities of the guaranty agency, or which are required for the orderly termination of the guaranty agency's operations and the liquidation of its assets;

"(C) the Secretary may direct a guaranty agency, or such agency's officers or directors, to cease any activities involving expenditure, use or transfer of the guaranty agency's reserve funds or assets which the Secretary determines is a misapplication, misuse, or improper expenditure of such funds or assets; and

"(D) any such determination under subparagraph (A) or (B) shall be based on standards prescribed by regulations that are developed through negotiated rulemaking and that include procedures for administrative due process.

"(2) TERMINATION PROVISIONS IN CONTRACTS.—(A) To ensure that the funds and assets of the guaranty agency are preserved, any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of this subsection shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section.

"(B) The Secretary may direct a guaranty agency to suspend or cease activities under any contract entered into by or on behalf of such agency after January 1, 1993, if the Secretary determines that the misuse or improper expenditure of such guaranty agency's funds or assets or such contract provides unnecessary or improper benefits to such agency's officers or directors.

"(3) PENALTIES.—Violation of any direction issued by the Secretary under this subsection may be subject to the penalties described in section 490 of this Act.

"(4) AVAILABILITY OF FUNDS.—Any funds that are returned or otherwise recovered by the Secretary pursuant to this subsection shall be available for expenditure for expenses pursuant to section 458 of this Act.".

SEC. 4043. TERMS OF LOANS.

(a) AMENDMENT.—Section 428 of the Act (20 U.S.C. 1078) is amended—

(1) in subsection (b)(1)(D), by striking "be subject to" through the semicolon and inserting "be subject to income contingent repayment in accordance with subsection (m);"; and

(2) in subsection (m)—

(A) by amending paragraph (1) to read as follows:

"(1) AUTHORITY OF SECRETARY TO REQUIRE.—The Secretary shall require at least 10 percent of the borrowers who have defaulted on loans made under this part that are assigned to the Secretary under subsection (c)(8) to repay those loans under an income contingent repayment plan, the terms and conditions of which shall be established by the Secretary and the same as, or similar to, an income contingent repayment plan established for purposes of part D of this title."; and

(B) by striking paragraphs (2), (3), and (4) and inserting the following new paragraph:

"(2) LOANS FOR WHICH INCOME CONTINGENT REPAYMENT MAY BE REQUIRED.—A loan made under this part may be required to be repaid under this subsection if the note or other evidence of the loan has been assigned to the Secretary pursuant to subsection (c)(8).".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994.

SEC. 4044. ASSIGNMENT OF LOANS.

Section 428(c)(8) of the Act (20 U.S.C. 1078(c)(8)) is amended—

(1) in the first sentence, by inserting the subparagraph designation "(A)" before "If the";

(2) by striking the second and third sentences; and

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

"(B) An orderly transition from the Federal Family Education Loan Program under this part to the Federal Direct Student Loan Program under part D of this title shall be deemed to be in the Federal fiscal interest, and a guaranty agency shall promptly assign loans to the Secretary under this paragraph upon the Secretary's request.".

SEC. 4045. TERMINATION OF GUARANTY AGENCY AGREEMENTS; ASSUMPTION OF GUARANTY AGENCY FUNCTIONS BY THE SECRETARY.

Section 428(c)(10) of the Act is amended—

(1) in subparagraph (C), by inserting ", as appropriate," after "the Secretary shall require";

(2) in subparagraph (D)—

(A) by inserting the clause designation "(i)" before "Each";

(B) by striking "Each" and inserting "If the Secretary is not seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a";

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

"(ii) If the Secretary is seeking to terminate the guaranty agency's agreement under subparagraph (E), or assuming the guaranty agency's functions under subparagraph (F), a management plan described in subparagraph (C) shall include the means by which the Secretary and the guaranty agency shall work together to ensure the orderly termination of the operations, and liquidation of the assets, of the guaranty agency.";

(3) in subparagraph (E)—

(A) in clause (ii), by striking "or" after the semicolon;

(B) in clause (iii), by striking the period and inserting a semicolon; and

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

"(iv) the Secretary determines that such action is necessary to protect the Federal fiscal interest;

"(v) the Secretary determines that such action is necessary to ensure the continued availability of loans to student or parent borrowers; or

"(vi) the Secretary determines that such action is necessary to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title.";

(4) in subparagraph (F)—

(A) in the matter preceding clause (i), by striking "Except as provided in subparagraph (G), if" and inserting "If";

(B) by amending clause (v) to read as follows:

"(v) provide the guaranty agency with additional advance funds in accordance with section 422(c)(7), with such restrictions on the use of such funds as is determined appropriate by the Secretary, in order to—

"(I) meet the immediate cash needs of the guaranty agency;

"(II) ensure the uninterrupted payment of claims; or

"(III) ensure that the guaranty agency will make loans as the lender-of-last-resort, in accordance with subsection (j);";

(C) in clause (vi)—

(i) by striking "and to avoid" and inserting "to avoid";

(ii) by striking the period and inserting a comma and "and to ensure an orderly transition from the loan programs under this part to the direct student loan programs under part D of this title."; and

(iii) by redesignating such clause as clause (vii); and

(D) by inserting after clause (v) the following new clause:

"(vi) use all funds and assets of the guaranty agency to assist in the activities undertaken in accordance with this subparagraph and take appropriate action to require the return, to the guaranty agency or the Secretary, of any funds or assets provided by the guaranty agency, under contract or otherwise, to any person or organization; or";

(5) by striking subparagraph (G);

(6) by redesignating subparagraphs (H), (I), and (J) as subparagraphs (I), (J), and (K), respectively;

(7) by inserting after subparagraph (F) the following new subparagraphs:

"(G) Notwithstanding any other provision of Federal or State law, if the Secretary has terminated or is seeking to terminate a guaranty agency's agreement under subparagraph (E), or has assumed a guaranty agency's functions under subparagraph (F)—

"(i) no State court may issue any order affecting the Secretary's actions with respect to such guaranty agency;

"(ii) any contract with respect to the administration of a guaranty agency's reserve funds, or the administration of any assets purchased or acquired with the reserve funds of the guaranty agency, that is entered into or extended by the guaranty agency, or any other party on behalf of or with the concurrence of the guaranty agency, after the date of enactment of this subparagraph shall provide that the contract is terminable by the Secretary upon 30 days notice to the contracting parties if the Secretary determines that such contract includes an impermissible transfer of the reserve funds or assets, or is otherwise inconsistent with the terms or purposes of this section; and

"(iii) no provision of State law shall apply to the actions of the Secretary in terminating the operations of a guaranty agency.

"(H) Notwithstanding any other provision of law, the Secretary's liability for any outstanding liabilities of a guaranty agency (other than outstanding student loan guarantees under this part), the functions of which the Secretary has assumed, shall not exceed the fair market value of the reserves of the guaranty agency, minus any necessary liquidation or other administrative costs."; and

(8) in subparagraph (K) (as redesignated by paragraph (5)), by striking all beginning with "system, together" through the period and inserting "system and the progress of the transition from the loan programs under this part to the direct student loan programs under part D of this title.".

SEC. 4046. CONSOLIDATION LOANS.

(a) COST SAVINGS FROM CONSOLIDATION LOANS.—Section 428C of the Act (20 U.S.C. 1078–3) is amended—

(1) in subsection (a) by amending paragraph (3)(A) to read as follows:

"(3) DEFINITION OF ELIGIBLE BORROWERS.—(A) For the purpose of this section, the term 'eligible borrower' means a borrower who, at the time of application for a consolidation loan is in repayment status, or in a grace period preceding repayment, or is a delinquent or defaulted borrower who will reenter repayment through loan consolidation.";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A)(ii), by inserting "with income-sensitive repayment terms" after "obtain a consolidation loan";

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph:

"(E) that the lender shall offer an income-sensitive repayment schedule, established by the lender in accordance with the regulations promulgated by the Secretary, to the borrower of any consolidation loan made by the lender on or after July 1, 1994; and";

(B) in paragraph (4), by amending subparagraph (C) to read as follows:

"(C)(i) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid in accordance with clause (ii), during any period for which the borrower would be eligible for a deferral under section 428(b)(1)(M), and that any such period shall not be included in determining the repayment schedule pursuant to subsection (c)(2) of this section; and

"(ii) provides that interest shall accrue and be paid—

"(I) by the Secretary, in the case of a consolidation loan that consolidated only Federal Stafford Loans for which the student borrower received an interest subsidy under section 428; or

"(II) by the borrower, or capitalized, in the case of a consolidation loan other than a loan described in subclause (I);"; and

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

"(5) DIRECT LOANS.—In the event that a borrower is unable to obtain a consolidation loan from a lender with an agreement under subsection (a)(1), or is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower from such a lender, the Secretary shall offer any such borrower who applies for it, a direct consolidation loan. Such direct consolidation loan shall, as requested by the borrower, be repaid either pursuant to income contingent repayment under part D of this title or pursuant to any other repayment provision under this section. The Secretary shall not offer such loans if, in the Secretary's judgment, the Department of Education does not have the necessary origination and servicing arrangements in place for such loans."; and

(3) in subsection (c)—

(A) in paragraph (1), by amending subparagraphs (B) and (C) to read as follows:

"(B) A consolidation loan made before July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the greater of—

"(i) the weighted average of the interest rates on the loans consolidated, rounded to the nearest whole percent; or

"(ii) 9 percent.

"(C) A consolidation loan made on or after July 1, 1994, shall bear interest at an annual rate on the unpaid principal balance of the loan that is equal to the weighted average of the interest rates on the loans consolidated, rounded upward to the nearest whole percent.";

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking "income sensitive repayment schedules. Such repayment terms" and inserting "income sensitive repayment schedules, established by the lender in accordance with the regulations of the Secretary. Except as required by such income sensitive repayment schedules, or by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5), such repayment terms";

(II) by redesignating clauses (i), (ii), (iii), (iv), and (v) as clauses (ii), (iii), (iv), (v), and (vi), respectively; and

(III) by inserting before clause (ii) (as redesignated by subclause (II)) the following new clause:

"(i) is less than $7,500, then such consolidation loan shall be repaid in not more than 10 years;";

(ii) by striking subparagraph (B); and

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

(C) in paragraph (3)(B), by inserting "except as required by the terms of repayment pursuant to income contingent repayment offered by the Secretary under subsection (b)(5)," before "the lender".

(b) COHORT DEFAULT RATE CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO DEFINITION.—Section 435(m)(1) of the Act (20 U.S.C. 1085) is amended—

(A) in subparagraph (A), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans";

(B) in subparagraph (C), by inserting "(or on the portion of a loan made under section 428C that is used to repay any such loans)" immediately after "on such loans"; and

(C) in subparagraph (D)—

(i) by inserting "(or the portion of a loan made under section 428C that is used to repay a loan made under such section)" after "section 428A" the first place it appears; and

(ii) by inserting "(or a loan made under section 428C a portion of which is used to repay a loan made under such section)" after "section 428A" the second place it appears.

(2) CONFORMING AMENDMENT.—Section 428C(a)(3)(B)(ii) of the Act (20 U.S.C. 1078–3 (a)(3)(B)(ii)) is amended by striking the second sentence.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994, except that the amendments made by subsection (a)(2)(B) shall take effect upon enactment.

SEC. 4047. CONSOLIDATION OF PROGRAMS.

(a) IN GENERAL.—Section 428H of the Act (20 U.S.C. 1078–9) is amended—

(1) in the matter preceding paragraph (1) of subsection (b), by inserting "(including graduate and professional students as defined in regulations promulgated by the Secretary)" after "484";

(2) by amending subsection (d) to read as follows:

"(d) LOAN LIMITS.—

"(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the annual and aggregate limits for loans under this section shall be the same as those established under section 428(b)(1), less any amount received by such student pursuant to the subsidized loan program established under section 428.

"(2) ANNUAL LIMITS FOR INDEPENDENT, GRADUATE, AND PROFESSIONAL STUDENTS.—The maximum annual amount of loans under this section an independent student (or a student whose parents are unable to borrow under section 428B or the Federal Direct PLUS Loan Program) may borrow in any academic year or its equivalent or in any period of 7 consecutive months, whichever is longer, shall be the amount determined under paragraph (1), plus—

"(A) in the case of such a student attending an eligible institution who has not completed such student's first 2 years of undergraduate study—

"(i) $4,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);

"(ii) $2,500, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

"(iii) $1,500, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year;

"(B) in the case of such a student attending an eligible institution who has completed the first 2 years of undergraduate study but who has not completed the remainder of a program of undergraduate study—

"(i) $5,000, if such student is enrolled in a program whose length is at least one academic year in length (as determined under section 481);

"(ii) $3,325, if such student is enrolled in a program whose length is less than one academic year, but at least ⅔ of such an academic year; and

"(iii) $1,675, if such student is enrolled in a program whose length is less than ⅔, but at least ⅓, of such an academic year; and

"(C) in the case of such a student who is a graduate or professional student attending an eligible institution, $10,000.

"(3) AGGREGATE LIMITS FOR INDEPENDENT, GRADUATE, AND PROFESSIONAL STUDENTS.—The maximum aggregate amount of loans under this section a student described in paragraph (2) may borrow shall be the amount described in paragraph (1), adjusted to reflect the increased annual limits described in paragraph (2), as prescribed by the Secretary by regulation."; and

(3) in subsection (e), by adding at the end the following new paragraphs:

"(5) AMORTIZATION.—The amount of the periodic payment and the repayment schedule for any loan made pursuant to this section shall be established by assuming an interest rate equal to the applicable rate of interest at the time the repayment of the principal amount of the loan

commences. At the option of the lender, the note or other written evidence of the loan may require that—

"(A) the amount of the periodic payment will be adjusted annually; or

"(B) the period of repayment of principal will be lengthened or shortened,

in order to reflect adjustments in interest rates occurring as a consequence of section 427A(c)(4).

"(6) REPAYMENT PERIOD.—For purposes of calculating the 10-year repayment period under section 428(b)(1)(D), such period shall commence at the time the first payment of principal is due from the borrower.".

(b) REPEAL.—Section 428A of the Act is repealed.

(c) TERMS, CONDITIONS AND BENEFITS.—Notwithstanding the amendments made by this section, with respect to loans provided under sections 428A and 428H of the Act (as such sections existed on the date preceding the date of enactment of this Act) the terms, conditions and benefits applicable to such loans under such sections shall continue to apply to such loans after the date of enactment of this Act.

(d) EFFECTIVE DATE.—Except as otherwise provided herein, the amendments made by this section shall take effect on July 1, 1994.

Subtitle B—Additional Savings From The Student Loan Programs

SEC. 4101. REDUCTION OF BORROWER INTEREST RATES.

Section 427A of the Act (20 U.S.C. 1077a) is amended—

(1) in subsection (c)(4), by adding at the end the following new subparagraph:

"(E) Notwithstanding subparagraphs (A) and (D) for any loan made pursuant to section 428B for which the first disbursement is made on or after July 1, 1994—

"(i) subparagraph (B) shall be applied by substituting "3.1" for "3.25"; and

"(ii) the interest rate shall not exceed 9 percent.";

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

(3) by adding after subsection (e) the following new subsections:

"(f) INTEREST RATES FOR NEW LOANS AFTER JULY 1, 1994.—

"(1) IN GENERAL.—Notwithstanding subsections (a), (b), (d), and (e) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to section 428B or 428C) for which the first disbursement is made on or after July 1, 1994, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to such June 1; plus

"(B) 3.10 percent,

except that such rate shall not exceed 8.25 percent.

"(2) CONSULTATION.—The Secretary shall determine the applicable rate of interest under paragraph (1) after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(g) IN SCHOOL AND GRACE PERIOD RULES.—

"(1) GENERAL RULE.—Notwithstanding the provisions of subsection (f), but subject to subsection (h), with respect to any loan under section 428 or 428H of this part for which the first disbursement is made on or after July 1, 1995, the applicable rate of interest for interest which accrues—

"(A) prior to the beginning of the repayment period of the loan; or

"(B) during the period in which principal need not be paid (whether or not such principal is in fact paid) by reason of a provision described in section 428(b)(1)(M) or 427(a)(2)(C),

shall not exceed the rate determined under paragraph (2).

"(2) RATE DETERMINATION.—For purposes of paragraph (1), the rate determined under this paragraph shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(A) the bond equivalent rate of 91-day Treasury bills auctioned at the final auction prior to such June 1; plus

"(B) 2.5 percent,

except that such rate shall not exceed 8.25 percent.

"(3) CONSULTATION.—The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.

"(h) INTEREST RATES FOR NEW LOANS AFTER JULY 1, 1998.—

"(1) IN GENERAL.—Notwithstanding subsections (a), (b), (d), (e), (f), and (g) of this section, with respect to any loan made, insured, or guaranteed under this part (other than a loan made pursuant to sections 428B and 428C) for which the first disbursement is made on or after July 1, 1998, the applicable rate of interest shall, during any 12-month period beginning on July 1 and ending on June 30, be determined on the preceding June 1 and be equal to—

"(A) the bond equivalent rate of the securities with a comparable maturity as established by the Secretary; plus

"(B) 1.0 percent,

except that such rate shall not exceed 8.25 percent.

"(2) INTEREST RATES FOR NEW PLUS LOANS AFTER JULY 1, 1998.—Notwithstanding subsections (a), (b), (d), (e), (f), and (g), with respect to any loan made under section 428B for which the first disbursement is made on or after July 1, 1998, paragraph (1) shall be applied—

"(A) by substituting '2.1 percent' for '1.0 percent' in subparagraph (B); and

"(B) by substituting '9.0 percent' for '8.25 percent' in the matter following such subparagraph.

"(3) CONSULTATION.—The Secretary shall determine the applicable rate of interest under this subsection after consultation with the Secretary of the Treasury and shall publish such rate in the Federal Register as soon as practicable after the date of determination.".

SEC. 4102. REDUCTION IN LOAN FEES PAID BY STUDENTS.

(a) ORIGINATION FEES.—Section 438 of the Act (20 U.S.C. 1087–1) is amended—

(1) in the heading of subsection (c) by inserting "FROM STUDENTS" after "ORIGINATION FEES"; and

(2) in subsection (c)—

(A) in paragraph (2)—

(i) by striking "428A, 428B, 428C," and inserting '428C"; and

(ii) by striking "5 percent" and inserting "3.0 percent"; and

(B) in paragraph (6), by striking "5 percent" and inserting "3.0 percent".

(b) ORIGINATION FEE; INSURANCE PREMIUM FOR UNSUBSIDIZED LOANS.—Section 428H of the Act (20 U.S.C. 1078–8) is amended—

(1) in subsection (f)—

(A) in the subsection heading, by striking "INSURANCE PREMIUM" and inserting "ORIGINATION FEE";

(B) in the heading of paragraph (1), by striking "/INSURANCE PREMIUM";

(C) in paragraph (1)—

(i) by striking "a combined origination fee and insurance premium in the amount of 6.5 percent" and inserting "an origination fee in the amount of 3.0 percent"; and

(ii) by striking the second sentence;

(D) in paragraph (2), by striking "combined fee and premium" and inserting "origination fee";

(E) in paragraph (3), by striking "combined origination fee and insurance premium" and inserting "origination fee";

(F) in paragraph (4)—

(i) in the heading, by striking "INSURANCE PREMIUM" and inserting "ORIGINATION FEE";

(ii) by striking "combined origination fee and insurance premiums" and inserting "origination fees"; and

(iii) by striking "and premiums to pay" and inserting "to pay"; and

(G) in paragraph (5)—

(i) in the heading, by inserting "ORIGINATION FEE AND" before "INSURANCE"; and

(ii) in the second sentence—

(I) by striking "6.5 percent insurance premium" and inserting "combined origination fee under this subsection and the insurance premium under subsection (h)"; and

(II) by inserting "origination fee and" before "insurance"; and

(2) by adding at the end the following new subsection:

"(l) INSURANCE PREMIUM.—Each State or nonprofit private institution or organization having an agreement with the Secretary under section 428(b)(1) may charge a borrower under this section an insurance premium equal to not more than 1.0 percent of the principal amount of the loan, if such premium will not be used for incentive payments to lenders."

(c) INSURANCE PREMIUM.—Section 428(b)(1)(H) of the Act (20 U.S.C. 1078(b)(1)(H)) is amended by striking "3 percent" and inserting "1.0 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on July 1, 1994.

SEC. 4103. LOAN FEES FROM LENDERS.

Section 438 of the Act (20 U.S.C 1087–1) is further amended—

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and

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

"(d) LOAN FEES FROM LENDERS.—

"(1) DEDUCTION FROM INTEREST AND SPECIAL ALLOWANCE SUBSIDIES.—Notwithstanding subsection (b), the Secretary shall reduce the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, to any holder of a loan by a loan fee in an amount determined in accordance with paragraph (2) of this subsection. If the total amount of interest and special allowance payable under section 428(a)(3)(A) and subsection (b) of this section, respectively, is less than the amount of such loan fee, then the Secretary shall deduct such excess amount from subsequent quarters' payments until the total amount has been deducted.

"(2) AMOUNT OF LOAN FEES.—With respect to any loan under this part for which the first disbursement was made on or after October 1, 1993, the amount of the loan fee which shall be deducted under paragraph (1) shall be equal to 0.50 percent of the principal amount of the loan.

"(3) DISTRIBUTION OF LOAN FEES.—The Secretary shall deposit all fees collected pursuant to paragraph (3) into the insurance fund established in section 431.".

SEC. 4104. OFFSET FEE.

Subsection (h) of section 439 of the Act (20 U.S.C. 1087–2(h)) is amended by adding at the end the following new paragraph:

"(7) OFFSET FEE.—(A) The Association shall pay to the Secretary, on a monthly basis, an offset fee calculated on an annual basis in an amount equal to 0.30 percent of the principal

amount of each loan made, insured or guaranteed under this part that the Association holds (except for loans made pursuant to sections 428C, 439(o), or 439(q)) and that was acquired on or after the date of enactment of this paragraph.

"(B) If the Secretary determines that the Association has substantially failed to comply with subsection (q), subparagraph (A) shall be applied by substituting '1.0 percent' for '0.3 percent'.

"(C) The Secretary shall deposit all fees collected pursuant to this paragraph into the insurance fund established in section 431.".

SEC. 4105. ELIMINATION OF TAX EXEMPT FLOOR.

Section 438(b)(2)(B) of the Act (20 U.S.C. 1087–1(b)(2)(B)) is amended by adding at the end the following new clause:

"(iv) Notwithstanding clauses (i) and (ii), the quarterly rate of the special allowance for holders of loans which are financed with funds obtained by the holder from the issuance of obligations originally issued on or after October 1, 1993, the income from which is excluded from gross income under the Internal Revenue Code of 1986, shall be the quarterly rate of the special allowance established under subparagraph (A), (E), or (F), as the case may be. Such rate shall also apply to holders of loans which were made or purchased with funds obtained by the holder from collections or default reimbursements on, or interest or other income pertaining to, eligible loans made or purchased with funds described in the preceding sentence of this subparagraph or from income on the investment of such funds.".

SEC. 4106. REDUCTION IN INTEREST RATE FOR CONSOLIDATION LOANS; REBATE FEE.

(a) AMENDMENT.—Section 428C of the Act (20 U.S.C. 1078–3) is amended by adding at the end the following new subsection:

"(f) INTEREST PAYMENT REBATE FEE.—

"(1) IN GENERAL.—For any month beginning on or after October 1, 1993, each holder of a consolidation loan under this section for which the first disbursement was made on or after October 1, 1993, shall pay to the Secretary, on a monthly basis and in such manner as the Secretary shall prescribe, a rebate fee calculated on an annual basis equal to 1.05 percent of the principal plus accrued unpaid interest on such loan.

"(2) DEPOSIT.—The Secretary shall deposit all fees collected pursuant to subsection (a) into the insurance fund established in section 431.".

(b) ENFORCEMENT.—Subsection (d) of section 435 of the Act (20 U.S.C. 1085(d)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by striking "(5)" and inserting "(6)"; and

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

"(6) REBATE FEE REQUIREMENT.—To be an eligible lender under this part, an eligible lender shall pay rebate fees in accordance with section 428C(f).".

SEC. 4107. REINSURANCE FEES AND ADMINISTRATIVE COST ALLOWANCE.

(a) REINSURANCE FEES.—Section 428(c) of the Act (20 U.S.C. 1078(c)) is amended—

(1) by striking paragraph (9); and

(2) by redesignating paragraph (10) as paragraph (9).

(b) ADMINISTRATIVE COST ALLOWANCE.—Section 428(f)(1) of the Act (20 U.S.C. 1078(f)(1)) is amended—

(1) in subparagraph (A), by striking "The Secretary" and inserting "For a fiscal year prior to fiscal year 1994, the Secretary"; and

(2) in subparagraph (B), by inserting "prior to fiscal year 1994" after "any fiscal year".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1993.

SEC. 4108. RISK SHARING.

(a) GUARANTY AGENCY REINSURANCE PERCENTAGE.—Section 428(c)(1) of the Act (20 U.S.C. 1078(c)(1)) is amended—

(1) in the fourth sentence of subparagraph (A), by striking "100 percent" and inserting "98 percent";

(2) in subparagraph (B)(i), by striking "90 percent" and inserting "88 percent";

(3) in subparagraph (B)(ii), by striking "80 percent" and inserting "78 percent"; and

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

"(E) Notwithstanding any other provisions of this section, in the case of a loan made pursuant to a lender-of-last-resort program, the Secretary shall apply the provisions of—

"(i) the fourth sentence of subparagraph (A) by substituting '100 percent' for '98 percent';

"(ii) subparagraph (B)(i) by substituting '100 percent' for '88 percent'; and

"(iii) subparagraph (B)(ii) by substituting '100 percent' for '78 percent'.

"(F) Notwithstanding any other provisions of this section, in the case of an outstanding loan transferred to a guaranty agency from another guaranty agency pursuant to a plan approved by the Secretary in response to the insolvency of the latter such guarantee agency, the Secretary shall apply the provision of—

"(i) the fourth sentence of subparagraph (A) by substituting '100 percent' for '98 percent';

"(ii) subparagraph (B)(i) by substituting '90 percent' for '88 percent'; and

"(iii) subparagraph (B)(ii) by substituting '80 percent' for '78 percent'.".

(b) RISK SHARING BY THE LOAN HOLDERS.—Section 428(b)(1)(G) of the Act (20 U.S.C. 1078(b)(1)(G)) is amended—

(1) by striking "100 percent" and inserting "98 percent"; and

(2) by adding before the semicolon at the end the following: ", except that such program shall insure 100 percent of the unpaid principal of loans made with funds advanced pursuant to section 428(j) or 439(q)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any loan for which the first disbursement is made on or after October 1, 1993.

SEC. 4109. PLUS LOAN DISBURSEMENTS.

(a) MULTIPLE DISBURSEMENT REQUIRED.—The matter preceding paragraph (1) of section 428B(c) of the Act (20 U.S.C. 1078–2(c)) is amended by inserting "shall be disbursed in accordance with the requirements of section 428G and" after "under this section".

(b) CONFORMING AMENDMENTS.—Section 428G(e) of the Act (20 U.S.C. 1078–7(e) is amended—

(1) in the subsection heading, by striking "PLUS, CONSOLIDATION," and inserting "CONSOLIDATION"; and

(2) by striking "section 428B or 428C" and inserting "section 428C".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to loans for which the first disbursement is made on or after October 1, 1993.

SEC. 4110. SECRETARY'S EQUITABLE SHARE.

(a) AMENDMENT.—Section 428(c)(6)(A)(ii) of the Act (20 U.S.C. 1078(c)(6)(A)(ii)) is amended by striking "30 percent" and inserting "27 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993.

SEC. 4111. REDUCTION IN THE SPECIAL ALLOWANCE PAYMENT.

Paragraph (2) of section 438(b) of the Act (20 U.S.C. 1087–1(b)(2)) is amended—

(1) in subparagraph (A)—

(A) by striking "and (D)" and inserting "(D), (E), and (F)"; and

(B) by striking "427A(e)" and inserting "427A(f)"; and

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

"(E) In the case of any loan for which the applicable rate of interest is described in section 427A(g)(2), subparagraph (A)(iii) shall be applied by substituting '2.5 percent' for '3.10 percent'.

"(F) Subject to paragraph (4), the special allowance paid pursuant to this subsection on loans for which the applicable rate of interest is determined under section 427A(h) shall be computed (i) by determining the applicable bond equivalent rate of the security with a comparable maturity, as established by the Secretary, (ii) by subtracting the applicable interest rates on such loans from such applicable bond equivalent rate, (iii) by adding 1.0 percent to the resultant percent, and (iv) by dividing the resultant percent by 4. If such computation produces a number less than zero, such loans shall be subject to section 427A(f).".

SEC. 4112. SUPPLEMENTAL PRECLAIMS ASSISTANCE.

(a) AMENDMENT.—Section 428(l)(2) of the Act (20 U.S.C. 1078(l)(2)) is amended by striking the second sentence and inserting the following: "For each loan on which such assistance is performed and for which a default claim is not presented to the guaranty agency by the lender on or before the 150th day after the loan becomes 120 days delinquent, such payment shall be equal to one percent of the total of the unpaid principle and the accrued unpaid interest of the loan.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1993.

Subtitle C—Cost Sharing by States

SEC. 4201. COST SHARING BY STATES.

(a) AMENDMENT.—Section 428 of the Act (20 U.S.C. 1078) is amended by adding at the end the following new subsection:

"(n) STATE SHARE OF DEFAULT COSTS.—

"(1) IN GENERAL.—In the case of any State in which there are located any institutions of higher education that have a cohort default rate that exceeds 20 percent, such State shall pay to the Secretary an amount equal to—

"(A) the new loan volume attributable to all institutions in the State for the current fiscal year; multiplied by

"(B) the percentage specified in paragraph (2); multiplied by

"(C) the quotient of—

"(i) the sum of the amounts calculated under paragraph (3) for each such institution in the State; divided by

"(ii) the total amount of loan volume attributable to current and former students of institutions located in that State entering repayment in the period used to calculate the cohort default rate.

"(2) PERCENTAGE.—For purposes of paragraph (1)(B), the percentage used shall be—

"(A) 12.5 percent for fiscal year 1995;

"(B) 20 percent for fiscal year 1996; and

"(C) 50 percent for fiscal year 1997 and succeeding fiscal years.

"(3) CALCULATION.—For purposes of paragraph (1)(C)(i), the amount shall be determined by calculating for each institution the amount by which—

"(A) the amount of the loans received for attendance by such institution's current and former students who (i) enter repayment during the fiscal year used for the calculation of the cohort default rate, and (ii) default before the end of the following fiscal year; exceeds

"(B) 20 percent of the loans received for attendance by all the current and former students who enter repayment during the fiscal year used for the calculation of the cohort default rate.

"(4) FEE.—A State may charge a fee to an institution of higher education that participates in the program under this part and is located in that State according to a fee structure, approved by the Secretary, that is based on the institution's cohort default rate and the State's risk of loss under this subsection. Such fee structure shall include a process by which an institution with a high cohort default rate is exempt from any fees under this paragraph if such institution demonstrates to the satisfaction of the State that exceptional mitigating circumstances, as determined by the State and approved by the Secretary, contributed to its cohort default rate.".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on October 1, 1994.

Subtitle D—Group Health Plans

SEC. 4301. STANDARDS FOR GROUP HEALTH PLAN COVERAGE.

(a) IN GENERAL.—Part 6 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1161 et seq.) is amended by adding at the end the following new section:

"ADDITIONAL STANDARDS FOR GROUP HEALTH PLANS

"SEC. 609. (a) GROUP HEALTH PLAN COVERAGE PURSUANT TO MEDICAL CHILD SUPPORT ORDERS.—

"(1) IN GENERAL.—Each group health plan shall provide benefits in accordance with the applicable requirements of any qualified medical child support order.

"(2) DEFINITIONS.—For purposes of this subsection—

"(A) QUALIFIED MEDICAL CHILD SUPPORT ORDER.—The term 'qualified medical child support order' means a medical child support order—

"(i) which creates or recognizes the existence of an alternate recipient's right to, or assigns to an alternate recipient the right to, receive benefits for which a participant or beneficiary is eligible under a group health plan, and

"(ii) with respect to which the requirements of paragraphs (3) and (4) are met.

"(B) MEDICAL CHILD SUPPORT ORDER.—The term 'medical child support order' means any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction which—

"(i) provides for child support with respect to a child of a participant under a group health plan or provides for health benefit coverage to such a child, is made pursuant to a State domestic relations law (including a community property law), and relates to benefits under such plan, or

"(ii) enforces a law relating to medical child support described in section 1908 of the Social Security Act (as added by section 13822 of the Omnibus Budget Reconciliation Act of 1993) with respect to a group health plan.

"(C) ALTERNATE RECIPIENT.—The term 'alternate recipient' means any child of a participant who is recognized under a medical child support order as having a right to enrollment under a group health plan with respect to such participant.

"(3) INFORMATION TO BE INCLUDED IN QUALIFIED ORDER.—A medical child support order meets the requirements of this paragraph only if such order clearly specifies—

"(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate recipient covered by the order,

"(B) a reasonable description of the type of coverage to be provided by the plan to each such alternate recipient, or the manner in which such type of coverage is to be determined,

"(C) the period to which such order applies, and

"(D) each plan to which such order applies.

"(4) RESTRICTION ON NEW TYPES OR FORMS OF BENEFITS.—A medical child support order meets the requirements of this paragraph only if such order does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan, except to the extent necessary to meet the requirements of a law relating to medical child support described in section 1908 of the Social Security Act (as added by section 13822 of the Omnibus Budget Reconciliation Act of 1993).

"(5) PROCEDURAL REQUIREMENTS.—

"(A) TIMELY NOTIFICATIONS AND DETERMINATIONS.—In the case of any medical child support order received by a group health plan—

"(i) the plan administrator shall promptly notify the participant and each alternate recipient of the receipt of such order and the plan's procedures for determining whether medical child support orders are qualified medical child support orders, and

"(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified medical child support order and notify the participant and each alternate recipient of such determination.

"(B) ESTABLISHMENT OF PROCEDURES FOR DETERMINING QUALIFIED STATUS OF ORDERS.—Each group health plan shall establish reasonable procedures to determine whether medical child support orders are qualified medical child support orders and to administer the provision of benefits under such qualified orders. Such procedures—

"(i) shall be in writing,

"(ii) shall provide for the notification of each person specified in a medical child support order as eligible to receive benefits under the plan (at the address included in the medical child support order) of such procedures promptly upon receipt by the plan of the medical child support order, and

"(iii) shall permit an alternate recipient to designate a representative for receipt of copies of notices that are sent to the alternate recipient with respect to a medical child support order.

"(6) ACTIONS TAKEN BY FIDUCIARIES.—If a plan fiduciary acts in accordance with part 4 of this subtitle in treating a medical child support order as being (or not being) a qualified medical child support order, then the plan's obligation to the participant and each alternate recipient shall be discharged to the extent of any payment made pursuant to such act of the fiduciary.

"(7) TREATMENT OF ALTERNATE RECIPIENTS.—

"(A) TREATMENT AS BENEFICIARY GENERALLY.—A person who is an alternate recipient under a qualified medical child support order shall be considered a beneficiary under the plan for purposes of any provision of this Act.

"(B) TREATMENT AS PARTICIPANT FOR PURPOSES OF REPORTING AND DISCLOSURE REQUIREMENTS.—A person who is an alternate recipient under any medical child support order shall be considered a participant under the plan for purposes of the reporting and disclosure requirements of part 1.

"(8) DIRECT PROVISION OF BENEFITS PROVIDED TO ALTERNATE RECIPIENTS.—Any payment for benefits made by a group health plan pursuant to a medical child support order in reimbursement for expenses paid by an alternate recipient or an alternate recipient's custodial parent or legal guardian shall be made to the alternate recipient or the alternate recipient's custodial parent or legal guardian.

"(b) RIGHTS OF STATES WITH RESPECT TO GROUP HEALTH PLANS WHERE PARTICIPANTS OR BENEFICIARIES THEREUNDER ARE ELIGIBLE FOR MEDICAID BENEFITS.—

"(1) COMPLIANCE BY PLANS WITH ASSIGNMENT OF RIGHTS.—A group health plan shall provide that payment for benefits with respect to a participant under the plan will be made in accordance with any assignment of rights made by or on behalf of such participant or a beneficiary of the participant as required by a State plan for medical assistance approved under title XIX of the Social Security Act pursuant to section 1912(a)(1)(A) of such Act (as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1993).

"(2) ENROLLMENT AND PROVISION OF BENEFITS WITHOUT REGARD TO MEDICAID ELIGIBILITY.—A group health plan shall provide that, in enrolling an individual as a participant or beneficiary or in determining or making any payments for benefits of an individual as a participant or beneficiary, the fact that the individual is eligible for or is provided medical assistance under a State plan for medical assistance approved under title XIX of the Social Security Act will not be taken into account.

"(3) ACQUISITION BY STATES OF RIGHTS OF THIRD PARTIES.—A group health plan shall provide that, to the extent that payment has been made under a State plan for medical assistance approved under title XIX of the Social Security Act in any case in which a group health plan has a legal liability to make payment for items or services constituting such assistance, payment for benefits under the plan will be made in accordance with any State law which provides that the State has acquired the rights with respect to a participant to such payment for such items or services.

"(c) GROUP HEALTH PLAN COVERAGE OF DEPENDENT CHILDREN IN CASES OF ADOPTION.—

"(1) COVERAGE EFFECTIVE UPON PLACEMENT FOR ADOPTION.—In any case in which a group health plan provides coverage for dependent children of participants or beneficiaries, such plan shall provide benefits to dependent children placed with participants or beneficiaries for adoption under the same terms and conditions as apply in the case of dependent children who are natural children of participants or beneficiaries under the plan, irrespective of whether the adoption has become final.

"(2) RESTRICTIONS BASED ON PREEXISTING CONDITIONS AT TIME OF PLACEMENT FOR ADOPTION PROHIBITED.—A group health plan may not restrict coverage under the plan of any dependent child adopted by a participant or beneficiary, or placed with a participant or beneficiary for adoption, solely on the basis of a preexisting condition of such child at the time that such child would otherwise become eligible for coverage under the plan, if the adoption or placement for adoption occurs while the participant or beneficiary is eligible for coverage under the plan.

"(3) DEFINITIONS.—For purposes of this subsection—

"(A) CHILD.—The term 'child' means, in connection with any adoption, or placement for adoption, of the child, an individual who has not attained age 18 as of the date of such adoption or placement for adoption.

"(B) PLACEMENT FOR ADOPTION.—The term 'placement', or being 'placed', for adoption, in connection with any placement for adoption of a child with any person, means the assumption and retention by such person of a legal obligation for total or partial support of such child in anticipation of adoption of such child. The child's placement with such person terminates upon the termination of such legal obligation.

"(d) CONTINUED COVERAGE OF COSTS OF A PEDIATRIC VACCINE UNDER GROUP HEALTH PLANS.—A group health plan may not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act as amended by section 13830 of the Omnibus Budget Reconciliation Act of 1993) below the coverage it provided as of May 1, 1993.

"(e) REGULATIONS.—Any regulations prescribed under this section shall be prescribed by the Secretary of Labor, in consultation with the Secretary of Health and Human Services.".

(b) CONFORMING AMENDMENTS TO ERISA TO ENSURE COMPLIANCE WITH MEDICARE AND MEDICAID COVERAGE DATA BANK REQUIREMENTS.—

(1) REPORTS TO DATA BANK.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

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

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

"(f) INFORMATION NECESSARY TO COMPLY WITH MEDICARE AND MEDICAID COVERAGE DATA BANK REQUIREMENTS.—

"(1) PROVISION OF INFORMATION BY GROUP HEALTH PLAN UPON REQUEST OF EMPLOYER.—

"(A) IN GENERAL.—An employer shall comply with the applicable requirements of section 1144 of the Social Security Act (as added by section 13581 of the Omnibus Budget Reconciliation Act of 1993). Upon the request of an employer maintaining a group health plan, any plan sponsor, plan administrator, insurer, third-party administrator, or other person who maintains under the plan the information necessary to enable the employer to comply with the applicable requirements of section 1144 of the Social Security Act shall, in such form and manner as may be prescribed in regulations of the Secretary (in consultation with the Secretary of Health and Human Services), provide such information (not inconsistent with paragraph (2))—

"(i) in the case of a request by an employer described in subparagraph (B) and a plan that is not a multiemployer plan or a component of an arrangement described in subparagraph (C), to the Medicare and Medicaid Coverage Data Bank;

"(ii) in the case of a plan that is a multiemployer plan or is a component of an arrangement described in subparagraph (C), to the employer or to such Data Bank, at the option of the plan; and

"(iii) in any other case, to the employer or to such Data Bank, at the option of the employer.

"(B) EMPLOYER DESCRIBED.—An employer is described in this subparagraph for any calendar year if such employer normally employed fewer than 50 employees on a typical business day during such calendar year.

"(C) ARRANGEMENT DESCRIBED.—An arrangement described in this subparagraph is any arrangement in which two or more employers contribute for the purpose of providing group health plan coverage for employees.

"(2) INFORMATION NOT REQUIRED TO BE PROVIDED.—Any plan sponsor, plan administrator, insurer, third-party administrator, or other person described in paragraph (1)(A) (other than the employer) that maintains the information under the plan shall not provide to an employer in order to satisfy the requirements of section 1144 of the Social Security Act, and shall not provide to the Data Bank under such section, information that pertains in any way to—

"(A) the health status of a participant, or of the participant's spouse, dependent child, or other beneficiary,

"(B) the cost of coverage provided to any participant or beneficiary, or

"(C) any limitations on such coverage specific to any participant or beneficiary.

"(3) REGULATIONS.—The Secretary may, in consultation with the Secretary of Health and Human Services, prescribe such regulations as are necessary to carry out this subsection.".

(c) CONFORMING AMENDMENTS.—

(1) CIVIL ACTIONS.—Section 502(a) of such Act (29 U.S.C. 1132(a)) is amended—

(A) in paragraph (5), by striking "or" at the end;

(B) in paragraph (6), by striking the period and inserting a semicolon; and

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

"(7) by a State to enforce compliance with a qualified medical child support order (as defined in section 609(a)(2)(A)); or

"(8) by the Secretary, or by an employer or other person referred to in section 101(f)(1), (A) to enjoin any act or practice which violates subsection (f) of section 101, or (B) to obtain appropriate equitable relief (i) to redress such violation or (ii) to enforce such subsection.".

(2) CIVIL PENALTY.—Section 502(c) of such Act (29 U.S.C. 1132(c)) is amended by adding at the end the following new paragraph:

"(4) The Secretary may assess a civil penalty of not more than $1,000 for each violation by any person of section 101(f)(1). For purposes of this paragraph, each violation described in subparagraph (A) with respect to any single participant, and each violation described in subparagraph (B) with respect to any single participant or beneficiary, shall be treated as a separate violation. The Secretary and the Secretary of Health and Human Services shall maintain such ongoing consultation as may be necessary and appropriate to coordinate enforcement under this subsection with enforcement under section 1144(c)(8) of the Social Security Act.".

(3) JURISDICTION.—Section 502(e)(1) of such Act (29 U.S.C. 1132(e)(1)) is amended—

(A) in the first sentence, by striking "or fiduciary" and inserting "fiduciary, or any person referred to in section 101(f)(1)"; and

(B) in the second sentence, by striking "subsection (a)(1)(B)" and inserting "paragraphs (1)(B) and (7) of subsection (a)".

(4) EFFECT ON OTHER LAWS.—Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(7)(D), by inserting ", qualified medical child support orders (within the meaning of section 609(a)(2)(A)), and the provisions of law referred to in section 609(a)(2)(B)(ii) to the extent enforced by qualified medical child support orders" before the period; and

(B) by striking subsection (b)(8) and inserting the following:

"(8) Subsection (a) of this section shall not be construed to preclude any State cause of action—

"(A) with respect to which the State exercises its acquired rights under section 609(b)(3) with respect to a group health plan (as defined in section 607(1)), or

"(B) for recoupment of payment with respect to items or services pursuant to a State plan for medical assistance approved under title XIX of the Social Security Act which would not have been payable if such acquired rights had been executed before payment with respect to such items or services by the group health plan.";

(5) CLERICAL AMENDMENTS.—

(A) The heading for part 6 of subtitle B of title I of such Act is amended to read as follows:

"PART 6—GROUP HEALTH PLANS".

(B) The table of contents in section 1 of such Act is amended—

(i) by striking the item relating to the heading for part 6 of subtitle B of title I and inserting the following:

"PART 6—GROUP HEALTH PLANS";

and

(ii) by inserting after the item relating to section 608 the following new item:

"Sec. 609. Additional standards for group health plans.".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994.—Any amendment to a plan required to be made by an amendment made by this section shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

(A) during the period after the date before the date of the enactment of this Act and before such first plan year, the plan is operated in accordance with the requirements of the amendments made by this section, and

(B) such plan amendment applies retroactively to the period after the date before the date of the enactment of this Act and before such first plan year.

A plan shall not be treated as failing to be operated in accordance with the provisions of the plan merely because it operates in accordance with this paragraph.

Subtitle E—Fee Increase

SEC. 4401. FEE INCREASE.

The Tea Importation Act (21 U.S.C. 41 et seq.) is amended—

(1) by inserting the 4th undesignated paragraph under the center heading "FOOD AND DRUG ADMINISTRATION" of title II of the Labor-Federal Security Appropriation Act, 1942 (21 U.S.C. 46a) as a new section 13 of the Tea Importation Act, and

(2) by amending such new section 13 to read as follows:

"SEC. 13. No tea or merchandise described as tea shall be examined for importation into the United States, or released by the Customs Service, under the Tea Importation Act unless the importer or consignee of such tea or merchandise has paid, before the examination, a fee in an amount equal to—

"(1) 10 cents for each hundred weight or fraction thereof of the tea or merchandise; or

"(2) the approximate cost of the examinations; whichever amount is less. Such fee shall be deposited into the Treasury of the United States as miscellaneous receipts."

TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

SEC. 5001. RECREATIONAL USER FEES.

(a) IN GENERAL.—Section 210 of the Flood Control Act of 1968 (16 U.S.C. 460d–3) is amended—

(1) by striking "SEC. 210. No entrance" and inserting the following:

"SEC. 210. RECREATIONAL USER FEES.

"(a) PROHIBITION ON ADMISSIONS FEES.—No entrance";

(2) by striking the second sentence; and

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

"(b) FEES FOR USE OF DEVELOPED RECREATION SITES AND FACILITIES.—

"(1) ESTABLISHMENT AND COLLECTION.—Notwithstanding section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l–6a(b)), the Secretary of the Army is authorized, subject to paragraphs (2) and (3), to establish and collect fees for the use of developed recreation sites and facilities, including campsites, swimming beaches, and boat launching ramps but excluding a site or facility which includes only a boat launch ramp and a courtesy dock.

"(2) EXEMPTION OF CERTAIN FACILITIES.—The Secretary shall not establish or collect fees under this subsection for the use or provision of drinking water, wayside exhibits, roads, scenic drives, overlook sites, picnic tables, toilet facilities, surface water areas, undeveloped or lightly developed shoreland, or general visitor information.

"(3) PER VEHICLE LIMIT.—The fee under this subsection for use of a site or facility (other than an overnight camping site or facility or any other site or facility at which a fee is charged for use of the site or facility as of the date of the enactment of this paragraph) for

persons entering the site or facility by private, noncommercial vehicle transporting not more than 8 persons (including the driver) shall not exceed $3 per day per vehicle. Such maximum amount may be adjusted annually by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

"(4) DEPOSIT INTO TREASURY ACCOUNT.—All fees collected under this subsection shall be deposited into the Treasury account for the Corps of Engineers established by section 4(i) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-6a(i)).".

(b) CONFORMING AMENDMENT FOR CAMPSITES.—Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 460l-6a(b)) is amended by striking the next to the last sentence.

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

SEC. 6001. TRANSFER OF AUCTIONABLE FREQUENCIES.

(a) AMENDMENT.—The National Telecommunications and Information Administration Organization Act (47 U.S.C. 901 et seq.) is amended—

(1) by striking the heading of part B and inserting the following:

"PART C—SPECIAL AND TEMPORARY PROVISIONS";

(2) by redesignating sections 131 through 135 as sections 151 through 155, respectively; and

(3) by inserting after part A the following new part:

"PART B—TRANSFER OF AUCTIONABLE FREQUENCIES.

"SEC. 111. DEFINITIONS.

"As used in this part:

"(1) The term 'allocation' means an entry in the National Table of Frequency Allocations of a given frequency band for the purpose of its use by one or more radiocommunication services.

"(2) The term 'assignment' means an authorization given to a station licensee to use specific frequencies or channels.

"(3) The term 'the 1934 Act' means the Communications Act of 1934 (47 U.S.C. 151 et seq.).

"SEC. 112. NATIONAL SPECTRUM ALLOCATION PLANNING.

"The Assistant Secretary and the Chairman of the Commission shall meet, at least biannually, to conduct joint spectrum planning with respect to the following issues:

"(1) the extent to which licenses for spectrum use can be issued pursuant to section 309(j) of the 1934 Act to increase Federal revenues;

"(2) the future spectrum requirements for public and private uses, including State and local government public safety agencies;

"(3) the spectrum allocation actions necessary to accommodate those uses; and

"(4) actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access.

"SEC. 113. IDENTIFICATION OF REALLOCABLE FREQUENCIES.

"(a) IDENTIFICATION REQUIRED.—The Secretary shall, within 18 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993, prepare and submit to the President and the Congress a report identifying and recommending for reallocation bands of frequencies—

"(1) that are allocated on a primary basis for Federal Government use;

"(2) that are not required for the present or identifiable future needs of the Federal Government;

"(3) that can feasibly be made available, as of the date of submission of the report or at any time during the next 15 years, for use under the 1934 Act (other than for Federal Government stations under section 305 of the 1934 Act);

"(4) the transfer of which (from Federal Government use) will not result in costs to the Federal Government, or losses of services or benefits to the public, that are excessive in relation to the benefits to the public that may be provided by non-Federal licensees; and

"(5) that are most likely to have the greatest potential for productive uses and public benefits under the 1934 Act if allocated for non-Federal use.

"(b) MINIMUM AMOUNT OF SPECTRUM RECOMMENDED.—

"(1) IN GENERAL.—In accordance with the provisions of this section, the Secretary shall recommend for reallocation, for use other than by Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305), bands of frequencies that in the aggregate span not less than 200 megahertz, that are located below 5 gigahertz, and that meet the criteria specified in paragraphs (1) through (5) of subsection (a). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that span in the aggregate not less than 100 megahertz.

"(2) MIXED USES PERMITTED TO BE COUNTED.—Bands of frequencies which a report of the Secretary under subsection (a) or (d)(1) recommends be partially retained for use by Federal Government stations, but which are also recommended to be reallocated to be made available under the 1934 Act for use by non-Federal stations, may be counted toward the minimum spectrum required by paragraph (1) of this subsection, except that—

"(A) the bands of frequencies counted under this paragraph may not count toward more than one-half of the minimums required by paragraph (1) of this subsection;

"(B) a band of frequencies may not be counted under this paragraph unless the assignments of the band to Federal Government stations under section 305 of the 1934 Act (47 U.S.C. 305) are limited by geographic area, by time, or by other means so as to guarantee that the potential use to be made by such Federal Government stations is substantially less (as measured by geographic area, time, or otherwise) than the potential use to be made by non-Federal stations; and

"(C) the operational sharing permitted under this paragraph shall be subject to the interference regulations prescribed by the Commission pursuant to section 305(a) of the 1934 Act and to coordination procedures that the Commission and the Secretary shall jointly establish and implement to ensure against harmful interference.

"(c) CRITERIA FOR IDENTIFICATION.—

"(1) NEEDS OF THE FEDERAL GOVERNMENT.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(2), the Secretary shall—

"(A) consider whether the band of frequencies is used to provide a communications service that is or could be available from a commercial provider or other vendor;

"(B) seek to promote—

"(i) the maximum practicable reliance on commercially available substitutes;

"(ii) the sharing of frequencies (as permitted under subsection (b)(2));

"(iii) the development and use of new communications technologies; and

"(iv) the use of nonradiating communications systems where practicable; and

"(C) seek to avoid—

"(i) serious degradation of Federal Government services and operations;

"(ii) excessive costs to the Federal Government and users of Federal Government services; and

"(iii) excessive disruption of existing use of Federal Government frequencies by amateur radio licensees.

"(2) FEASIBILITY OF USE.—In determining whether a frequency band meets the criteria specified in subsection (a)(3), the Secretary shall—

"(A) assume that the frequency will be assigned by the Commission under section 303 of the 1934 Act (47 U.S.C. 303) within 15 years;

"(B) assume reasonable rates of scientific progress and growth of demand for telecommunications services;

"(C) seek to include frequencies which can be used to stimulate the development of new technologies; and

"(D) consider the immediate and recurring costs to reestablish services displaced by the reallocation of spectrum.

"(3) ANALYSIS OF BENEFITS.—In determining whether a band of frequencies meets the criteria specified in subsection (a)(5), the Secretary shall consider—

"(A) the extent to which equipment is or will be available that is capable of utilizing the band;

"(B) the proximity of frequencies that are already assigned for commercial or other non-Federal use;

"(C) the extent to which, in general, commercial users could share the frequency with amateur radio licensees; and

"(D) the activities of foreign governments in making frequencies available for experimentation or commercial assignments in order to support their domestic manufacturers of equipment.

"(4) POWER AGENCY FREQUENCIES.—

"(A) APPLICABILITY OF CRITERIA.—The criteria specified by subsection (a) shall be deemed not to be met for any purpose under this part with regard to any frequency assignment to, or any frequency assignment used by, a Federal power agency for the purpose of withdrawing that assignment.

"(B) MIXED USE ELIGIBILITY.—The frequencies assigned to any Federal power agency may only be eligible for mixed use under subsection (b)(2) in geographically separate areas, but in those cases where a frequency is to be shared by an affected Federal power agency and a non-Federal user, such use by the non-Federal user shall not cause harmful interference to the affected Federal power agency or adversely affect the reliability of its power system.

"(C) DEFINITION.—As used in this paragraph, the term 'Federal power agency' means the Tennessee Valley Authority, the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration, the Southeastern Power Administration, or the Alaska Power Administration.

"(5) LIMITATION ON REALLOCATION.—None of the frequencies recommended for reallocation in the reports required by this subsection shall have been recommended, prior to the date of enactment of the Omnibus Budget Reconciliation Act of 1993, for reallocation to non-Federal use by international agreement.

"(d) PROCEDURE FOR IDENTIFICATION OF REALLOCABLE BANDS OF FREQUENCIES.—

"(1) SUBMISSION OF PRELIMINARY IDENTIFICATION TO CONGRESS.—Within 6 months after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993, the Secretary shall prepare, make publicly available, and submit to the President, the Congress, and the Commission a report which makes a preliminary identification of reallocable bands of frequencies which meet the criteria established by this section.

"(2) PUBLIC COMMENT.—The Secretary shall provide interested persons with the opportunity

to submit, within 90 days after the date of its publication, written comment on the preliminary report required by paragraph (1). The Secretary shall immediately transmit a copy of any such comment to the Commission.

"(3) COMMENT AND RECOMMENDATIONS FROM COMMISSION.—The Commission shall, within 90 days after the conclusion of the period for comment provided pursuant to paragraph (2), submit to the Secretary the Commission's analysis of such comments and the Commission's recommendations for responses to such comments, together with such other comments and recommendations as the Commission deems appropriate.

"(4) DIRECT DISCUSSIONS.—The Secretary shall encourage and provide opportunity for direct discussions among commercial representatives and Federal Government users of the spectrum to aid the Secretary in determining which frequencies to recommend for reallocation. The Secretary shall provide notice to the public and the Commission of any such discussions, including the name or names of any businesses or other persons represented in such discussions. A representative of the Commission (and of the Secretary at the election of the Secretary) shall be permitted to attend any such discussions. The Secretary shall provide the public and the Commission with an opportunity to comment on the results of any such discussions prior to the submission of the final report required by subsection (a).

"(e) TIMETABLE FOR REALLOCATION AND LIMITATION.—

"(1) TIMETABLE REQUIRED.—The Secretary shall, as part of the reports required by subsections (a) and (d)(1), include a timetable that recommends effective dates by which the President shall withdraw or limit assignments of the frequencies specified in such reports.

"(2) EXPEDITED REALLOCATION.—

"(A) REQUIRED REALLOCATION.—The Secretary shall, as part of the report required by subsection (d)(1), specifically identify and recommend for immediate reallocation bands of frequencies that in the aggregate span not less than 50 megahertz, that meet the criteria described in subsection (a), and that can be made available for reallocation immediately upon issuance of the report required by subsection (d)(1). Such bands of frequencies shall include bands of frequencies, located below 3 gigahertz, that in the aggregate span not less than 25 megahertz .

"(B) PERMITTED REALLOCATION.—The Secretary may, as part of such report, identify and recommend bands of frequencies for immediate reallocation for a mixed use pursuant to subsection (b)(2), but such bands of frequencies may not count toward the minimums required by subparagraph (A).

"(3) DELAYED EFFECTIVE DATES.— In setting the recommended delayed effective dates, the Secretary shall—

"(A) consider the need to reallocate bands of frequencies as early as possible, taking into account the requirements of paragraphs (1) and (2) of section 115(b);

"(B) be based on the useful remaining life of equipment that has been purchased or contracted for to operate on identified frequencies;

"(C) consider the need to coordinate frequency use with other nations; and

"(D) take into account the relationship between the costs to the Federal Government of changing to different frequencies and the benefits that may be obtained from commercial and other non-Federal uses of the reassigned frequencies.

"SEC. 114. WITHDRAWAL OR LIMITATION OF ASSIGNMENT TO FEDERAL GOVERNMENT STATIONS.

"(a) IN GENERAL.—The President shall—

"(1) within 6 months after receipt of a report by the Secretary under subsection (a) or (d)(1) of section 113, withdraw the assignment to a Federal Government station of any frequency which the report recommends for immediate reallocation;

"(2) within either such 6-month period, limit the assignment to a Federal Government station of any frequency which the report recommends be made immediately available for mixed use under section 113(b)(2);

"(3) by the delayed effective date recommended by the Secretary under section 113(e) (except as provided in subsection (b)(4) of this section), withdraw or limit the assignment to a Federal Government station of any frequency which the report recommends be reallocated or made available for mixed use on such delayed effective date;

"(4) assign or reassign other frequencies to Federal Government stations as necessary to adjust to such withdrawal or limitation of assignments; and

"(5) transmit a notice and description to the Commission and each House of Congress of the actions taken under this subsection.

"(b) EXCEPTIONS.—

"(1) AUTHORITY TO SUBSTITUTE.—If the President determines that a circumstance described in paragraph (2) exists, the President—

"(A) may substitute an alternative frequency or frequencies for the frequency that is subject to such determination and withdraw (or limit) the assignment of that alternative frequency in the manner required by subsection (a); and

"(B) shall submit a statement of the reasons for taking the action described in subparagraph (A) to the Commission, Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate.

"(2) GROUNDS FOR SUBSTITUTION.—For purposes of paragraph (1), the following circumstances are described in this paragraph:

"(A) the reassignment would seriously jeopardize the national defense interests of the United States;

"(B) the frequency proposed for reassignment is uniquely suited to meeting important governmental needs;

"(C) the reassignment would seriously jeopardize public health or safety;

"(D) the reassignment will result in costs to the Federal Government that are excessive in relation to the benefits that may be obtained from commercial or other non-Federal uses of the reassigned frequency; or

"(E) the reassignment will disrupt the existing use of a Federal Government band of frequencies by amateur radio licensees.

"(3) CRITERIA FOR SUBSTITUTED FREQUENCIES.—For purposes of paragraph (1), a frequency may not be substituted for a frequency identified and recommended by the report of the Secretary under section 113(a) unless the substituted frequency also meets each of the criteria specified by section 113(a).

"(4) DELAYS IN IMPLEMENTATION.—If the President determines that any action cannot be completed by the delayed effective date recommended by the Secretary pursuant to section 113(e), or that such an action by such date would result in a frequency being unused as a consequence of the Commission's plan under section 115, the President may—

"(A) withdraw or limit the assignment to Federal Government stations on a later date that is consistent with such plan, except that the President shall notify each committee specified in paragraph (1)(B) and the Commission of the reason that withdrawal or limitation at a later date is required; or

"(B) substitute alternative frequencies pursuant to the provisions of this subsection.

"SEC. 115. DISTRIBUTION OF FREQUENCIES BY THE COMMISSION.

"(a) ALLOCATION AND ASSIGNMENT OF IMMEDIATELY AVAILABLE FREQUENCIES.—With respect to the frequencies made available for immediate reallocation pursuant to section 113(e)(2), the Commission, not later than 18 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, shall issue regulations to allocate such frequencies and shall propose regulations to assign such frequencies.

"(b) ALLOCATION AND ASSIGNMENT OF REMAINING AVAILABLE FREQUENCIES.—With respect to the frequencies made available for reallocation pursuant to section 113(e)(3), the Commission shall, not later than 1 year after receipt of the report required by section 113(a), prepare, submit to the President and the Congress, and implement, a plan for the allocation and assignment under the 1934 Act of such frequencies. Such plan shall—

"(1) not propose the immediate allocation and assignment of all such frequencies but, taking into account the timetable recommended by the Secretary pursuant to section 113(e), shall propose—

"(A) gradually to allocate and assign the frequencies remaining, after making the reservation required by subparagraph (B), over the course of 10 years beginning on the date of submission of such plan; and

"(B) to reserve a significant portion of such frequencies for allocation and assignment beginning after the end of such 10-year period;

"(2) contain appropriate provisions to ensure—

"(A) the availability of frequencies for new technologies and services in accordance with the policies of section 7 of the 1934 Act (47 U.S.C. 157);

"(B) the availability of frequencies to stimulate the development of such technologies; and

"(C) the safety of life and property in accordance with the policies of section 1 of the 1934 Act (47 U.S.C. 151);

"(3) address (A) the feasibility of reallocating portions of the spectrum from current commercial and other non-Federal uses to provide for more efficient use of the spectrum, and (B) innovation and marketplace developments that may affect the relative efficiencies of different spectrum allocations;

"(4) not prevent the Commission from allocating frequencies, and assigning licenses to use frequencies, not included in the plan; and

"(5) not preclude the Commission from making changes to the plan in future proceedings.

"SEC. 116. AUTHORITY TO RECOVER REASSIGNED FREQUENCIES.

"(a) AUTHORITY OF PRESIDENT.—Subsequent to the withdrawal of assignment to Federal Government stations pursuant to section 114, the President may reclaim reassigned frequencies for reassignment to Federal Government stations in accordance with this section.

"(b) PROCEDURE FOR RECLAIMING FREQUENCIES.—

"(1) UNALLOCATED FREQUENCIES.—If the frequencies to be reclaimed have not been allocated or assigned by the Commission pursuant to the 1934 Act, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part.

"(2) ALLOCATED FREQUENCIES.—If the frequencies to be reclaimed have been allocated or assigned by the Commission, the President shall follow the procedures for substitution of frequencies established by section 114(b) of this part, except that the statement required by section 114(b)(1)(B) shall include—

"(A) a timetable to accommodate an orderly transition for licensees to obtain new frequencies and equipment necessary for its utilization; and

"(B) an estimate of the cost of displacing spectrum users licensed by the Commission.

"(c) COSTS OF RECLAIMING FREQUENCIES.—The Federal Government shall bear all costs of reclaiming frequencies pursuant to this section, including the cost of equipment which is rendered unusable, the cost of relocating operations to a different frequency, and any other costs that are directly attributable to the reclaiming of the frequency pursuant to this section, and there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

"(d) EFFECTIVE DATE OF RECLAIMED FREQUENCIES.—The Commission shall not withdraw licenses for any reclaimed frequencies until the end of the fiscal year following the fiscal year in which a statement under section 114(b)(1)(B) pertaining to such frequencies is received by the Commission.

"(e) EFFECT ON OTHER LAW.—Nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706 of the 1934 Act (47 U.S.C. 606).

"SEC. 117. EXISTING ALLOCATION AND TRANSFER AUTHORITY RETAINED.

"(a) ADDITIONAL REALLOCATION.—Nothing in this part prevents or limits additional reallocation of spectrum from the Federal Government to other users.

"(b) IMPLEMENTATION OF NEW TECHNOLOGIES AND SERVICES.—Notwithstanding any other provision of this part—

"(1) the Secretary may, consistent with section 104(e) of this Act, at any time allow frequencies allocated on a primary basis for Federal Government use to be used by non-Federal licensees on a mixed-use basis for the purpose of facilitating the prompt implementation of new technologies or services and for other purposes; and

"(2) the Commission shall make any allocation and licensing decisions with respect to such frequencies in a timely manner and in no event later than the date required by section 7 of the 1934 Act.".

(b) CONFORMING AMENDMENT TO ENSURE COLLECTION OF FCC FEES.—Section 104 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 903) is amended by adding at the end the following new subsection:

"(e) PROOF OF COMPLIANCE WITH FCC LICENSING REQUIREMENTS.—

"(1) AMENDMENT TO MANUAL REQUIRED.—Within 90 days after the date of enactment of this subsection, the Secretary and the NTIA shall amend the spectrum management document described in subsection (a) to require that—

"(A) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after such date of enactment, to operate a radio station utilizing a frequency that is authorized for the use of government stations pursuant to section 103(b)(2)(A) of this Act for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission; and

"(B) no person or entity (other than an agency or instrumentality of the United States) shall be permitted, after 1 year after such date of enactment, to utilize a radio station belonging to the United States for any non-government application unless such person or entity has submitted to the NTIA proof, in a form prescribed by such manual, that such person or entity has obtained a license from the Commission.

"(2) RETENTION OF FORMS.—The NTIA shall maintain on file the proofs submitted under paragraph (1), or facsimiles thereof.

"(3) CERTIFICATION.—Within 1 year after the date of enactment of this subsection, the Secretary and the NTIA shall certify to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate that—

"(A) the amendments required by paragraph (1) have been accomplished; and

"(B) the requirements of subparagraphs (A) and (B) of such paragraph are being enforced.".

SEC. 6002. AUTHORITY TO USE COMPETITIVE BIDDING.

(a) USE OF COMPETITIVE BIDDING.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

"(j) USE OF COMPETITIVE BIDDING.—

"(1) GENERAL AUTHORITY.—If mutually exclusive applications are accepted for filing for any initial license or construction permit which will involve a use of the electromagnetic spectrum described in paragraph (2), then the Commission shall have the authority, subject to paragraph (10), to grant such license or permit to a qualified applicant through the use of a system of competitive bidding that meets the requirements of this subsection.

"(2) USES TO WHICH BIDDING MAY APPLY.—A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that—

"(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee—

"(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or

"(ii) enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate; and

"(B) a system of competitive bidding will promote the objectives described in paragraph (3).

"(3) DESIGN OF SYSTEMS OF COMPETITIVE BIDDING.—For each class of licenses or permits that the Commission grants through the use of a competitive bidding system, the Commission shall, by regulation, establish a competitive bidding methodology. The Commission shall seek to design and test multiple alternative methodologies under appropriate circumstances. In identifying classes of licenses and permits to be issued by competitive bidding, in specifying eligibility and other characteristics of such licenses and permits, and in designing the methodologies for use under this subsection, the Commission shall include safeguards to protect the public interest in the use of the spectrum and shall seek to promote the purposes specified in section 1 of this Act and the following objectives:

"(A) the development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;

"(B) promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;

"(C) recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and

"(D) efficient and intensive use of the electromagnetic spectrum.

"(4) CONTENTS OF REGULATIONS.—In prescribing regulations pursuant to paragraph (3), the Commission shall—

"(A) consider alternative payment schedules and methods of calculation, including lump sums or guaranteed installment payments, with or without royalty payments, or other schedules or methods that promote the objectives described in paragraph (3)(B), and combinations of such schedules and methods;

"(B) include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural areas, to prevent stockpiling or warehousing of spectrum by licensees or permittees, and to promote investment in and rapid deployment of new technologies and services;

"(C) consistent with the public interest, convenience, and necessity, the purposes of this Act, and the characteristics of the proposed service, prescribe area designations and bandwidth assignments that promote (i) an equitable distribution of licenses and services among geographic areas, (ii) economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women, and (iii) investment in and rapid deployment of new technologies and services;

"(D) ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures; and

"(E) require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses and permits.

"(5) BIDDER AND LICENSEE QUALIFICATION.—No person shall be permitted to participate in a system of competitive bidding pursuant to this subsection unless such bidder submits such information and assurances as the Commission may require to demonstrate that such bidder's application is acceptable for filing. No license shall be granted to an applicant selected pursuant to this subsection unless the Commission determines that the applicant is qualified pursuant to subsection (a) and sections 308(b) and 310. Consistent with the objectives described in paragraph (3), the Commission shall, by regulation, prescribe expedited procedures consistent with the procedures authorized by subsection (i)(2) for the resolution of any substantial and material issues of fact concerning qualifications.

"(6) RULES OF CONSTRUCTION.—Nothing in this subsection, or in the use of competitive bidding, shall—

"(A) alter spectrum allocation criteria and procedures established by the other provisions of this Act;

"(B) limit or otherwise affect the requirements of subsection (h) of this section, section 301, 304, 307, 310, or 706, or any other provision of this Act (other than subsections (d)(2) and (e) of this section);

"(C) diminish the authority of the Commission under the other provisions of this Act to regulate or reclaim spectrum licenses;

"(D) be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant to this subsection;

"(E) be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings;

"(F) be construed to prohibit the Commission from issuing nationwide, regional, or local licenses or permits;

"(G) be construed to prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology; or

"(H) be construed to relieve any applicant for a license or permit of the obligation to pay charges imposed pursuant to section 8 of this Act.

"(7) CONSIDERATION OF REVENUES IN PUBLIC INTEREST DETERMINATIONS.—

"(A) CONSIDERATION PROHIBITED.—In making a decision pursuant to section 303(c) to assign a band of frequencies to a use for which licenses or permits will be issued pursuant to this subsection, and in prescribing regulations pursuant to paragraph (4)(C) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

"(B) CONSIDERATION LIMITED.—In prescribing regulations pursuant to paragraph (4)(A) of this subsection, the Commission may not base a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding under this subsection.

"(C) CONSIDERATION OF DEMAND FOR SPECTRUM NOT AFFECTED.—Nothing in this paragraph shall be construed to prevent the Commission from continuing to consider consumer demand for spectrum-based services.

"(8) TREATMENT OF REVENUES.—

"(A) GENERAL RULE.—Except as provided in subparagraph (B), all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, United States Code.

"(B) RETENTION OF REVENUES.—Notwithstanding subparagraph (A), the salaries and expenses account of the Commission shall retain as an offsetting collection such sums as may be necessary from such proceeds for the costs of developing and implementing the program required by this subsection. Such offsetting collections shall be available for obligation subject to the terms and conditions of the receiving appropriations account, and shall be deposited in such accounts on a quarterly basis. Any funds appropriated to the Commission for fiscal years 1994 through 1998 for the purpose of assigning licenses using random selection under subsection (i) shall be used by the Commission to implement this subsection.

"(9) USE OF FORMER GOVERNMENT SPECTRUM.—The Commission shall, not later than 5 years after the date of enactment of this subsection, issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

"(A) in the aggregate span not less than 10 megahertz; and

"(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

"(10) AUTHORITY CONTINGENT ON AVAILABILITY OF ADDITIONAL SPECTRUM.—

"(A) INITIAL CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection shall not take effect unless—

"(i) the Secretary of Commerce has submitted to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act;

"(ii) such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz;

"(iii) such bands of frequencies meet the criteria required by section 113(a) of such Act; and

"(iv) the Commission has completed the rulemaking required by section 332(c)(1)(D) of this Act.

"(B) SUBSEQUENT CONDITIONS.—The Commission's authority to issue licenses or permits under this subsection on and after 2 years after the date of the enactment of this subsection shall cease to be effective if—

"(i) the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act;

"(ii) the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of section 114(a) of such Act;

"(iii) the Commission has failed to issue the regulations required by section 115(a) of such Act;

"(iv) the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of State and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees; or

"(v) the Commission has failed under section 332(c)(3) to grant or deny within the time required by such section any petition that a State has filed within 90 days after the date of enactment of this subsection;

until such failure has been corrected.

"(11) TERMINATION.—The authority of the Commission to grant a license or permit under this subsection shall expire September 30, 1998.

"(12) EVALUATION.—Not later than September 30, 1997, the Commission shall conduct a public inquiry and submit to the Congress a report—

"(A) containing a statement of the revenues obtained, and a projection of the future revenues, from the use of competitive bidding systems under this subsection;

"(B) describing the methodologies established by the Commission pursuant to paragraphs (3) and (4);

"(C) comparing the relative advantages and disadvantages of such methodologies in terms of attaining the objectives described in such paragraphs;

"(D) evaluating whether and to what extent—

"(i) competitive bidding significantly improved the efficiency and effectiveness of the process for granting radio spectrum licenses;

"(ii) competitive bidding facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market;

"(iii) competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural spectrum users; and

"(iv) small businesses, rural telephone companies, and businesses owned by members of minority groups and women were able to participate successfully in the competitive bidding process; and

"(E) recommending any statutory changes that are needed to improve the competitive bidding process.".

(b) CONFORMING AMENDMENTS.—

(1) LIMITATIONS ON LOTTERIES.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is further amended—

(A) by striking subsection (i)(1) and inserting the following:

"(i) RANDOM SELECTION.—

"(1) GENERAL AUTHORITY.—If—

"(A) there is more than one application for any initial license or construction permit which will involve a use of the electromagnetic spectrum; and

"(B) the Commission has determined that the use is not described in subsection (j)(2)(A);

then the Commission shall have the authority to grant such license or permit to a qualified applicant through the use of a system of random selection."; and

(B) in paragraph (4), by adding at the end the following new subparagraph:

"(C) Not later than 180 days after the date of enactment of this subparagraph, the Commission shall prescribe such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses or permits as a result of the methods employed to issue licenses under this subsection.".

(2) REGULATORY TREATMENT TO ENHANCE AUCTION VALUE OF SPECTRUM LICENSES.—

(A) AMENDMENT.—Section 332 of the Communications Act of 1934 (47 U.S.C. 332) is amended—

(i) by striking "PRIVATE LAND" from the heading of the section;

(ii) by striking "land" each place it appears in subsections (a) and (b); and

(iii) by striking subsection (c) and inserting the following:

"(c) REGULATORY TREATMENT OF MOBILE SERVICES.—

"(1) COMMON CARRIER TREATMENT OF COMMERCIAL MOBILE SERVICES.—(A) A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier for purposes of this Act, except for such provisions of title II as the Commission may specify by regulation as inapplicable to that service or person. In prescribing or amending any such regulation, the Commission may not specify any provision of section 201, 202, or 208, and may specify any other provision only if the Commission determines that—

"(i) enforcement of such provision is not necessary in order to ensure that the charges, practices, classifications, or regulations for or in connection with that service are just and reasonable and are not unjustly or unreasonably discriminatory;

"(ii) enforcement of such provision is not necessary for the protection of consumers; and

"(iii) specifying such provision is consistent with the public interest.

"(B) Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

"(C) The Commission shall review competitive market conditions with respect to commercial mobile services and shall include in its annual report an analysis of those conditions. Such analysis shall include an identification of the number of competitors in various commercial mobile services, an analysis of whether or not there is effective competition, an analysis of whether any of such competitors have a dominant share of the market for such services, and a statement of whether additional providers or classes of providers in those services would be likely to enhance competition. As a part of making a determination with respect to the public interest under subparagraph (A)(iii), the Commission shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions, including the extent to which such regulation (or amendment) will enhance competition among providers of commercial mobile services. If the Commission determines that such regulation (or amendment) will promote competition among providers of commercial mobile services, such determination

may be the basis for a Commission finding that such regulation (or amendment) is in the public interest.

"(D) The Commission shall, not later than 180 days after the date of enactment of this subparagraph, complete a rulemaking required to implement this paragraph with respect to the licensing of personal communications services, including making any determinations required by subparagraph (C).

"(2) NON-COMMON CARRIER TREATMENT OF PRIVATE MOBILE SERVICES.—A person engaged in the provision of a service that is a private mobile service shall not, insofar as such person is so engaged, be treated as a common carrier for any purpose under this Act. A common carrier (other than a person that was treated as a provider of a private land mobile service prior to the enactment of the Omnibus Budget Reconciliation Act of 1993) shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982. The Commission may by regulation terminate, in whole or in part, the prohibition contained in the preceding sentence if the Commission determines that such termination will serve the public interest.

"(3) STATE PREEMPTION.—(A) Notwithstanding sections 2(b) and 221(b), no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service, except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile services. Nothing in this subparagraph shall exempt providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates. Notwithstanding the first sentence of this subparagraph, a State may petition the Commission for authority to regulate the rates for any commercial mobile service and the Commission shall grant such petition if such State demonstrates that—

"(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

"(ii) such market conditions exist and such service is a replacement for land line telephone exchange service for a substantial portion of the telephone land line exchange service within such State.

The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition. If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such periods of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory.

"(B) If a State has in effect on June 1, 1993, any regulation concerning the rates for any commercial mobile service offered in such State on such date, such State may, no later than 1 year after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, petition the Commission requesting that the State be authorized to continue exercising authority over such rates. If a State files such a petition, the State's existing regulation shall, notwithstanding subparagraph (A), remain in effect until the Commission completes all action (including any reconsideration) on such petition. The Commission shall review such petition in accordance with the procedures established in such subparagraph, shall complete all action (including any reconsideration) within 12 months after such petition is filed, and shall grant such petition if the State satisfies the showing required under subparagraph (A)(i) or (A)(ii). If the Commission grants such petition, the Commission shall authorize the State to exercise under State law such authority over rates, for such period of time, as the Commission deems necessary to ensure that such rates are just and reasonable and not unjustly or unreasonably discriminatory. After a reasonable period of time, as determined by the Commission, has elapsed from the issuance of an order under subparagraph (A) or this subparagraph, any interested party may petition the Commission for an order that the exercise of authority by a State pursuant to such subparagraph is no longer necessary to ensure that the rates for commercial mobile services are just and reasonable and not unjustly or unreasonably discriminatory. The Commission shall provide reasonable opportunity for public comment in response to such petition, and shall, within 9 months after the date of its submission, grant or deny such petition in whole or in part.

"(4) REGULATORY TREATMENT OF COMMUNICATIONS SATELLITE CORPORATION.—Nothing in this subsection shall be construed to alter or affect the regulatory treatment required by title IV of the Communications Satellite of 1962 of the corporation authorized by title III of such Act.

"(5) SPACE SEGMENT CAPACITY.—Nothing in this section shall prohibit the Commission from continuing to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

"(6) FOREIGN OWNERSHIP.—The Commission, upon a petition for waiver filed within 6 months after the date of enactment of the Omnibus Budget Reconciliation Act of 1993, may waive the application of section 310(b) to any foreign ownership that lawfully existed before May 24, 1993, of any provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993, but only upon the following conditions:

"(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

"(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

"(d) DEFINITIONS.—For purposes of this section—

"(1) the term 'commercial mobile service' means any mobile service (as defined in section 3(n)) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission;

"(2) the term 'interconnected service' means service that is interconnected with the public switched network (as such terms are defined by regulation by the Commission) or service for which a request for interconnection is pending pursuant to subsection (c)(1)(B); and

"(3) the term 'private mobile service' means any mobile service (as defined in section 3(n)) that is not a commercial mobile service or the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.".

(B) ADDITIONAL CONFORMING AMENDMENTS.—(i) Section 2(b) of the Communications Act of 1934 (47 U.S.C. 152(b)) is amended by inserting "and section 332," after "inclusive,".

(ii) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended—

(I) in subsection (n) by inserting "(1)" after "and includes", and by inserting before the period at the end the following: ", (2) a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and (3) any service for which a license is required in a personal communications service established pursuant to the proceeding entitled 'Amendment to the Commission's Rules to Establish New Personal Communications Services' (GEN Docket No. 90–314; ET Docket No. 92–100), or any successor proceeding"; and

(II) by striking subsection (gg).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section are effective on the date of enactment of this Act.

(2) EFFECTIVE DATES OF MOBILE SERVICE AMENDMENTS.—The amendments made by subsection (b)(2) shall be effective on the date of enactment of this Act, except that—

(A) section 332(c)(3)(A) of the Communications Act of 1934, as amended by such subsection, shall take effect 1 year after such date of enactment; and

(B) any private land mobile service provided by any person before such date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, except for purposes of section 332(c)(6) of such Act, be treated as a private mobile service until 3 years after such date of enactment.

(d) DEADLINES FOR COMMISSION ACTION.—

(1) GENERAL RULEMAKING.—The Federal Communications Commission shall prescribe regulations to implement section 309(j) of the Communications Act of 1934 (as added by this section) within 210 days after the date of enactment of this Act.

(2) PCS ORDERS AND LICENSING.—The Commission shall—

(A) within 180 days after such date of enactment, issue a final report and order (i) in the matter entitled "Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies" (ET Docket No. 92–9); and (ii) in the matter entitled "Amendment of the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90–314; ET Docket No. 92–100); and

(B) within 270 days after such date of enactment, commence issuing licenses and permits in the personal communications service.

(3) TRANSITIONAL RULEMAKING FOR MOBILE SERVICE PROVIDERS.—Within 1 year after the date of enactment of this Act, the Federal Communications Commission—

(A) shall issue such modifications or terminations of the regulations applicable (before the date of enactment of this Act) to private land mobile services as are necessary to implement the amendments made by subsection (b)(2);

(B) in the regulations that will, after such date of enactment, apply to a service that was a private land mobile service and that becomes a commercial mobile service (as a consequence of such amendments), shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services;

(C) shall issue such other regulations as are necessary to implement the amendments made by subsection (b)(2); and

(D) shall include, in such regulations, modifications, and terminations, such provisions as are necessary to provide for an orderly transition.

(e) SPECIAL RULE.—The Federal Communications Commission shall not issue any license or permit pursuant to section 309(i) of the Communications Act of 1934 (47 U.S.C. 309(i)) after the date of enactment of this Act unless—

(1) the Commission has made the determination required by paragraph (1)(B) of such section (as added by this section); or

(2) one or more applications for such license were accepted for filing by the Commission before July 26, 1993.

SEC. 6003. ADDITIONAL COMMUNICATIONS FEES.

(a) REGULATORY FEES.—

(1) AMENDMENT.—Title I of the Communications Act of 1934 is amended by inserting after section 8 the following new section:

"SEC. 9. REGULATORY FEES.

"(a) GENERAL AUTHORITY.—The Commission, in accordance with this section, shall assess and collect regulatory fees to recover the costs of the following regulatory activities of the Commission: enforcement activities, policy and rulemaking activities, user information services, and international activities.

"(b) ESTABLISHMENT AND ADJUSTMENT OF REGULATORY FEES.—

"(1) IN GENERAL.—The fees assessed under subsection (a) shall—

"(A) be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service area coverage, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

"(B) be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in subsection (a); and

"(C) until adjusted or amended by the Commission pursuant to paragraph (2) or (3), be the fees established by the Schedule of Regulatory Fees in subsection (g).

"(2) MANDATORY ADJUSTMENT OF SCHEDULE.—For any fiscal year after fiscal year 1994, the Commission shall, by rule, revise the Schedule of Regulatory Fees by proportionate increases or decreases to reflect, in accordance with paragraph (1)(B), changes in the amount appropriated for the performance of the activities described in subsection (a) for such fiscal year. Such proportionate increases or decreases shall—

"(A) be adjusted to reflect, within the overall amounts described in appropriations Act under the authority of paragraph (1)(A), unexpected increases or decreases in the number of licensees or units subject to payment of such fees; and

"(B) be established at amounts that will result in collection of an aggregate amount of fees pursuant to this section that can reasonably be expected to equal the aggregate amount of fees that are required to be collected by appropriations Acts pursuant to paragraph (1)(B).

Increases or decreases in fees made by adjustments pursuant to this paragraph shall not be subject to judicial review. In making adjustments pursuant to this paragraph the Commission may round such fees to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more.

"(3) PERMITTED AMENDMENTS.—In addition to the adjustments required by paragraph (2), the Commission shall, by regulation, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A). In making such amendments, the Commission shall add, delete, or reclassify services in the Schedule to reflect additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law. Increases or decreases in fees made by amendments pursuant to this paragraph shall not be subject to judicial review.

"(4) NOTICE TO CONGRESS.—The Commission shall—

"(A) transmit to the Congress notification of any adjustment made pursuant to paragraph (2) immediately upon the adoption of such adjustment; and

"(B) transmit to the Congress notification of any amendment made pursuant to paragraph (3) not later than 90 days before the effective date of such amendment.

"(c) ENFORCEMENT.—

"(1) PENALTIES FOR LATE PAYMENT.—The Commission shall prescribe by regulation an additional charge which shall be assessed as a penalty for late payment of fees required by subsection (a) of this section. Such penalty shall be 25 percent of the amount of the fee which was not paid in a timely manner.

"(2) DISMISSAL OF APPLICATIONS FOR FILINGS.—The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.

"(3) REVOCATIONS.—In addition to or in lieu of the penalties and dismissals authorized by paragraphs (1) and (2), the Commission may revoke any instrument of authorization held by any entity that has failed to make payment of a regulatory fee assessed pursuant to this section. Such revocation action may be taken by the Commission after notice of the Commission's intent to take such action is sent to the licensee by registered mail, return receipt requested, at the licensee's last known address. The notice will provide the licensee at least 30 days to either pay the fee or show cause why the fee does not apply to the licensee or should otherwise be waived or payment deferred. A hearing is not required under this subsection unless the licensee's response presents a substantial and material question of fact. In any case where a hearing is conducted pursuant to this section, the hearing shall be based on written evidence only, and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the licensee. Unless the licensee substantially prevails in the hearing, the Commission may assess the licensee for the costs of such hearing. Any Commission order adopted pursuant to this subsection shall determine the amount due, if any, and provide the licensee with at least 30 days to pay that amount or have its authorization revoked. No order of revocation under this subsection shall become final until the licensee has exhausted its right to judicial review of such order under section 402(b)(5) of this title.

"(d) WAIVER, REDUCTION, AND DEFERMENT.—The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest.

"(e) DEPOSIT OF COLLECTIONS.—Moneys received from fees established under this section shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Commission.

"(f) REGULATIONS.—

"(1) IN GENERAL.—The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. Such rules and regulations shall permit payment by installments in the case of fees in large amounts, and in the case of fees in small amounts, shall require the payment of the fee in advance for a number of years not to exceed the term of the license held by the payor.

"(g) SCHEDULE.—Until amended by the Commission pursuant to subsection (b), the Schedule of Regulatory Fees which the Federal Communications Commission shall, subject to subsection (a)(2), assess and collect shall be as follows:

"SCHEDULE OF REGULATORY FEES

Bureau/Category	Annual Regulatory Fee
Private Radio Bureau	
Exclusive use services (per license)	
Land Mobile (above 470 MHz, Base Station and SMRS) (47 C.F.R. Part 90)	$16
Microwave (47 C.F.R. Part 94)	16
Interactive Video Data Service (47 C.F.R. Part)	16
Shared use services (per license unless otherwise noted)	7
Amateur vanity call-signs	7
Mass Media Bureau (per license)	
AM radio (47 C.F.R. Part 73)	
Class D Daytime	250
Class A Fulltime	900
Class B Fulltime	500
Class C Fulltime	200
Construction permits	100
FM radio (47 C.F.R. Part 73)	
Classes C, C1, C2, B	900
Classes A, B1, C3	600
Construction permits	500
TV (47 C.F.R. Part 73)	
VHF Commercial	
Markets 1 thru 10	18,000
Markets 11 thru 25	16,000
Markets 26 thru 50	12,000
Markets 51 thru 100	8,000
Remaining Markets	5,000
Construction permits	4,000
UHF Commercial	
Markets 1 thru 10	14,400
Markets 11 thru 25	12,800
Markets 26 thru 50	9,600
Markets 51 thru 100	6,400
Remaining Markets	4,000
Construction permits	3,200
Low Power TV, TV Translator, and TV Booster (47 C.F.R. Part 74)	135
Broadcast Auxiliary (47 C.F.R. Part 74)	25
International (HF) Broadcast (47 C.F.R. Part 73)	200
Cable Antenna Relay Service (47 C.F.R. Part 78)	220
Cable Television System (per 1,000 subscribers) (47 C.F.R. Part 76)	370
Common Carrier Bureau	
Radio Facilities	
Cellular Radio (per 1,000 subscribers) (47 C.F.R. Part 22)	60
Personal Communications (per 1,000 subscribers) (47 C.F.R.)	60
Space Station (per operational station in geosynchronous orbit) (47 C.F.R. Part 25)	65,000
Space Station (per system in low-earth orbit) (47 C.F.R. Part 25)	90,000
Public Mobile (per 1,000 subscribers) (47 C.F.R. Part 22)	60
Domestic Public Fixed (per call sign) (47 C.F.R. Part 21)	55
International Public Fixed (per call sign) (47 C.F.R. Part 23)	110
Earth Stations (47 C.F.R. Part 25)	

"SCHEDULE OF REGULATORY FEES—CONTINUED

Bureau/Category	Annual Regulatory Fee
VSAT and equivalent C-Band antennas (per 100 antennas) ..	6
Mobile satellite earth stations (per 100 antennas)	6
Earth station antennas	
Less than 9 meters (per 100 antennas)	6
9 Meters or more	
Transmit/Receive and Transmit Only (per meter)	85
Receive only (per meter)	55
Carriers	
Inter-Exchange Carrier (per 1,000 presubscribed access lines)	60
Local Exchange Carrier (per 1,000 access lines)	60
Competitive access provider (per 1,000 subscribers)	60
International circuits (per 100 active 64KB circuit or equivalent)	220

"(h) EXCEPTIONS.—The charges established under this section shall not be applicable to (1) governmental entities or nonprofit entities; or (2) to amateur radio operator licenses under part 97 of the Commission's regulations (47 C.F.R. Part 97).

"(i) ACCOUNTING SYSTEM.—The Commission shall develop accounting systems necessary to making the adjustments authorized by subsection (b)(3). In the Commission's annual report, the Commission shall prepare an analysis of its progress in developing such systems and shall afford interested persons the opportunity to submit comments concerning the allocation of the costs of performing the functions described in subsection (a) among the services in the Schedule.".

(2) CONFORMING AMENDMENTS.—Section 8 of the Communications Act of 1934 (47 U.S.C. 158) is amended—

(A) by striking the heading of such section and inserting "APPLICATION FEES";

(B) by striking "charges" each place it appears and inserting "application fees";

(C) by striking "charge" each place it appears in subsection (c) and inserting "application fee";

(D) by striking out "Schedule of Charges" each place it appears and inserting "Schedule of Application Fees"; and

(E) in the schedule contained in subsection (g)—

(i) by striking "SCHEDULE OF CHARGES" and inserting "SCHEDULE OF APPLICATION FEES";

(ii) by striking "charge" and "Charges" each place they appear and inserting "application fee" and "Application fee", respectively; and

(iii) by striking "CHARGES" and inserting "APPLICATION FEES".

(b) USE OF REGULATORY FEES.—Section 6 of the Communications Act of 1934 (47 U.S.C. 156) is amended by adding at the end the following new subsection:

"(d) Of the sum appropriated in any fiscal year under this section, a portion, in an amount determined under section 9(b), shall be derived from fees authorized by section 9.".

TITLE VII—NUCLEAR REGULATORY COMMISSION PROVISIONS

SEC. 7001. NUCLEAR REGULATORY COMMISSION ANNUAL CHARGES.

Section 6101(a)(3) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(a)(3)) is amended by striking "September 30, 1995" and inserting "September 30, 1998".

TITLE VIII—PATENT AND TRADEMARK FEES

SEC. 8001. PATENT AND TRADEMARK FEES.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended—

(1) in subsection (a) by striking "1995" and inserting "1998";

(2) in subsection (b)(2) by striking "1995" and inserting "1998"; and

(3) in subsection (c)—

(A) by striking "through 1995" and inserting "through 1998"; and

(B) by adding at the end the following:

"(6) $111,000,000 in fiscal year 1996.

"(7) $115,000,000 in fiscal year 1997.

"(8) $119,000,000 in fiscal year 1998.".

TITLE IX—MERCHANT MARINE PROVISIONS

SEC. 9001. EXTENSION OF VESSEL TONNAGE DUTIES.

(a) EXTENSION OF DUTIES.—Section 36 of the Act of August 5, 1909 (36 Stat. 111; 46 App. U.S.C. 121), is amended by—

(1) striking "and 1995," each place it appears and inserting "1995, 1996, 1997, 1998,";

(2) striking "place," and inserting "place;"; and

(3) striking "port, not, however, to include vessels in distress or not engaged in trade" and inserting "port. However, neither duty shall be imposed on vessels in distress or not engaged in trade".

(b) CONFORMING AMENDMENT.—The Act of March 8, 1910 (36 Stat. 234; 46 App. U.S.C. 132), is amended by striking "and 1995," and inserting "1995, 1996, 1997, and 1998,".

(c) TECHNICAL CORRECTION.—

(1) CORRECTION.—Section 10402(a) of the Omnibus Budget Reconciliation Act of 1990 (104 Stat. 1388–398) is amended by striking "in the second paragraph".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective on and after November 5, 1990.

TITLE X—NATURAL RESOURCE PROVISIONS

Subtitle A—Recreation Use Fees

SEC. 10001. ADMISSION FEES.

(a) ADDITIONAL AREAS.—(1) The first sentence of section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a)) is amended by inserting after "National Park System" the phrase "or National Conservation Areas" and by inserting after "National Recreation Areas" the following ", National Monuments, National Volcanic Monuments, National Scenic Areas, and no more than 21 areas of concentrated public use".

(2) Section 4(a) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(a) is amended by inserting the following after the first sentence: "For purposes of this subsection, the term 'area of concentrated public use' means an area that is managed primarily for outdoor recreation purposes, contains at least one major recreation attraction, where facilities and services necessary to accommodate heavy public use are provided, and public access to the area is provided in such a manner that admission fees can be efficiently collected at one or more centralized locations.".

(b) GOLDEN AGE PASSPORT.—The second sentence of section 4(a)(4) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(4)) is amended by striking "without charge," and inserting in lieu thereof "for a one-time charge of $10,".

SEC. 10002. RECREATION USER FEES.

(a) IN GENERAL.—(1) The first sentence of section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-6a(b)) is amended by striking out "toilet facilities, picnic tables, or boat ramps" and all that follows down through the end of the sentence and inserting in lieu thereof: "or toilet facilities, nor shall there be any such charge solely for the use of picnic tables: Provided, That in no event shall there be a charge for the use of any campground not having a majority of the following: tent or trailer spaces, picnic tables, drinking water, access road, refuse containers, toilet facilities, personal collection of the fee by an employee or agent of the Federal agency operating the facility, reasonable visitor protection, and simple devices for containing a campfire (where campfires are permitted). For the purposes of this subsection, the term 'specialized outdoor recreation sites' includes, but is not limited to, campgrounds, swimming sites, boat launch facilities, and managed parking lots.".

(2) Section 4(b) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(b)) is amended by striking the second sentence.

(b) COSTS OF COLLECTION.—Section 4(i)(1) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(i)) is amended by inserting "(A)" after "(1)" and by adding the following at the end of paragraph (1):

"(B) Notwithstanding subparagraph (A), in any fiscal year, the Secretary of Agriculture and the Secretary of the Interior may withhold from the special account established under subparagraph (A) such portion of all receipts collected from fees imposed under this section in such fiscal year as the Secretary of Agriculture or the Secretary of the Interior, as appropriate, determines to be equal to the fee collection costs for that fiscal year: Provided, That such costs shall not exceed 15 percent of all receipts collected from fees imposed under this section in that fiscal year. The amounts so withheld shall be retained by the Secretary of Agriculture or the Secretary of the Interior, as appropriate, and shall be available, without further appropriation, for expenditure by the Secretary concerned to cover fee collection costs in that fiscal year. The Secretary concerned shall deposit into the special account established pursuant to subparagraph (A) any amounts so retained which remain unexpended and unobligated at the end of the fiscal year. For the purposes of this subparagraph, for any fiscal year, the term 'fee collection costs' means those costs for personnel and infrastructure directly associated with the collection of fees imposed under this section.".

(c) COMMERCIAL TOUR USE FEES.—Section 4 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a) is amended by adding the following new subsection at the end thereof:

"(n)(1) In the case of each unit of the National Park System for which an admission fee is charged under this section, the Secretary of the Interior shall establish, by October 1, 1993, a commercial tour use fee to be imposed on each vehicle entering the unit for the purpose of providing commercial tour services within the unit. Fee revenue derived from such commercial tour use fees shall be deposited into the special account established under subsection (i).

"(2) The Secretary shall establish the amount of fee per entry as follows:

"(A) $25 per vehicle with a passenger capacity of 25 persons or less, and

"(B) $50 per vehicle with a passenger capacity of more than 25 persons.

"(3) The Secretary may periodically make reasonable adjustments to the commercial tour use fee imposed under this subsection.

"(4) The commercial tour use fee imposed under this subsection shall not apply to either of the following:

"(A) Any vehicle transporting organized school groups or outings conducted for educational purposes by schools or other bona fide educational institutions.

"(B) Any vehicle entering a park system unit pursuant to a contract issued under the Act of October 9, 1965 (16 U.S.C. 20–20g) entitled 'An Act relating to the establishment of concession policies in the areas administered by the National Park Service and for other purposes.'.

"(5)(A) The provisions of this subsection shall apply to aircraft entering the airspace of units of the National Park System identified in section 2(b) and section 3 of Public Law 100-91 for the specific purpose of providing commercial tour services within the airspace of such units.

"(B) The provisions of this subsection shall also apply to aircraft entering the airspace of other units of the National Park System for the specific purpose of providing commercial tour services if the Secretary determines that the level of such services is equal to or greater than the level at those units of the National Park System specified in subparagraph (A).".

(d) NON-FEDERAL GOLDEN EAGLE PASSPORT SALES.—Section 4(a)(1)(A) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(1)(A)) is amended by inserting "(i)" after "(A)" and by adding at the end thereof the following new clause:

"(ii) The Secretary of the Interior and the Secretary of Agriculture may authorize businesses, nonprofit entities, and other organizations to sell and collect fees for the Golden Eagle Passport subject to such terms and conditions as the Secretaries may jointly prescribe. The Secretaries shall develop detailed guidelines for promotional advertising of non-Federal Golden Eagle Passport sales and shall monitor compliance with such guidelines. The Secretaries may authorize the sellers to withhold amounts up to, but not exceeding 8 percent of the gross fees collected from the sale of such passports as reimbursement for actual expenses of the sales. Receipts from such non-Federal sales of the Golden Eagle Passport shall be deposited into the special account established in subsection (i), to be allocated between the Secretary of the Interior and the Secretary of Agriculture in the same ratio as receipts from admission into Federal fee areas administered by the Secretary of Agriculture and the Secretary of the Interior pursuant to subsection (a).".

(e) CONFORMING AMENDMENT.—Section 4(a)(1)(A) of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–6a(a)(1)(A)) is amended by striking the third sentence in its entirety and inserting in lieu thereof "The annual permit shall be valid for a period of 12 months from the date the annual fee is paid.".

SEC. 10003. COMMUNICATION SITE FEES.

Notwithstanding any other provision of law, for fiscal year 1994 the Secretary of Agriculture and the Secretary of the Interior shall assess and collect annual charges for the utilization of existing radio, television, and commercial telephone transmission communication sites located on Federal lands administered by the Forest Service and the Bureau of Land Management at a level 10 percent above the fee assessed and collected during fiscal year 1993. For a site located after the enactment of this Act, the charges for fiscal year 1994 shall be equal in amount to the charges assessed for a comparable new site located before the enactment of this Act, plus 10 percent.

Subtitle B—Hardrock Mining Claim Maintenance Fee

SEC. 10101. FEE.

(a) CLAIM MAINTENANCE FEE.—The holder of each unpatented mining claim, mill or tunnel site located pursuant to the Mining Laws of the United States, whether located before or after the enactment of this Act, shall pay to the Secretary of the Interior, on or before August 31 of each year, for years 1994 through 1998, a claim maintenance fee of $100 per claim. Such claim maintenance fee shall be in lieu of the assessment work requirement contained in the Mining Law of 1872 (30 U.S.C. 28–28e) and the related filing requirements contained in section 314(a) and (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(a) and (c)).

(b) TIME OF PAYMENT.—The claim maintenance fee payable pursuant to subsection (a) for any assessment year shall be paid before the commencement of the assessment year, except that for the initial assessment year in which the location is made, the locator shall pay the claim maintenance fee at the time the location notice is recorded with the Bureau of Land Management. The location fee imposed under section 10102 shall be payable not later than 90 days after the date of location.

(c) OIL SHALE CLAIMS SUBJECT TO CLAIM MAINTENANCE FEES UNDER ENERGY POLICY ACT OF 1992.—This section shall not apply to any oil shale claims for which a fee is required to be paid under section 2511(e)(2) of the Energy Policy Act of 1992 (Public Law 102–486; 106 Stat. 3111; 30 U.S.C. 242).

(d) WAIVER.—(1) The claim maintenance fee required under this section may be waived for a claimant who certifies in writing to the Secretary that on the date the payment was due, the claimant and all related parties—

(A) held not more than 10 mining claims, mill sites, or tunnel sites, or any combination thereof, on public lands; and

(B) have performed assessment work required under the Mining Law of 1872 (30 U.S.C. 28–28e) to maintain the mining claims held by the claimant and such related parties for the assessment year ending on noon of September 1 of the calendar year in which payment of the claim maintenance fee was due.

(2) For purposes of paragraph (1), with respect to any claimant, the term "related party" means—

(A) the spouse and dependent children (as defined in section 152 of the Internal Revenue Code of 1986), of the claimant; and

(B) a person who controls, is controlled by, or is under common control with the claimant.

For purposes of this section, the term control includes actual control, legal control, and the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means.

SEC. 10102. LOCATION FEE.

Notwithstanding any other provision of law, for every unpatented mining claim, mill or tunnel site located after the date of enactment of this subtitle and before September 30, 1998, pursuant to the Mining Laws of the United States, the locator shall, at the time the location notice is recorded with the Bureau of Land Management, pay to the Secretary of the Interior a location fee, in addition to the claim maintenance fee required by section 10101, of $25.00 per claim.

SEC. 10103. CO-OWNERSHIP.

The co-ownership provisions of the Mining Law of 1872 (30 U.S.C. 28) shall remain in effect, except that in applying such provisions, the annual claim maintenance fee required under this Act shall, where applicable, replace applicable assessment requirements and expenditures.

SEC. 10104. FAILURE TO PAY.

Failure to pay the claim maintenance fee or the location fee as required by this subtitle shall conclusively constitute a forfeiture of the unpatented mining claim, mill or tunnel site by the claimant and the claim shall be deemed null and void by operation of law.

SEC. 10105. OTHER REQUIREMENTS.

(a) FEDERAL LAND POLICY AND MANAGEMENT ACT REQUIREMENTS.—Nothing in this subtitle shall change or modify the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(b)), or the requirements of section 314(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744(c)) related to filings required by section 314(b), and such requirements shall remain in effect with respect to claims, and mill or tunnel sites for which fees are required to be paid under this section.

(b) REVISED STATUTES SECTION 2324.—The third sentence of section 2324 of the Revised Statutes (30 U.S.C. 28) is amended by inserting after "On each claim located after the tenth day of May, eighteen hundred and seventy-two," the following: "that is granted a waiver under section 10101 of the Omnibus Budget Reconciliation Act of 1993,".

(c) FEE ADJUSTMENTS.—(1) The Secretary of the Interior shall adjust the fees required by this subtitle to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor every 5 years after the date of the enactment of this Act, or more frequently if the Secretary determines an adjustment to be reasonable.

(2) The Secretary shall provide claimants notice of any adjustment made under this subsection not later than July 1 of any year in which the adjustment is made.

(3) A fee adjustment under this subsection shall begin to apply the first assessment year which begins after adjustment is made.

SEC. 10106. REGULATIONS.

The Secretary of the Interior shall promulgate rules and regulations to carry out the terms and conditions of this subtitle as soon as practicable after the date of the enactment of this subtitle.

Subtitle C—Mineral Receipts

SEC. 10201. AMENDMENT TO THE MINERAL LEASING ACT.

Section 35 of the Mineral Leasing Act (30 U.S.C. 191) is amended as follows:

(1) Delete the last sentence and redesignate the remaining language as subsection (a).

(2) Amend subsection (a) by inserting the "and, subject to the provisions of subsection (b)," between the words "United States;" and "50 per centum".

(3) Add a new subsection (b) as follows:

"(b)(1) In calculating the amount to be paid to States during any fiscal year under this section or under any other provision of law requiring payment to a State of any revenues derived from the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, 50 percent of the portion of the enacted appropriation of the Department of the Interior and any other agency during the preceding fiscal year allocable to the administration of all laws providing for the leasing of any onshore lands or interest in land owned by the United States for the production of the same types of minerals leasable under this Act or of geothermal steam, and to enforcement of such laws, shall be deducted from the receipts derived under those laws in approximately equal amounts each month (subject to paragraph (4)) prior to the division and distribution of such receipts between the States and the United States.

"(2) The proportion of the deduction provided in paragraph (1) allocable to each State shall be determined by dividing the monies disbursed to the State during the preceding fiscal year derived from onshore mineral leasing referred to in paragraph (1) in that State by the total money disbursed to States during the preceding fiscal year from such onshore mineral leasing in all States.

"(3) In the event the deduction apportioned to any State under this subsection exceeds 50 percent of the Secretary of the Interior's estimate of the amounts attributable to onshore mineral leasing referred to in paragraph (1) within that State during the preceding fiscal year, the deduction from receipts received from leases in

that State shall be limited to such estimated amounts and the total amount to be deducted from such onshore mineral leasing receipts shall be reduced accordingly.

"(4) If the amount otherwise deductible under this subsection in any month from the portion of receipts to be distributed to a State exceeds the amount payable to the State during that month, any amount exceeding the amount payable shall be carried forward and deducted from amounts payable to the State in subsequent months. If any amount remains to be carried forward at the end of the fiscal year, such amount shall not be deducted from any disbursements in any subsequent fiscal year.

"(5) All deductions to be made pursuant to this subsection shall be made in full during the fiscal year in which such deductions were incurred.".

SEC. 10202. CONFORMING AMENDMENTS.

(a) MINERAL LEASING ACT FOR ACQUIRED LANDS.—Section 6(a) of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 355) is amended by striking "All receipts" at the beginning of the first sentence and inserting the following: "Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all receipts".

(b) GEOTHERMAL STEAM ACT.—Section 20 of the Geothermal Steam Act (30 U.S.C. 1019) is amended by striking "All moneys" at the beginning of thereof and inserting "Subject to the provisions of section 35(b) of the Mineral Leasing Act (30 U.S.C. 191(b)), all moneys".

TITLE XI—CIVIL SERVICE AND POST OFFICE PROVISIONS

Subtitle A—Civil Service

SEC. 11001. DELAY IN COST-OF-LIVING ADJUSTMENTS IN FEDERAL EMPLOYEE RETIREMENT BENEFITS DURING FISCAL YEARS 1994, 1995, AND 1996.

(a) APPLICABILITY.—This section shall apply with respect to any cost-of-living increase scheduled to take effect, during fiscal year 1994, 1995, or 1996, under—

(1) section 8340(b) or 8462(b) of title 5, United States Code;

(2) section 826 or 858 of the Foreign Service Act of 1980; or

(3) section 291 of the Central Intelligence Agency Retirement Act (50 U.S.C. 2131), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102–496; 106 Stat. 3196).

(b) DELAY IN EFFECTIVE DATE OF ADJUSTMENTS.—A cost-of-living increase described in subsection (a) shall not take effect until the first day of the third calendar month after the date such increase would otherwise take effect.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be considered to affect any determination relating to eligibility for an annuity increase or the amount of the first increase in an annuity under section 8340(b) or (c) or section 8462(b) or (c) of title 5, United States Code, or comparable provisions of law.

SEC. 11002. PERMANENT ELIMINATION OF THE ALTERNATIVE-FORM-OF-ANNUITY OPTION EXCEPT FOR INDIVIDUALS WITH A CRITICAL MEDICAL CONDITION.

(a) CIVIL SERVICE RETIREMENT SYSTEM; FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Sections 8343a and 8420a of title 5, United States Code, are each amended—

(1) in subsection (a) by striking "an employee or Member may," and inserting "any employee or Member who has a life-threatening affliction or other critical medical condition may,"; and

(2) by striking subsection (f).

(b) FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM.—Section 807(e)(1) of the Foreign Service Act of 1980 (22 U.S.C. 4047(e)(1)) is amended by striking "a participant may," and inserting "any participant who has a life-threatening affliction or other critical medical condition may,".

(c) CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM.—Section 294(a) of the Central Intelligence Agency Retirement Act (50 U.S.C. 2143(a)), as set forth in section 802 of the CIARDS Technical Corrections Act of 1992 (Public Law 102–496; 106 Stat. 3196), is amended by striking "a participant may," and inserting "any participant who has a life-threatening affliction or other critical medical condition may,".

(d) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 1994, and shall apply with respect to any annuity commencing on or after that date.

SEC. 11003. APPLICATION OF MEDICARE PART B LIMITS TO PHYSICIANS' SERVICES FURNISHED TO FEDERAL EMPLOYEE HEALTH BENEFITS ENROLLEES AGE 65 OR OLDER.

(a) IN GENERAL.—Section 8904(b) of title 5, United States Code, is amended—

(1) in paragraph (1) by inserting "(A)" after "(b)(1)" and by adding at the end the following:

"(B)(i) A plan, other than a prepayment plan described in section 8903(4), may not provide benefits, in the case of any retired enrolled individual who is age 65 or older and is not entitled to Medicare supplementary medical insurance benefits under part B of title XVIII of the Social Security Act (42 U.S.C. 1395j et seq.), to pay a charge imposed for physicians' services (as defined in section 1848(j) of such Act, 42 U.S.C. 1395w–4(j)) which are covered for purposes of benefit payments under this chapter and under such part, to the extent that such charge exceeds the fee schedule amount under section 1848(a) of such Act (42 U.S.C. 1395w–4(a)).

"(ii) Physicians and suppliers who have in force participation agreements with the Secretary of Health and Human Services consistent with section 1842(h)(1) of such Act (42 U.S.C. 1395u(h)(1)), whereby the participating provider accepts Medicare benefits (including allowable deductible and coinsurance amounts) as full payment for covered items and services shall accept equivalent benefit and enrollee cost-sharing under this chapter as full payment for services described in clause (i). Physicians and suppliers who are nonparticipating physicians and suppliers for purposes of part B of title XVIII of such Act shall not impose charges that exceed the limiting charge under section 1848(g) of such Act (42 U.S.C. 1395w–4(g)) with respect to services described in clause (i) provided to enrollees described in such clause. The Office of Personnel Management shall notify a physician or supplier who is found to have violated this clause and inform them of the requirements of this clause and sanctions for such a violation. The Office of Personnel Management shall notify the Secretary of Health and Human Services if a physician or supplier is found to knowingly and willfully violate this clause on a repeated basis and the Secretary of Health and Human Services may invoke appropriate sanctions in accordance with sections 1128A(a) and section 1848(g)(1) of such Act (42 U.S.C. 1320a–7a(a), 1395w–4(g)(1)) and applicable regulations.

"(C) If the Secretary of Health and Human Services determines that a violation of this subsection warrants excluding a provider from participation for a specified period under title XVIII of the Social Security Act, the Office shall enforce a corresponding exclusion of such provider for purposes of this chapter.";

(2) in paragraph (3)(B)—

(A) by inserting "(i)" after "includes"; and

(B) by inserting before the period at the end the following: ", and (ii) the fee schedule amounts and limiting charges for physicians' services established under section 1848 of such Act (42 U.S.C. 1395w–4) and the identity of participating physicians and suppliers who have in force agreements with such Secretary under section 1842(h) of such Act (42 U.S.C. 1395u(h))"; and

(3) by adding at the end the following:

"(4) The Director of the Office of Personnel Management shall enter into an arrangement with the Secretary of Health and Human Services, to be effective before the first day of the fifth month that begins before each contract year, under which—

"(A) physicians and suppliers (whether or not participating) under the Medicare program will be notified of the requirements of paragraph (1)(B);

"(B) enforcement procedures will be in place to carry out such paragraph (including enforcement of protections against overcharging of beneficiaries); and

"(C) Medicare program information described in paragraph (3)(B)(ii) will be supplied to carriers under paragraph (3)(A).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to contract years beginning on or after January 1, 1995.

SEC. 11004. FEDERAL EMPLOYEES' SURVIVOR ANNUITY IMPROVEMENTS.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) REDUCTION FOR SPOUSAL ANNUITY.—Section 8339(j) of title 5, United States Code, is amended—

(A) in paragraph (3)—

(i) in the second sentence by striking ", within such 2-year period,"; and

(ii) by striking the fourth sentence and inserting the following: "The Office shall, by regulation, provide for payment of the deposit required under this paragraph by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under this paragraph, except that the total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph, paragraph (5), or subsection (k)(2) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction, which shall be effective on the same date as the election under this paragraph, shall be permanent and unaffected by any future termination of the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under the first sentence of this paragraph."; and

(B) in paragraph (5)(C)—

(i) in clause (ii) by striking ", within 2 years after the date of the remarriage or, if later, the death or remarriage of the former spouse (or of the last such surviving former spouse),"; and

(ii) by amending clause (iii) to read as follows:

"(iii) The Office shall, by regulation, provide for payment of the deposit required under clause (ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under clause (ii), except that total reductions in the annuity of an employee or Member to pay deposits required by the provisions of this paragraph or paragraph (3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this clause, which shall be effective on the same date as the election under clause (i), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under clause (i).".

(2) REDUCTION RELATING TO FORMER SPOUSE.—Section 8339(k)(2) of title 5, United States Code, is amended—

(A) in subparagraph (B)(ii) by striking "Within 2 years after the date of the marriage, the" and inserting "The"; and

(B) by amending subparagraph (C) to read as follows:

"(C) The Office shall, by regulation, provide for payment of the deposit required under subparagraph (B)(ii) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subparagraph (B)(ii), except that total reductions in the annuity of an employee or Member to pay deposits required by this subsection or subsection (j)(3) shall not exceed 25 percent of the annuity computed under subsections (a) through (i), (n), and (q), including adjustments under section 8340. The reduction required by this subparagraph, which shall be effective on the same date as the election under subparagraph (A), shall be permanent and unaffected by any future termination of the marriage. Such reduction shall be independent of and in addition to the reduction required under subparagraph (A).".

(3) DEPOSITS.—Section 8334(h) of title 5, United States Code, is amended by striking "and by section 8339(j)(5)(C) and the last sentence of section 8339(k)(2) of this title".

(b) FEDERAL EMPLOYEES' RETIREMENT SYSTEM.—Section 8418 of title 5, United States Code, is amended—

(1) in subsection (a)(1) by striking ", before the expiration of the 2-year period involved,"; and

(2) by amending subsection (b) to read as follows:

"(b) The Office shall, by regulation, provide for payment of the deposit required under subsection (a) by a reduction in the annuity of the employee or Member. The reduction shall, to the extent practicable, be designed so that the present value of the future reduction is actuarially equivalent to the deposit required under subsection (a), except that the total reductions in the annuity of an employee or Member to pay deposits required by this section shall not exceed 25 percent of the annuity computed under section 8415 or section 8452, including adjustments under section 8462. The reduction required by this subsection, which shall be effective at the same time as the election under section 8416 (b) and (c) or section 8417(b), shall be permanent and unaffected by any future termination of the marriage or the entitlement of the former spouse. Such reduction shall be independent of and in addition to the reduction required under section 8416 (b) and (c) or section 8417(b).".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the first day of the first month beginning at least 30 days after the date of the enactment of this Act and shall apply to all deposits required under section 8339(j) (3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, on which no payment has been made prior to such effective date.

(2) PARTIAL DEPOSIT.—For any deposit required under section 8339(j) (3) or (5), 8339(k)(2), or 8418 of title 5, United States Code, or section 4 (b) or (c) of the Civil Service Retirement Spouse Equity Act of 1984 (5 U.S.C. 8341 note) that has been partially, but not fully, paid before the effective date of this Act, the Office shall by regulation provide for determining the remaining portion of the deposit and for payment of the remaining portion of the deposit by a prospective reduction in the annuity of the employee or Member. The reduction shall be similar to the reductions provided pursuant to the amendments made under this section.

SEC. 11005. TEMPORARY EXTENSION AND MODIFICATION OF THE METHOD FOR DETERMINING GOVERNMENT CONTRIBUTIONS UNDER FEHBP IN THE ABSENCE OF A GOVERNMENT-WIDE INDEMNITY BENEFIT PLAN.

Public Law 101–76 (5 U.S.C. 8906 note) is amended by striking the matter after the enacting clause and before paragraph (2) of subsection (a) and inserting the following:

"That (a)(1) in the administration of chapter 89 of title 5, United States Code, for each of contract years 1990 through 1998 (inclusive), in order to compute the average subscription charges under section 8906(a) of such title for such contract years, the subscription charges in effect for the indemnity benefit plan on the beginning date of each such contract year—

"(A) shall be deemed to be the subscription charges which were in effect for such plan on the beginning date of the preceding contract year as adjusted under paragraph (2); or

"(B) if subparagraph (A) does not apply, shall be deemed to be—

"(i) the subscription charges which were deemed under this Act to have been in effect for such plan with respect to the preceding contract year as adjusted under paragraph (2), except as provided in clause (ii); or

"(ii) for each of contract years 1997 and 1998, the subscription charges which would be derived by applying the terms of clause (i), reduced by 1 percent.".

Subtitle B—Postal Service

SEC. 11101. PAYMENTS TO BE MADE BY THE UNITED STATES POSTAL SERVICE.

(a) RELATING TO CORRECTED CALCULATIONS FOR PAST RETIREMENT COLAS.—In addition to any other payments required under section 8348(m) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Civil Service Retirement and Disability Fund a total of $693,000,000, of which—

(1) at least one-third shall be paid not later than September 30, 1996;

(2) at least two-thirds shall be paid not later than September 30, 1997; and

(3) any remaining balance shall be paid not later than September 30, 1998.

(b) RELATING TO CORRECTED CALCULATIONS FOR PAST HEALTH BENEFITS.—In addition to any other payments required under section 8906(g)(2) of title 5, United States Code, or any other provision of law, the United States Postal Service shall pay into the Employees Health Benefits Fund a total of $348,000,000, of which—

(1) at least one-third shall be paid not later than September 30, 1996;

(2) at least two-thirds shall be paid not later than September 30, 1997; and

(3) any remaining balance shall be paid not later than September 30, 1998.

TITLE XII—VETERANS' AFFAIRS PROVISIONS

SEC. 12001. SHORT TITLE.

This title may be cited as the "Veterans Reconciliation Act of 1993".

SEC. 12002. EXTENSION OF AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO 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 (Public Law 101–508; 38 U.S.C. 1710 note) is amended—

(1) by striking out "September 30, 1992" in the first sentence and inserting in lieu thereof "September 30, 1998"; and

(2) by striking out the second sentence.

(b) OUTPATIENT MEDICATIONS.—Section 1722A(c) of title 38, United States Code, is amended—

(1) by striking out "September 30, 1992" in the first sentence and inserting in lieu thereof "September 30, 1998"; and

(2) by striking out the second sentence.

SEC. 12003. EXTENSION OF AUTHORITY FOR MEDICAL CARE COST RECOVERY.

Section 1729(a)(2)(E) of title 38, United States Code, is amended by striking out "before August 1, 1994," and inserting in lieu thereof "before October 1, 1998,".

SEC. 12004. EXTENSION OF CERTAIN INCOME VERIFICATION AUTHORITY.

Section 5317(g) of title 38, United States Code, is amended by striking out "September 30, 1997" and inserting in lieu thereof "September 30, 1998".

SEC. 12005. EXTENSION OF 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, 1997" and inserting in lieu thereof "September 30, 1998".

SEC. 12006. EXTENSION OF PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) INCLUSION OF LOSSES.—Section 3732(c) of title 38, United States Code, is amended—

(1) in paragraph (1)(C), by striking out "resale," and inserting in lieu thereof "resale (including losses sustained on the resale of the property),"; and

(2) in paragraph (11), by striking out "shall" and all that follows and inserting in lieu thereof "shall apply to loans closed before October 1, 1998.".

(b) EFFECTIVE DATE.—The amendments made by this section shall become effective October 1, 1993.

SEC. 12007. LOAN FEES.

(a) INCREASE IN HOME LOAN FEES.—Subsection (a) of section 3729 of title 38, United States Code, is amended—

(1) by striking out paragraph (6); and

(2) by inserting after paragraph (3) the following:

"(4) With respect to a loan closed after September 30, 1993, and before October 1, 1998, for which a fee is collected under paragraph (1), the amount of such fee, as computed under paragraph (2), shall be increased by 0.75 percent of the total loan amount other than in the case of a loan described in subparagraph (A), (D)(ii), or (E) of paragraph (2).".

(b) FEE FOR MULTIPLE USE OF HOUSING ASSISTANCE.—Subsection (a) of such section, as amended by subsection (a) of this section, is amended by adding at the end the following:

"(5)(A) Except as provided in subparagraph (B) of this paragraph, notwithstanding paragraphs (2) and (4) of this subsection, after a veteran has obtained an initial loan pursuant to section 3710 of this title, the amount of such fee with respect to any additional loan obtained under this chapter by such veteran shall be 3 percent of the total loan amount.

"(B) Subparagraph (A) of this paragraph does not apply with respect to (i) a loan obtained by a veteran with a downpayment described in paragraph (2)(B), (2)(C), or (2)(D)(iii) of this subsection, and (ii) loans described in paragraph (2)(E) of this subsection.

"(C) This paragraph applies with respect to a loan closed after September 30, 1993, and before October 1, 1998.".

(c) CONFORMING AMENDMENT.—Paragraph (2) of subsection (a) of such section is amended by striking out "paragraph (6)" and inserting in lieu thereof "paragraphs (4) and (5)".

SEC. 12008. POLICY REGARDING COST-OF-LIVING ADJUSTMENT IN COMPENSATION RATES.

(a) POLICY.—The fiscal year 1994 cost-of-living adjustments in the rates of and limitations

for compensation payable under chapter 11 of title 38, United States Code, and of dependency and indemnity compensation payable under chapter 13 of such title, except as provided in subsection (b) of this section, will be no more than a percentage equal to the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1, 1993, as a result of a determination under section 215(i) of such Act (42 U.S.C. 415(i)), 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 dollar.

(b) LIMITATION ON FISCAL YEAR 1994 COST-OF-LIVING ADJUSTMENT FOR CERTAIN DIC RECIPIENTS.—(1) During fiscal year 1994, the amount of any increase in any of the rates of dependency and indemnity compensation in effect under section 1311(a)(3) of title 38, United States Code, will not exceed 50 percent of the new law increase, rounded down (if not an even dollar amount) to the next lower dollar.

(2) For purposes of paragraph (1), the new law increase is the amount by which the rate of dependency and indemnity compensation provided for recipients under section 1311(a)(1) of such title is increased for fiscal year 1994.

SEC. 12009. LIMITATION REGARDING COST-OF-LIVING ADJUSTMENTS FOR MONTGOMERY GI BILL BENEFITS.

(a) BENEFITS PAYABLE UNDER CHAPTER 30.—Section 3015(g) of title 38, United States Code, is amended—

(1) by striking out "(1)" and all that follows through "(2)" and by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(2) in paragraph (2), as redesignated by paragraph (1) of this subsection, by striking out "subparagraph (A)" and inserting in lieu thereof "paragraph (1)".

(b) BENEFITS PAYABLE UNDER SELECTED RESERVE PROGRAM.—Section 2131(b)(2) of title 10, United States Code, is amended—

(1) by striking out "(A)" the first place it appears and all that follows through "(B) With respect to" and inserting in lieu thereof "With respect to";

(2) by redesignating clauses (i) and (ii) as subparagraphs (A) and (B), respectively; and

(3) in subparagraph (B), as redesignated by paragraph (2) of this subsection, by striking out "clause (i)" and inserting in lieu thereof "subparagraph (A)".

(c) LIMITATION.—The fiscal year 1995 cost-of-living adjustments in the rates of educational assistance payable under chapter 30 of title 38, United States Code, and under chapter 106 of title 10, United States Code, shall be the percentage equal to 50 percent of the percentage by which such assistance would be increased under section 3015(g) of title 38, and under section 2131(b)(2) of title 10, United States Code, respectively, but for this section.

(d) TECHNICAL AMENDMENTS.—(1) Section 301(c) of Public Law 102-568 (106 Stat. 4326) is amended by striking out "Section 3015(f)" and inserting in lieu thereof "Section 3015(g) (as redesignated by section 307(a)(1))".

(2) Section 307(a) of such Public Law (106 Stat. 4328) is amended by striking out "(as amended by section 301)".

(3) The amendments made by paragraphs (1) and (2) shall apply as if included in the enactment of Public Law 102-568.

TITLE XIII—REVENUE, HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, CUSTOMS AND TRADE, FOOD STAMP PROGRAM, AND TIMBER SALE PROVISIONS

CHAPTER 1—REVENUE PROVISIONS

SEC. 13001. SHORT TITLE; ETC.

(a) SHORT TITLE.—This chapter may be cited as the "Revenue Reconciliation Act of 1993".

(b) AMENDMENT TO 1986 CODE.—Except as otherwise expressly provided, whenever 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 Internal Revenue Code of 1986.

(c) SECTION 15 NOT TO APPLY.—Except in the case of the amendments made by section 13221 (relating to corporate rate increase), no amendment made by this chapter shall be treated as a change in a rate of tax for purposes of section 15 of the Internal Revenue Code of 1986.

(d) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1986 for any period before April 16, 1994 (March 16, 1994, in the case of a corporation), with respect to any underpayment to the extent such underpayment was created or increased by any provision of this chapter.

(e) TABLE OF CONTENTS.—

CHAPTER 1—REVENUE PROVISIONS
Sec. 13001. Short title; etc.
Subchapter A—Training and Investment Incentives
PART I—PROVISIONS RELATING TO EDUCATION AND TRAINING
Sec. 13101. Employer-provided educational assistance.
Sec. 13102. Targeted jobs credit.
PART II—INVESTMENT INCENTIVES
SUBPART A—RESEARCH AND CLINICAL TESTING CREDITS
Sec. 13111. Extension of research and clinical testing credits.
Sec. 13112. Modification of fixed base percentage for startup companies.
SUBPART B—CAPITAL GAIN PROVISIONS
Sec. 13113. 50-percent exclusion for gain from certain small business stock.
Sec. 13114. Rollover of gain from sale of publicly traded securities into specialized small business investment companies.
SUBPART C—MODIFICATION TO MINIMUM TAX DEPRECIATION RULES
Sec. 13115. Modification to minimum tax depreciation rules.
SUBPART D—INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES
Sec. 13116. Increase in expense treatment for small businesses.
SUBPART E—TAX EXEMPT BONDS
Sec. 13121. High-speed intercity rail facility bonds exempt from State volume cap.
Sec. 13122. Permanent extension of qualified small issue bonds.
PART III—EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT
Sec. 13131. Expansion and simplification of earned income tax credit.
PART IV—INCENTIVES FOR INVESTMENT IN REAL ESTATE
SUBPART A—EXTENSION OF QUALIFIED MORTGAGE BONDS AND LOW-INCOME HOUSING CREDIT
Sec. 13141. Permanent extension of qualified mortgage bonds.
Sec. 13142. Low-income housing credit.
SUBPART B—PASSIVE LOSS RULES
Sec. 13143. Application of passive loss rules to rental real estate activities.
SUBPART C—PROVISIONS RELATING TO REAL ESTATE INVESTMENTS BY PENSION FUNDS
Sec. 13144. Real estate property acquired by a qualified organization.
Sec. 13145. Repeal of special treatment of publicly treated partnerships.
Sec. 13146. Title-holding companies permitted to receive small amounts of unrelated business taxable income.
Sec. 13147. Exclusion from unrelated business tax of gains from certain property.
Sec. 13148. Exclusion from unrelated business tax of certain fees and option premiums.
Sec. 13149. Treatment of pension fund investments in real estate investment trusts.
SUBPART D—DISCHARGE OF INDEBTEDNESS
Sec. 13150. Exclusion from gross income for income from discharge of qualified real property business indebtedness.
SUBPART E—INCREASE IN RECOVERY PERIOD FOR NONRESIDENTIAL REAL PROPERTY
Sec. 13151. Increase in recovery period for nonresidential real property.
PART V—LUXURY TAX
Sec. 13161. Repeal of luxury excise taxes other than on passenger vehicles.
Sec. 13162. Exemption from luxury excise tax for certain equipment installed on passenger vehicles for use by disabled individuals.
Sec. 13163. Tax on diesel fuel used in noncommercial boats.
PART VI—OTHER CHANGES
Sec. 13171. Alternative minimum tax treatment of contributions of appreciated property.
Sec. 13172. Substantiation requirement for deduction of certain charitable contributions.
Sec. 13173. Disclosure related to quid pro quo contributions.
Sec. 13174. Temporary extension of deduction for health insurance costs of self-employed individuals.
Subchapter B—Revenue Increases
PART I—PROVISIONS AFFECTING INDIVIDUALS
SUBPART A—RATE INCREASES
Sec. 13201. Increase in top marginal rate under section 1.
Sec. 13202. Surtax on high-income taxpayers.
Sec. 13203. Modifications to alternative minimum tax rates and exemption amounts.
Sec. 13204. Overall limitation on itemized deductions for high-income taxpayers made permanent.
Sec. 13205. Phaseout of personal exemption of high-income taxpayers made permanent.
Sec. 13206. Provisions to prevent conversion of ordinary income to capital gain.
SUBPART B—OTHER PROVISIONS
Sec. 13207. Repeal of limitation on amount of wages subject to health insurance employment tax.
Sec. 13208. Top estate and gift tax rates made permanent.
Sec. 13209. Reduction in deductible portion of business meals and entertainment.
Sec. 13210. Elimination of deduction for club membership fees.
Sec. 13211. Disallowance of deduction for certain employee remuneration in excess of $1,000,000.
Sec. 13212. Reduction in compensation taken into account in determining contributions and benefits under qualified retirement plans.
Sec. 13213. Modifications to deduction for moving expenses.
Sec. 13214. Simplification of individual estimated tax safe harbor based on last year's tax.
Sec. 13215. Social security and tier 1 railroad retirement benefits.
PART II—PROVISIONS AFFECTING BUSINESSES
Sec. 13221. Increase in top marginal rate under section 11.

Sec. 13222. Denial of deduction for lobbying expenses.
Sec. 13223. Market to market accounting method for securities dealers.
Sec. 13224. Clarification of treatment of certain FSLIC financial assistance.
Sec. 13225. Modification of corporate estimated tax rules.
Sec. 13226. Modifications of discharge of indebtedness provisions.
Sec. 13227. Limitation on section 936 credit.
Sec. 13228. Modification to limitation on deduction for certain interest.

PART III—FOREIGN TAX PROVISIONS

SUBPART A—CURRENT TAXATION OF CERTAIN EARNINGS OF CONTROLLED FOREIGN CORPORATIONS

Sec. 13231. Earnings invested in excess passive assets.
Sec. 13232. Modification to taxation of investment in United States property.
Sec. 13233. Other modifications to subpart F.

SUBPART B—ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Sec. 13234. Allocation of research and experimental expenditures.

SUBPART C—OTHER PROVISIONS

Sec. 13235. Repeal of certain exceptions for working capital.
Sec. 13236. Modifications of accuracy-related penalty.
Sec. 13237. Denial of portfolio interest exemption for contingent interest.
Sec. 13238. Regulations dealing with conduit arrangements.
Sec. 13239. Treatment of export of certain softwood logs.

PART IV—TRANSPORTATION FUELS PROVISIONS

SUBPART A—TRANSPORTATION FUELS TAX

Sec. 13241. Transportation fuels tax.

SUBPART B—MODIFICATIONS TO TAX ON DIESEL FUEL

Sec. 13242. Modifications to tax on diesel fuel.
Sec. 13243. Floor stocks tax.

SUBPART C—OTHER PROVISIONS

Sec. 13244. Increased deposits into Mass Transit Account.
Sec. 13245. Floor stocks tax on aviation fuel held on October 1, 1995.

PART V—COMPLIANCE PROVISIONS

Sec. 13251. Modifications to substantial understatement penalty.
Sec. 13252. Returns relating to the cancellation of indebtedness by certain financial entities.

PART VI—TREATMENT OF INTANGIBLES

Sec. 13261. Amortization of goodwill and certain other intangibles.
Sec. 13262. Treatment of certain payments to retired or deceased partner.

PART VII—MISCELLANEOUS PROVISIONS

Sec. 13271. Disallowance of interest on certain overpayments of tax.
Sec. 13272. Denial of deduction relating to travel expenses.
Sec. 13273. Increase in withholding from supplemental wage payments.

Subchapter C—Empowerment Zones, Enterprise Communities, Rural Development Investment Areas, Etc.

PART I—EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS

Sec. 13301. Designation and treatment of empowerment zones, enterprise communities, and rural development investment areas.
Sec. 13302. Technical and conforming amendments.
Sec. 13303. Effective date.

PART II—CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

Sec. 13311. Credit for contributions to certain community development corporations.

PART III—INVESTMENT IN INDIAN RESERVATIONS

Sec. 13321. Accelerated depreciation for property on Indian reservations.
Sec. 13322. Indian employment credit.

Subchapter D—Other Provisions

PART I—DISCLOSURE PROVISIONS

Sec. 13401. Disclosure of return information for administration of certain veterans programs.
Sec. 13402. Disclosure of return information to carry out income contingent repayment of student loans.
Sec. 13403. Use of return information for income verification under certain housing assistance programs.

PART II—PUBLIC DEBT LIMIT

Sec. 13411. Increase in public debt limit.

PART III—VACCINE PROVISIONS

Sec. 13421. Excise tax on certain vaccines made permanent.
Sec. 13422. Continuation coverage under group health plans of costs of pediatric vaccines.

PART IV—DISASTER RELIEF PROVISIONS

Sec. 13431. Modification of involuntary conversion rules for certain disaster-related conversions.

PART V—MISCELLANEOUS PROVISIONS

Sec. 13441. Increase in presidential election campaign check-off.
Sec. 13442. Special rule for hospital services.
Sec. 13443. Credit for portion of employer social security taxes paid with respect to employee cash tips.
Sec. 13444. Availability and use of death information.

Subchapter A—Training and Investment Incentives

PART I—PROVISIONS RELATING TO EDUCATION AND TRAINING

SEC. 13101. EMPLOYER-PROVIDED EDUCATIONAL ASSISTANCE.

(a) EXTENSION OF EXCLUSION.—

(1) IN GENERAL.—Subsection (d) of section 127 (relating to educational assistance programs) is amended to read as follows:

"(d) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 1994."

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 103(a) of the Tax Extension Act of 1991 is hereby repealed.

(b) COORDINATION WITH SECTION 132.—Paragraph (8) of section 132(i) is amended to read as follows:

"(8) APPLICATION OF SECTION TO OTHERWISE TAXABLE EDUCATIONAL OR TRAINING BENEFITS.—Amounts paid or expenses incurred by the employer for education or training provided to the employee which are not excludable from gross income under section 127 shall be excluded from gross income under this section if (and only if) such amounts or expenses are a working condition fringe."

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to taxable years ending after June 30, 1992.

(2) SUBSECTION (b).—The amendment made by subsection (b) shall apply to taxable years beginning after December 31, 1988.

SEC. 13102. TARGETED JOBS CREDIT.

(a) EXTENSION OF CREDIT.—Paragraph (4) of section 51(c) (relating to termination) is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals who begin work for the employer after June 30, 1992.

PART II—INVESTMENT INCENTIVES

Subpart A—Research and Clinical Testing Credits

SEC. 13111. EXTENSION OF RESEARCH AND CLINICAL TESTING CREDITS.

(a) RESEARCH CREDIT.—

(1) IN GENERAL.—Subsection (h) of section 41 (relating to credit for research activities) is amended—

(A) by striking "June 30, 1992" each place it appears and inserting "June 30, 1995", and

(B) by striking "July 1, 1992" each place it appears and inserting "July 1, 1995".

(2) CONFORMING AMENDMENT.—Subparagraph (D) of section 28(b)(1) is amended by striking "June 30, 1992" and inserting "June 30, 1995".

(b) CLINICAL TESTING CREDIT.—Subsection (e) of section 28 is amended by striking "June 30, 1992" and inserting "December 31, 1994".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after June 30, 1992.

SEC. 13112. MODIFICATION OF FIXED BASE PERCENTAGE FOR STARTUP COMPANIES.

(a) GENERAL RULE.—Clause (ii) of section 41(c)(3)(B) is amended to read as follows:

"(ii) FIXED-BASE PERCENTAGE.—In a case to which this subparagraph applies, the fixed-base percentage is—

"(I) 3 percent for each of the taxpayer's 1st 5 taxable years beginning after December 31, 1993, for which the taxpayer has qualified research expenses,

"(II) in the case of the taxpayer's 6th such taxable year, 1/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 4th and 5th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

"(III) in the case of the taxpayer's 7th such taxable year, 1/3 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th and 6th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

"(IV) in the case of the taxpayer's 8th such taxable year, 1/2 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

"(V) in the case of the taxpayer's 9th such taxable year, 2/3 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, and 8th such taxable years is of the aggregate gross receipts of the taxpayer for such years,

"(VI) in the case of the taxpayer's 10th such taxable year, 5/6 of the percentage which the aggregate qualified research expenses of the taxpayer for the 5th, 6th, 7th, 8th, and 9th such taxable years is of the aggregate gross receipts of the taxpayer for such years, and

"(VII) for taxable years thereafter, the percentage which the aggregate qualified research expenses for any 5 taxable years selected by the taxpayer from among the 5th through the 10th such taxable years is of the aggregate gross receipts of the taxpayer for such selected years.".

(b) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 41(c)(3)(B) is amended by striking "clause (i)" and inserting "clauses (i) and (ii)".

(2) Subparagraph (D) of section 41(c)(3) is amended by striking "subparagraph (A)" and inserting "subparagraphs (A) and (B)(ii)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart B—Capital Gain Provisions

SEC. 13113. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

(a) GENERAL RULE.—Part I of subchapter P of chapter 1 (relating to capital gains and losses) is amended by adding at the end thereof the following new section:

"SEC. 1202. 50-PERCENT EXCLUSION FOR GAIN FROM CERTAIN SMALL BUSINESS STOCK.

"(a) 50-PERCENT EXCLUSION.—In the case of a taxpayer other than a corporation, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(b) PER-ISSUER LIMITATION ON TAXPAYER'S ELIGIBLE GAIN.—

"(1) IN GENERAL.—If the taxpayer has eligible gain for the taxable year from 1 or more dispositions of stock issued by any corporation, the aggregate amount of such gain from dispositions of stock issued by such corporation which may be taken into account under subsection (a) for the taxable year shall not exceed the greater of—

"(A) $10,000,000 reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subsection (a) for prior taxable years and attributable to dispositions of stock issued by such corporation, or

"(B) 10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.

For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which such stock was originally issued.

"(2) ELIGIBLE GAIN.—For purposes of this subsection, the term 'eligible gain' means any gain from the sale or exchange of qualified small business stock held for more than 5 years.

"(3) TREATMENT OF MARRIED INDIVIDUALS.—

"(A) SEPARATE RETURNS.—In the case of a separate return by a married individual, paragraph (1)(A) shall be applied by substituting '$5,000,000' for '$10,000,000'.

"(B) ALLOCATION OF EXCLUSION.—In the case of any joint return, the amount of gain taken into account under subsection (a) shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

"(C) MARITAL STATUS.—For purposes of this subsection, marital status shall be determined under section 7703.

"(c) QUALIFIED SMALL BUSINESS STOCK.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'qualified small business stock' means any stock in a C corporation which is originally issued after the date of the enactment of the Revenue Reconciliation Act of 1993, if—

"(A) as of the date of issuance, such corporation is a qualified small business, and

"(B) except as provided in subsections (f) and (h), such stock 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 provided to such corporation (other than services performed as an underwriter of such stock).

"(2) ACTIVE BUSINESS REQUIREMENT; ETC.—

"(A) IN GENERAL.—Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for such stock, such corporation meets the active business requirements of subsection (e) and such corporation is a C corporation.

"(B) SPECIAL RULE FOR CERTAIN SMALL BUSINESS INVESTMENT COMPANIES.—

"(i) WAIVER OF ACTIVE BUSINESS REQUIREMENT.—Notwithstanding any provision of subsection (e), a corporation shall be treated as meeting the active business requirements of such subsection for any period during which such corporation qualifies as a specialized small business investment company.

"(ii) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—For purposes of clause (i), the term 'specialized small business investment company' means any eligible corporation (as defined in subsection (e)(4)) which is licensed to operate under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

"(3) CERTAIN PURCHASES BY CORPORATION OF ITS OWN STOCK.—

"(A) REDEMPTIONS FROM TAXPAYER OR RELATED PERSON.—Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the corporation issuing such stock purchased (directly or indirectly) any of its stock from the taxpayer or from a person related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

"(B) SIGNIFICANT REDEMPTIONS.—Stock issued by a corporation shall not be treated as qualified business stock if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such corporation made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

"(C) TREATMENT OF CERTAIN TRANSACTIONS.—If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), such corporation shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

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

"(1) IN GENERAL.—The term 'qualified small business' means any domestic corporation which is a C corporation if—

"(A) 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 1993 and before the issuance did not exceed $50,000,000,

"(B) the aggregate gross assets of such corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed $50,000,000, and

"(C) 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) AGGREGATE GROSS ASSETS.—

"(A) IN GENERAL.—For purposes of paragraph (1), the term 'aggregate gross assets' means the amount of cash and the aggregate adjusted bases of other property held by the corporation.

"(B) TREATMENT OF CONTRIBUTED PROPERTY.—For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation (immediately after such contribution) were equal to its fair market value as of the time of such contribution.

"(3) AGGREGATION RULES.—

"(A) IN GENERAL.—All corporations which are members of the same parent-subsidiary controlled group shall be treated as 1 corporation for purposes of this subsection.

"(B) PARENT-SUBSIDIARY CONTROLLED GROUP.—For purposes of subparagraph (A), the term 'parent-subsidiary controlled group' means any controlled group of corporations as defined in section 1563(a)(1), except that—

"(i) 'more than 50 percent' shall be substituted for 'at least 80 percent' each place it appears in section 1563(a)(1), and

"(ii) section 1563(a)(4) shall not apply.

"(e) ACTIVE BUSINESS REQUIREMENT.—

"(1) IN GENERAL.—For purposes of subsection (c)(2), the requirements of this subsection are met by a corporation for any period if during such period—

"(A) at least 80 percent (by value) of the assets of such corporation are used by such corporation in the active conduct of 1 or more qualified trades or businesses, and

"(B) such corporation is an eligible corporation.

"(2) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in—

"(A) start-up 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),

assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from such activities at the time of the determination.

"(3) QUALIFIED TRADE OR BUSINESS.—For purposes of this subsection, the term 'qualified trade or business' means any trade or business other than—

"(A) any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of such trade or business is the reputation or skill of 1 or more of its employees,

"(B) any banking, insurance, financing, leasing, investing, or similar business,

"(C) any farming business (including the business of raising or harvesting trees),

"(D) any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 613 or 613A, and

"(E) any business of operating a hotel, motel, restaurant, or similar business.

"(4) ELIGIBLE CORPORATION.—For purposes of this subsection, the term 'eligible corporation' means any domestic corporation; except that such term shall not include—

"(A) a DISC or former DISC,

"(B) a corporation with respect to which an election under section 936 is in effect or which has a direct or indirect subsidiary with respect to which such an election is in effect,

"(C) a regulated investment company, real estate investment trust, or REMIC, and

"(D) a cooperative.

"(5) STOCK IN OTHER CORPORATIONS.—

"(A) LOOK-THRU IN CASE OF SUBSIDIARIES.—For purposes of this subsection, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

"(B) PORTFOLIO STOCK OR SECURITIES.—A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value

of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of such corporation (other than assets described in paragraph (6)).

"(C) SUBSIDIARY.—For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such corporation.

"(6) WORKING CAPITAL.—For purposes of paragraph (1)(A), any assets which—

"(A) are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation, or

"(B) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

"(7) MAXIMUM REAL ESTATE HOLDINGS.—A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

"(8) COMPUTER SOFTWARE ROYALTIES.—For purposes of paragraph (1), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

"(f) STOCK ACQUIRED ON CONVERSION OF OTHER STOCK.—If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

"(1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and

"(2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.

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

"(1) IN GENERAL.—If any amount included in gross income by reason of holding an interest in a pass-thru entity meets the requirements of paragraph (2)—

"(A) such amount shall be treated as gain described in subsection (a), and

"(B) for purposes of applying subsection (b), such amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-thru entity and the taxpayer's proportionate share of the adjusted basis of the pass-thru entity in such stock shall be taken into account.

"(2) REQUIREMENTS.—An amount meets the requirements of this paragraph if—

"(A) such amount is attributable to gain on the sale or exchange by the pass-thru entity of stock which is qualified small business stock in the hands of such entity (determined by treating such entity as an individual) and which was held by such entity for more than 5 years, and

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

"(3) LIMITATION BASED ON INTEREST ORIGINALLY HELD BY TAXPAYER.—Paragraph (1) shall not apply to any amount to the extent such amount exceeds the amount to which paragraph (1) would have applied if such amount were determined by reference to the interest the taxpayer held in the pass-thru entity on the date the qualified small business stock was acquired.

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

"(A) any partnership,

"(B) any S corporation,

"(C) any regulated investment company, and

"(D) any common trust fund.

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

"(1) IN GENERAL.—In the case of a transfer described in paragraph (2), the transferee shall be treated as—

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

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

"(2) DESCRIPTION OF TRANSFERS.—A transfer is described in this subsection if such transfer is—

"(A) by gift,

"(B) at death, or

"(C) from a partnership to a partner of stock with respect to which requirements similar to the requirements of subsection (g) are met at the time of the transfer (without regard to the 5-year holding period requirement).

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

"(4) INCORPORATIONS AND REORGANIZATIONS INVOLVING NONQUALIFIED STOCK.—

"(A) IN GENERAL.—In the case of a transaction described in section 351 or a reorganization described in section 368, if qualified small business stock is exchanged for other stock which would not qualify as qualified small business stock but for this subparagraph, such other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

"(B) LIMITATION.—This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain which would have been recognized at the time of the transfer described in subparagraph (A) if section 351 or 368 had not applied at such time. The preceding sentence shall not apply if the stock which is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation which (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

"(C) SUCCESSIVE APPLICATION.—For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which such limitation applied (determined after the application of the second sentence of subparagraph (B)).

"(D) CONTROL TEST.—In the case of a transaction described in section 351, this paragraph shall apply only if, immediately after the transaction, the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of section 368(c)) of the corporation whose stock was exchanged.

"(i) BASIS RULES.—For purposes of this section—

"(1) STOCK EXCHANGED FOR PROPERTY.—In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation—

"(A) such stock shall be treated as having been acquired by the taxpayer on the date of such exchange, and

"(B) the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

"(2) TREATMENT OF CONTRIBUTIONS TO CAPITAL.—If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which such stock was originally issued, in determining the amount of the adjustment by reason of such contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

"(j) TREATMENT OF CERTAIN SHORT POSITIONS.—

"(1) IN GENERAL.—If the taxpayer has an offsetting short position with respect to any qualified small business stock, subsection (a) shall not apply to any gain from the sale or exchange of such stock unless—

"(A) such stock was held by the taxpayer for more than 5 years as of the first day on which there was such a short position, and

"(B) the taxpayer elects to recognize gain as if such stock were sold on such first day for its fair market value.

"(2) OFFSETTING SHORT POSITION.—For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if—

"(A) the taxpayer has made a short sale of substantially identical property,

"(B) the taxpayer has acquired an option to sell substantially identical property at a fixed price, or

"(C) to the extent provided in regulations, the taxpayer has entered into any other transaction which substantially reduces the risk of loss from holding such qualified small business stock.

For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of section 267(b) or 707(b)) to the taxpayer.

"(k) 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 split-ups, shell corporations, partnerships, or otherwise."

(b) ONE-HALF OF EXCLUSION TREATED AS PREFERENCE FOR MINIMUM TAX.—

(1) IN GENERAL.—Subsection (a) of section 57 (relating to items of tax preference) is amended by adding at the end thereof the following new paragraph:

"(8) EXCLUSION FOR GAINS ON SALE OF CERTAIN SMALL BUSINESS STOCK.—An amount equal to one-half of the amount excluded from gross income for the taxable year under section 1202."

(2) CONFORMING AMENDMENT.—Subclause (II) of section 53(d)(1)(B)(ii) is amended by striking "and (6)" and inserting "(6), and (8)".

(c) PENALTY FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS.—Section 6652 is amended by inserting before the last subsection thereof the following new subsection:

"(k) FAILURE TO MAKE REPORTS REQUIRED UNDER SECTION 1202.—In the case of a failure to make a report required under section 1202(d)(1)(C) which contains the information required by such section on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing to make such report, an amount equal to $50 for each report with respect to which there was

such a failure. In the case of any failure due to negligence or intentional disregard, the preceding sentence shall be applied by substituting '$100' for '$50'. In the case of a report covering periods in 2 or more years, the penalty determined under preceding provisions of this subsection shall be multiplied by the number of such years."

(d) CONFORMING AMENDMENTS.—

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

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

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

"(B) the exclusion provided by section 1202 shall not be allowed."

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

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

"(4) ADJUSTMENTS.—To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain described in section 1202(a), proper adjustment shall be made for any exclusion allowable to the estate or trust under section 1202. In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income)."

(3) Paragraph (3) of section 643(a) is amended by adding at the end thereof the following new sentence: "The exclusion under section 1202 shall not be taken into account.".

(4) Paragraph (4) of section 691(c) is amended by striking "1201, and 1211" and inserting "1201, 1202, and 1211".

(5) The second sentence of paragraph (2) of section 871(a) is amended by inserting "such gains and losses shall be determined without regard to section 1202 and" after "except that".

(6) The table of sections for part I of subchapter P of chapter 1 is amended by adding after the item relating to section 1201 the following new item:

"Sec. 1202. 50-percent exclusion for gain from certain small business stock."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to stock issued after the date of the enactment of this Act.

SEC. 13114. ROLLOVER OF GAIN FROM SALE OF PUBLICLY TRADED SECURITIES INTO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.

(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. 1044. ROLLOVER OF PUBLICLY TRADED SECURITIES GAIN INTO SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.

"(a) NONRECOGNITION OF GAIN.—In the case of the sale of any publicly traded securities 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 common stock or partnership interest in a specialized small business investment company purchased by the taxpayer during the 60-day 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) LIMITATIONS.—

"(1) LIMITATION ON INDIVIDUALS.—In the case of an individual, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

"(A) $50,000, or

"(B) $500,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

"(2) LIMITATION ON C CORPORATIONS.—In the case of a C corporation, the amount of gain which may be excluded under subsection (a) for any taxable year shall not exceed the lesser of—

"(A) $250,000, or

"(B) $1,000,000, reduced by the amount of gain excluded under subsection (a) for all preceding taxable years.

"(3) SPECIAL RULES FOR MARRIED INDIVIDUALS.—For purposes of this subsection—

"(A) SEPARATE RETURNS.—In the case of a separate return by a married individual, paragraph (1) shall be applied by substituting '$25,000' for '$50,000' and '$250,000' for '$500,000'.

"(B) ALLOCATION OF GAIN.—In the case of any joint return, the amount of gain excluded under subsection (a) for any taxable year shall be allocated equally between the spouses for purposes of applying this subsection to subsequent taxable years.

"(C) MARITAL STATUS.—For purposes of this subsection, marital status shall be determined under section 7703.

"(4) SPECIAL RULES FOR C CORPORATION.—For purposes of this subsection—

"(A) all corporations which are members of the same controlled group of corporations (within the meaning of section 52(a)) shall be treated as 1 taxpayer, and

"(B) any gain excluded under subsection (a) by a predecessor of any C corporation shall be treated as having been excluded by such C corporation.

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

"(1) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities which are traded on an established securities market.

"(2) PURCHASE.—The term 'purchase' has the meaning given such term by section 1043(b)(4).

"(3) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term 'specialized small business investment company' means any partnership or corporation which is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

"(4) CERTAIN ENTITIES NOT ELIGIBLE.—This section shall not apply to any estate, trust, partnership, or S corporation.

"(d) 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 common stock or partnership interest in any specialized small business investment company which is purchased by the taxpayer during the 60-day period described in subsection (a). This subsection shall not apply for purposes of section 1202."

(b) CONFORMING AMENDMENT.—Paragraph (24) of section 1016(a) is amended—

(1) by striking "section 1043" and inserting "section 1043 or 1044", and

(2) by striking "section 1043(c)" and inserting "section 1043(c) or 1044(d), as the case may be".

(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. 1044. Rollover of publicly traded securities gain into specialized small business investment companies."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to sales on and after the date of the enactment of this Act, in taxable years ending on and after such date.

Subpart C—Modification To Minimum Tax Depreciation Rules

SEC. 13115. MODIFICATION TO MINIMUM TAX DEPRECIATION RULES.

(a) ELIMINATION OF ACE DEPRECIATION ADJUSTMENT.—Clause (i) of section 56(g)(4)(A) (relating to depreciation adjustments for computing adjusted current earnings) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any property placed in service after December 31, 1993, and the depreciation deduction with respect to such property shall be determined under the rules of subsection (a)(1)(A).".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to property placed in service after December 31, 1993.

(2) COORDINATION WITH TRANSITIONAL RULES.—The amendments made by this section shall not apply to any property to which paragraph (1) of section 56(a) of the Internal Revenue Code of 1986 does not apply by reason of subparagraph (C)(i) thereof.

Subpart D—Increase in Expense Treatment for Small Businesses

SEC. 13116. INCREASE IN EXPENSE TREATMENT FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Paragraph (1) of section 179(b) (relating to dollar limitation) is amended by striking "$10,000" and inserting "$17,500".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1992.

Subpart E—Tax Exempt Bonds

SEC. 13121. HIGH-SPEED INTERCITY RAIL FACILITY BONDS EXEMPT FROM STATE VOLUME CAP.

(a) IN GENERAL.—Paragraph (4) of section 146(g) (relating to exemption for certain bonds) is amended by adding at the end thereof the following flush sentence:

"Paragraph (4) shall be applied without regard to '75 percent of' if all of the property to be financed by the net proceeds of the issue is to be owned by a governmental unit (within the meaning of section 142(b)(1))."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to bonds issued after December 31, 1993.

SEC. 13122. PERMANENT EXTENSION OF QUALIFIED SMALL ISSUE BONDS.

(a) IN GENERAL.—Subparagraph (B) of section 144(a)(12) is amended to read as follows:

"(B) BONDS ISSUED TO FINANCE MANUFACTURING FACILITIES AND FARM PROPERTY.—Subparagraph (A) shall not apply to any bond issued as part of an issue 95 percent or more of the net proceeds of which are to be used to provide—

"(i) any manufacturing facility, or

"(ii) any land or property in accordance with section 147(c)(2)."

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

(c) TREATMENT UNDER INDUCEMENT REGULATIONS.—If the 1-year period specified in Treasury Regulation §1.103–8(a)(5) (as in effect before July 1, 1993) or any successor regulation would (but for this subsection) expire after June 30, 1992, and before January 1, 1994, such period shall not expire before January 1, 1994.

PART III—EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT

SEC. 13131. EXPANSION AND SIMPLIFICATION OF EARNED INCOME TAX CREDIT.

(a) GENERAL RULE.—Section 32 (relating to earned income credit) is amended by striking subsections (a) and (b) and inserting the following:

"(a) ALLOWANCE OF CREDIT.—

"(1) IN GENERAL.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

"(2) LIMITATION.—The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of—

"(A) the credit percentage of the earned income amount, over

"(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

"(b) PERCENTAGES AND AMOUNTS.—For purposes of subsection (a)—

"(1) PERCENTAGES.—The credit percentage and the phaseout percentage shall be determined as follows:

"(A) IN GENERAL.—In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	40	21.06
No qualifying children	7.65	7.65

"(B) TRANSITIONAL PERCENTAGES FOR 1995.—In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children	36	20.22
No qualifying children	7.65	7.65

"(C) TRANSITIONAL PERCENTAGES FOR 1994.—In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children	30	17.68
No qualifying children	7.65	7.65

"(2) AMOUNTS.—The earned income amount and the phaseout amount shall be determined as follows:

"(A) IN GENERAL.—In the case of taxable years beginning after 1994:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	$6,000	$11,000
2 or more qualifying children	$8,425	$11,000
No qualifying children	$4,000	$5,000

"(B) TRANSITIONAL AMOUNTS.—In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	$7,750	$11,000
2 or more qualifying children	$8,425	$11,000
No qualifying children	$4,000	$5,000".

(b) ELIGIBLE INDIVIDUAL.—Subparagraph (A) of section 32(c)(1) (defining eligible individual) is amended to read as follows:±

"(A) IN GENERAL.—The term 'eligible individual' means—

"(i) any individual who has a qualifying child for the taxable year, or

"(ii) any other individual who does not have a qualifying child for the taxable year, if—

"(I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,

"(II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and

"(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section 7703."

(c) INFLATION ADJUSTMENTS.—Section 32(i) (relating to inflation adjustments) is amended—

(1) by striking paragraphs (1) and (2) and inserting the following new paragraph:

"(1) IN GENERAL.—In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(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, by substituting 'calendar year 1993' for 'calendar year 1992'.", and

(2) by redesignating paragraph (3) as paragraph (2).

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (D) of section 32(c)(3) is amended—

(A) by striking "clause (i) or (ii)" in clause (iii) and inserting "clause (i)",

(B) by striking clause (ii), and

(C) by redesignating clause (iii) as clause (ii).

(2) Paragraph (3) of section 162(l) is amended to read as follows:

"(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a)."

(3) Section 213 is amended by striking subsection (f).

(4) Subsection (b) of section 3507 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) certifies that the employee has 1 or more qualifying children (within the meaning of section 32(c)(3)) for such taxable year,".

(5) Subparagraph (B) of section 3507(c)(2) is amended by striking clauses (i) and (ii) and inserting the following:

"(i) of not more than 60 percent of the credit percentage in effect under section 32(b)(1) for an eligible individual with 1 qualifying child and with earned income not in excess of the earned income amount in effect under section 32(b)(2) for such an eligible individual, which

"(ii) phases out at 60 percent of the phaseout percentage in effect under section 32(b)(1) for such an eligible individual between the phaseout amount in effect under section 32(b)(2) for such an eligible individual and the amount of earned income at which the credit under section 32(a) phases out for such an eligible individual, or".

(6) Section 3507 is amended by adding at the end thereof the following new subsection:

"(f) INTERNAL REVENUE SERVICE NOTIFICATION.—The Internal Revenue Service shall take such steps as may be appropriate to ensure that taxpayers who have 1 or more qualifying children and who receive a refund of the credit under section 32 are aware of the availability of earned income advance amounts under this section."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

PART IV—INCENTIVES FOR INVESTMENT IN REAL ESTATE

Subpart A—Extension of Qualified Mortgage Bonds and Low-Income Housing Credit

SEC. 13141. PERMANENT EXTENSION OF QUALIFIED MORTGAGE BONDS.

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

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

(b) MORTGAGE CREDIT CERTIFICATES.—Section 25 is amended by striking subsection (h) and by redesignating subsections (i) and (j) as subsections (h) and (i), respectively.

(c) TREATMENT OF RESALE PRICE CONTROL AND SUBSIDY LIEN PROGRAMS.—Subsection (k) of section 143 is amended by adding at the end thereof the following new paragraph:

"(10) TREATMENT OF RESALE PRICE CONTROL AND SUBSIDY LIEN PROGRAMS.—

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

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

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

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

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

(d) FINANCING ALLOWED FOR CONTRACT FOR DEED AGREEMENTS.—

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

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

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

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

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

(2) EXCEPTION TO NEW MORTGAGE REQUIREMENT.—Paragraph (1) of section 143(i) (relating

to mortgages must be new mortgages) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR CERTAIN CONTRACT FOR DEED AGREEMENTS.—

"(i) IN GENERAL.—In the case of land possessed under a contract for deed by a mortgagor—

"(I) whose principal residence (within the meaning of section 1034) is located on such land, and

"(II) whose family income (as defined in subsection (f)(2)) is not more than 50 percent of applicable median family income (as defined in subsection (f)(4)),

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

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

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

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

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

(e) FINANCING OF NEW 2-FAMILY RESIDENCES PERMITTED.—Paragraph (7) of section 143(k) is amended by adding at the end thereof the following flush sentence:

"Subparagraph (B) shall not apply to any 2-family residence if the residence is a targeted area residence and the family income of the mortgagor meets the requirement of subsection (f)(3)(B)."

(f) EFFECTIVE DATES.—

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

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

(3) SUBSECTIONS (c) AND (e).—The amendments made by subsections (c) and (e) shall apply to qualified mortgage bonds issued and mortgage credit certificates provided on or after the date of enactment of this Act.

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

SEC. 13142. LOW-INCOME HOUSING CREDIT.

(a) PERMANENT EXTENSION.—

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

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

(b) MODIFICATIONS.—

(1) HOUSING CREDIT AGENCY DETERMINATION OF REASONABLENESS OF PROJECT COSTS.—Subparagraph (B) of section 42(m)(2) (relating to credit allocated to building not to exceed amount necessary to assure project feasibility) is amended—

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

(B) by striking the period at the end of clause (iii) and inserting ", and", and

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

"(iv) the reasonableness of the developmental and operational costs of the project."

(2) UNITS WITH CERTAIN FULL-TIME STUDENTS NOT DISQUALIFIED.—Subparagraph (D) of section 42(i)(3) (defining low-income unit) is amended to read as follows:

"(D) CERTAIN STUDENTS NOT TO DISQUALIFY UNIT.—A unit shall not fail to be treated as a low-income unit merely because it is occupied—

"(i) by an individual who is—

"(I) a student and receiving assistance under title IV of the Social Security Act, or

"(II) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or

"(ii) entirely by full-time students if such students are—

"(I) single parents and their children and such parents and children are not dependents (as defined in section 152) of another individual, or

"(II) married and file a joint return."

(3) TREASURY WAIVERS OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.—Subsection (g) of section 42 (relating to qualified low-income housing projects) is amended by adding at the end thereof the following new paragraph:

"(8) WAIVER OF CERTAIN DE MINIMIS ERRORS AND RECERTIFICATIONS.—On application by the taxpayer, the Secretary may waive—

"(A) any recapture under subsection (j) in the case of any de minimis error in complying with paragraph (1), or

"(B) any annual recertification of tenant income for purposes of this subsection, if the entire building is occupied by low-income tenants."

(4) DISCRIMINATION AGAINST TENANTS PROHIBITED.—Section 42(h)(6)(B) (defining extended low-income housing commitment) is amended by redesignating clauses (iv) and (v) as clauses (v) and (vi) and by inserting after clause (iii) the following new clause:

"(iv) which prohibits the refusal to lease to a holder of a voucher or certificate of eligibility under section 8 of the United States Housing Act of 1937 because of the status of the prospective tenant as such a holder,".

(5) HOME ASSISTANCE NOT TO RESULT IN CERTAIN BUILDINGS BEING FEDERALLY SUBSIDIZED.—Paragraph (2) of section 42(i) (relating to determination of whether building is federally subsidized) is amended by adding at the end thereof the following new subparagraph:

"(E) BUILDINGS RECEIVING HOME ASSISTANCE.—

"(i) IN GENERAL.—Assistance provided under the HOME Investment Partnerships Act (as in effect on the date of the enactment of this subparagraph) with respect to any building shall not be taken into account under subparagraph (D) if 40 percent or more of the residential units in the building are occupied by individuals whose income is 50 percent or less of area median gross income. Subsection (d)(5)(C) shall not apply to any building to which the preceding sentence applies.

"(ii) SPECIAL RULE FOR CERTAIN HIGH-COST HOUSING AREAS.—In the case of a building located in a city described in section 142(d)(6), clause (i) shall be applied by substituting '25 percent' for '40 percent'."

(6) EFFECTIVE DATES.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the amendments made by this subsection shall apply to—

(i) determinations under section 42 of the Internal Revenue Code of 1986 with respect to housing credit dollar amounts allocated from State housing credit ceilings after June 30, 1992, or

(ii) buildings placed in service after June 30, 1992, to the extent paragraph (1) of section 42(h) of such Code does not apply to any building by reason of paragraph (4) thereof, but only with respect to bonds issued after such date.

(B) WAIVER AUTHORITY AND PROHIBITED DISCRIMINATION.—The amendments made by paragraphs (3) and (4) shall take effect on the date of the enactment of this Act.

(C) HOME ASSISTANCE.—The amendment made by paragraph (2) shall apply to periods after the date of the enactment of this Act.

(c) ELECTION TO DETERMINE RENT LIMITATION BASED ON NUMBER OF BEDROOMS AND DEEP RENT SKEWING.—

(1) In the case of a building to which the amendments made by subsection (e)(1) or (n)(2) of section 7108 of the Revenue Reconciliation Act of 1989 did not apply, the taxpayer may elect to have such amendments apply to such building if the taxpayer has met the requirements of the procedures described in section 42(m)(1)(B)(iii) of the Internal Revenue Code of 1986.

(2) In the case of the amendment made by such subsection (e)(1), such election shall apply only with respect to tenants first occupying any unit in the building after the date of the election.

(3) In the case of the amendment made by such subsection (n)(2), such election shall apply only if rents of low-income tenants in such building do not increase as a result of such election.

(4) An election under this subsection may be made only during the 180 day period beginning on the date of the enactment of this Act and, once made, shall be irrevocable.

Subpart B—Passive Loss Rules

SEC. 13143. APPLICATION OF PASSIVE LOSS RULES TO RENTAL REAL ESTATE ACTIVITIES.

(a) RENTAL REAL ESTATE ACTIVITIES OF PERSONS IN REAL PROPERTY BUSINESS NOT AUTOMATICALLY TREATED AS PASSIVE ACTIVITIES.—Subsection (c) of section 469 (defining passive activity) is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULES FOR TAXPAYERS IN REAL PROPERTY BUSINESS—

"(A) IN GENERAL.—If this paragraph applies to any taxpayer for a taxable year—

"(i) paragraph (2) shall not apply to any rental real estate activity of such taxpayer for such taxable year, and

"(ii) this section shall be applied as if each interest of the taxpayer in rental real estate were a separate activity.

Notwithstanding clause (ii), a taxpayer may elect to treat all interests in rental real estate as one activity. Nothing in the preceding provisions of this subparagraph shall be construed as affecting the determination of whether the taxpayer materially participates with respect to any interest in a limited partnership as a limited partner.

"(B) TAXPAYERS TO WHOM PARAGRAPH APPLIES.—This paragraph shall apply to a taxpayer for a taxable year if—

"(i) more than one-half of the personal services performed in trades or businesses by the taxpayer during such taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and

"(ii) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates.

In the case of a joint return, the requirements of the preceding sentence are satisfied if and only if either spouse separately satisfies such requirements. For purposes of the preceding sentence, activities in which a spouse materially participates shall be determined under subsection (h).

"(C) REAL PROPERTY TRADE OR BUSINESS.—For purposes of this paragraph, the term 'real property trade or business' means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

"(D) SPECIAL RULES FOR SUBPARAGRAPH (B).—

"(i) CLOSELY HELD C CORPORATIONS.—In the case of a closely held C corporation, the requirements of subparagraph (B) shall be treated as met for any taxable year if more than 50 percent of the gross receipts of such corporation for such taxable year are derived from real property trades or businesses in which the corporation materially participates.

"(ii) PERSONAL SERVICES AS AN EMPLOYEE.—For purposes of subparagraph (B), personal services performed as an employee shall not be treated as performed in real property trades or businesses. The preceding sentence shall not apply if such employee is a 5-percent owner (as defined in section 416(i)(1)(B)) in the employer."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 469(c) is amended by striking "The" and inserting "Except as provided in paragraph (7), the".

(2) Clause (iv) of section 469(i)(3)(E) is amended by inserting "or any loss allowable by reason of subsection (c)(7)" after "loss".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart C—Provisions Relating to Real Estate Investments by Pension Funds

SEC. 13144. REAL ESTATE PROPERTY ACQUIRED BY A QUALIFIED ORGANIZATION.

(a) MODIFICATIONS OF EXCEPTIONS.—Paragraph (9) of section 514(c) (relating to real property acquired by a qualified organization) is amended by adding at the end thereof the following new subparagraphs:

"(G) SPECIAL RULES FOR PURPOSES OF THE EXCEPTIONS.—Except as otherwise provided by regulations—

"(i) SMALL LEASES DISREGARDED.—For purposes of clauses (iii) and (iv) of subparagraph (B), a lease to a person described in such clause (iii) or (iv) shall be disregarded if no more than 25 percent of the leasable floor space in a building (or complex of buildings) is covered by the lease and if the lease is on commercially reasonable terms.

"(ii) COMMERCIALLY REASONABLE FINANCING.—Clause (v) of subparagraph (B) shall not apply if the financing is on commercially reasonable terms.

"(H) QUALIFYING SALES BY FINANCIAL INSTITUTIONS.—

"(i) IN GENERAL.—In the case of a qualifying sale by a financial institution, except as provided in regulations, clauses (i) and (ii) of subparagraph (B) shall not apply with respect to financing provided by such institution for such sale.

"(ii) QUALIFYING SALE.—For purposes of this clause, there is a qualifying sale by a financial institution if—

"(I) a qualified organization acquires property described in clause (iii) from a financial institution and any gain recognized by the financial institution with respect to the property is ordinary income,

"(II) the stated principal amount of the financing provided by the financial institution does not exceed the amount of the outstanding indebtedness (including accrued but unpaid interest) of the financial institution with respect to the property described in clause (iii) immediately before the acquisition referred to in clause (iii) or (v), whichever is applicable, and

"(III) the present value (determined as of the time of the sale and by using the applicable Federal rate determined under section 1274(d)) of the maximum amount payable pursuant to the financing that is determined by reference to the revenue, income, or profits derived from the property cannot exceed 30 percent of the total purchase price of the property (including the contingent payments).

"(iii) PROPERTY TO WHICH SUBPARAGRAPH APPLIES.—Property is described in this clause if such property is foreclosure property, or is real property which—

"(I) was acquired by the qualified organization from a financial institution which is in conservatorship or receivership, or from the conservator or receiver of such an institution, and

"(II) was held by the financial institution at the time it entered into conservatorship or receivership.

"(iv) FINANCIAL INSTITUTION.—For purposes of this subparagraph, the term 'financial institution' means—

"(I) any financial institution described in section 581 or 591(a),

"(II) any other corporation which is a direct or indirect subsidiary of an institution referred to in subclause (I) but only if, by virtue of being affiliated with such institution, such other corporation is subject to supervision and examination by a Federal or State agency which regulates institutions referred to in subclause (I), and

"(III) any person acting as a conservator or receiver of an entity referred to in subclause (I) or (II) (or any government agency or corporation succeeding to the rights or interest of such person).

"(v) FORECLOSURE PROPERTY.—For purposes of this subparagraph, the term 'foreclosure property' means any real property acquired by the financial institution as the result of having bid on such property at foreclosure, or by operation of an agreement or process of law, after there was a default (or a default was imminent) on indebtedness which such property secured.".

(b) CONFORMING AMENDMENT.—Paragraph (9) of section 514(c) is amended—

(1) by adding the following new sentence at the end of subparagraph (A): "For purposes of this paragraph, an interest in a mortgage shall in no event be treated as real property.", and

(2) by striking the last sentence of subparagraph (B).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to acquisitions on or after January 1, 1994.

(2) SMALL LEASES.—The provisions of section 514(c)(9)(G)(i) of the Internal Revenue Code of 1986 shall, in addition to any leases to which the provisions apply by reason of paragraph (1), apply to leases entered into on or after January 1, 1994.

SEC. 13145. REPEAL OF SPECIAL TREATMENT OF PUBLICLY TREATED PARTNERSHIPS.

(a) GENERAL RULE.—Subsection (c) of section 512 is amended—

(1) by striking paragraph (2),

(2) by redesignating paragraph (3) as paragraph (2), and

(3) by striking "paragraph (1) or (2)" in paragraph (2) (as so redesignated) and inserting "paragraph (1)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to partnership years beginning on or after January 1, 1994.

SEC. 13146. TITLE-HOLDING COMPANIES PERMITTED TO RECEIVE SMALL AMOUNTS OF UNRELATED BUSINESS TAXABLE INCOME.

(a) GENERAL RULE.—Paragraph (25) of section 501(c) is amended by adding at the end thereof the following new subparagraph:

"(G)(i) An organization shall not be treated as failing to be described in this paragraph merely by reason of the receipt of any otherwise disqualifying income which is incidentally derived from the holding of real property.

"(ii) Clause (i) shall not apply if the amount of gross income described in such clause exceeds 10 percent of the organization's gross income for the taxable year unless the organization establishes to the satisfaction of the Secretary that the receipt of gross income described in clause (i) in excess of such limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such income."

(b) CONFORMING AMENDMENT.—Paragraph (2) of section 501(c) is amended by adding at the end thereof the following new sentence: "Rules similar to the rules of subparagraph (G) of paragraph (25) shall apply for purposes of this paragraph."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1994.

SEC. 13147. EXCLUSION FROM UNRELATED BUSINESS TAX OF GAINS FROM CERTAIN PROPERTY.

(a) GENERAL RULE.—Subsection (b) of section 512 (relating to modifications) is amended by adding at the end thereof the following new paragraph:

"(16)(A) Notwithstanding paragraph (5)(B), there shall be excluded all gains or losses from the sale, exchange, or other disposition of any real property described in subparagraph (B) if—

"(i) such property was acquired by the organization from—

"(I) a financial institution described in section 581 or 591(a) which is in conservatorship or receivership, or

"(II) the conservator or receiver of such an institution (or any government agency or corporation succeeding to the rights or interests of the conservator or receiver),

"(ii) such property is designated by the organization within the 9-month period beginning on the date of its acquisition as property held for sale, except that not more than one-half (by value determined as of such date) of property acquired in a single transaction may be so designated,

"(iii) such sale, exchange, or disposition occurs before the later of—

"(I) the date which is 30 months after the date of the acquisition of such property, or

"(II) the date specified by the Secretary in order to assure an orderly disposition of property held by persons described in subparagraph (A), and

"(iv) while such property was held by the organization, the aggregate expenditures on improvements and development activities included in the basis of the property are (or were) not in excess of 20 percent of the net selling price of such property.

"(B) Property is described in this subparagraph if it is real property which—

"(i) was held by the financial institution at the time it entered into conservatorship or receivership, or

"(ii) was foreclosure property (as defined in section 514(c)(9)(H)(v)) which secured indebtedness held by the financial institution at such time.

For purposes of this subparagraph, real property includes an interest in a mortgage."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property acquired on or after January 1, 1994.

SEC. 13148. EXCLUSION FROM UNRELATED BUSINESS TAX OF CERTAIN FEES AND OPTION PREMIUMS.

(a) LOAN COMMITMENT FEES.—Paragraph (1) of section 512(b) (relating to modifications) is amended by inserting "amounts received or accrued as consideration for entering into agreements to make loans," before "and annuities".

(b) OPTION PREMIUMS.—The second sentence of section 512(b)(5) is amended—

(1) by striking "all gains on" and inserting "all gains or losses recognized, in connection with the organization's investment activities, from",

(2) by striking ", written by the organization in connection with its investment activities," and

(3) by inserting "or real property and all gains or losses from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale, or lease of real property in connection with the organization's investment activities" before the period.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts received on or after January 1, 1994.

SEC. 13149. TREATMENT OF PENSION FUND INVESTMENTS IN REAL ESTATE INVESTMENT TRUSTS.

(a) GENERAL RULE.—Subsection (h) of section 856 (relating to closely held determinations) is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF TRUSTS DESCRIBED IN SECTION 401(a).—

"(A) LOOK-THRU TREATMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), in determining whether the stock ownership requirement of section 542(a)(2) is met for purposes of paragraph (1)(A), any stock held by a qualified trust shall be treated as held directly by its beneficiaries in proportion to their actuarial interests in such trust and shall not be treated as held by such trust.

"(ii) CERTAIN RELATED TRUSTS NOT ELIGIBLE.—Clause (i) shall not apply to any qualified trust if one or more disqualified persons (as defined in section 4975(e)(2), without regard to subparagraphs (B) and (I) thereof) with respect to such qualified trust hold in the aggregate 5 percent or more in value of the interests in the real estate investment trust and such real estate investment trust has accumulated earnings and profits attributable to any period for which it did not qualify as a real estate investment trust.

"(B) COORDINATION WITH PERSONAL HOLDING COMPANY RULES.—If any entity qualifies as a real estate investment trust for any taxable year by reason of subparagraph (A), such entity shall not be treated as a personal holding company for such taxable year for purposes of part II of subchapter G of this chapter.

"(C) TREATMENT FOR PURPOSES OF UNRELATED BUSINESS TAX.—If any qualified trust holds more than 10 percent (by value) of the interests in any pension-held REIT at any time during a taxable year, the trust shall be treated as having for such taxable year gross income from an unrelated trade or business in an amount which bears the same ratio to the aggregate dividends paid (or treated as paid) by the REIT to the trust for the taxable year of the REIT with or within which the taxable year of the trust ends (the 'REIT year') as—

"(i) the gross income (less direct expenses related thereto) of the REIT for the REIT year from unrelated trades or businesses (determined as if the REIT were a qualified trust), bears to

"(ii) the gross income (less direct expenses related thereto) of the REIT for the REIT year.

This subparagraph shall apply only if the ratio determined under the preceding sentence is at least 5 percent.

"(D) PENSION-HELD REIT.—The purposes of subparagraph (C)—

"(i) IN GENERAL.—A real estate investment trust is a pension-held REIT if such trust would not have qualified as a real estate investment trust but for the provisions of this paragraph and if such trust is predominantly held by qualified trusts.

"(ii) PREDOMINANTLY HELD.—For purposes of clause (i), a real estate investment trust is predominantly held by qualified trusts if—

"(I) at least 1 qualified trust holds more than 25 percent (by value) of the interests in such real estate investment trust, or

"(II) 1 or more qualified trusts (each of whom own more than 10 percent by value of the interests in such real estate investment trust) hold in the aggregate more than 50 percent (by value) of the interests in such real estate investment trust.

"(E) QUALIFIED TRUST.—For purposes of this paragraph, the term 'qualified trust' means any trust described in section 401(a) and exempt from tax under section 501(a)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 1993.

Subpart D—Discharge of Indebtedness

SEC. 13150. EXCLUSION FROM GROSS INCOME FOR INCOME FROM DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.

(a) IN GENERAL.—Paragraph (1) of section 108(a) (relating to income from discharge of indebtedness) is amended by striking "or" at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting ", or", and by adding at the end the following new subparagraph:

"(D) in the case of a taxpayer other than a C corporation, the indebtedness discharged is qualified real property business indebtedness."

(b) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—Section 108 is amended by inserting after subsection (b) the following new subsection:

"(c) TREATMENT OF DISCHARGE OF QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—

"(1) BASIS REDUCTION.—

"(A) IN GENERAL.—The amount excluded from gross income under subparagraph (D) of subsection (a)(1) shall be applied to reduce the basis of the depreciable real property of the taxpayer.

"(B) CROSS REFERENCE.—For provisions making the reduction described in subparagraph (A), see section 1017.

"(2) LIMITATIONS.—

"(A) INDEBTEDNESS IN EXCESS OF VALUE.—The amount excluded under subparagraph (D) of subsection (a)(1) with respect to any qualified real property business indebtedness shall not exceed the excess (if any) of—

"(i) the outstanding principal amount of such indebtedness (immediately before the discharge), over

"(ii) the fair market value of the real property described in paragraph (3)(A) (as of such time), reduced by the outstanding principal amount of any other qualified real property business indebtedness secured by such property (as of such time).

"(B) OVERALL LIMITATION.—The amount excluded under subparagraph (D) of subsection (a)(1) shall not exceed the aggregate adjusted bases of depreciable real property (determined after any reductions under subsections (b) and (g)) held by the taxpayer immediately before the discharge (other than depreciable real property acquired in contemplation of such discharge).

"(3) QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—The term 'qualified real property business indebtedness' means indebtedness which—

"(A) was incurred or assumed by the taxpayer in connection with real property used in a trade or business and is secured by such real property,

"(B) was incurred or assumed before January 1, 1993, or if incurred or assumed on or after such date, is qualified acquisition indebtedness, and

"(C) with respect to which such taxpayer makes an election to have this paragraph apply.

Such term shall not include qualified farm indebtedness. Indebtedness under subparagraph (B) shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (B) (or this sentence), but only to the extent it does not exceed the amount of the indebtedness being refinanced.

"(4) QUALIFIED ACQUISITION INDEBTEDNESS.—For purposes of paragraph (3)(B), the term 'qualified acquisition indebtedness' means, with respect to any real property described in paragraph (3)(A), indebtedness incurred or assumed to acquire, construct, reconstruct, or substantially improve such property.

"(5) REGULATIONS.—The Secretary shall issue such regulations as are necessary to carry out this subsection, including regulations preventing the abuse of this subsection through cross-collateralization or other means."

(c) TECHNICAL AMENDMENTS.—

(1) Subparagraph (A) of section 108(a)(2) is amended by striking "and (C)" and inserting ", (C), and (D)".

(2) Subparagraph (B) of section 108(a)(2) is amended to read as follows:

"(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION AND QUALIFIED REAL PROPERTY BUSINESS EXCLUSION.—Subparagraphs (C) and (D) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent."

(3) Subsection (d) of section 108 is amended—

(A) by striking "subsections (a), (b), and (g)" in paragraphs (6) and (7)(A) and inserting "subsections (a), (b), (c), and (g)",

(B) by striking "SUBSECTIONS (a), (b), AND (g)" in the subsection heading and inserting "CERTAIN PROVISIONS", and

(C) by striking "SUBSECTIONS (a), (b), AND (g)" in the headings of paragraphs (6) and (7)(A) and inserting "CERTAIN PROVISIONS".

(4) Subparagraph (B) of section 108(d)(7) is amended by adding at the end thereof the following new sentence: "The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(D) applies to such discharge."

(5) Subparagraph (A) of section 108(d)(9) is amended by inserting "or under paragraph (3)(B) of subsection (c)" after "subsection (b)".

(6) Paragraph (2) of section 1017(a) is amended by striking "or (b)(5)" and inserting ", (b)(5), or (c)(1)".

(7) Subparagraph (A) of section 1017(b)(3) is amended by inserting "or (c)(1)" after "subsection (b)(5)".

(8) Section 1017(b)(3) is amended by adding at the end the following new subparagraph:

"(F) SPECIAL RULES FOR QUALIFIED REAL PROPERTY BUSINESS INDEBTEDNESS.—In the case of any amount which under section 108(c)(1) is to be applied to reduce basis—

"(i) depreciable property shall only include depreciable real property for purposes of subparagraphs (A) and (C),

"(ii) subparagraph (E) shall not apply, and

"(iii) in the case of property taken into account under section 108(c)(2)(B), the reduction with respect to such property shall be made as of the time immediately before disposition if earlier than the time under subsection (a)."

(9) Paragraph (1) of section 703(b) is amended by striking "subsection (b)(5)" and inserting "subsection (b)(5) or (c)(3)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to discharges after December 31, 1992, in taxable years ending after such date.

Subpart E—Increase in Recovery Period for Nonresidential Real Property

SEC. 13151. INCREASE IN RECOVERY PERIOD FOR NONRESIDENTIAL REAL PROPERTY.

(a) GENERAL RULE.—Paragraph (1) of section 168(c) (relating to applicable recovery period) is amended by striking the item relating to nonresidential real property and inserting the following:

"Nonresidential real property ..... 39 years.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall apply to property placed in service by the taxpayer on or after May 13, 1993.

(2) EXCEPTION.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1994, if—

(A) the taxpayer or a qualified person entered into a binding written contract to purchase or construct such property before May 13, 1993, or

(B) the construction of such property was commenced by or for the taxpayer or a qualified person before May 13, 1993.

For purposes of this paragraph, the term "qualified person" means any person who transfers his rights in such a contract or such property to the taxpayer but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

PART V—LUXURY TAX

SEC. 13161. REPEAL OF LUXURY EXCISE TAXES OTHER THAN ON PASSENGER VEHICLES.

(a) IN GENERAL.—Subchapter A of chapter 31 (relating to retail excise taxes) is amended to read as follows:

"Subchapter A—Luxury Passenger Automobiles

"Sec. 4001. Imposition of tax.

"Sec. 4002. 1st retail sale; uses, etc. treated as sales; determination of price.

"Sec. 4003. Special rules.

"SEC. 4001. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—There is hereby imposed on the 1st retail sale of any passenger vehicle a tax equal to 10 percent of the price for which so sold to the extent such price exceeds $30,000.

"(b) PASSENGER VEHICLE.—

"(1) IN GENERAL.—For purposes of this subchapter, the term 'passenger vehicle' means any 4-wheeled vehicle—

"(A) which is manufactured primarily for use on public streets, roads, and highways, and

"(B) which is rated at 6,000 pounds unloaded gross vehicle weight or less.

"(2) SPECIAL RULES.—

"(A) TRUCKS AND VANS.—In the case of a truck or van, paragraph (1)(B) shall be applied by substituting 'gross vehicle weight' for 'unloaded gross vehicle weight'.

"(B) LIMOUSINES.—In the case of a limousine, paragraph (1) shall be applied without regard to subparagraph (B) thereof.

"(c) EXCEPTIONS FOR TAXICABS, ETC.—The tax imposed by this section shall not apply to the sale of any passenger vehicle for use by the purchaser exclusively in the active conduct of a trade or business of transporting persons or property for compensation or hire.

"(d) EXEMPTION FOR LAW ENFORCEMENT USES, ETC.—No tax shall be imposed by this section on the sale of any passenger vehicle—

"(1) to the Federal Government, or a State or local government, for use exclusively in police, firefighting, search and rescue, or other law enforcement or public safety activities, or in public works activities, or

"(2) to any person for use exclusively in providing emergency medical services.

"(e) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—If, for any calendar year, the excess (if any) of—

"(A) $30,000, increased by the cost-of-living adjustment for the calendar year, over

"(B) the dollar amount in effect under subsection (a) for the calendar year,

is equal to or greater than $2,000, then the $30,000 amount in subsection (a) and section 4003(a) (as previously adjusted under this subsection) for any subsequent calendar year shall be increased by the amount of such excess rounded to the next lowest multiple of $2,000.

"(2) COST-OF-LIVING ADJUSTMENT.—For purposes of paragraph (1), the cost-of-living adjustment for any calendar year shall be the cost-of-living adjustment under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 1990' for 'calendar year 1992' in subparagraph (B) thereof.

"(f) TERMINATION.—The tax imposed by this section shall not apply to any sale or use after December 31, 1999.

"SEC. 4002. 1ST RETAIL SALE; USES, ETC. TREATED AS SALES; DETERMINATION OF PRICE.

"(a) 1ST RETAIL SALE.—For purposes of this subchapter, the term '1st retail sale' means the 1st sale, for a purpose other than resale, after manufacture, production, or importation.

"(b) USE TREATED AS SALE.—

"(1) IN GENERAL.—If any person uses a passenger vehicle (including any use after importation) before the 1st retail sale of such vehicle, then such person shall be liable for tax under this subchapter in the same manner as if such vehicle were sold at retail by him.

"(2) EXEMPTION FOR FURTHER MANUFACTURE.—Paragraph (1) shall not apply to use of a vehicle as material in the manufacture or production of, or as a component part of, another vehicle taxable under this subchapter to be manufactured or produced by him.

"(3) EXEMPTION FOR DEMONSTRATION USE.—Paragraph (1) shall not apply to any use of a passenger vehicle as a demonstrator.

"(4) EXCEPTION FOR USE AFTER IMPORTATION OF CERTAIN VEHICLES.—Paragraph (1) shall not apply to the use of a vehicle after importation if the user or importer establishes to the satisfaction of the Secretary that the 1st use of the vehicle occurred before January 1, 1991, outside the United States.

"(5) COMPUTATION OF TAX.—In the case of any person made liable for tax by paragraph (1), the tax shall be computed on the price at which similar vehicles are sold at retail in the ordinary course of trade, as determined by the Secretary.

"(c) LEASES CONSIDERED AS SALES.—For purposes of this subchapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the lease of a vehicle (including any renewal or any extension of a lease or any subsequent lease of such vehicle) by any person shall be considered a sale of such vehicle at retail.

"(2) SPECIAL RULES FOR LONG-TERM LEASES.—

"(A) TAX NOT IMPOSED ON SALE FOR LEASING IN A QUALIFIED LEASE.—The sale of a passenger vehicle to a person engaged in a passenger vehicle leasing or rental trade or business for leasing by such person in a long-term lease shall not be treated as the 1st retail sale of such vehicle.

"(B) LONG-TERM LEASE.—For purposes of subparagraph (A), the term 'long-term lease' means any long-term lease (as defined in section 4052).

"(C) SPECIAL RULES.—In the case of a long-term lease of a vehicle which is treated as the 1st retail sale of such vehicle—

"(i) DETERMINATION OF PRICE.—The tax under this subchapter shall be computed on the lowest price for which the vehicle is sold by retailers in the ordinary course of trade.

"(ii) PAYMENT OF TAX.—Rules similar to the rules of section 4217(e)(2) shall apply.

"(iii) NO TAX WHERE EXEMPT USE BY LESSEE.—No tax shall be imposed on any lease payment under a long-term lease if the lessee's use of the vehicle under such lease is an exempt use (as defined in section 4003(b)) of such vehicle.

"(d) DETERMINATION OF PRICE.—

"(1) IN GENERAL.—In determining price for purposes of this subchapter—

"(A) there shall be included any charge incident to placing the passenger vehicle in condition ready for use,

"(B) there shall be excluded—

"(i) the amount of the tax imposed by this subchapter,

"(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee, and

"(iii) the value of any component of such passenger vehicle if—

"(I) such component is furnished by the 1st user of such passenger vehicle, and

"(II) such component has been used before such furnishing, and

"(C) the price shall be determined without regard to any trade-in.

"(2) OTHER RULES.—Rules similar to the rules of paragraphs (2) and (4) of section 4052(b) shall apply for purposes of this subchapter.

"SEC. 4003. SPECIAL RULES.

"(a) SEPARATE PURCHASE OF VEHICLE AND PARTS AND ACCESSORIES THEREFOR.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—Except as provided in paragraph (2), if—

"(A) the owner, lessee, or operator of any passenger vehicle installs (or causes to be installed) any part or accessory on such vehicle, and

"(B) such installation is not later than the date 6 months after the date the vehicle was 1st placed in service,

then there is hereby imposed on such installation a tax equal to 10 percent of the price of such part or accessory and its installation.

"(2) LIMITATION.—The tax imposed by paragraph (1) on the installation of any part or accessory shall not exceed 10 percent of the excess (if any) of—

"(A) the sum of—

"(i) the price of such part or accessory and its installation,

"(ii) the aggregate price of the parts and accessories (and their installation) installed before such part or accessory, plus

"(iii) the price for which the passenger vehicle was sold, over

"(B) $30,000.

"(3) EXCEPTIONS.—Paragraph (1) shall not apply if—

"(A) the part or accessory installed is a replacement part or accessory,

"(B) the part or accessory is installed to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or

"(C) the aggregate price of the parts and accessories (and their installation) described in paragraph (1) with respect to the vehicle does not exceed $200 (or such other amount or amounts as the Secretary may by regulation prescribe).

The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A).

"(4) INSTALLERS SECONDARILY LIABLE FOR TAX.—The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by this subsection.

"(b) IMPOSITION OF TAX ON SALES, ETC., WITHIN 2 YEARS OF VEHICLES PURCHASED TAX-FREE.—

"(1) IN GENERAL.—If—

"(A) no tax was imposed under this subchapter on the 1st retail sale of any passenger vehicle by reason of its exempt use, and

"(B) within 2 years after the date of such 1st retail sale, such vehicle is resold by the purchaser or such purchaser makes a substantial nonexempt use of such vehicle,

then such sale or use of such vehicle by such purchaser shall be treated as the 1st retail sale of such vehicle for a price equal to its fair market value at the time of such sale or use.

"(2) EXEMPT USE.—For purposes of this subsection, the term 'exempt use' means any use of

a vehicle if the 1st retail sale of such vehicle is not taxable under this subchapter by reason of such use.

"(c) PARTS AND ACCESSORIES SOLD WITH TAXABLE PASSENGER VEHICLE.—Parts and accessories sold on, in connection with, or with the sale of any passenger vehicle shall be treated as part of the vehicle.

"(d) PARTIAL PAYMENTS, ETC.—In the case of a contract, sale, or arrangement described in paragraph (2), (3), or (4) of section 4216(c), rules similar to the rules of section 4217(e)(2) shall apply for purposes of this subchapter."

(b) TECHNICAL AMENDMENTS.—

(1) Subsection (c) of section 4221 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(2) Subsection (d) of section 4222 is amended by striking "4002(b), 4003(c), 4004(a)" and inserting "4001(d)".

(3) The table of subchapters for chapter 31 is amended by striking the item relating to subchapter A and inserting the following:

"Subchapter A. Luxury passenger vehicles."

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1993, except that the provisions of section 4001(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall take effect on the date of the enactment of this Act.

SEC. 13162. EXEMPTION FROM LUXURY EXCISE TAX FOR CERTAIN EQUIPMENT INSTALLED ON PASSENGER VEHICLES FOR USE BY DISABLED INDIVIDUALS.

(a) IN GENERAL.—Paragraph (3) of section 4004(b) (relating to separate purchase of article and parts and accessories therefor), as in effect on the day before the date of the enactment of this Act, is amended—

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

(2) by redesignating subparagraph (B) as subparagraph (C),

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

"(B) the part or accessory is installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, by compensating for the effect of such disability, or", and

(4) by inserting after subparagraph (C) the following flush sentence:

"The price of any part or accessory (and its installation) to which paragraph (1) does not apply by reason of this paragraph shall not be taken into account under paragraph (2)(A)."

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 11221(a) of the Omnibus Budget Reconciliation Act of 1990.

(c) PERIOD FOR FILING CLAIMS.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to such amendments) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period.

SEC. 13163. TAX ON DIESEL FUEL USED IN NONCOMMERCIAL BOATS.

(a) GENERAL RULE.—

(1) Paragraph (2) of section 4092(a) (defining diesel fuel) is amended by striking "or a diesel-powered train" and inserting ", a diesel-powered train, or a diesel-powered boat".

(2) Paragraph (1) of section 4041(a) is amended—

(A) by striking "diesel-powered highway vehicle" each place it appears and inserting "diesel-powered highway vehicle or diesel-powered boat", and

(B) by striking "such vehicle" and inserting "such vehicle or boat".

(3) Subparagraph (B) of section 4092(b)(1) is amended by striking "commercial and noncommercial vessels" each place it appears and inserting "vessels for use in an off-highway business use (as defined in section 6421(e)(2)(B))".

(b) EXEMPTION FOR USE IN FISHERIES OR COMMERCIAL TRANSPORTATION.—Subparagraph (B) of section 6421(e)(2) is amended to read as follows:

"(B) USES IN BOATS.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the term 'off-highway business use' does not include any use in a motorboat.

"(ii) FISHERIES AND WHALING.—The term 'off-highway business use' shall include any use in a vessel employed in the fisheries or in the whaling business.

"(iii) EXCEPTION FOR DIESEL FUEL.—The term 'off-highway business use' shall include the use of diesel fuel in a boat in the active conduct of—

"(I) a trade or business of commercial fishing or transporting persons or property for compensation or hire, and

"(II) except as provided in clause (iv), any other trade or business.

"(iv) NONCOMMERCIAL BOATS.—In the case of a boat used predominantly in any activity which is of a type generally considered to constitute entertainment, amusement, or recreation, clause (iii)(II) shall not apply to—

"(I) the taxes under sections 4041(a)(1) and 4081 for the period after December 31, 1993, and before January 1, 2000, and

"(II) so much of the tax under sections 4041(a)(1) and 4081 as does not exceed 4.3 cents per gallon for the period after December 31, 1999."

(c) RETENTION OF TAXES IN GENERAL FUND.—Subsection (b) of section 9508 (relating to transfers to Leaking Underground Storage Tank Trust Fund) is amended by adding at the end thereof the following new sentence: "For purposes of this subsection, there shall not be taken into account the taxes imposed by sections 4041 and 4081 on diesel fuel sold for use or used as fuel in a diesel-powered boat."

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

PART VI—OTHER CHANGES

SEC. 13171. ALTERNATIVE MINIMUM TAX TREATMENT OF CONTRIBUTIONS OF APPRECIATED PROPERTY.

(a) REPEAL OF TAX PREFERENCE.—Subsection (a) of section 57 (as amended by section 13113) is amended by striking paragraph (6) (relating to appreciated property charitable deduction) and by redesignating paragraphs (7) and (8) as paragraphs (6) and (7), respectively.

(b) EFFECT ON ADJUSTED CURRENT EARNINGS.—Paragraph (4) of section 56(g) is amended by adding at the end thereof the following new subparagraph:

"(J) TREATMENT OF CHARITABLE CONTRIBUTIONS.—Notwithstanding subparagraphs (B) and (C), no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing adjusted current earnings."

(c) CONFORMING AMENDMENT.—Subclause (II) of section 53(d)(1)(B)(ii) (as amended by section 13113) is amended by striking "(5), (6), and (8)" and inserting "(5), and (7)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions made after June 30, 1992, except that in the case of any contribution of capital gain property which is not tangible personal property, such amendments shall apply only if the contribution is made after December 31, 1992.

SEC. 13172. SUBSTANTIATION REQUIREMENT FOR DEDUCTION OF CERTAIN CHARITABLE CONTRIBUTIONS.

(a) SUBSTANTIATION REQUIREMENT.—Section 170(f) (providing special rules relating to the deduction of charitable contributions and gifts) is amended by adding at the end the following new paragraph:

"(8) SUBSTANTIATION REQUIREMENT FOR CERTAIN CONTRIBUTIONS.—

"(A) GENERAL RULE.—No deduction shall be allowed under subsection (a) for any contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment of the contribution by the donee organization that meets the requirements of subparagraph (B).

"(B) CONTENT OF ACKNOWLEDGEMENT.—An acknowledgement meets the requirements of this subparagraph if it includes the following information:

"(i) The amount of cash and a description (but not value) of any property other than cash contributed.

"(ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).

"(iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

For purposes of this subparagraph, the term 'intangible religious benefit' means any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context.

"(C) CONTEMPORANEOUS.—For purposes of subparagraph (A), an acknowledgment shall be considered to be contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of—

"(i) the date on which the taxpayer files a return for the taxable year in which the contribution was made, or

"(ii) the due date (including extensions) for filing such return.

"(D) SUBSTANTIATION NOT REQUIRED FOR CONTRIBUTIONS REPORTED BY THE DONEE ORGANIZATION.—Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

"(E) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph, including regulations that may provide that some or all of the requirements of this paragraph do not apply in appropriate cases."

(b) EFFECTIVE DATE.—The provisions of this section shall apply to contributions made on or after January 1, 1994.

SEC. 13173. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

(a) DISCLOSURE REQUIREMENT.—Subchapter B of chapter 61 (relating to information and returns) is amended by redesignating section 6115 as section 6116 and by inserting after section 6114 the following new section:

"SEC. 6115. DISCLOSURE RELATED TO QUID PRO QUO CONTRIBUTIONS.

"(a) DISCLOSURE REQUIREMENT.—If an organization described in section 170(c) (other than paragraph (1) thereof) receives a quid pro quo contribution in excess of $75, the organization shall, in connection with the solicitation or receipt of the contribution, provide a written statement which—

"(1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the

amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the organization, and

"(2) provides the donor with a good faith estimate of the value of such goods or services.

"(b) QUID PRO QUO CONTRIBUTION.—For purposes of this section, the term 'quid pro quo contribution' means a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization. A quid pro quo contribution does not include any payment made to an organization, organized exclusively for religious purposes, in return for which the taxpayer receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context."

(b) PENALTY FOR FAILURE TO DISCLOSE.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6713 the following new section:

"SEC. 6714. FAILURE TO MEET DISCLOSURE REQUIREMENTS APPLICABLE TO QUID PRO QUO CONTRIBUTIONS.

"(a) IMPOSITION OF PENALTY.—If an organization fails to meet the disclosure requirement of section 6115 with respect to a quid pro quo contribution, such organization shall pay a penalty of $10 for each contribution in respect of which the organization fails to make the required disclosure, except that the total penalty imposed by this subsection with respect to a particular fundraising event or mailing shall not exceed $5,000.

"(b) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under this section with respect to any failure if it is shown that such failure is due to reasonable cause."

(c) CLERICAL AMENDMENTS.—

(1) The table for subchapter B of chapter 61 is amended by striking the item relating to section 6115 and inserting the following new items:

"Sec. 6115. Disclosure related to quid pro quo contributions.

"Sec. 6116. Cross reference."

(2) The table for part I of subchapter B of chapter 68 is amended by inserting after the item for section 6713 the following new item:

"Sec. 6714. Failure to meet disclosure requirements applicable to quid pro quo contributions."

(d) EFFECTIVE DATE.—The provisions of this section shall apply to quid pro quo contributions made on or after January 1, 1994.

SEC. 13174. TEMPORARY EXTENSION OF DEDUCTION FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.

(a) IN GENERAL.—

(1) EXTENSION.—Paragraph (6) of section 162(l) (relating to special rules for health insurance costs of self-employed individuals) is amended by striking "June 30, 1992" and inserting "December 31, 1993".

(2) CONFORMING AMENDMENT.—Paragraph (2) of section 110(a) of the Tax Extension Act of 1991 is hereby repealed.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after June 30, 1992.

(b) DETERMINATION OF ELIGIBILITY FOR EMPLOYER-SPONSORED HEALTH PLAN.—

(1) IN GENERAL.—Paragraph (2)(B) of section 162(l) is amended to read as follows:

"(B) OTHER COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of the taxpayer."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after December 31, 1992.

Subchapter B—Revenue Increases

PART I—PROVISIONS AFFECTING INDIVIDUALS

Subpart A—Rate Increases

SEC. 13201. INCREASE IN TOP MARGINAL RATE UNDER SECTION 1.

(a) GENERAL RULE.—Section 1 (relating to tax imposed) is amended by striking subsections (a) through (e) and inserting the following:

"(a) MARRIED INDIVIDUALS FILING JOINT RETURNS AND SURVIVING SPOUSES.—There is hereby imposed on the taxable income of—

"(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

"(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $36,900	15% of taxable income.
Over $36,900 but not over $89,150.	$5,535, plus 28% of the excess over $36,900.
Over $89,150 but not over $140,000.	$20,165, plus 31% of the excess over $89,150.
Over $140,000	$35,928.50, plus 36% of the excess over $140,000.

"(b) HEADS OF HOUSEHOLDS.—There is hereby imposed on the taxable income of every head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $29,600	15% of taxable income.
Over $29,600 but not over $76,400.	$4,440, plus 28% of the excess over $29,600.
Over $76,400 but not over $127,500.	$17,544, plus 31% of the excess over $76,400.
Over $127,500	$33,385, plus 36% of the excess over $127,500.

"(c) UNMARRIED INDIVIDUALS (OTHER THAN SURVIVING SPOUSES AND HEADS OF HOUSEHOLDS).—There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $22,100	15% of taxable income.
Over $22,100 but not over $53,500.	$3,315, plus 28% of the excess over $22,100.
Over $53,500 but not over $115,000.	$12,107, plus 31% of the excess over $53,500.
Over $115,000	$31,172, plus 36% of the excess over $115,000.

"(d) MARRIED INDIVIDUALS FILING SEPARATE RETURNS.—There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $18,450	15% of taxable income.
Over $18,450 but not over $44,575.	$2,767.50, plus 28% of the excess over $18,450.
Over $44,575 but not over $70,000.	$10,082.50, plus 31% of the excess over $44,575.
Over $70,000	$17,964.25, plus 36% of the excess over $70,000.

"(e) ESTATES AND TRUSTS.—There is hereby imposed on the taxable income of—

"(1) every estate, and

"(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

"If taxable income is:	The tax is:
Not over $1,500	15% of taxable income.
Over $1,500 but not over $3,500.	$225, plus 28% of the excess over $1,500.
Over $3,500 but not over $5,500.	$785, plus 31% of the excess over $3,500.
Over $5,500	$1,405, plus 36% of the excess over $5,500."

(b) CONFORMING AMENDMENTS.—

(1) Section 531 is amended by striking "28 percent" and inserting "36 percent".

(2) Section 541 is amended by striking "28 percent" and inserting "36 percent".

(3)(A) Subsection (f) of section 1 is amended—

(i) by striking "1990" in paragraph (1) and inserting "1993", and

(ii) by striking "1989" in paragraph (3)(B) and inserting "1992".

(B) Subsection (f) of section 1 is amended by adding at the end thereof the following new paragraph:

"(7) SPECIAL RULE FOR CERTAIN BRACKETS.—

"(A) CALENDAR YEAR 1994.—In prescribing the tables under paragraph (1) which apply with respect to taxable years beginning in calendar year 1994, the Secretary shall make no adjustment to the dollar amounts at which the 36 percent rate bracket begins or at which the 39.6 percent rate begins under any table contained in subsection (a), (b), (c), (d), or (e).

"(B) LATER CALENDAR YEARS.—In prescribing tables under paragraph (1) which apply with respect to taxable years beginning in a calendar year after 1994, the cost-of-living adjustment used in making adjustments to the dollar amounts referred to in subparagraph (A) shall be determined under paragraph (3) by substituting '1993' for '1992'."

(C) Subparagraph (C) of section 41(e)(5) is amended by striking "1989" each place it appears and inserting "1992".

(D) Subparagraph (B) of section 63(c)(4) is amended by striking "1989" and inserting "1992".

(E) Subparagraph (B) of section 68(b)(2) is amended by striking "1989" and inserting "1992".

(F) Subparagraph (B) of section 132(f)(6) is amended by striking ", determined by substituting" and all that follows down through the period at the end thereof and inserting a period.

(G) Subparagraphs (A)(ii) and (B)(ii) of section 151(d)(4) are each amended by striking "1989" and inserting "1992".

(H) Clause (ii) of section 513(h)(2)(C) is amended by striking "1989" and inserting "1992".

(4) Paragraph (3) of section 453A(c) is amended by adding at the end thereof the following new sentence:

"For purposes of applying the preceding sentence with respect to so much of the gain which, when recognized, will be treated as long-term capital gain, the maximum rate on net capital gain under section 1(h) or 1201 (whichever is appropriate) shall be taken into account."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

(d) ELECTION TO PAY ADDITIONAL 1993 TAXES IN INSTALLMENTS.—

(1) IN GENERAL.—At the election of the taxpayer, the additional 1993 taxes may be paid in 3 equal installments.

(2) DATES FOR PAYING INSTALLMENTS.—In the case of any tax payable in installments by reason of paragraph (1)—

(A) the first installment shall be paid on or before the due date for the taxpayer's taxable year beginning in calendar year 1993,

(B) the second installment shall be paid on or before the date 1 year after the date determined under subparagraph (A), and

(C) the third installment shall be paid on or before the date 2 years after the date determined under subparagraph (A).

For purposes of the preceding sentence, the term "due date" means the date prescribed for filing the taxpayer's return determined without regard to extensions.

(3) EXTENSION WITHOUT INTEREST.—For purposes of section 6601 of the Internal Revenue

Code of 1986, the date prescribed for the payment of any tax payable in installments under paragraph (1) shall be determined with regard to the extension under paragraph (1).

(4) ADDITIONAL 1993 TAXES.—

(A) IN GENERAL.—For purposes of this subsection, the term "additional 1993 taxes" means the excess of—

(i) the taxpayer's net chapter 1 liability as shown on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993, over

(ii) the amount which would have been the taxpayer's net chapter 1 liability for such taxable year if such liability had been determined using the rates which would have been in effect under section 1 of the Internal Revenue Code of 1986 for taxable years beginning in calendar year 1993 but for the amendments made by this section and section 13202 and such liability had otherwise been determined on the basis of the amounts shown on the taxpayer's return.

(B) NET CHAPTER 1 LIABILITY.—For purposes of subparagraph (A), the term "net chapter 1 liability" means the liability for tax under chapter 1 of the Internal Revenue Code of 1986 determined—

(i) after the application of any credit against such tax other than the credits under sections 31 and 34, and

(ii) before crediting any payment of estimated tax for the taxable year.

(5) ACCELERATION OF PAYMENTS.—If the taxpayer does not pay any installment under this section on or before the date prescribed for its payment or if the Secretary of the Treasury or his delegate believes that the collection of any amount payable in installments under this section is in jeopardy, the Secretary shall immediately terminate the extension under paragraph (1) and the whole of the unpaid tax shall be paid on notice and demand from the Secretary.

(6) ELECTION ON RETURN.—An election under paragraph (1) shall be made on the taxpayer's return for the taxpayer's taxable year beginning in calendar year 1993.

(7) EXCEPTION FOR ESTATES AND TRUSTS.—This subsection shall not apply in the case of an estate or trust.

SEC. 13202. SURTAX ON HIGH-INCOME TAXPAYERS.

(a) GENERAL RULE.—

(1) Subsection (a) of section 1 (as amended by section 13201) is amended by striking the last item in the table contained therein and inserting the following:

"Over $140,000 but not over $250,000.	$35,928.50, plus 36% of the excess over $140,000.
Over $250,000	$75,528.50, plus 39.6% of the excess over $250,000."

(2) Subsection (b) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

"Over $127,500 but not over $250,000.	$33,385, plus 36% of the excess over $127,500.
Over $250,000	$77,485, plus 39.6% of the excess over $250,000."

(3) Subsection (c) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

"Over $115,000 but not over $250,000.	$31,172, plus 36% of the excess over $115,000.
Over $250,000	$79,772, plus 39.6% of the excess over $250,000."

(4) Subsection (d) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

"Over $70,000 but not over $125,000.	$17,964.25, plus 36% of the excess over $70,000.
Over $125,000	$37,764.25, plus 39.6% of the excess over $125,000."

(5) Subsection (e) of section 1 (as so amended) is amended by striking the last item in the table contained therein and inserting the following:

"Over $5,500 but not over $7,500.	$1,405, plus 36% of the excess over $5,500.
Over $7,500	$2,125, plus 39.6% of the excess over $7,500."

(b) TECHNICAL AMENDMENT.—Sections 531 and 541 (as amended by section 13201) are each amended by striking "36 percent" and inserting "39.6 percent".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13203. MODIFICATIONS TO ALTERNATIVE MINIMUM TAX RATES AND EXEMPTION AMOUNTS.

(a) INCREASE IN RATE.—Paragraph (1) of section 55(b) (defining tentative minimum tax) is amended to read as follows:

"(1) AMOUNT OF TENTATIVE TAX.—

"(A) NONCORPORATE TAXPAYERS.—

"(i) IN GENERAL.—In the case of a taxpayer other than a corporation, the tentative minimum tax for the taxable year is the sum of—

"(I) 26 percent of so much of the taxable excess as does not exceed $175,000, plus

"(II) 28 percent of so much of the taxable excess as exceeds $175,000.

The amount determined under the preceding sentence shall be reduced by the alternative minimum tax foreign tax credit for the taxable year.

"(ii) TAXABLE EXCESS.—For purposes of clause (i), the term 'taxable excess' means so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

"(iii) MARRIED INDIVIDUAL FILING SEPARATE RETURN.—In the case of a married individual filing a separate return, clause (i) shall be applied by substituting '$87,500' for '$175,000' each place it appears. For purposes of the preceding sentence, marital status shall be determined under section 7703.

"(B) CORPORATIONS.—In the case of a corporation, the tentative minimum tax for the taxable year is—

"(i) 20 percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, reduced by

"(ii) the alternative minimum tax foreign tax credit for the taxable year."

(b) INCREASE IN EXEMPTION AMOUNTS.—Paragraph (1) of section 55(d) (defining exemption amount) is amended—

(1) by striking "$40,000" in subparagraph (A) and inserting "$45,000",

(2) by striking "$30,000" in subparagraph (B) and inserting "$33,750", and

(3) by striking "$20,000" in subparagraph (C) and inserting "$22,500".

(c) CONFORMING AMENDMENTS.—

(1) The last sentence of section 55(d)(3) is amended by striking "$155,000 or (ii) $20,000" and inserting "$165,000 or (ii) $22,500".

(2)(A) Subparagraph (A) of section 897(a)(2) is amended by striking "the amount determined under section 55(b)(1)(A) shall not be less than 21 percent of" and inserting "the taxable excess for purposes of section 55(b)(1)(A) shall not be less than".

(B) The heading for paragraph (2) of section 897(a) is amended by striking "21-PERCENT".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13204. OVERALL LIMITATION ON ITEMIZED DEDUCTIONS FOR HIGH-INCOME TAXPAYERS MADE PERMANENT.

Subsection (f) of section 68 (relating to overall limitation on itemized deductions) is hereby repealed.

SEC. 13205. PHASEOUT OF PERSONAL EXEMPTION OF HIGH-INCOME TAXPAYERS MADE PERMANENT.

Section 151(d)(3) (relating to phaseout of personal exemption) is amended by striking subparagraph (E).

SEC. 13206. PROVISIONS TO PREVENT CONVERSION OF ORDINARY INCOME TO CAPITAL GAIN.

(a) INTEREST EMBEDDED IN FINANCIAL TRANSACTIONS.—

(1) IN GENERAL.—Part IV of subchapter P of chapter 1 (relating to special rules for determining capital gains and losses) is amended by adding at the end the following new section:

"SEC. 1258. RECHARACTERIZATION OF GAIN FROM CERTAIN FINANCIAL TRANSACTIONS.

"(a) GENERAL RULE.—In the case of any gain—

"(1) which (but for this section) would be treated as gain from the sale or exchange of a capital asset, and

"(2) which is recognized on the disposition or other termination of any position which was held as part of a conversion transaction,

such gain (to the extent such gain does not exceed the applicable imputed income amount) shall be treated as ordinary income.

"(b) APPLICABLE IMPUTED INCOME AMOUNT.—For purposes of subsection (a), the term 'applicable imputed income amount' means, with respect to any disposition or other termination referred to in subsection (a), an amount equal to—

"(1) the amount of interest which would have accrued on the taxpayer's net investment in the conversion transaction for the period ending on the date of such disposition or other termination (or, if earlier, the date on which the requirements of subsection (c) ceased to be satisfied) at a rate equal to 120 percent of the applicable rate, reduced by

"(2) the amount treated as ordinary income under subsection (a) with respect to any prior disposition or other termination of a position which was held as a part of such transaction.

The Secretary shall by regulations provide for such reductions in the applicable imputed income amount as may be appropriate by reason of amounts capitalized under section 263(g), ordinary income received, or otherwise.

"(c) CONVERSION TRANSACTION.—For purposes of this section, the term 'conversion transaction' means any transaction—

"(1) substantially all of the taxpayer's expected return from which is attributable to the time value of the taxpayer's net investment in such transaction, and

"(2) which is—

"(A) the holding of any property (whether or not actively traded), and the entering into a contract to sell such property (or substantially identical property) at a price determined in accordance with such contract, but only if such property was acquired and such contract was entered into on a substantially contemporaneous basis,

"(B) an applicable straddle,

"(C) any other transaction which is marketed or sold as producing capital gains from a transaction described in paragraph (1), or

"(D) any other transaction specified in regulations prescribed by the Secretary.

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

"(1) APPLICABLE STRADDLE.—The term 'applicable straddle' means any straddle (within the meaning of section 1092(c)); except that the term 'personal property' shall include stock.

"(2) APPLICABLE RATE.—The term 'applicable rate' means—

"(A) the applicable Federal rate determined under section 1274(d) (compounded semiannually) as if the conversion transaction were a debt instrument, or

"(B) if the term of the conversion transaction is indefinite, the Federal short-term rates in effect under section 6621(b) during the period of the conversion transaction (compounded daily).

"(3) TREATMENT OF BUILT-IN LOSSES.—

"(A) IN GENERAL.—If any position with a built-in loss becomes part of a conversion transaction—

"(i) for purposes of applying this subtitle to such position for periods after such position becomes part of such transaction, such position shall be taken into account at its fair market value as of the time it became part of such transaction, except that

"(ii) upon the disposition or other termination of such position in a transaction in which gain or loss is recognized, such built-in loss shall be recognized and shall have a character determined without regard to this section.

"(B) BUILT-IN LOSS.—For purposes of subparagraph (A), the term 'built-in loss' means the loss (if any) which would have been realized if the position had been disposed of or otherwise terminated at its fair market value as of the time such position became part of the conversion transaction.

"(4) POSITION TAKEN INTO ACCOUNT AT FAIR MARKET VALUE.—In determining the taxpayer's net investment in any conversion transaction, there shall be included the fair market value of any position which becomes part of such transaction (determined as of the time such position became part of such transaction).

"(5) SPECIAL RULE FOR OPTIONS DEALERS AND COMMODITIES TRADERS.—

"(A) IN GENERAL.—Subsection (a) shall not apply to transactions —

"(i) of an options dealer in the normal course of the dealer's trade or business of dealing in options, or

"(ii) of a commodities trader in the normal course of the trader's trade or business of trading section 1256 contracts.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) OPTIONS DEALER.—The term 'options dealer' has the meaning given such term by section 1256(g)(8).

"(ii) COMMODITIES TRADER.— The term 'commodities trader' means any person who is a member (or, except as otherwise provided in regulations, is entitled to trade as a member) of a domestic board of trade which is designated as a contract market by the Commodity Futures Trading Commission.

"(C) LIMITED PARTNERS AND LIMITED ENTREPRENEURS.—In the case of any gain from a transaction recognized by an entity which is allocable to a limited partner or limited entrepreneur (within the meaning of section 464(e)(2)), subparagraph (A) shall not apply if—

"(i) substantially all of the limited partner's (or limited entrepreneur's) expected return from the entity is attributable to the time value of the partner's (or entrepreneur's) net investment in such entity,

"(ii) the transaction (or the interest in the entity) was marketed or sold as producing capital gains treatment from a transaction described in subsection (c)(1), or

"(iii) the transaction (or the interest in the entity) is a transaction (or interest) specified in regulations prescribed by the Secretary."

(2) CLERICAL AMENDMENT.—The table of sections for part IV of subchapter P of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 1258. Recharacterization of gain from certain financial transactions."

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to conversion transactions entered into after April 30, 1993.

(b) REPEAL OF CERTAIN EXCEPTIONS TO MARKET DISCOUNT RULES.—

(1) MARKET DISCOUNT BONDS ISSUED ON OR BEFORE JULY 18, 1984.—The following provisions are hereby repealed:

(A) Section 1276(e).

(B) Section 1277(d).

(2) TAX-EXEMPT OBLIGATIONS.—

(A) IN GENERAL.—Paragraph (1) of section 1278(a) (defining market discount bond) is amended—

(i) by striking clause (ii) of subparagraph (B) and redesignating clauses (iii) and (iv) of such subparagraph as clauses (ii) and (iii), respectively,

(ii) by redesignating subparagraph (C) as subparagraph (D), and

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

"(C) SECTION 1277 NOT APPLICABLE TO TAX-EXEMPT OBLIGATIONS.—For purposes of section 1277, the term 'market discount bond' shall not include any tax-exempt obligation (as defined in section 1275(a)(3))."

(B) CONFORMING AMENDMENTS.—

(i) Sections 1276(a)(4) and 1278(b)(1) are each amended by striking "sections 871(a)" and inserting "sections 103, 871(a),".

(ii) Subparagraph (B) of section 1278(a)(4) is amended by inserting before the period at the end thereof the following: "or, in the case of a tax-exempt obligation, the aggregate amount of the original issue discount which accrued in the manner provided by section 1272(a) (determined without regard to paragraph (7) thereof) during periods before the acquisition of the bond by the taxpayer".

(3) EFFECTIVE DATE.—The amendments made by this section shall apply to obligations purchased (within the meaning of section 1272(d)(1) of the Internal Revenue Code of 1986) after April 30, 1993.

(c) TREATMENT OF STRIPPED PREFERRED STOCK.—

(1) IN GENERAL.—Section 305 is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) TREATMENT OF PURCHASER OF STRIPPED PREFERRED STOCK.—

"(1) IN GENERAL.—If any person purchases after April 30, 1993, any stripped preferred stock, then such person, while holding such stock, shall include in gross income amounts equal to the amounts which would have been so includible if such stripped preferred stock were a bond issued on the purchase date and having original issue discount equal to the excess, if any, of—

"(A) the redemption price for such stock, over

"(B) the price at which such person purchased such stock.

The preceding sentence shall also apply in the case of any person whose basis in such stock is determined by reference to the basis in the hands of such purchaser.

"(2) BASIS ADJUSTMENTS.—Appropriate adjustments to basis shall be made for amounts includible in gross income under paragraph (1).

"(3) TAX TREATMENT OF PERSON STRIPPING STOCK.—If any person strips the rights to 1 or more dividends from any stock described in paragraph (5)(B) and after April 30, 1993, disposes of such dividend rights, for purposes of paragraph (1), such person shall be treated as having purchased the stripped preferred stock on the date of such disposition for a purchase price equal to such person's adjusted basis in such stripped preferred stock.

"(4) AMOUNTS TREATED AS ORDINARY INCOME.—Any amount included in gross income under paragraph (1) shall be treated as ordinary income.

"(5) STRIPPED PREFERRED STOCK.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'stripped preferred stock' means any stock described in subparagraph (B) if there has been a separation in ownership between such stock and any dividend on such stock which has not become payable.

"(B) DESCRIPTION OF STOCK.—Stock is described in this subsection if such stock—

"(i) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent, and

"(ii) has a fixed redemption price.

"(6) PURCHASE.—For purposes of this subsection, the term 'purchase' means—

"(A) any acquisition of stock, where

"(B) the basis of such stock is not determined in whole or in part by the reference to the adjusted basis of such stock in the hands of the person from whom acquired."

(2) COORDINATION WITH SECTION 167(e).—Paragraph (2) of section 167(e) is amended to read as follows:

"(2) COORDINATION WITH OTHER PROVISIONS.—

"(A) SECTION 273.—This subsection shall not apply to any term interest to which section 273 applies.

"(B) SECTION 305(e).—This subsection shall not apply to the holder of the dividend rights which were separated from any stripped preferred stock to which section 305(e)(1) applies."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on April 30, 1993.

(d) TREATMENT OF CAPITAL GAIN UNDER LIMITATION ON INVESTMENT INTEREST.—

(1) IN GENERAL.—Subparagraph (B) of section 163(d)(4) (defining investment income) is amended to read as follows:

"(B) INVESTMENT INCOME.—The term 'investment income' means the sum of—

"(i) gross income from property held for investment (other than any gain taken into account under clause (ii)(I)),

"(ii) the excess (if any) of—

"(I) the net gain attributable to the disposition of property held for investment, over

"(II) the net capital gain determined by only taking into account gains and losses from dispositions of property held for investment, plus

"(iii) so much of the net capital gain referred to in clause (ii)(II) (or, if lesser, the net gain referred to in clause (ii)(I)) as the taxpayer elects to take into account under this clause."

(2) COORDINATION WITH SPECIAL CAPITAL GAINS RATE.—Subsection (h) of section 1 is amended by adding at the end the following new sentence:

"For purposes of the preceding sentence, the net capital gain for any taxable year shall be reduced (but not below zero) by the amount which the taxpayer elects to take into account as investment income for the taxable year under section 163(d)(4)(B)(iii)."

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 1992.

(e) TREATMENT OF CERTAIN APPRECIATED INVENTORY.—

(1) IN GENERAL.—Paragraph (1) of section 751(d) is amended to read as follows:

"(1) SUBSTANTIAL APPRECIATION.—

"(A) IN GENERAL.—Inventory items of the partnership shall be considered to have appreciated substantially in value if their fair market value exceeds 120 percent of the adjusted basis to the partnership of such property.

"(B) CERTAIN PROPERTY EXCLUDED.—For purposes of subparagraph (A), there shall be excluded any inventory property if a principal purpose for acquiring such property was to avoid the provisions of this section relating to inventory items."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to sales, exchanges, and distributions after April 30, 1993.

Subpart B—Other Provisions

SEC. 13207. REPEAL OF LIMITATION ON AMOUNT OF WAGES SUBJECT TO HEALTH INSURANCE EMPLOYMENT TAX.

(a) HOSPITAL INSURANCE TAX.—

(1) Paragraph (1) of section 3121(a) (defining wages) is amended—

(A) by inserting "in the case of the taxes imposed by sections 3101(a) and 3111(a)" after "(1)",

(B) by striking "applicable contribution base (as determined under subsection (x))" each place it appears and inserting "contribution and benefit base (as determined under section 230 of the Social Security Act)", and

(C) by striking "such applicable contribution base" and inserting "such contribution and benefit base".

(2) Section 3121 is amended by striking subsection (x).

(b) SELF-EMPLOYMENT TAX.—

(1) Subsection (b) of section 1402 is amended—

(A) by striking "that part of the net" in paragraph (1) and inserting "in the case of the tax imposed by section 1401(a), that part of the net",

(B) by striking "applicable contribution base (as determined under subsection (k))" in paragraph (1) and inserting "contribution and benefit base (as determined under section 230 of the Social Security Act)",

(C) by inserting "and" after "section 3121(b),", and

(D) by striking "and (C) includes" and all that follows through "3111(b)".

(2) Section 1402 is amended by striking subsection (k).

(c) RAILROAD RETIREMENT TAX.—

(1) Subparagraph (A) of section 3231(e)(2) is amended by adding at the end thereof the following new clause:

"(iii) HOSPITAL INSURANCE TAXES.—Clause (i) shall not apply to—

"(I) so much of the rate applicable under section 3201(a) or 3221(a) as does not exceed the rate of tax in effect under section 3101(b), and

"(II) so much of the rate applicable under section 3211(a)(1) as does not exceed the rate of tax in effect under section 1401(b)."

(2) Clause (i) of section 3231(e)(2)(B) is amended to read as follows:

"(i) TIER 1 TAXES.—Except as provided in clause (ii), the term 'applicable base' means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year."

(d) TECHNICAL AMENDMENTS.—

(1) Paragraph (1) of section 6413(c) is amended by striking "section 3101 or section 3201" and inserting "section 3101(a) or section 3201(a) (to the extent of so much of the rate applicable under section 3201(a) as does not exceed the rate of tax in effect under section 3101(a))".

(2) Subparagraphs (B) and (C) of section 6413(c)(2) are each amended by striking "section 3101" each place it appears and inserting "section 3101(a)".

(3) Subsection (c) of section 6413 is amended by striking paragraph (3).

(4) Sections 3122 and 3125 are each amended by striking "applicable contribution base limitation" and inserting "contribution and benefit base limitation".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to 1994 and later calendar years.

SEC. 13208. TOP ESTATE AND GIFT TAX RATES MADE PERMANENT.

(a) GENERAL RULE.—The table contained in paragraph (1) of section 2001(c) is amended by striking the last item and inserting the following new items:

"Over $2,500,000 but not over $3,000,000.	$1,025,800, plus 53% of the excess over $2,500,000.
Over $3,000,000	$1,290,800, plus 55% of the excess over $3,000,000."

(b) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 2001 is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(2) Paragraph (2) of section 2001(c), as redesignated by paragraph (1), is amended by striking "($18,340,000 in the case of decedents dying, and gifts made, after 1992)".

(3) The last sentence of section 2101(b) is amended by striking "section 2001(c)(3)" and inserting "section 2001(c)(2)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply in the case of decedents dying and gifts made after December 31, 1992.

SEC. 13209. REDUCTION IN DEDUCTIBLE PORTION OF BUSINESS MEALS AND ENTERTAINMENT.

(a) GENERAL RULE.—Paragraph (1) of section 274(n) (relating to only 80 percent of meal and entertainment expenses allowed as deduction) is amended by striking "80 percent" and inserting "50 percent".

(b) CONFORMING AMENDMENT.—The subsection heading for section 274(n) is amended by striking "80" and inserting "50".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13210. ELIMINATION OF DEDUCTION FOR CLUB MEMBERSHIP FEES.

(a) IN GENERAL.—Subsection (a) of section 274 (relating to disallowance of certain entertainment, etc., expenses) is amended by adding at the end thereof the following new paragraph:

"(3) DENIAL OF DEDUCTION FOR CLUB DUES.—Notwithstanding the preceding provisions of this subsection, no deduction shall be allowed under this chapter for amounts paid or incurred for membership in any club organized for business, pleasure, recreation, or other social purpose."

(b) EXCEPTION FOR EMPLOYEE RECREATIONAL EXPENSES NOT TO APPLY.—Paragraph (4) of section 274(e) is amended by adding at the end thereof the following: "This paragraph shall not apply for purposes of subsection (a)(3)."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13211. DISALLOWANCE OF DEDUCTION FOR CERTAIN EMPLOYEE REMUNERATION IN EXCESS OF $1,000,000.

(a) GENERAL RULE.—Section 162 (relating to trade or business expenses) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

"(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

"(1) IN GENERAL.—In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds $1,000,000.

"(2) PUBLICLY HELD CORPORATION.—For purposes of this subsection, the term 'publicly held corporation' means any corporation issuing any class of common equity securities required to be registered under section 12 of the Securities Exchange Act of 1934.

"(3) COVERED EMPLOYEE.—For purposes of this subsection, the term 'covered employee' means any employee of the taxpayer if—

"(A) as of the close of the taxable year, such employee is the chief executive officer of the taxpayer or is an individual acting in such a capacity, or

"(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 4 highest compensated officers for the taxable year (other than the chief executive officer).

"(4) APPLICABLE EMPLOYEE REMUNERATION.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'applicable employee remuneration' means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

"(B) EXCEPTION FOR REMUNERATION PAYABLE ON COMMISSION BASIS.—The term 'applicable employee remuneration' shall not include any remuneration payable on a commission basis solely on account of income generated directly by the individual performance of the individual to whom such remuneration is payable.

"(C) OTHER PERFORMANCE-BASED COMPENSATION.—The term 'applicable employee remuneration' shall not include any remuneration payable solely on account of the attainment of one or more performance goals, but only if—

"(i) the performance goals are determined by a compensation committee of the board of directors of the taxpayer which is comprised solely of 2 or more outside directors,

"(ii) the material terms under which the remuneration is to be paid, including the performance goals, are disclosed to shareholders and approved by a majority of the vote in a separate shareholder vote before the payment of such remuneration, and

"(iii) before any payment of such remuneration, the compensation committee referred to in clause (i) certifies that the performance goals and any other material terms were in fact satisfied.

"(D) EXCEPTION FOR EXISTING BINDING CONTRACTS.—The term 'applicable employee remuneration' shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

"(E) REMUNERATION.—For purposes of this paragraph, the term 'remuneration' includes any remuneration (including benefits) in any medium other than cash, but shall not include—

"(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

"(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

"(F) COORDINATION WITH DISALLOWED GOLDEN PARACHUTE PAYMENTS.—The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to amounts which would otherwise be deductible for taxable years beginning on or after January 1, 1994.

SEC. 13212. REDUCTION IN COMPENSATION TAKEN INTO ACCOUNT IN DETERMINING CONTRIBUTIONS AND BENEFITS UNDER QUALIFIED RETIREMENT PLANS.

(a) QUALIFICATION REQUIREMENT.—

(1) IN GENERAL.—Section 401(a)(17) is amended—

(A) by striking "$200,000" in the first sentence and inserting "$150,000",

(B) by striking the second sentence, and

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

"(B) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—If, for any calendar year after 1994, the excess (if any) of—

"(I) $150,000, increased by the cost-of-living adjustment for the calendar year, over

"(II) the dollar amount in effect under subparagraph (A) for taxable years beginning in the calendar year,

is equal to or greater than $10,000, then the $150,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

"(ii) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993."

(2) CONFORMING AMENDMENT.—Section 401(a)(17) is amended by striking "(17) A trust" and inserting:

"(17) COMPENSATION LIMIT.—

"(A) IN GENERAL.—A trust".

(b) SIMPLIFIED EMPLOYEE PENSIONS.—

(1) IN GENERAL.—Paragraphs (3)(C) and (6)(D)(ii) of section 408(k) are each amended by striking "$200,000" and inserting "$150,000".

(2) COST-OF-LIVING.—Paragraph (8) of section 408(k) is amended to read as follows:

"(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $150,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B)."

(c) OTHER RELATED PROVISIONS.—

(1) IN GENERAL.—Sections 404(l) and 505(b)(7) are each amended—

(A) by striking "$200,000" in the first sentence and inserting "$150,000", and

(B) by striking the second sentence and inserting "The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B)."

(2) CONFORMING AMENDMENT.—The heading for section 505(b)(7) is amended by striking "$200,000".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section shall apply to benefits accruing in plan years beginning after December 31, 1993.

(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

(A) the latest of—

(i) January 1, 1994,

(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act, the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

(B) January 1, 1997.

(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

(ii) December 31, 1995.

(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).

SEC. 13213. MODIFICATIONS TO DEDUCTION FOR MOVING EXPENSES.

(a) DEFINITION OF DEDUCTIBLE EXPENSES.—

(1) IN GENERAL.—Subsection (b) of section 217 (defining moving expenses) is amended to read as follows:

"(b) DEFINITION OF MOVING EXPENSES.—

"(1) IN GENERAL.—For purposes of this section, the term 'moving expenses' means only the reasonable expenses—

"(A) of moving household goods and personal effects from the former residence to the new residence, and

"(B) of traveling (including lodging) from the former residence to the new place of residence. Such term shall not include any expenses for meals.

"(2) INDIVIDUALS OTHER THAN TAXPAYER.—In the case of any individual other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household."

(2) CONFORMING AMENDMENTS.—

(A) Section 217 is amended by striking subsection (e).

(B) Subsection (f) of section 217 is amended to read as follows:

"(f) SELF-EMPLOYED INDIVIDUAL.—For purposes of this section, the term 'self-employed individual' means an individual who performs personal services—

"(1) as the owner of the entire interest in an unincorporated trade or business, or

"(2) as a partner in a partnership carrying on a trade or business."

(C) Paragraph (3) of section 217(g) is amended by inserting "and" at the end of subparagraph (A), by striking subparagraph (B), and by redesignating subparagraph (C) as subparagraph (B).

(D) Subsection (h) of section 217 is amended by striking paragraph (1) and redesignating the following paragraphs accordingly.

(E) Section 1001 is amended by striking subsection (f).

(F) Subsection (e) of section 1016 is amended to read as follows:

"(e) CROSS REFERENCE.—

"For treatment of separate mineral interests as one property, see section 614."

(b) INCREASE IN MILEAGE REQUIREMENT.—Paragraph (1) of section 217(c) is amended by striking "35 miles" each place it appears and inserting "50 miles".

(c) DEDUCTION ALLOWED IN COMPUTING ADJUSTED GROSS INCOME.—

(1) IN GENERAL.—Subsection (a) of section 62 (defining adjusted gross income) is amended by inserting after paragraph (14) the following new paragraph:

"(15) MOVING EXPENSES.—The deduction allowed by section 217."

(2) CONFORMING AMENDMENT.—Subsection (b) of section 67 is amended by striking paragraph (6) and redesignating the following paragraphs accordingly.

(d) EXCLUSION OF EMPLOYER REIMBURSEMENT FOR DEDUCTIBLE EXPENSES.—

(1) IN GENERAL.—Subsection (a) of section 132 (relating to certain fringe benefits) is amended by striking "or" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting ", or", and by adding at the end thereof the following new paragraph:

"(6) qualified moving expense reimbursement."

(2) QUALIFIED MOVING EXPENSE REIMBURSEMENT DEFINED.—Section 132 is amended by redesignating subsections (g), (h), (i), (j), (k), and (l), as subsections (h), (i), (j), (k), (l), and (m), respectively, and by inserting after subsection (f) the following new subsection:

"(g) QUALIFIED MOVING EXPENSE REIMBURSEMENT.—For purposes of this section, the term 'qualified moving expense reimbursement' means any amount received (directly or indirectly) by an individual from an employer as a payment for (or a reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. Such term shall not include any payment for (or reimbursement of) an expense actually deducted by the individual in a prior taxable year."

(3) CONFORMING AMENDMENTS.—

(A) Section 82 is amended by striking "There shall" and inserting "Except as provided in section 132(a)(6), there shall".

(B) Subsection (j) of section 132 (as redesignated by paragraph (2)) is amended by striking "subsection (f)" in paragraph (4)(B)(iii) thereof and inserting "subsection (h)".

(C) Subsection (l) of section 132 (as redesignated by paragraph (2)) is amended by striking "subsection (e)" and inserting "subsections (e) and (g)".

(D) Section 4977(c) is amended by striking "section 132(g)(2)" and inserting "section 132(i)(2)".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to expenses incurred after December 31, 1993; except that the amendments made by subsection (d) shall apply to reimbursements or other payments in respect of expenses incurred after such date.

SEC. 13214. SIMPLIFICATION OF INDIVIDUAL ESTIMATED TAX SAFE HARBOR BASED ON LAST YEAR'S TAX.

(a) IN GENERAL.—Paragraph (1) of section 6654(d) (relating to amount of required estimated tax installments) is amended by striking subparagraphs (C), (D), (E), and (F) and by inserting the following new subparagraph:

"(C) LIMITATION ON USE OF PRECEDING YEAR'S TAX.—

"(i) IN GENERAL.—If the adjusted gross income shown on the return of the individual for the preceding taxable year exceeds $150,000, clause (ii) of subparagraph (B) shall be applied by substituting '110 percent' for '100 percent'.

"(ii) SEPARATE RETURNS.—In the case of a married individual (within the meaning of section 7703) who files a separate return for the taxable year for which the amount of the installment is being determined, clause (i) shall be applied by substituting '$75,000' for '$150,000'.

"(iii) SPECIAL RULE.—In the case of an estate or trust, adjusted gross income shall be determined as provided in section 67(e)."

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 6654(j)(3) is amended by striking "and subsection (d)(1)(C)(iii) shall not apply".

(2) Paragraph (4) of section 6654(l) is amended by striking "paragraphs (1)(C)(iv) and (2)(B)(i) of subsection (d)" and inserting "subsection (d)(2)(B)(i)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13215. SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS.

(a) ADDITIONAL INCLUSION FOR CERTAIN TAXPAYERS.—

(1) IN GENERAL.—Subsection (a) of section 86 (relating to social security and tier 1 railroad retirement benefits) is amended by adding at the end the following new paragraph:

"(2) ADDITIONAL AMOUNT.—In the case of a taxpayer with respect to whom the amount determined under subsection (b)(1)(A) exceeds the adjusted base amount, the amount included in gross income under this section shall be equal to the lesser of—

"(A) the sum of—

"(i) 85 percent of such excess, plus

"(ii) the lesser of the amount determined under paragraph (1) or an amount equal to one-half of the difference between the adjusted base amount and the base amount of the taxpayer, or

"(B) 85 percent of the social security benefits received during the taxable year."

(2) CONFORMING AMENDMENTS.—Subsection (a) of section 86 is amended—

(A) by striking "Gross" and inserting:

"(1) IN GENERAL.—Except as provided in paragraph (2), gross", and

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively.

(b) ADJUSTED BASE AMOUNT.—Section 86(c) (defining base amount) is amended to read as follows:

"(c) BASE AMOUNT AND ADJUSTED BASE AMOUNT.—For purposes of this section—

"(1) BASE AMOUNT.—The term 'base amount' means—

"(A) except as otherwise provided in this paragraph, $25,000,

"(B) $32,000 in the case of a joint return, and

"(C) zero in the case of a taxpayer who—

"(i) is married as of the close of the taxable year (within the meaning of section 7703) but does not file a joint return for such year, and

"(ii) does not live apart from his spouse at all times during the taxable year.

"(2) ADJUSTED BASE AMOUNT.—The term 'adjusted base amount' means—

"(A) except as otherwise provided in this paragraph, $34,000,

"(B) $44,000 in the case of a joint return, and

"(C) zero in the case of a taxpayer described in paragraph (1)(C)."

(c) TRANSFERS TO THE HOSPITAL INSURANCE TRUST FUND.—

(1) IN GENERAL.—Paragraph (1) of section 121(e) of the Social Security Amendments of 1983 (Public Law 92–21) is amended by—

(A) striking "There" and inserting:

"(A) There";

(B) inserting "(i)" immediately following "amounts equivalent to"; and

(C) striking the period and inserting the following: ", less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993.

"(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities."

(2) DEFINITION.—Paragraph (3) of section 121(e) of such Act is amended by redesignating subparagraph (B) as subparagraph (C), and by inserting after subparagraph (A) the following new subparagraph:

"(B) HOSPITAL INSURANCE TRUST FUND.—The term 'hospital insurance trust fund' means the fund established pursuant to section 1817 of the Social Security Act.".

(3) CONFORMING AMENDMENT.—Paragraph (2) of section 121(e) of such Act is amended in the first sentence by striking "paragraph (1)" and inserting "paragraph (1)(A)".

(4) TECHNICAL AMENDMENTS.—Paragraph (1)(A) of section 121(e) of such Act, as redesignated and amended by paragraph (1), is amended by striking "1954" and inserting "1986".

(d) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to taxable years beginning after December 31, 1993.

PART II—PROVISIONS AFFECTING BUSINESSES

SEC. 13221. INCREASE IN TOP MARGINAL RATE UNDER SECTION 11.

(a) GENERAL RULE.—Paragraph (1) of section 11(b) (relating to amount of tax) is amended—

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

(2) by striking subparagraph (C) and inserting the following:

"(C) 34 percent of so much of the taxable income as exceeds $75,000 but does not exceed $10,000,000, and

"(D) 35 percent of so much of the taxable income as exceeds $10,000,000.", and

(3) by adding at the end thereof the following new sentence: "In the case of a corporation which has taxable income in excess of $15,000,000, the amount of the tax determined under the foregoing provisions of this paragraph shall be increased by an additional amount equal to the lesser of (i) 3 percent of such excess, or (ii) $100,000."

(b) CERTAIN PERSONAL SERVICE CORPORATIONS.—Paragraph (2) of section 11(b) is amended by striking "34 percent" and inserting "35 percent".

(c) CONFORMING AMENDMENTS.—

(1) Clause (iii) of section 852(b)(3)(D) is amended by striking "66 percent" and inserting "65 percent".

(2) Subsection (a) of section 1201 is amended by striking "34 percent" each place it appears and inserting "35 percent".

(3) Paragraphs (1) and (2) of section 1445(e) are each amended by striking "34 percent" and inserting "35 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning on or after January 1, 1993; except that the amendment made by subsection (c)(3) shall take effect on the date of the enactment of this Act.

SEC. 13222. DENIAL OF DEDUCTION FOR LOBBYING EXPENSES.

(a) DISALLOWANCE OF DEDUCTION.—Section 162(e) (relating to appearances, etc., with respect to legislation) is amended to read as follows:

"(e) DENIAL OF DEDUCTION FOR CERTAIN LOBBYING AND POLITICAL EXPENDITURES.—

"(1) IN GENERAL.—No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

"(A) influencing legislation,

"(B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

"(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

"(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

"(2) EXCEPTION FOR LOCAL LEGISLATION.—In the case of any legislation of any local council or similar governing body—

"(A) paragraph (1)(A) shall not apply, and

"(B) the deduction allowed by subsection (a) shall include all ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a)(2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business—

"(i) in direct connection with appearances before, submission of statements to, or sending communications to the committees, or individual members, of such council or body with respect to legislation or proposed legislation of direct interest to the taxpayer, or

"(ii) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to any such legislation or proposed legislation which is of direct interest to the taxpayer and to such organization,

and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in clauses (i) and (ii) carried on by such organization.

"(3) APPLICATION TO DUES OF TAX-EXEMPT ORGANIZATIONS.—No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

"(4) INFLUENCING LEGISLATION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'influencing legislation' means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

"(B) LEGISLATION.—The term 'legislation' has the meaning given such term by section 4911(e)(2).

"(5) OTHER SPECIAL RULES.—

"(A) EXCEPTION FOR CERTAIN TAXPAYERS.—In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

"(B) DE MINIMIS EXCEPTION.—

"(i) IN GENERAL.—Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

"(ii) IN-HOUSE EXPENDITURES.—For purposes of clause (i), the term 'in-house expenditures' means expenditures described in paragraphs (1)(A) and (D) other than—

"(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

"(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

"(C) EXPENSES INCURRED IN CONNECTION WITH LOBBYING AND POLITICAL ACTIVITIES.—Any

amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

"(6) COVERED EXECUTIVE BRANCH OFFICIAL.—For purposes of this subsection, the term 'covered executive branch official' means—

"(A) the President,

"(B) the Vice President,

"(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

"(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

"(7) SPECIAL RULE FOR INDIAN TRIBAL GOVERNMENTS.—For purposes of this subsection, an Indian tribal government shall be treated in the same manner as a local council or similar governing body.

"(8) CROSS REFERENCE.—

"For reporting requirements and alternative taxes related to this subsection, see section 6033(e)."

(b) DISALLOWANCE OF CHARITABLE DEDUCTION IN CERTAIN CASES.—Section 170(f) (relating to disallowance of deduction in certain cases and special rules), as amended by section 13172, is amended by adding at the end the following new paragraph:

"(9) DENIAL OF DEDUCTION WHERE CONTRIBUTION FOR LOBBYING ACTIVITIES.—No deduction shall be allowed under this section for a contribution to an organization which conducts activities to which section 162(e)(1) applies on matters of direct financial interest to the donor's trade or business, if a principal purpose of the contribution was to avoid Federal income tax by securing a deduction for such activities under this section which would be disallowed by reason of section 162(e) if the donor had conducted such activities directly. No deduction shall be allowed under section 162(a) for any amount for which a deduction is disallowed under the preceding sentence."

(c) REPORTING REQUIREMENTS.—Section 6033 (relating to returns by exempt organizations) is amended by redesignating subsection (e) as subsection (f) and by inserting after subsection (d) the following new subsection:

"(e) SPECIAL RULES RELATING TO LOBBYING ACTIVITIES.—

"(1) REPORTING REQUIREMENTS.—

"(A) IN GENERAL.—If this subsection applies to an organization for any taxable year, such organization—

"(i) shall include on any return required to be filed under subsection (a) for such year information setting forth the total expenditures of the organization to which section 162(e)(1) applies and the total amount of the dues or other similar amounts paid to the organization to which such expenditures are allocable, and

"(ii) except as provided in paragraphs (2)(A)(i) and (3), shall, at the time of assessment or payment of such dues or other similar amounts, provide notice to each person making such payment which contains a reasonable estimate of the portion of such dues or other similar amounts to which such expenditures are so allocable.

"(B) ORGANIZATIONS TO WHICH SUBSECTION APPLIES.—

"(i) IN GENERAL.—This subsection shall apply to any organization which is exempt from taxation under this subtitle other than an organization described in section 501(c)(3).

"(ii) SPECIAL RULE FOR IN-HOUSE EXPENDITURES.—This subsection shall not apply to the in-house expenditures (within the meaning of section 162(e)(5)(B)(ii)) of an organization for a taxable year if such expenditures do not exceed $2,000. In determining whether a taxpayer exceeds the $2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in subparagraphs (A) and (D) of section 162(e)(1).

"(C) ALLOCATION.—For purposes of this paragraph—

"(i) IN GENERAL.—Expenditures to which section 162(e)(1) applies shall be treated as paid out of dues or other similar amounts to the extent thereof.

"(ii) CARRYOVER OF LOBBYING EXPENDITURES IN EXCESS OF DUES.—If expenditures to which section 162(e)(1) applies exceed the dues or other similar amounts for any taxable year, such excess shall be treated as expenditures to which section 162(e)(1) applies which are paid or incurred by the organization during the following taxable year.

"(2) TAX IMPOSED WHERE ORGANIZATION DOES NOT NOTIFY.—

"(A) IN GENERAL.—If an organization—

"(i) elects not to provide the notices described in paragraph (1)(A) for any taxable year, or

"(ii) fails to include in such notices the amount allocable to expenditures to which section 162(e)(1) applies (determined on the basis of actual amounts rather than the reasonable estimates under paragraph (1)(A)(ii)),

then there is hereby imposed on such organization for such taxable year a tax in an amount equal to the product of the highest rate of tax imposed by section 11 for the taxable year and the aggregate amount not included in such notices by reason of such election or failure.

"(B) WAIVER WHERE FUTURE ADJUSTMENTS MADE.—The Secretary may waive the tax imposed by subparagraph (A)(ii) for any taxable year if the organization agrees to adjust its estimates under paragraph (1)(A)(ii) for the following taxable year to correct any failures.

"(C) TAX TREATED AS INCOME TAX.—For purposes of this title, the tax imposed by subparagraph (A) shall be treated in the same manner as a tax imposed by chapter 1 (relating to income taxes).

"(3) EXCEPTION WHERE DUES GENERALLY NONDEDUCTIBLE.—Paragraph (1)(A) shall not apply to an organization which establishes to the satisfaction of the Secretary that substantially all of the dues or other similar amounts paid by persons to such organization are not deductible without regard to section 162(e)."

(d) CONFORMING AMENDMENT.—Section 7871(a)(6) is amended by striking subparagraph (B) and by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13223. MARK TO MARKET ACCOUNTING METHOD FOR SECURITIES DEALERS.

(a) GENERAL RULE.—Subpart D of part II of subchapter E of chapter 1 (relating to inventories) is amended by adding at the end thereof the following new section:

"SEC. 475. MARK TO MARKET ACCOUNTING METHOD FOR DEALERS IN SECURITIES.

"(a) GENERAL RULE.—Notwithstanding any other provision of this subpart, the following rules shall apply to securities held by a dealer in securities:

"(1) Any security which is inventory in the hands of the dealer shall be included in inventory at its fair market value.

"(2) In the case of any security which is not inventory in the hands of the dealer and which is held at the close of any taxable year—

"(A) the dealer shall recognize gain or loss as if such security were sold for its fair market value on the last business day of such taxable year, and

"(B) any gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this paragraph at times other than the times provided in this paragraph.

"(b) EXCEPTIONS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to—

"(A) any security held for investment,

"(B)(i) any security described in subsection (c)(2)(C) which is acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and which is not held for sale, and (ii) any obligation to acquire a security described in clause (i) if such obligation is entered into in the ordinary course of such trade or business and is not held for sale, and

"(C) any security which is a hedge with respect to—

"(i) a security to which subsection (a) does not apply, or

"(ii) a position, right to income, or a liability which is not a security in the hands of the taxpayer.

To the extent provided in regulations, subparagraph (C) shall not apply to any security held by a person in its capacity as a dealer in securities.

"(2) IDENTIFICATION REQUIRED.—A security shall not be treated as described in subparagraph (A), (B), or (C) of paragraph (1), as the case may be, unless such security is clearly identified in the dealer's records as being described in such subparagraph before the close of the day on which it was acquired, originated, or entered into (or such other time as the Secretary may by regulations prescribe).

"(3) SECURITIES SUBSEQUENTLY NOT EXEMPT.—If a security ceases to be described in paragraph (1) at any time after it was identified as such under paragraph (2), subsection (a) shall apply to any changes in value of the security occurring after the cessation.

"(4) SPECIAL RULE FOR PROPERTY HELD FOR INVESTMENT.—To the extent provided in regulations, subparagraph (A) of paragraph (1) shall not apply to any security described in subparagraph (D) or (E) of subsection (c)(2) which is held by a dealer in such securities.

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

"(1) DEALER IN SECURITIES DEFINED.—The term 'dealer in securities' means a taxpayer who—

"(A) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or

"(B) regularly offers to enter into, assume, offset, assign or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

"(2) SECURITY DEFINED.—The term 'security' means any—

"(A) share of stock in a corporation;

"(B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust;

"(C) note, bond, debenture, or other evidence of indebtedness;

"(D) interest rate, currency, or equity notional principal contract;

"(E) evidence of an interest in, or a derivative financial instrument in, any security described in subparagraph (A), (B), (C), or (D), or any currency, including any option, forward contract, short position, and any similar financial instrument in such a security or currency; and

"(F) position which—

"(i) is not a security described in subparagraph (A), (B), (C), (D), or (E),

"(ii) is a hedge with respect to such a security, and

"(iii) is clearly identified in the dealer's records as being described in this subparagraph before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

Subparagraph (E) shall not include any contract to which section 1256(a) applies.

"(3) HEDGE.—The term 'hedge' means any position which reduces the dealer's risk of interest rate or price changes or currency fluctuations, including any position which is reasonably expected to become a hedge within 60 days after the acquisition of the position.

"(d) SPECIAL RULES.—For purposes of this section—

"(1) COORDINATION WITH CERTAIN RULES.—The rules of sections 263(g), 263A, and 1256(a) shall not apply to securities to which subsection (a) applies, and section 1091 shall not apply (and section 1092 shall apply) to any loss recognized under subsection (a).

"(2) IMPROPER IDENTIFICATION.—If a taxpayer—

"(A) identifies any security under subsection (b)(2) as being described in subsection (b)(1) and such security is not so described, or

"(B) fails under subsection (c)(2)(F)(iii) to identify any position which is described in subsection (c)(2)(F) (without regard to clause (iii) thereof) at the time such identification is required,

the provisions of subsection (a) shall apply to such security or position, except that any loss under this section prior to the disposition of the security or position shall be recognized only to the extent of gain previously recognized under this section (and not previously taken into account under this paragraph) with respect to such security or position.

"(3) CHARACTER OF GAIN OR LOSS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) or section 1236(b)—

"(i) IN GENERAL.—Any gain or loss with respect to a security under subsection (a)(2) shall be treated as ordinary income or loss.

"(ii) SPECIAL RULE FOR DISPOSITIONS.—If—

"(I) gain or loss is recognized with respect to a security before the close of the taxable year, and

"(II) subsection (a)(2) would have applied if the security were held as of the close of the taxable year,

such gain or loss shall be treated as ordinary income or loss.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to any gain or loss which is allocable to a period during which—

"(i) the security is described in subsection (b)(1)(C) (without regard to subsection (b)(2)),

"(ii) the security is held by a person other than in connection with its activities as a dealer in securities, or

"(iii) the security is improperly identified (within the meaning of subparagraph (A) or (B) of paragraph (2)).

"(e) REGULATORY AUTHORITY.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including rules—

"(1) to prevent the use of year-end transfers, related parties, or other arrangements to avoid the provisions of this section, and

"(2) to provide for the application of this section to any security which is a hedge which cannot be identified with a specific security, position, right to income, or liability."

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 988(d) is amended—

(A) by striking "section 1256" and inserting "section 475 or 1256", and

(B) by striking "1092 and 1256" and inserting "475, 1092, and 1256".

(2) The table of sections for subpart D of part II of subchapter E of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 475. Mark to market accounting method for dealers in securities."

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to all taxable years ending on or after December 31, 1993.

(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

(A) such change shall be treated as initiated by the taxpayer,

(B) such change shall be treated as made with the consent of the Secretary, and

(C) except as provided in paragraph (3), 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 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

(3) SPECIAL RULE FOR FLOOR SPECIALISTS AND MARKET MAKERS.—

(A) IN GENERAL.—If—

(i) a taxpayer (or any predecessor) used the last-in first-out (LIFO) method of accounting with respect to any qualified securities for the 5-taxable year period ending with its last taxable year ending before December 31, 1993, and

(ii) any portion of the net amount described in paragraph (2)(C) is attributable to the use of such method of accounting,

then paragraph (2)(C) shall be applied by taking such portion into account ratably over the 15-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

(B) QUALIFIED SECURITY.—For purposes of this paragraph, the term "qualified security" means any security acquired—

(i) by a floor specialist (as defined in section 1236(d)(2) of the Internal Revenue Code of 1986) in connection with the specialist's duties as a specialist on an exchange, but only if the security is one in which the specialist is registered with the exchange, or

(ii) by a taxpayer who is a market maker in connection with the taxpayer's duties as a market maker, but only if—

(I) the security is included on the National Association of Security Dealers Automated Quotation System,

(II) the taxpayer is registered as a market maker in such security with the National Association of Security Dealers, and

(III) as of the last day of the taxable year preceding the taxpayer's first taxable year ending on or after December 31, 1993, the taxpayer (or any predecessor) has been actively and regularly engaged as a market maker in such security for the 2-year period ending on such date (or, if shorter, the period beginning 61 days after the security was listed in such quotation system and ending on such date).

SEC. 13224. CLARIFICATION OF TREATMENT OF CERTAIN FSLIC FINANCIAL ASSISTANCE.

(a) GENERAL RULE.—For purposes of chapter 1 of the Internal Revenue Code of 1986—

(1) any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of any asset shall be taken into account as compensation for such loss for purposes of section 165 of such Code, and

(2) any FSLIC assistance with respect to any debt shall be taken into account for purposes of section 166, 585, or 593 of such Code in determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts arising from the worthlessness or partial worthlessness of such debts.

(b) FSLIC ASSISTANCE.—For purposes of this section, the term "FSLIC assistance" means any assistance (or right to assistance) with respect to a domestic building and loan association (as defined in section 7701(a)(19) of such Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection—

(A) The provisions of this section shall apply to taxable years ending on or after March 4, 1991, but only with respect to FSLIC assistance not credited before March 4, 1991.

(B) If any FSLIC assistance not credited before March 4, 1991, is with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991, for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991, the provisions of this section shall apply to such assistance for purposes of determining the amount of the net operating loss for the taxable year in which such loss was sustained or debt written off. Except as provided in the preceding sentence, this section shall not apply to any FSLIC assistance with respect to a loss sustained or charge-off in a taxable year ending before March 4, 1991.

(2) EXCEPTIONS.—The provisions of this section shall not apply to any assistance to which the amendments made by section 1401(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 apply.

SEC. 13225. MODIFICATION OF CORPORATE ESTIMATED TAX RULES.

(a) INCREASE IN REQUIRED INSTALLMENT BASED ON CURRENT YEAR TAX.—

(1) IN GENERAL.—Clause (i) of section 6655(d)(1)(B) (relating to amount of required installment) is amended by striking "91 percent" each place it appears and inserting "100 percent".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (d) of section 6655 is amended—

(i) by striking paragraph (3), and

(ii) by striking "91 PERCENT" in the paragraph heading of paragraph (2) and inserting "100 PERCENT".

(B) Clause (ii) of section 6655(e)(2)(B) is amended by striking the table contained therein and inserting the following:

"In the case of the following required installments:	The applicable percentage is:
1st	25
2nd	50
3rd	75
4th	100."

(C) Clause (i) of section 6655(e)(3)(A) is amended by striking "91 percent" and inserting "100 percent".

(b) MODIFICATION OF PERIODS FOR APPLYING ANNUALIZATION.—

(1) Clause (i) of section 6655(e)(2)(A) is amended—

(A) by striking "or for the first 5 months" in subclause (II),

(B) by striking "or for the first 8 months" in subclause (III), and

(C) by striking "or for the first 11 months" in subclause (IV).

(2) Paragraph (2) of section 6655(e) is amended by adding at the end thereof the following new subparagraph:

"(C) ELECTION FOR DIFFERENT ANNUALIZATION PERIODS.—

"(i) If the taxpayer makes an election under this clause—

"(I) subclause (I) of subparagraph (A)(i) shall be applied by substituting '2 months' for '3 months',

"(II) subclause (II) of subparagraph (A)(i) shall be applied by substituting '4 months' for '3 months',

"(III) subclause (III) of subparagraph (A)(i) shall be applied by substituting '7 months' for '6 months', and

"(IV) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '10 months' for '9 months'.

"(ii) If the taxpayer makes an election under this clause—

"(I) subclause (II) of subparagraph (A)(i) shall be applied by substituting '5 months' for '3 months',

"(II) subclause (III) of subparagraph (A)(i) shall be applied by substituting '8 months' for '6 months', and

"(III) subclause (IV) of subparagraph (A)(i) shall be applied by substituting '11 months' for '9 months'.

"(iii) An election under clause (i) or (ii) shall apply to the taxable year for which made and such an election shall be effective only if made on or before the date required for the payment of the first required installment for such taxable year."

(3) The last sentence of section 6655(g)(3) is amended by striking "and subsection (e)(2)(A)" and inserting "and, except in the case of an election under subsection (e)(2)(C), subsection (e)(2)(A)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13226. MODIFICATIONS OF DISCHARGE OF INDEBTEDNESS PROVISIONS.

(a) REPEAL OF STOCK FOR DEBT EXCEPTION IN DETERMINING INCOME FROM DISCHARGE OF INDEBTEDNESS.—

(1) IN GENERAL.—Subsection (e) of section 108 is amended—

(A) by striking paragraph (10) and by redesignating paragraph (11) as paragraph (10), and

(B) by amending paragraph (8) to read as follows:

"(8) INDEBTEDNESS SATISFIED BY CORPORATION'S STOCK.—For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock."

(2) CONFORMING AMENDMENTS.—

(A) Subparagraph (C) of section 382(l)(5) is amended to read as follows:

"(C) COORDINATION WITH SECTION 108.—In applying section 108(e)(8) to any case to which subparagraph (A) applies, there shall not be taken into account any indebtedness for interest described in subparagraph (B)."

(B) Section 108(e)(6) is amended by striking "For" and inserting "Except as provided in regulations, for".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this subsection shall apply to stock transferred after December 31, 1994, in satisfaction of any indebtedness.

(B) EXCEPTION FOR TITLE 11 CASES.—The amendments made by this subsection shall not apply to stock transferred in satisfaction of any indebtedness if such transfer is in a title 11 or similar case (as defined in section 368(a)(3)(A) of the Internal Revenue Code of 1986) which was filed on or before December 31, 1993.

(b) TAX ATTRIBUTES SUBJECT TO REDUCTION.—

(1) MINIMUM TAX CREDIT.—Section 108(b)(2) (relating to tax attributes affected; order of reduction) is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F) and by adding after subparagraph (B) the following new subparagraph:

"(C) MINIMUM TAX CREDIT.—The amount of the minimum tax credit available under section 53(b) as of the beginning of the taxable year immediately following the taxable year of the discharge."

(2) PASSIVE ACTIVITY LOSSES AND CREDITS.—Section 108(b)(2), as amended by paragraph (1), is amended by redesignating subparagraph (F) as subparagraph (G) and by adding after subparagraph (E) the following new subparagraph:

"(F) PASSIVE ACTIVITY LOSS AND CREDIT CARRYOVERS.—Any passive activity loss or credit carryover of the taxpayer under section 469(b) from the taxable year of the discharge."

(3) CONFORMING AMENDMENTS.—

(A) Subparagraph (B) of section 108(b)(3) is amended to read as follows:

"(B) CREDIT CARRYOVER REDUCTION.—The reductions described in subparagraphs (B), (C), and (G) shall be 33⅓ cents for each dollar excluded by subsection (a). The reduction described in subparagraph (F) in any passive activity credit carryover shall be 33⅓ cents for each dollar excluded by subsection (a)."

(B) Subparagraph (B) of section 108(b)(4) is amended by striking "(C)" in the text and heading thereof and inserting "(D)".

(C) Subparagraph (C) of section 108(b)(4) is amended by striking "(E)" in the text and heading thereof and inserting "(G)".

(D) Subparagraph (B) of section 108(g)(3) is amended—

(i) by striking "subparagraphs (A), (B), (C), and (E)" and inserting "subparagraphs (A), (B), (C), (D), (F), and (G)",

(ii) by striking "subparagraphs (B) and (E)" and inserting "subparagraphs (B), (C), and (G)", and

(iii) by inserting before the period at the end the following: "and the attribute described in subparagraph (F) of subsection (b)(2) to the extent attributable to any passive activity credit carryover".

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to discharges of indebtedness in taxable years beginning after December 31, 1993.

SEC. 13227. LIMITATION ON SECTION 936 CREDIT.

(a) GENERAL RULE.—Subsection (a) of section 936 (relating to Puerto Rico and possession tax credit) is amended—

(1) by striking "as provided in paragraph (3)" in paragraph (1) and inserting "as otherwise provided in this section"; and

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

"(4) LIMITATIONS ON CREDIT FOR ACTIVE BUSINESS INCOME.—

"(A) IN GENERAL.—The amount of the credit determined under paragraph (1) for any taxable year with respect to income referred to in subparagraph (A) thereof shall not exceed the sum of the following amounts:

"(i) 60 percent of the sum of—

"(I) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, plus

"(II) the allocable employee fringe benefit expenses of the possession corporation for the taxable year.

"(ii) The sum of—

"(I) 15 percent of the depreciation allowances for the taxable year with respect to short-life qualified tangible property,

"(II) 40 percent of the depreciation allowances for the taxable year with respect to medium-life qualified tangible property, and

"(III) 65 percent of the depreciation allowances for the taxable year with respect to long-life qualified tangible property.

"(iii) If the possession corporation does not have an election to use the method described in subsection (h)(5)(C)(ii) (relating to profit split) in effect for the taxable year, the amount of qualified possession income taxes for the taxable year allocable to nonsheltered income.

"(B) ELECTION TO TAKE REDUCED CREDIT.—

"(i) IN GENERAL.—If an election under this subparagraph applies to a possession corporation for any taxable year—

"(I) subparagraph (A), and the provisions of subsection (i), shall not apply to such possession corporation for such taxable year, and

"(II) the credit determined under paragraph (1) for such taxable year with respect to income referred to in subparagraph (A) thereof shall be the applicable percentage of the credit which would otherwise have been determined under such paragraph with respect to such income.

Notwithstanding subclause (I), a possession corporation to which an election under this subparagraph applies shall be entitled to the benefits of subsection (i)(3)(B) for taxes allocable (on a pro rata basis) to taxable income the tax on which is not offset by reason of this subparagraph.

"(ii) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means the percentage determined in accordance with the following table:

"In the case of taxable years beginning in:	The percentage is:
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40.

"(iii) ELECTION.—

"(I) IN GENERAL.—An election under this subparagraph by any possession corporation may be made only for the corporation's first taxable year beginning after December 31, 1993, for which it is a possession corporation.

"(II) PERIOD OF ELECTION.—An election under this subparagraph shall apply to the taxable year for which made and all subsequent taxable years unless revoked.

"(III) AFFILIATED GROUPS.—If, for any taxable year, an election is not in effect for any possession corporation which is a member of an affiliated group, any election under this subparagraph for any other member of such group is revoked for such taxable year and all subsequent taxable years. For purposes of this subclause, members of an affiliated group shall be determined without regard to the exceptions contained in section 1504(b) and as if the constructive ownership rules of section 1563(e) applied for purposes of section 1504(a). The Secretary may prescribe regulations to prevent the avoidance of this subclause through deconsolidation or otherwise.

"(C) CROSS REFERENCE.—

"For definitions and special rules applicable to this paragraph, see subsection (i)."

(b) DEFINITIONS AND SPECIAL RULES.—Section 936 is amended by adding at the end thereof the following new subsection:

"(i) DEFINITIONS AND SPECIAL RULES RELATING TO LIMITATIONS OF SUBSECTION (a)(4).—

"(1) QUALIFIED POSSESSION WAGES.—For purposes of this section—

"(A) IN GENERAL.—The term 'qualified possession wages' means wages paid or incurred by the possession corporation during the taxable year in connection with the active conduct of a trade or business within a possession of the United States to any employee for services performed in such possession, but only if such services are performed while the principal place of employment of such employee is within such possession.

"(B) LIMITATION ON AMOUNT OF WAGES TAKEN INTO ACCOUNT.—

"(i) IN GENERAL.—The amount of wages which may be taken into account under subparagraph (A) with respect to any employee for any taxable year shall not exceed 85 percent of the contribution and benefit base determined under section 230 of the Social Security Act for the calendar year in which such taxable year begins.

"(ii) TREATMENT OF PART-TIME EMPLOYEES, ETC.—If—

"(I) any employee is not employed by the possession corporation on a substantially full-time basis at all times during the taxable year, or

"(II) the principal place of employment of any employee with the possession corporation is not within a possession at all times during the taxable year,

the limitation applicable under clause (i) with respect to such employee shall be the appropriate portion (as determined by the Secretary) of the limitation which would otherwise be in effect under clause (i).

"(C) TREATMENT OF CERTAIN EMPLOYEES.—The term 'qualified possession wages' shall not include any wages paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer is to make employees available for temporary periods to other persons in return for compensation. All possession corporations treated as 1 corporation under paragraph (5) shall be treated as 1 employer for purposes of the preceding sentence.

"(D) WAGES.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'wages' has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section). For purposes of the preceding sentence, such subsection (b) shall be applied as if the term 'United States' included all possessions of the United States.

"(ii) SPECIAL RULE FOR AGRICULTURAL LABOR AND RAILWAY LABOR.—In any case to which subparagraph (A) or (B) of paragraph (1) of section 51(h) applies, the term 'wages' has the meaning given to such term by section 51(h)(2).

"(2) ALLOCABLE EMPLOYEE FRINGE BENEFIT EXPENSES.—

"(A) IN GENERAL.—The allocable employee fringe benefit expenses of any possession corporation for any taxable year is an amount which bears the same ratio to the amount determined under subparagraph (B) for such taxable year as—

"(i) the aggregate amount of the possession corporation's qualified possession wages for such taxable year, bears to

"(ii) the aggregate amount of the wages paid or incurred by such possession corporation during such taxable year.

In no event shall the amount determined under the preceding sentence exceed 15 percent of the amount referred to in clause (i).

"(B) EXPENSES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), the amount determined under this subparagraph for any taxable year is the aggregate amount allowable as a deduction under this chapter to the possession corporation for such taxable year with respect to—

"(i) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan,

"(ii) employer-provided coverage under any accident or health plan for employees, and

"(iii) the cost of life or disability insurance provided to employees.

Any amount treated as wages under paragraph (1)(D) shall not be taken into account under this subparagraph.

"(3) TREATMENT OF POSSESSION TAXES.—

"(A) AMOUNT OF CREDIT FOR POSSESSION CORPORATIONS NOT USING PROFIT SPLIT.—

"(i) IN GENERAL.—For purposes of subsection (a)(4)(A)(iii), the amount of the qualified possession income taxes for any taxable year allocable to nonsheltered income shall be an amount which bears the same ratio to the possession income taxes for such taxable year as—

"(I) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A) (without regard to clause (iii) thereof), bears to

"(II) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

"(ii) LIMITATION ON AMOUNT OF TAXES TAKEN INTO ACCOUNT.—Possession income taxes shall not be taken into account under clause (i) for any taxable year to the extent that the amount of such taxes exceeds 9 percent of the amount of the taxable income for such taxable year.

"(B) DEDUCTION FOR POSSESSION CORPORATIONS USING PROFIT SPLIT.—Notwithstanding subsection (c), if a possession corporation is not described in subsection (a)(4)(A)(iii) for the taxable year, such possession corporation shall be allowed a deduction for such taxable year in an amount which bears the same ratio to the possession income taxes for such taxable year as—

"(i) the increase in the tax liability of the possession corporation under this chapter for the taxable year by reason of subsection (a)(4)(A), bears to

"(ii) the tax liability of the possession corporation under this chapter for the taxable year determined without regard to the credit allowable under this section.

In determining the credit under subsection (a) and in applying the preceding sentence, taxable income shall be determined without regard to the preceding sentence.

"(C) POSSESSION INCOME TAXES.—For purposes of this paragraph, the term 'possession income taxes' means any taxes of a possession of the United States which are treated as not being income, war profits, or excess profits taxes paid or accrued to a possession of the United States by reason of subsection (c).

"(4) DEPRECIATION RULES.—For purposes of this section—

"(A) DEPRECIATION ALLOWANCES.—The term 'depreciation allowances' means the depreciation deductions allowable under section 167 to the possession corporation.

"(B) CATEGORIES OF PROPERTY.—

"(i) QUALIFIED TANGIBLE PROPERTY.—The term 'qualified tangible property' means any tangible property used by the possession corporation in a possession of the United States in the active conduct of a trade or business within such possession.

"(ii) SHORT-LIFE QUALIFIED TANGIBLE PROPERTY.—The term 'short-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is 3-year property or 5-year property for purposes of such section.

"(iii) MEDIUM-LIFE QUALIFIED TANGIBLE PROPERTY.—The term 'medium-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is 7-year property or 10-year property for purposes of such section.

"(iv) LONG-LIFE QUALIFIED TANGIBLE PROPERTY.—The term 'long-life qualified tangible property' means any qualified tangible property to which section 168 applies and which is not described in clause (ii) or (iii).

"(v) TRANSITIONAL RULE.—In the case of any qualified tangible property to which section 168 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1986) applies, any reference in this paragraph to section 168 shall be treated as a reference to such section as so in effect.

"(5) ELECTION TO COMPUTE CREDIT ON CONSOLIDATED BASIS.—

"(A) IN GENERAL.—Any affiliated group may elect to treat all possession corporations which would be members of such group but for section 1504(b) (3) or (4) as 1 corporation for purposes of this section. The credit determined under this section with respect to such 1 corporation shall be allocated among such possession corporations in such manner as the Secretary may prescribe.

"(B) ELECTION.—An election under subparagraph (A) shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Secretary.

"(6) POSSESSION CORPORATION.—The term 'possession corporation' means a domestic corporation for which the election provided in subsection (a) is in effect."

(c) MINIMUM TAX TREATMENT.—

(1) IN GENERAL.—Subclause (I) of section 56(g)(4)(C)(ii) (relating to special rule for certain dividends) is amended by striking "sections 936 and 921" and inserting "sections 936 (including subsections (a)(4) and (i) thereof) and 921".

(2) TREATMENT OF FOREIGN TAXES.—Clause (iii) of section 56(g)(4)(C) is amended by adding at the end thereof the following subclauses:

"(IV) SEPARATE APPLICATION OF FOREIGN TAX CREDIT LIMITATIONS.—In determining the alternative minimum foreign tax credit, section 904(d) shall be applied as if dividends from a corporation eligible for the credit provided by section 936 were a separate category of income referred to in a subparagraph of section 904(d)(1).

"(V) COORDINATION WITH LIMITATION ON 936 CREDIT.—Any reference in this clause to a dividend received from a corporation eligible for the credit provided by section 936 shall be treated as a reference to the portion of any such dividend for which the dividends received deduction is disallowed under clause (i) after the application of clause (ii)(I)."

(d) CONFORMING AMENDMENT.—Paragraph (4) of section 904(b) is amended by inserting before the period at the end thereof the following: "(without regard to subsections (a)(4) and (i) thereof)".

(e) INCREASE IN LIMITATION ON COVER OVER.—Paragraph (1) of section 7652(f) is amended to read as follows:

"(1) $10.50 ($11.30 in the case of distilled spirits brought into the United States during the 5-year period beginning on October 1, 1993), or."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993; except that the amendment made by subsection (e) shall take effect on October 1, 1993.

SEC. 13228. MODIFICATION TO LIMITATION ON DEDUCTION FOR CERTAIN INTEREST.

(a) GENERAL RULE.—Paragraph (3) of section 163(j) (defining disqualified interest) is amended to read as follows:

"(3) DISQUALIFIED INTEREST.—For purposes of this subsection, the term 'disqualified interest' means—

"(A) any interest paid or accrued by the taxpayer (directly or indirectly) to a related person if no tax is imposed by this subtitle with respect to such interest, and

"(B) any interest paid or accrued by the taxpayer with respect to any indebtedness to a person who is not a related person if—

"(i) there is a disqualified guarantee of such indebtedness, and

"(ii) no gross basis tax is imposed by this subtitle with respect to such interest."

(b) DEFINITIONS.—Paragraph (6) of section 163(j) is amended by adding at the end thereof the following new subparagraphs:

"(D) DISQUALIFIED GUARANTEE.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'disqualified guarantee'

means any guarantee by a related person which is—

"(I) an organization exempt from taxation under this subtitle, or

"(II) a foreign person.

"(ii) EXCEPTIONS.—The term 'disqualified guarantee' shall not include a guarantee—

"(I) in any circumstances identified by the Secretary by regulation, where the interest on the indebtedness would have been subject to a net basis tax if the interest had been paid to the guarantor, or

"(II) if the taxpayer owns a controlling interest in the guarantor.

For purposes of subclause (II), except as provided in regulations, the term 'a controlling interest' means direct or indirect ownership of at least 80 percent of the total voting power and value of all classes of stock of a corporation, or 80 percent of the profit and capital interests in any other entity. For purposes of the preceding sentence, the rules of paragraphs (1) and (5) of section 267(c) shall apply; except that such rules shall also apply to interest in entities other than corporations.

"(iii) GUARANTEE.—Except as provided in regulations, the term 'guarantee' includes any arrangement under which a person (directly or indirectly through an entity or otherwise) assures, on a conditional or unconditional basis, the payment of another person's obligation under any indebtedness.

"(E) GROSS BASIS AND NET BASIS TAXATION.—

"(i) GROSS BASIS TAX.—The term 'gross basis tax' means any tax imposed by this subtitle which is determined by reference to the gross amount of any item of income without any reduction for any deduction allowed by this subtitle.

"(ii) NET BASIS TAX.—The term 'net basis tax' means any tax imposed by this subtitle which is a not a gross basis tax."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 163(j)(5) is amended by striking "to a related person".

(2) The subsection heading for subsection (j) of section 163 is amended to read as follows:

"(j) LIMITATION ON DEDUCTION FOR INTEREST ON CERTAIN INDEBTEDNESS.—".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to interest paid or accrued in taxable years beginning after December 31, 1993.

PART III—FOREIGN TAX PROVISIONS

Subpart A—Current Taxation of Certain Earnings of Controlled Foreign Corporations

SEC. 13231. EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

(a) GENERAL RULE.—Paragraph (1) of section 951(a) (relating to amounts included in gross income of United States shareholders) 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 thereof the following new subparagraph:

"(C) the amount determined under section 956A with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(3))."

(b) AMOUNT OF INCLUSION.—Subpart F of part III of subchapter N of chapter 1 is amended by inserting after section 956 the following new section:

"SEC. 956A. EARNINGS INVESTED IN EXCESS PASSIVE ASSETS.

"(a) GENERAL RULE.—In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

"(1) the excess (if any) of—

"(A) such shareholder's pro rata share of the amount of the controlled foreign corporation's excess passive assets for such taxable year, over

"(B) the amount of earnings and profits described in section 959(c)(1)(B) with respect to such shareholder, or

"(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation determined after the application of section 951(a)(1)(B).

"(b) APPLICABLE EARNINGS.—For purposes of this section, the term 'applicable earnings' means, with respect to any controlled foreign corporation, the sum of—

"(1) the amount referred to in section 316(a)(1) to the extent such amount was accumulated in taxable years beginning after September 30, 1993, and

"(2) the amount referred to in section 316(a)(2),

but reduced by distributions made during the taxable year and reduced by the earnings and profits described in section 959(c)(1) to the extent that the earnings and profits so described were accumulated in taxable years beginning after September 30, 1993.

"(c) EXCESS PASSIVE ASSETS.—For purposes of this section—

"(1) IN GENERAL.—The excess passive assets of any controlled foreign corporation for any taxable year is the excess (if any) of—

"(A) the average of the amounts of passive assets held by such corporation as of the close of each quarter of such taxable year, over

"(B) 25 percent of the average of the amounts of total assets held by such corporation as of the close of each quarter of such taxable year.

For purposes of the preceding sentence, the amount taken into account with respect to any asset shall be its adjusted basis as determined for purposes of computing earnings and profits.

"(2) PASSIVE ASSET.—

"(A) IN GENERAL.—Except as otherwise provided in this section, the term 'passive asset' means any asset held by the controlled foreign corporation which produces passive income (as defined in section 1296(b)) or is held for the production of such income.

"(B) COORDINATION WITH SECTION 956.—The term 'passive asset' shall not include any United States property (as defined in section 956).

"(3) CERTAIN RULES TO APPLY.—For purposes of this subsection, the rules of the following provisions shall apply:

"(A) Section 1296(c) (relating to look-thru rules).

"(B) Section 1297(d) (relating to leasing rules).

"(C) Section 1297(e) (relating to intangible property).

"(d) TREATMENT OF CERTAIN GROUPS OF CONTROLLED FOREIGN CORPORATIONS.—

"(1) IN GENERAL.—For purposes of applying subsection (c)—

"(A) all controlled foreign corporations which are members of the same CFC group shall be treated as 1 controlled foreign corporation, and

"(B) the amount of the excess passive assets determined with respect to such 1 corporation shall be allocated among the controlled foreign corporations which are members of such group in proportion to their respective amounts of applicable earnings.

"(2) CFC GROUP.—For purposes of paragraph (1), the term 'CFC group' means 1 or more chains of controlled foreign corporations connected through stock ownership with a top tier corporation which is a controlled foreign corporation, but only if—

"(A) the top tier corporation owns directly more than 50 percent (by vote or value) of the stock of at least 1 of the other controlled foreign corporations, and

"(B) more than 50 percent (by vote or value) of the stock of each of the controlled foreign corporations (other than the top tier corporation) is owned (directly or indirectly) by one or more other members of the group.

"(e) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION DURING TAXABLE YEAR.—If any foreign corporation ceases to be a controlled foreign corporation during any taxable year—

"(1) the determination of any United States shareholder's pro rata share shall be made on the basis of stock owned (within the meaning of section 958(a)) by such shareholder on the last day during the taxable year on which the foreign corporation is a controlled foreign corporation, and

"(2) the amount of such corporation's excess passive assets for such taxable year shall be determined by only taking into account quarters ending on or before such last day, and

"(3) in determining applicable earnings, the amount taken into account by reason of being described in paragraph (2) of section 316(a) shall be the portion of the amount so described which is allocable (on a pro rata basis) to the part of such year during which the corporation is a controlled foreign corporation.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisions of this section through reorganizations or otherwise."

(c) PREVIOUSLY TAXED INCOME RULES.—

(1) IN GENERAL.—Subsection (a) of section 959 (relating to exclusion from gross income of previously taxed earnings and profits) is amended by striking "or" at the end of paragraph (1), by adding "or" at the end of paragraph (2), and by inserting after paragraph (2) the following new paragraph:

"(3) such amounts would, but for this subsection, be included under section 951(a)(1)(C) in the gross income of,".

(2) ALLOCATION RULES.—

(A) Subsection (a) of section 959 is amended by adding at the end thereof the following new sentence: "The rules of subsection (c) shall apply for purposes of paragraph (1) of this subsection and the rules of subsection (f) shall apply for purposes of paragraphs (2) and (3) of this subsection.".

(B) Section 959 is amended by adding at the end thereof the following new subsection:

"(f) ALLOCATION RULES FOR CERTAIN INCLUSIONS.—

"(1) IN GENERAL.—For purposes of this section—

"(A) amounts that would be included under subparagraph (B) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2), and then to earnings described in subsection (c)(3), and

"(B) amounts that would be included under subparagraph (C) of section 951(a)(1) (determined without regard to this section) shall be treated as attributable first to earnings described in subsection (c)(2) to the extent the earnings so described were accumulated in taxable years beginning after September 30, 1993, and then to earnings described in subsection (c)(3).

"(2) TREATMENT OF DISTRIBUTIONS.—In applying this section, actual distributions shall be taken into account before amounts that would be included under subparagraphs (B) and (C) of section 951(a)(1) (determined without regard to this section)."

(C) Paragraph (1) of section 959(c) is amended to read as follows:

"(1) first to the aggregate of—

"(A) earnings and profits attributable to amounts included in gross income under section 951(a)(1)(B) (or which would have been included except for subsection (a)(2) of this section), and

"(B) earnings and profits attributable to amounts included in gross income under section

951(a)(1)(C) (or which would have been included except for subsection (a)(3) of this section), with any distribution being allocated between earnings and profits described in subparagraph (A) and earnings and profits described in subparagraph (B) proportionately on the basis of the respective amounts of such earnings and profits,".

(3) COORDINATION WITH PFIC INCLUSIONS.—Subsection (c) of section 1293 is amended by adding at the end thereof the following new sentence: "If the passive foreign investment company is a controlled foreign corporation (as defined in section 957(a)), the preceding sentence shall not apply to any United States shareholder (as defined in section 951(b)) in such corporation, and, in applying section 959 to any such shareholder, any inclusion under this section shall be treated as an inclusion under section 951(a)(1)(A).".

(4) CONFORMING AMENDMENTS.—

(A) Subsections (a) and (b) of section 959 are each amended by striking "earnings and profits for a taxable year" and inserting "earnings and profits".

(B) Paragraph (2) of section 959(c) is amended to read as follows:

"(2) then to earnings and profits attributable to amounts included in gross income under section 951(a)(1)(A) (but reduced by amounts not included under subparagraph (B) or (C) of section 951(a)(1) because of the exclusions in paragraphs (2) and (3) of subsection (a) of this section), and"

(C) Subsection (b) of section 989 is amended by striking "section 951(a)(1)(B)" and inserting "subparagraph (B) or (C) of section 951(a)(1)".

(d) MODIFICATIONS TO PASSIVE FOREIGN INVESTMENT COMPANY RULES.—

(1) ADJUSTED BASIS USED IN CERTAIN DETERMINATIONS.—Subsection (a) of section 1296 is amended by striking the material following paragraph (2) and inserting the following:

"In the case of a controlled foreign corporation (or any other foreign corporation if such corporation so elects), the determination under paragraph (2) shall be based on the adjusted bases (as determined for purposes of computing earnings and profits) of its assets in lieu of their value. Such an election, once made, may be revoked only with the consent of the Secretary."

(2) TREATMENT OF CERTAIN SUBPART F INCLUSIONS.—Subsection (b) of section 1297 is amended by adding at the end thereof the following new paragraph:

"(9) TREATMENT OF CERTAIN SUBPART F INCLUSIONS.—Any amount included in gross income under subparagraph (B) or (C) of section 951(a)(1) shall be treated as a distribution received with respect to the stock."

(3) TREATMENT OF CERTAIN DEALERS IN SECURITIES.—Subsection (b) of section 1296 is amended by adding at the end thereof the following new paragraph:

"(3) TREATMENT OF CERTAIN DEALERS IN SECURITIES.—

"(A) IN GENERAL.—In the case of any foreign corporation which is a controlled foreign corporation (as defined in section 957(a)), the term 'passive income' does not include any income derived in the active conduct of a securities business by such corporation if such corporation is registered as a securities broker or dealer under section 15(a) of the Securities Exchange Act of 1934 or is registered as a Government securities broker or dealer under section 15C(a) of such Act. To the extent provided in regulations, such term shall not include any income derived in the active conduct of a securities business by a controlled foreign corporation which is not so registered.

"(B) APPLICATION OF LOOK-THRU RULES.—For purposes of paragraph (2)(C), rules similar to the rules of subparagraph (A) of this paragraph shall apply in determining whether any income of a related person (whether or not a corporation) is passive income.

"(C) LIMITATION.—The preceding provisions of this paragraph shall only apply in the case of persons who are United States shareholders (as defined in section 951(b)) in the controlled foreign corporation."

(4) LEASING AND INTANGIBLE ASSET RULES.—Section 1297 is amended by redesignating subsection (d) as subsection (f) and by inserting after subsection (c) the following new subsections:

"(d) TREATMENT OF CERTAIN LEASED PROPERTY.—For purposes of this part—

"(1) IN GENERAL.—Any tangible personal property with respect to which a foreign corporation is the lessee under a lease with a term of at least 12 months shall be treated as an asset actually held by such corporation.

"(2) DETERMINATION OF ADJUSTED BASIS.—

"(A) IN GENERAL.—The adjusted basis of any asset to which paragraph (1) applies shall be the unamortized portion (as determined under regulations prescribed by the Secretary) of the present value of the payments under the lease for the use of such property.

"(B) PRESENT VALUE.—For purposes of subparagraph (A), the present value of payments described in subparagraph (A) shall be determined in the manner provided in regulations prescribed by the Secretary—

"(i) as of the beginning of the lease term, and

"(ii) except as provided in such regulations, by using a discount rate equal to the applicable Federal rate determined under section 1274(d)—

"(I) by substituting the lease term for the term of the debt instrument, and

"(II) without regard to paragraph (2) or (3) thereof.

"(3) EXCEPTIONS.—This subsection shall not apply in any case where—

"(A) the lessor is a related person (as defined in section 954(d)(3)) with respect to the foreign corporation, or

"(B) a principal purpose of leasing the property was to avoid the provisions of this part or section 956A.

"(e) SPECIAL RULES FOR CERTAIN INTANGIBLES.—

"(1) RESEARCH EXPENDITURES.—The adjusted basis of the total assets of a controlled foreign corporation shall be increased by the research or experimental expenditures (within the meaning of section 174) paid or incurred by such foreign corporation during the taxable year and the preceding 2 taxable years. Any expenditure otherwise taken into account under the preceding sentence shall be reduced by the amount of any reimbursement received by the controlled foreign corporation with respect to such expenditure.

"(2) CERTAIN LICENSED INTANGIBLES.—

"(A) IN GENERAL.—In the case of any intangible property (as defined in section 936(h)(3)(B)) with respect to which a controlled foreign corporation is a licensee and which is used by such foreign corporation in the active conduct of a trade or business, the adjusted basis of the total assets of such foreign corporation shall be increased by an amount equal to 300 percent of the payments made during the taxable year by such foreign corporation for the use of such intangible property.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply to—

"(i) any payments to a foreign person if such foreign person is a related person (as defined in section 954(d)(3)) with respect to the controlled foreign corporation, and

"(ii) any payments under a license if a principal purpose of entering into such license was to avoid the provisions of this part or section 956A.

"(3) CONTROLLED FOREIGN CORPORATION.—For purposes of this subsection, the term 'controlled foreign corporation' has the meaning given such term by section 957(a)."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of foreign corporations end.

SEC. 13232. MODIFICATION TO TAXATION OF INVESTMENT IN UNITED STATES PROPERTY.

(a) GENERAL RULE.—Section 956 (relating to investment of earnings in United States property) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively, and

(2) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—In the case of any controlled foreign corporation, the amount determined under this section with respect to any United States shareholder for any taxable year is the lesser of—

"(1) the excess (if any) of—

"(A) such shareholder's pro rata share of the average of the amounts of United States property held (directly or indirectly) by the controlled foreign corporation as of the close of each quarter of such taxable year, over

"(B) the amount of earnings and profits described in section 959(c)(1)(A) with respect to such shareholder, or

"(2) such shareholder's pro rata share of the applicable earnings of such controlled foreign corporation.

The amount taken into account under paragraph (1) with respect to any property shall be its adjusted basis as determined for purposes of computing earnings and profits, reduced by any liability to which the property is subject.

"(b) SPECIAL RULES.—

"(1) APPLICABLE EARNINGS.—For purposes of this section, the term 'applicable earnings' has the meaning given to such term by section 956A(b), except that the provisions of such section excluding earnings and profits accumulated in taxable years beginning before October 1, 1993, shall be disregarded.

"(2) SPECIAL RULE FOR U.S. PROPERTY ACQUIRED BEFORE CORPORATION IS A CONTROLLED FOREIGN CORPORATION.—In applying subsection (a) to any taxable year, there shall be disregarded any item of United States property which was acquired by the controlled foreign corporation before the first day on which such corporation was treated as a controlled foreign corporation. The aggregate amount of property disregarded under the preceding sentence shall not exceed the portion of the applicable earnings of such controlled foreign corporation which were accumulated during periods before such first day.

"(3) SPECIAL RULE WHERE CORPORATION CEASES TO BE CONTROLLED FOREIGN CORPORATION.—Rules similar to the rules of section 956A(e) shall apply for purposes of this section."

(b) REGULATORY AUTHORITY.—Section 956 is amended by adding at the end thereof the following new subsection:

"(e) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations to prevent the avoidance of the provisons of this section through reorganizations or otherwise."

(c) CONFORMING AMENDMENTS.—

(1) Subparagraph (B) of section 951(a)(1) is amended to read as follows:

"(B) the amount determined under section 956 with respect to such shareholder for such year (but only to the extent not excluded from gross income under section 959(a)(2)); and"

(2) Subsection (a) of section 951 is amended by striking paragraph (4).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.

SEC. 13233. OTHER MODIFICATIONS TO SUBPART F.

(a) SAME COUNTRY EXCEPTION NOT TO APPLY TO CERTAIN DIVIDENDS.—

(1) IN GENERAL.—Paragraph (3) of section 954(c) (relating to certain income received from related persons) is amended by adding at the end thereof the following new subparagraph:

"(C) EXCEPTION FOR CERTAIN DIVIDENDS.—Subparagraph (A)(i) shall not apply to any dividend with respect to any stock which is attributable to earnings and profits of the distributing corporation accumulated during any period during which the person receiving such dividend did not hold such stock either directly, or indirectly through a chain of one or more subsidiaries each of which meets the requirements of subparagraph (A)(i)."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years of controlled foreign corporations beginning after September 30, 1993, and to taxable years of United States shareholders in which or with which such taxable years of controlled foreign corporations end.

(b) AMENDMENTS TO SECTION 960(b).—

(1) IN GENERAL.—Subsection (b) of section 960 is amended—

(A) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and

(B) by striking paragraphs (1) and (2) and inserting the following new paragraphs:

"(1) INCREASE IN SECTION 904 LIMITATION.—In the case of any taxpayer who—

"(A) either (i) chose to have the benefits of subpart A of this part for a taxable year beginning after September 30, 1993, in which he was required under section 951(a) to include any amount in his gross income, or (ii) did not pay or accrue for such taxable year any income, war profits, or excess profits taxes to any foreign country or to any possession of the United States,

"(B) chooses to have the benefits of subpart A of this part for any taxable year in which he receives 1 or more distributions or amounts which are excludable from gross income under section 959(a) and which are attributable to amounts included in his gross income for taxable years referred to in subparagraph (A), and

"(C) for the taxable year in which such distributions or amounts are received, pays, or is deemed to have paid, or accrues income, war profits, or excess profits taxes to a foreign country or to any possession of the United States with respect to such distributions or amounts,

the limitation under section 904 for the taxable year in which such distributions or amounts are received shall be increased by the lesser of the amount of such taxes paid, or deemed paid, or accrued with respect to such distributions or amounts or the amount in the excess limitation account as of the beginning of such taxable year.

"(2) EXCESS LIMITATION ACCOUNT.—

"(A) ESTABLISHMENT OF ACCOUNT.—Each taxpayer meeting the requirements of paragraph (1)(A) shall establish an excess limitation account. The opening balance of such account shall be zero.

"(B) INCREASES IN ACCOUNT.—For each taxable year beginning after September 30, 1993, the taxpayer shall increase the amount in the excess limitation account by the excess (if any) of—

"(i) the amount by which the limitation under section 904(a) for such taxable year was increased by reason of the total amount of the inclusions in gross income under section 951(a) for such taxable year, over

"(ii) the amount of any income, war profits, and excess profits taxes paid, or deemed paid, or accrued to any foreign country or possession of the United States which were allowable as a credit under section 901 for such taxable year and which would not have been allowable but for the inclusions in gross income described in clause (i).

Proper reductions in the amount added to the account under the preceding sentence for any taxable year shall be made for any increase in the credit allowable under section 901 for such taxable year by reason of a carryback if such increase would not have been allowable but for the inclusions in gross income described in clause (i).

"(C) DECREASES IN ACCOUNT.—For each taxable year beginning after September 30, 1993, for which the limitation under section 904 was increased under paragraph (1), the taxpayer shall reduce the amount in the excess limitation account by the amount of such increase.

"(3) DISTRIBUTIONS OF INCOME PREVIOUSLY TAXED IN YEARS BEGINNING BEFORE OCTOBER 1, 1993.—If the taxpayer receives a distribution or amount in a taxable year beginning after September 30, 1993, which is excluded from gross income under section 959(a) and is attributable to any amount included in gross income under section 951(a) for a taxable year beginning before October 1, 1993, the limitation under section 904 for the taxable year in which such amount or distribution is received shall be increased by the amount determined under this subsection as in effect on the day before the date of the enactment of the Revenue Reconcilation Act of 1993."

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to taxable years beginning after September 30, 1993.

Subpart B—Allocation of Research and Experimental Expenditures

SEC. 13234. ALLOCATION OF RESEARCH AND EXPERIMENTAL EXPENDITURES.

(a) GENERAL RULE.—Subparagraph (B) of section 864(f)(1) (relating to allocation of research and experimental expenditures) is amended by striking "64 percent" each place it appears and inserting "50 percent".

(b) CONFORMING AMENDMENTS.—

(1) Subsection (f) of section 864 is amended by striking paragraph (5) and inserting the following new paragraphs:

"(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subsection, including regulations relating to the determination of whether any expenses are attributable to activities conducted in the United States or outside the United States and regulations providing such adjustments to the provisions of this subsection as may be appropriate in the case of cost-sharing arrangements and contract research.

"(6) APPLICABILITY.—This subsection shall apply to the taxpayer's first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Revenue Procedure 92-56 applies or would apply if the taxpayer elected the benefits of such Revenue Procedure."

(2) Subparagraph (D) of section 864(f)(4) is amended by striking "subparagraph (C)" and inserting "subparagraph (B) or (C)".

Subpart C—Other Provisions

SEC. 13235. REPEAL OF CERTAIN EXCEPTIONS FOR WORKING CAPITAL.

(a) PROVISIONS RELATING TO OIL AND GAS INCOME.—

(1) AMENDMENTS TO SECTION 907.—

(A) Paragraph (1) of section 907(c) is amended by adding at the end thereof the following new flush sentence:

"Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A))."

(B) Paragraph (2) of section 907(c) is amended by adding at the end thereof the following new flush sentence:

"Such term does not include any dividend or interest income which is passive income (as defined in section 904(d)(2)(A))."

(2) SEPARATE APPLICATION OF FOREIGN TAX CREDIT.—Clause (iii) of section 904(d)(2)(A) is amended by inserting "and" at the end of subclause (II), by striking ", and" at the end of subclause (III) and inserting a period, and by striking subclause (IV).

(3) TREATMENT UNDER SUBPART F.—

(A) Paragraph (1) of section 954(g) is amended by adding at the end thereof the following new flush sentence:

"Such term shall not include any foreign personal holding company income (as defined in subsection (c))."

(B) Paragraph (8) of section 954(b) is amended by striking "(1),".

(b) TREATMENT OF SHIPPING INCOME.—Subsection (f) of section 954 is amended by adding at the end thereof the following new sentence: "Except as provided in paragraph (1), such term shall not include any dividend or interest income which is foreign personal holding company income (as defined in subsection (c))."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1992.

SEC. 13236. MODIFICATIONS OF ACCURACY-RELATED PENALTY.

(a) THRESHOLD REQUIREMENT.—Clause (ii) of section 6662(e)(1)(B) (relating to substantial valuation misstatement under chapter 1) is amended to read as follows:

"(ii) the net section 482 transfer price adjustment for the taxable year exceeds the lesser of $5,000,000 or 10 percent of the taxpayer's gross receipts."

(b) CERTAIN ADJUSTMENTS EXCLUDED IN DETERMINING THRESHOLD.—Subparagraph (B) of section 6662(e)(3) is amended to read as follows:

"(B) CERTAIN ADJUSTMENTS EXCLUDED IN DETERMINING THRESHOLD.—For purposes of determining whether the threshold requirements of paragraph (1)(B)(ii) are met, the following shall be excluded:

"(i) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to any redetermination of a price if—

"(I) it is established that the taxpayer determined such price in accordance with a specific pricing method set forth in the regulations prescribed under section 482 and that the taxpayer's use of such method was reasonable,

"(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such price in accordance with such a method and which establishes that the use of such method was reasonable, and

"(III) the taxpayer provides such documentation to the Secretary within 30 days of a request for such documentation.

"(ii) Any portion of the net increase in taxable income referred to in subparagraph (A) which is attributable to a redetermination of price where such price was not determined in accordance with such a specific pricing method if—

"(I) the taxpayer establishes that none of such pricing methods was likely to result in a price that would clearly reflect income, the taxpayer used another pricing method to determine such price, and such other pricing method was likely to result in a price that would clearly reflect income,

"(II) the taxpayer has documentation (which was in existence as of the time of filing the return) which sets forth the determination of such

price in accordance with such other method and which establishes that the requirements of subclause (I) were satisfied, and

"(III) the taxpayer provides such documentation to the Secretary within 30 days of request for such documentation.

"(iii) Any portion of such net increase which is attributable to any transaction solely between foreign corporations unless, in the case of any such corporations, the treatment of such transaction affects the determination of income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States."

(c) COORDINATION WITH REASONABLE CAUSE EXCEPTION.—Paragraph (3) of section 6662(e) is amended by adding at the end thereof the following new subparagraph:

"(D) COORDINATION WITH REASONABLE CAUSE EXCEPTION.—For purposes of section 6664(c) the taxpayer shall not be treated as having reasonable cause for any portion of an underpayment attributable to a net section 482 transfer price adjustment unless such taxpayer meets the requirements of clause (i), (ii), or (iii) of subparagraph (B) with respect to such portion."

(d) CONFORMING AMENDMENT.—Clause (iii) of section 6662(h)(2)(A) is amended to read as follows:

"(iii) in paragraph (1)(B)(ii)—

"(I) '$20,000,000' for '$5,000,000', and

"(II) '20 percent' for '10 percent'."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1993.

SEC. 13237. DENIAL OF PORTFOLIO INTEREST EXEMPTION FOR CONTINGENT INTEREST.

(a) GENERAL RULE.—

(1) Subsection (h) of section 871 (relating to repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments) is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) PORTFOLIO INTEREST NOT TO INCLUDE CERTAIN CONTINGENT INTEREST.—For purposes of this subsection—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term 'portfolio interest' shall not include—

"(i) any interest if the amount of such interest is determined by reference to—

"(I) any receipts, sales or other cash flow of the debtor or a related person,

"(II) any income or profits of the debtor or a related person,

"(III) any change in value of any property of the debtor or a related person, or

"(IV) any dividend, partnership distributions, or similar payments made by the debtor or a related person, or

"(ii) any other type of contingent interest that is identified by the Secretary by regulation, where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of Federal income tax.

"(B) RELATED PERSON.—The term 'related person' means any person who is related to the debtor within the meaning of section 267(b) or 707(b)(1), or who is a party to any arrangement undertaken for a purpose of avoiding the application of this paragraph.

"(C) EXCEPTIONS.—Subparagraph (A)(i) shall not apply to—

"(i) any amount of interest solely by reason of the fact that the timing of any interest or principal payment is subject to a contingency,

"(ii) any amount of interest solely by reason of the fact that the interest is paid with respect to nonrecourse or limited recourse indebtedness,

"(iii) any amount of interest all or substantially all of which is determined by reference to any other amount of interest not described in subparagraph (A) (or by reference to the principal amount of indebtedness on which such other interest is paid),

"(iv) any amount of interest solely by reason of the fact that the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest,

"(v) any amount of interest determined by reference to—

"(I) changes in the value of property (including stock) that is actively traded (within the meaning of section 1092(d)) other than property described in section 897(c)(1) or (g),

"(II) the yield on property described in subclause (I), other than a debt instrument that pays interest described in subparagraph (A), or stock or other property that represents a beneficial interest in the debtor or a related person, or

"(III) changes in any index of the value of property described in subclause (I) or of the yield on property described in subclause (II), and

"(vi) any other type of interest identified by the Secretary by regulation.

"(D) EXCEPTION FOR CERTAIN EXISTING INDEBTEDNESS.—Subparagraph (A) shall not apply to any interest paid or accrued with respect to any indebtedness with a fixed term—

"(i) which was issued on or before April 7, 1993, or

"(ii) which was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued."

(2) Subsection (c) of section 881 is amended by redesignating paragraphs (4), (5), and (6) as paragraphs (5), (6), and (7), respectively, and by inserting after paragraph (3) the following new paragraph:

"(4) PORTFOLIO INTEREST NOT TO INCLUDE CERTAIN CONTINGENT INTEREST.—For purposes of this subsection, the term 'portfolio interest' shall not include any interest which is treated as not being portfolio interest under the rules of section 871(h)(4)."

(b) ESTATE TAX TREATMENT.—Subsection (b) of section 2105 is amended—

(1) by striking "this subchapter" in the material preceding paragraph (1) and inserting "this subchapter, the following shall not be deemed property within the United States", and

(2) by striking paragraph (3) and all that follows down through the period at the end thereof and inserting the following:

"(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(5) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1) were such interest received by the decedent at the time of his death.

Notwithstanding the preceding sentence, if any portion of the interest on an obligation referred to in paragraph (3) would not be eligible for the exemption referred to in paragraph (3) by reason of section 871(h)(4) if the interest were received by the decedent at the time of his death, then an appropriate portion (as determined in a manner prescribed by the Secretary) of the value (as determined for purposes of this chapter) of such debt obligation shall be deemed property within the United States."

(c) CONFORMING AMENDMENTS.—

(1) Clause (ii) of section 871(h)(2)(B) is amended by striking "paragraph (4)" and inserting "paragraph (5)".

(2) Clause (ii) of section 881(c)(2)(B) is amended by striking "section 871(h)(4)" and inserting "section 871(h)(5)".

(3) Paragraph (6) of section 881(c) (as redesignated by subsection (a)) is amended by striking "section 871(h)(5)" each place it appears and inserting "section 871(h)(6)".

(4) Paragraph (9) of section 1441(c) is amended by striking "section 871(h)(3)" and inserting "section 871(h)(3) or (4)".

(5) Subsection (a) of section 1442 is amended—

(A) by striking "871(h)(3)" and inserting "871(h)(3) or (4)", and

(B) by striking "881(c)(3)" and inserting "881(c)(3) or (4)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to interest received after December 31, 1993; except that the amendments made by subsection (b) shall apply to the estates of decedents dying after December 31, 1993.

SEC. 13238. REGULATIONS DEALING WITH CONDUIT ARRANGEMENTS.

Section 7701 is amended by redesignating subsection (l) as subsection (m) and by inserting after subsection (k) the following new subsection:

"(l) REGULATIONS RELATING TO CONDUIT ARRANGEMENTS.—The Secretary may prescribe regulations recharacterizing any multiple-party financing transaction as a transaction directly among any 2 or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by this title."

SEC. 13239. TREATMENT OF EXPORT OF CERTAIN SOFTWOOD LOGS.

(a) FOREIGN SALES CORPORATIONS.—Paragraph (2) of section 927(a) (relating to exclusion of certain property) is amended by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding at the end the following:

"(E) any unprocessed timber which is a softwood.

For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(b) DOMESTIC INTERNATIONAL SALES CORPORATIONS.—Paragraph (2) of section 993(c) (relating to exclusion of certain property) is amended—

(1) by striking "or" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", or", and by adding after subparagraph (D) the following new subparagraph:

"(E) any unprocessed timber which is a softwood.", and

(2) by adding at the end the following new sentence: "For purposes of subparagraph (E), the term 'unprocessed timber' means any log, cant, or similar form of timber."

(c) SOURCE RULE.—Subsection (b) of section 865 (relating to source rules for personal property sales) is amended by adding at the end the following: "Notwithstanding the preceding sentence, any income from the sale of any unprocessed timber which is a softwood and was cut from an area in the United States shall be sourced in the United States and the rules of sections 862(a)(6) and 863(b) shall not apply to any such income. For purposes of the preceding sentence, the term 'unprocessed timber' means any log, cant, or similar form of timber."

(d) ELIMINATION OF DEFERRAL.—Subsection (d) of section 954 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR CERTAIN TIMBER PRODUCTS.—For purposes of subsection (a)(2), the term 'foreign base company sales income' includes any income (whether in the form of profits, commissions, fees, or otherwise) derived in connection with—

"(A) the sale of any unprocessed timber referred to in section 865(b), or

"(B) the milling of any such timber outside the United States.

Subpart G shall not apply to any amount treated as subpart F income by reason of this paragraph."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales, exchanges, or other dispositions after the date of the enactment of this Act.

PART IV—TRANSPORTATION FUELS PROVISIONS

Subpart A—Transportation Fuels Tax

SEC. 13241. TRANSPORTATION FUELS TAX.

(a) GASOLINE.—Clause (iii) of section 4081(a)(2)(B) (relating to rates of tax) is amended to read as follows:

"(iii) the deficit reduction rate is 6.8 cents per gallon."

(b) DIESEL FUEL AND NONCOMMERCIAL AVIATION FUEL.—

(1) DIESEL FUEL.—Paragraph (4) of section 4091(b) (relating to rate of tax) is amended by striking "2.5 cents" and inserting "6.8 cents".

(2) AVIATION FUEL.—

(A) GASOLINE IN NONCOMMERCIAL AVIATION.—Paragraph (3) of section 4041(c) is amended to read as follows:

"(3) RATE OF TAX.—The rate of tax imposed by paragraph (2) on any gasoline is 1 cent per gallon."

(B) FUEL OTHER THAN GASOLINE.—

(i) Clause (ii) of section 4091(b)(1)(A) is amended by inserting "and the aviation fuel deficit reduction rate" after "financing rate".

(ii) Subsection (b) of section 4091 is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

"(6) AVIATION FUEL DEFICIT REDUCTION RATE.—For purposes of paragraph (1), the aviation fuel deficit reduction rate is 4.3 cents per gallon."

(iii) Paragraph (1) of section 4041(c) is amended—

(I) by striking "of 17.5 cents a gallon", and

(II) by inserting before the last sentence the following new sentence:

"The rate of the tax imposed by this paragraph shall be the sum of the Airport and Airway Trust Fund financing rate and the aviation fuel deficit reduction rate in effect under section 4091 at the time of such sale or use."

(c) CERTAIN ALCOHOL FUELS.—Section 4041(m)(1)(A) is amended to read as follows:

"(A) under subsection (a)(2)—

"(i) the Highway Trust Fund financing rate shall be 5.75 cents per gallon, and

"(ii) the deficit reduction rate shall be 5.55 cents per gallon."

(d) FUEL USED IN COMMERCIAL TRANSPORTATION ON INLAND WATERWAYS.—

(1) IN GENERAL.—Section 4042(b)(1) (relating to amount of tax) is amended—

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

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

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

"(C) the deficit reduction rate."

(2) RATE.—Section 4042(b)(2) (relating to rates) is amended by adding at the end the following new subparagraph:

"(C) The deficit reduction rate is 4.3 cents per gallon."

(e) COMPRESSED NATURAL GAS.—

(1) IN GENERAL.—Subsection (a) of section 4041 is amended by adding at the end thereof the following new paragraph:

"(3) COMPRESSED NATURAL GAS.—

"(A) IN GENERAL.—There is hereby imposed a tax on compressed natural gas—

"(i) sold by any person to an owner, lessee, or other operator of a motor vehicle or motorboat for use as a fuel in such motor vehicle or motorboat, or

"(ii) used by any person as a fuel in a motor vehicle or motorboat unless there was a taxable sale of such gas under clause (i).

The rate of the tax imposed by this paragraph shall be 48.54 cents per MCF (determined at standard temperature and pressure).

"(B) BUS USES.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2) (relating to school bus and intracity transportation).

"(C) ADMINISTRATIVE PROVISIONS.—For purposes of applying this title with respect to the taxes imposed by this subsection, references to any liquid subject to tax under this subsection shall be treated as including references to compressed natural gas subject to tax under this paragraph, and references to gallons shall be treated as including references to MCF with respect to such gas."

(2) EXEMPTION FROM LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.—Paragraph (1) of section 4041(d) is amended by striking "subsection (a)" the second place it appears in the text and inserting "subsection (a)(1) or (2)".

(f) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 4041(f) is hereby repealed.

(2) Subsection (g) of section 4041 is amended by striking the last sentence.

(3) Subparagraphs (A) and (B) of section 4093(c)(2) are amended to read as follows:

"(A) NO EXEMPTION FROM CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—In the case of fuel sold for use in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate and the diesel fuel deficit reduction rate imposed under such section. The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(B) NO EXEMPTION FROM LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel sold for use in commercial aviation (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) also shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section. For purposes of the preceding sentence, the term 'commercial aviation' means any use of an aircraft other than in noncommercial aviation (as defined in section 4041(c)(4))."

(4) Section 4093(d) is amended by inserting "and the aviation fuel deficit reduction rate" after "rate".

(5) Section 6420 is amended by striking subsection (h).

(6) Paragraph (3) of section 6421(f) is amended by inserting "and at the deficit reduction rate" after "financing rate", and by inserting "AND DEFICIT REDUCTION TAX" after "TAX" in the heading.

(7) Section 6421 is amended by striking subsection (i).

(8) Paragraph (2) of section 6427(b) is amended—

(A) by striking "3.1 cents" in subparagraph (A) and inserting "7.4 cents", and

(B) by striking "3-CENT REDUCTION" in the paragraph heading and inserting "REDUCTION".

(9) Section 6427(l) is amended by striking paragraphs (3) and (4) and inserting the following new paragraphs:

"(3) NO REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—In the case of fuel used in a diesel-powered train, paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate and the diesel fuel deficit reduction rate imposed by such section. The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(4) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel used in commercial aviation (as defined in section 4093(c)(2)(B)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section."

(10) Section 6427 is amended by striking subsections (m) and (o).

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 1993.

(h) FLOOR STOCKS TAXES.—

(1) IMPOSITION OF TAX.—In the case of gasoline, diesel fuel, and aviation fuel on which tax was imposed under section 4081 or 4091 of the Internal Revenue Code of 1986 before October 1, 1993, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon on such gasoline, diesel fuel, and aviation fuel.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—A person holding gasoline, diesel fuel, or aviation fuel on October 1, 1993, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before November 30, 1993.

(3) DEFINITIONS.—For purposes of this subsection—

(A) HELD BY A PERSON.—Gasoline, diesel fuel, and aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(B) GASOLINE.—The term "gasoline" has the meaning given such term by section 4082 of such Code.

(C) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4092 of such Code.

(D) AVIATION FUEL.—The term "aviation fuel" has the meaning given such term by section 4092 of such Code.

(E) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(4) EXCEPTION FOR EXEMPT USES.—The tax imposed by paragraph (1) shall not apply to gasoline, diesel fuel, or aviation fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 or 4091 of such Code, as the case may be, is allowable for such use.

(5) EXCEPTION FOR FUEL HELD IN VEHICLE TANK.—No tax shall be imposed by paragraph (1) on gasoline or diesel fuel held in the tank of a motor vehicle or motorboat.

(6) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(A) IN GENERAL.—No tax shall be imposed by paragraph (1)—

(i) on gasoline held on October 1, 1993, by any person if the aggregate amount of gasoline held by such person on such date does not exceed 4,000 gallons, and

(ii) on diesel fuel or aviation fuel held on October 1, 1993, by any person if the aggregate amount of diesel fuel or aviation fuel held by such person on such date does not exceed 2,000 gallons.

The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such

information as the Secretary shall require for purposes of this paragraph.

(B) EXEMPT FUEL.—For purposes of subparagraph (A), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by paragraph (1) by reason of paragraph (4) or (5).

(C) CONTROLLED GROUPS.—For purposes of this paragraph—

(i) CORPORATIONS.—

(I) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(II) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(ii) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of clause (i) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(7) OTHER LAW APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code in the case of gasoline and section 4091 of such Code in the case of diesel fuel and aviation fuel shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply with respect to the floor stock taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 4081 or 4091.

Subpart B—Modifications to Tax on Diesel Fuel

SEC. 13242. MODIFICATIONS TO TAX ON DIESEL FUEL.

(a) IN GENERAL.—Subparts A and B of part III of subchapter A of chapter 32 (relating to manufacturers excise taxes), as amended by subpart A, are amended to read as follows:

"Subpart A—Gasoline and Diesel Fuel

"Sec. 4081. Imposition of tax.

"Sec. 4082. Exemptions for diesel fuel.

"Sec. 4083. Definitions; special rule; administrative authority.

"Sec. 4084. Cross references.

"SEC. 4081. IMPOSITION OF TAX.

"(a) TAX IMPOSED.—

"(1) TAX ON REMOVAL, ENTRY, OR SALE.—

"(A) IN GENERAL.—There is hereby imposed a tax at the rate specified in paragraph (2) on—

"(i) the removal of a taxable fuel from any refinery,

"(ii) the removal of a taxable fuel from any terminal,

"(iii) the entry into the United States of any taxable fuel for consumption, use, or warehousing, and

"(iv) the sale of a taxable fuel to any person who is not registered under section 4101 unless there was a prior taxable removal or entry of such fuel under clause (i), (ii), or (iii).

"(B) EXEMPTION FOR BULK TRANSFERS TO REGISTERED TERMINALS OR REFINERIES.—The tax imposed by this paragraph shall not apply to any removal or entry of a taxable fuel transferred in bulk to a terminal or refinery if the person removing or entering the taxable fuel and the operator of such terminal or refinery are registered under section 4101.

"(2) RATES OF TAX.—

"(A) IN GENERAL.—The rate of the tax imposed by this section is—

"(i) in the case of gasoline, 18.3 cents per gallon, and

"(ii) in the case of diesel fuel, 24.3 cents per gallon.

"(B) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.—The rates of tax specified in subparagraph (A) shall each be increased by 0.1 cent per gallon. The increase in tax under this subparagraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

"(b) TREATMENT OF REMOVAL OR SUBSEQUENT SALE BY BLENDER.—

"(1) IN GENERAL.—There is hereby imposed a tax at the rate determined under subsection (a) on taxable fuel removed or sold by the blender thereof.

"(2) CREDIT FOR TAX PREVIOUSLY PAID.—If—

"(A) tax is imposed on the removal or sale of a taxable fuel by reason of paragraph (1), and

"(B) the blender establishes the amount of the tax paid with respect to such fuel by reason of subsection (a),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

"(c) TAXABLE FUELS MIXED WITH ALCOHOL.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The rate of tax under subsection (a) shall be the alcohol mixture rate in the case of the removal or entry of any qualified alcohol mixture.

"(2) TAX PRIOR TO MIXING.—

"(A) IN GENERAL.—In the case of the removal or entry of any taxable fuel for use in producing at the time of such removal or entry a qualified alcohol mixture, the rate of tax under subsection (a) shall be the applicable fraction of the alcohol mixture rate. Subject to such terms and conditions as the Secretary may prescribe (including the application of section 4101), the treatment under the preceding sentence also shall apply to use in producing a qualified alcohol mixture after the time of such removal or entry.

"(B) APPLICABLE FRACTION.—For purposes of subparagraph (A), the applicable fraction is—

"(i) in the case of a qualified alcohol mixture which contains gasoline, the fraction the numerator of which is 10 and the denominator of which is—

"(I) 9 in the case of 10 percent gasohol,

"(II) 9.23 in the case of 7.7 percent gasohol, and

"(III) 9.43 in the case of 5.7 percent gasohol, and

"(ii) in the case of a qualified alcohol mixture which does not contain gasoline, 1/9.

"(3) ALCOHOL; QUALIFIED ALCOHOL MIXTURE.—For purposes of this subsection—

"(A) ALCOHOL.—The term 'alcohol' includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

"(B) QUALIFIED ALCOHOL MIXTURE.—The term 'qualified alcohol mixture' means—

"(i) any mixture of gasoline with alcohol if at least 5.7 percent of such mixture is alcohol, and

"(ii) any mixture of diesel fuel with alcohol if at least 10 percent of such mixture is alcohol.

"(4) ALCOHOL MIXTURE RATES FOR GASOLINE MIXTURES.—For purposes of this subsection—

"(A) IN GENERAL.—The alcohol mixture rate for a qualified alcohol mixture which contains gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over—

"(i) 5.4 cents per gallon for 10 percent gasohol,

"(ii) 4.158 cents per gallon for 7.7 percent gasohol, and

"(iii) 3.078 cents per gallon for 5.7 percent gasohol.

In the case of a mixture none of the alcohol in which consists of ethanol, clauses (i), (ii), and (iii) shall be applied by substituting '6 cents' for '5.4 cents', '4.62 cents' for '4.158 cents', and '3.42 cents' for '3.078 cents'.

"(B) 10 PERCENT GASOHOL.—The term '10 percent gasohol' means any mixture of gasoline with alcohol if at least 10 percent of such mixture is alcohol.

"(C) 7.7 PERCENT GASOHOL.—The term '7.7 percent gasohol' means any mixture of gasoline with alcohol if at least 7.7 percent, but not 10 percent or more, of such mixture is alcohol.

"(D) 5.7 PERCENT GASOHOL.—The term '5.7 percent gasohol' means any mixture of gasoline with alcohol if at least 5.7 percent, but not 7.7 percent or more, of such mixture is alcohol.

"(5) ALCOHOL MIXTURE RATE FOR DIESEL FUEL MIXTURES.—The alcohol mixture rate for a qualified alcohol mixture which does not contain gasoline is the excess of the rate which would (but for this paragraph) be determined under subsection (a) over 5.4 cents per gallon (6 cents per gallon in the case of a qualified alcohol mixture none of the alcohol in which consists of ethanol).

"(6) LIMITATION.—In no event shall any alcohol mixture rate determined under this subsection be less than 4.3 cents per gallon.

"(7) LATER SEPARATION OF FUEL FROM QUALIFIED ALCOHOL MIXTURE.—If any person separates the taxable fuel from a qualified alcohol mixture on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the refiner of such taxable fuel. The amount of tax imposed on any removal of such fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior removal or entry of such fuel.

"(8) TERMINATION.—Paragraphs (1) and (2) shall not apply to any removal, entry, or sale after September 30, 2000.

"(d) TERMINATION.—

"(1) IN GENERAL.—On and after October 1, 1999, each rate of tax specified in subsection (a)(2)(A) shall be 4.3 cents per gallon.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—The Leaking Underground Storage Tank Trust Fund financing rate under subsection (a)(2) shall not apply after December 31, 1995.

"(e) REFUNDS IN CERTAIN CASES.—Under regulations prescribed by the Secretary, if any person who paid the tax imposed by this section with respect to any taxable fuel establishes to the satisfaction of the Secretary that a prior tax was paid (and not credited or refunded) with respect to such taxable fuel, then an amount equal to the tax paid by such person shall be allowed as a refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

"SEC. 4082. EXEMPTIONS FOR DIESEL FUEL.

"(a) IN GENERAL.—The tax imposed by section 4081 shall not apply to diesel fuel—

"(1) which the Secretary determines is destined for a nontaxable use,

"(2) which is indelibly dyed in accordance with regulations which the Secretary shall prescribe, and

"(3) which meets such marking requirements (if any) as may be prescribed by the Secretary in regulations.

Such regulations shall allow an individual choice of dye color approved by the Secretary or chosen from any list of approved dye colors that the Secretary may publish.

"(b) NONTAXABLE USE.—For purposes of this section, the term 'nontaxable use' means—

"(1) any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax,

"(2) any use in a train, and

"(3) any use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

"(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to

carry out this section, including regulations requiring the conspicuous labeling of retail diesel fuel pumps and other delivery facilities to assure that persons are aware of which fuel is available only for nontaxable uses.

"(d) CROSS REFERENCE.—

"For tax on train and certain bus uses of fuel purchased tax-free, see section 4041(a)(1).

"SEC. 4083. DEFINITIONS; SPECIAL RULE; ADMINISTRATIVE AUTHORITY.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) gasoline, and

"(B) diesel fuel.

"(2) GASOLINE.—The term 'gasoline' includes, to the extent prescribed in regulations—

"(A) gasoline blend stocks, and

"(B) products commonly used as additives in gasoline.

For purposes of subparagraph (A), the term 'gasoline blend stock' means any petroleum product component of gasoline.

"(3) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than gasoline) which is suitable for use as a fuel in a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat.

"(b) CERTAIN USES DEFINED AS REMOVAL.—If any person uses taxable fuel (other than in the production of gasoline, diesel fuel, or special fuels referred to in section 4041), such use shall for the purposes of this chapter be considered a removal.

"(c) ADMINISTRATIVE AUTHORITY.—

"(1) IN GENERAL.—In addition to the authority otherwise granted by this title, the Secretary may in administering compliance with this subpart, section 4041, and penalties and other administrative provisions related thereto—

"(A) enter any place at which taxable fuel is produced or is stored (or may be stored) for purposes of—

"(i) examining the equipment used to determine the amount or composition of such fuel and the equipment used to store such fuel, and

"(ii) taking and removing samples of such fuel, and

"(B) detain, for the purposes referred in subparagraph (A), any container which contains or may contain any taxable fuel.

"(2) INSPECTION SITES.—The Secretary may establish inspection sites for purposes of carrying out the Secretary's authority under paragraph (1)(B).

"(3) PENALTY FOR REFUSAL OF ENTRY.—The penalty provided by section 7342 shall apply to any refusal to admit entry or other refusal to permit an action by the Secretary authorized by paragraph (1), except that section 7342 shall be applied by substituting '$1,000' for '$500' for each such refusal.

"SEC. 4084. CROSS REFERENCES.

"(1) For provisions to relieve farmers from excise tax in the case of gasoline used on the farm for farming purposes, see section 6420.

"(2) For provisions to relieve purchasers of gasoline from excise tax in the case of gasoline used for certain nonhighway purposes, used by local transit systems, or sold for certain exempt purposes, see section 6421.

"(3) For provisions to relieve purchasers from excise tax in the case of taxable fuel not used for taxable purposes, see section 6427.

"Subpart B—Aviation Fuel

"Sec. 4091. Imposition of tax.

"Sec. 4092. Exemptions.

"Sec. 4093. Definitions.

"SEC. 4091. IMPOSITION OF TAX.

"(a) TAX ON SALE.—

"(1) IN GENERAL.—There is hereby imposed a tax on the sale of aviation fuel by the producer or the importer thereof or by any producer of aviation fuel.

"(2) USE TREATED AS SALE.—For purposes of paragraph (1), if any producer uses aviation fuel (other than for a nontaxable use as defined in section 6427(l)(2)(B)) on which no tax has been imposed under such paragraph, then such use shall be considered a sale.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be 21.8 cents per gallon.

"(2) LEAKING UNDERGROUND STORAGE TANK TRUST FUND TAX.—The rate of tax specified in paragraph (1) shall be increased by 0.1 cent per gallon. The increase in tax under this paragraph shall in this title be referred to as the Leaking Underground Storage Tank Trust Fund financing rate.

"(3) TERMINATION.—

"(A) On and after January 1, 1996, the rate of tax specified in paragraph (1) shall be 4.3 cents per gallon.

"(B) The Leaking Underground Storage Tank Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The rate of tax under subsection (a) shall be reduced by 13.4 cents per gallon in the case of the sale of any mixture of aviation fuel if—

"(A) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(B) the aviation fuel in such mixture was not taxed under paragraph (2).

In the case of such a mixture none of the alcohol in which is ethanol, the preceding sentence shall be applied by substituting '14 cents' for '13.4 cents'.

"(2) TAX PRIOR TO MIXING.—In the case of the sale of aviation fuel for use (at the time of such sale) in producing a mixture described in paragraph (1), the rate of tax under subsection (a) shall be 1% of the rate which would (but for this paragraph) have been applicable to such mixture had such mixture been created prior to such sale.

"(3) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which tax was imposed under subsection (a) at a rate determined under paragraph (1) or (2) (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such aviation fuel. The amount of tax imposed on any sale of such aviation fuel by such person shall be reduced by the amount of tax imposed (and not credited or refunded) on any prior sale of such fuel.

"(4) LIMITATION.—In no event shall any rate determined under paragraph (1) be less than 4.3 cents per gallon.

"(5) TERMINATION.—Paragraphs (1) and (2) shall not apply to any sale after September 30, 2000.

"SEC. 4092. EXEMPTIONS.

"(a) NONTAXABLE USES.—No tax shall be imposed by section 4091 on aviation fuel sold by a producer or importer for use by the purchaser in a nontaxable use (as defined in section 6427(l)(2)(B)).

"(b) NO EXEMPTION FROM CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel sold for use in commercial aviation (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), subsection (a) shall not apply to so much of the tax imposed by section 4091 as is attributable to—

"(1) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(2) in the case of fuel sold after September 30, 1995, 4.3 cents per gallon of the rate specified in section 4091(b)(1).

For purposes of the preceding sentence, the term 'commercial aviation' means any use of an aircraft other than in noncommercial aviation (as defined in section 4041(c)(4)).

"(c) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply to aviation fuel sold to a producer of such fuel.

"SEC. 4093. DEFINITIONS.

"(a) AVIATION FUEL.—For purposes of this subpart, the term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) and registered under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, blender, or wholesale distributor of aviation fuel, or

"(ii) a dealer selling aviation fuel exclusively to producers of aviation fuel.

"(C) REDUCED RATE PURCHASERS TREATED AS PRODUCERS.—Any person to whom aviation fuel is sold at a reduced rate under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells aviation fuel to producers, retailers, or to users who purchase in bulk quantities and accept delivery into bulk storage tanks. Such term does not include any person who (excluding the term 'wholesale distributor' from paragraph (1)) is a producer or importer."

(b) CIVIL PENALTY FOR USING REDUCED-RATE FUEL FOR TAXABLE USE, ETC .—

(1) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by adding at the end thereof the following new section:

"SEC. 6714. DYED FUEL SOLD FOR USE OR USED IN TAXABLE USE, ETC.

"(a) IMPOSITION OF PENALTY.—If—

"(1) any dyed fuel is sold or held for sale by any person for any use which such person knows or has reason to know is not a nontaxable use of such fuel,

"(2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, or

"(3) any person willfully alters, or attempts to alter, the strength or composition of any dye or marking done pursuant to section 4082 in any dyed fuel,

then such person shall pay a penalty in addition to the tax (if any).

"(b) AMOUNT OF PENALTY.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amount of the penalty under subsection (a) on each act shall be the greater of—

"(A) $1,000, or

"(B) $10 for each gallon of the dyed fuel involved.

"(2) MULTIPLE VIOLATIONS.—In determining the penalty under subsection (a) on any person, paragraph (1) shall be applied by increasing the amount in paragraph (1)(A) by the product of such amount and the number of prior penalties (if any) imposed by this section on such person (or a related person or any predecessor of such person or related person).

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

"(1) DYED FUEL.—The term 'dyed fuel' means any dyed diesel fuel, whether or not the fuel was dyed pursuant to section 4082.

"(2) NONTAXABLE USE.—The term 'nontaxable use' has the meaning given such term by section 4082(b).

"(d) JOINT AND SEVERAL LIABILITY OF CERTAIN OFFICERS AND EMPLOYEES.—If a penalty is imposed under this section on any business entity, each officer, employee, or agent of such entity who willfully participated in any act giving rise to such penalty shall be jointly and severally liable with such entity for such penalty."

(2) CLERICAL AMENDMENT.—The table of sections for such part I is amended by adding at the end thereof the following new item:

"Sec. 6714. Dyed fuel sold for use or used in taxable use, etc."

(c) REGISTERED VENDORS TO ADMINISTER CLAIMS FOR CERTAIN REFUNDS OF DIESEL FUEL.—

(1) IN GENERAL.—Section 6427(l) (relating to nontaxable uses of diesel fuel and aviation fuel) is amended by adding at the end the following new paragraph:

"(5) REGISTERED VENDORS TO ADMINISTER CLAIMS FOR REFUND OF DIESEL FUEL SOLD TO FARMERS AND STATE AND LOCAL GOVERNMENTS.—

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

"(i) on a farm for farming purposes (within the meaning of section 6420(c)), or

"(ii) by a State or local government.

"(B) PAYMENT TO ULTIMATE, REGISTERED VENDOR.—The amount which would (but for subparagraph (A)) have been paid under paragraph (1) with respect to any fuel shall be paid to the ultimate vendor of such fuel, if such vendor—

"(i) is registered under section 4101, and

"(ii) meets the requirements of subparagraph (A), (B), or (D) of section 6416(a)(1)."

(2) SPECIAL REFUND RULES.—

(A) Subsection (i) of section 6427 is amended by adding at the end thereof the following new paragraph:

"(5) SPECIAL RULE FOR VENDOR REFUNDS.—

"(A) IN GENERAL.—A claim may be filed under subsection (l)(5) by any person with respect to fuel sold by such person for any period—

"(i) for which $200 or more is payable under subsection (l)(5), and

"(ii) which is not less than 1 week.

Notwithstanding subsection (l)(1), paragraph (3)(B) shall apply to claims filed under the preceding sentence.

"(B) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim."

(B) Paragraph (1) of section 6427(i) is amended by striking "provided in paragraphs (2), (3), and (4)" and inserting "otherwise provided in this subsection".

(C) Paragraph (2) of section 6427(k) is amended by striking "or (4)" and inserting "(4), or (5)".

(D) Paragraph (3) of section 6427(i) is amended by adding at the end thereof the following new subparagraph:

"(C) TIME FOR FILING CLAIM.—No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the earliest quarter included in the claim."

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Sections 4101(a) and 4103 are each amended by striking "4081" and inserting "4041(a)(1), 4081,".

(2) Section 4102 is amended by striking "gasoline" and inserting "any taxable fuel (as defined in section 4083)".

(3) Paragraph (1) of section 4041(a), as amended by subchapter A, is amended to read as follows:

"(1) TAX ON DIESEL FUEL IN CERTAIN CASES.—

"(A) IN GENERAL.—There is hereby imposed a tax on any liquid other than gasoline (as defined in section 4083)—

"(i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat for use as a fuel in such vehicle, train, or boat, or

"(ii) used by any person as a fuel in a diesel-powered highway vehicle, a diesel-powered train, or a diesel-powered boat unless there was a taxable sale of such fuel under clause (i).

"(B) EXEMPTION FOR PREVIOUSLY TAXED FUEL.—No tax shall be imposed by this paragraph on the sale or use of any liquid if tax was imposed on such liquid under section 4081 and the tax thereon was not credited or refunded.

"(C) RATE OF TAX.—

"(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on diesel fuel which is in effect at the time of such sale or use.

"(ii) RATE OF TAX ON TRAINS.—In the case of any sale for use, or use, of diesel fuel in a train, the rate of tax imposed by this paragraph shall be—

"(I) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(II) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and

"(III) 4.3 cents per gallon after September 30, 1999.

"(iii) RATE OF TAX ON CERTAIN BUSES.—

"(I) IN GENERAL.—Except as provided in subclause (II), in the case of fuel sold for use or used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the rate of tax imposed by this paragraph shall be 7.3 cents per gallon (4.3 cents per gallon after September 30, 1999).

"(II) SCHOOL BUS AND INTRACITY TRANSPORTATION.—No tax shall be imposed by this paragraph on any sale for use, or use, described in subparagraph (B) or (C) of section 6427(b)(2).

"(D) DIESEL FUEL USED IN MOTORBOATS.—In the case of any sale for use, or use, of fuel in a diesel-powered motorboat—

"(i) effective during the period after September 30, 1999, and before January 1, 2000, the rate of tax imposed by this paragraph is 24.3 cents per gallon, and

"(ii) the termination of the tax under subsection (d) shall not occur before January 1, 2000."

(4) Paragraph (2) of section 4041(a) is amended—

(A) by striking "or paragraph (1) of this subsection", and

(B) by striking the last sentence and inserting the following new flush sentence:

"The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4081(a)(2)(A) on gasoline which is in effect at the time of such sale or use."

(5)(A) Subparagraph (B) of section 4041(b)(1) is amended by striking "paragraph (1)(B) or (2)(B)" and inserting "paragraph (1)(B), (2)(B), or (3)(A)(ii)" and by inserting before the period "(if any)".

(B) Subparagraph (C) of section 4041(b)(1) is amended by inserting before the period "; except that such term shall not, for purposes of subsection (a)(1), include use in a diesel-powered train".

(C) Clause (i) of section 4041(b)(2)(A) is amended by striking "Highway Trust Fund financing".

(6) Paragraph (1) of section 4041(c), as amended by subpart A, is amended by striking the next to the last sentence and inserting the following new flush sentence:

"The rate of the tax imposed by this paragraph shall be the rate of tax specified in section 4091(b)(1) which is in effect at the time of such sale or use."

(7) Paragraph (2) of section 4041(c) is amended by striking "any product taxable under section 4081" and inserting "gasoline (as defined in section 4083)".

(8) Paragraph (5) of section 4041(c) is amended by adding at the end thereof the following: "The termination under the preceding sentence shall not apply to so much of the tax imposed by paragraph (1) as does not exceed 4.3 cents per gallon.".

(9) Subsection (d) of section 4041 is amended by striking paragraph (2) and by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

(10) Paragraph (2) of section 4041(d), as redesignated by the preceding paragraph, is amended by striking "(other than any product taxable under section 4081)" and inserting "(other than gasoline (as defined in section 4083))".

(11) Subparagraph (A) of section 4041(k)(1) is amended—

(A) by striking "Highway Trust Fund financing", and

(B) by striking "sections 4081(c) and 4091(c), as the case may be" and inserting "section 4081(c)".

(12) Subparagraph (B) of section 4041(k)(1) is amended by striking "4091(d)" and inserting "4091(c)".

(13) Subparagraphs (A) and (B) of section 4041(m)(1) are amended to read as follows:

"(A) the rate of the tax imposed by subsection (a)(2) shall be—

"(i) 11.3 cents per gallon after September 30, 1993, and before October 1, 1999, and

"(ii) 4.3 cents per gallon after September 30, 1999, and

"(B) the rate of the tax imposed by subsection (c)(1) shall be the comparable rate under section 4091(c)(1)."

(14) Section 6206 is amended by striking "4041 or 4091" and inserting "4041, 4081, or 4091".

(15) The heading for subsection (f) of section 6302 is amended by inserting "AND DIESEL FUEL" after "GASOLINE".

(16) Paragraph (1) of section 6412(a) is amended by striking "gasoline" each place it appears (including the heading) and inserting "taxable fuel".

(17)(A) Subparagraph (A) of section 6416(a)(4) is amended by striking "product" each place it appears and inserting "gasoline".

(B) Subparagraph (B) of section 6416(a)(4) is amended—

(i) by striking "section 4092(b)(2)" and inserting "section 4093(b)(2)", and

(ii) by striking all that follows "substituting" and inserting "'any gasoline taxable under section 4081' for 'aviation fuel' therein)."

(18) The material following the first sentence of section 6416(b)(2) is amended by inserting "any tax imposed under section 4041(a)(1) or 4081 on diesel fuel and" after "This paragraph shall not apply in the case of".

(19)(A) Subparagraph (A) of section 6416(b)(3) is amended by striking "gasoline taxable under section 4081 and other than any fuel taxable under section 4091" and inserting "any fuel taxable under section 4081 or 4091".

(B) Subparagraph (B) of section 6416(b)(3) is amended by striking "gasoline taxable under section 4081 or any fuel taxable under section 4091, such gasoline or fuel" and inserting "any fuel taxable under section 4081 or 4091, such fuel".

(20) Sections 6420(c)(5) and 6421(e)(1) are each amended by striking "section 4082(b)" and inserting "section 4083(a)".

(21) Subsections (a) and (c) of section 6427 are each amended by striking "section 4041(a) or

(c)" and inserting "paragraph (2) or (3) of section 4041(a) or section 4041(c)".

(22) Subsection (c) of section 6421 is amended by adding at the end thereof the following: "The preceding sentence shall apply notwithstanding paragraphs (2)(A) and (3) of subsection (f)."

(23) Subparagraph (B) of section 6421(f)(2) is amended by inserting before the period "and, in the case of fuel purchased after September 30, 1995, at so much of the rate specified in section 4081(a)(2)(A) as does not exceed 4.3 cents per gallon".

(24) Paragraph (3) of section 6421(f), as amended by subpart A, is amended to read as follows:

"(3) GASOLINE USED IN TRAINS.—In the case of gasoline used as a fuel in a train, this section shall not apply with respect to—

"(A) the Leaking Underground Storage Tank Trust Fund financing rate under section 4081, and

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(ii) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and

"(iii) 4.3 cents per gallon after September 30, 1999."

(25) Subsection (b) of section 6427 is amended—

(A) by striking "if any fuel" in paragraph (1) and inserting "if any fuel other than gasoline (as defined in section 4083(a))", and

(B) by striking "4091" each place it appears and inserting "4081".

(26)(A) Paragraph (1) of section 6427(f) is amended by striking ", 4091(c)(1)(A), or 4091(d)(1)(A)" and inserting "or 4091(c)(1)(A)".

(B) Paragraph (2) of section 6427(f) is amended to read as follows:

"(2) DEFINITIONS.—For purposes of paragraph (1)—

"(A) REGULAR TAX RATE.—The term 'regular tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 determined without regard to subsection (c) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 determined without regard to subsection (c) thereof.

"(B) INCENTIVE TAX RATE.—The term 'incentive tax rate' means—

"(i) in the case of gasoline or diesel fuel, the aggregate rate of tax imposed by section 4081 with respect to fuel described in subsection (c)(2) thereof, and

"(ii) in the case of aviation fuel, the aggregate rate of tax imposed by section 4091 with respect to fuel described in subsection (c)(2) thereof."

(27) Subsection (h) of section 6427 is amended by striking "section 4082(b)" and inserting "section 4083(a)(2)".

(28) Paragraph (3) of section 6427(i) is amended—

(A) by striking "GASOHOL" in the heading and inserting "ALCOHOL MIXTURE", and

(B) by striking "gasoline used to produce gasohol (as defined in section 4081(c)(1))" in subparagraph (A) and inserting "gasoline or diesel fuel used to produce a qualified alcohol mixture (as defined in section 4081(c)(3))".

(29) Paragraph (1) of section 6427(j) is amended by striking "section 4041" and inserting "sections 4041, 4081, and 4091".

(30) The heading of paragraph (4) of section 6427(i) is amended by inserting "4081 OR" before "4091".

(31) So much of subsection (l) of section 6427, as previously amended by this part, as precedes paragraph (5) is amended to read as follows:

"(l) NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection and in subsection (k), if—

"(A) any diesel fuel on which tax has been imposed by section 4041 or 4081, or

"(B) any aviation fuel on which tax has been imposed by section 4091,

is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4041, 4081, or 4091, as the case may be.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means—

"(A) in the case of diesel fuel, any use which is exempt from the tax imposed by section 4041(a)(1) other than by reason of a prior imposition of tax, and

"(B) in the case of aviation fuel, any use which is exempt from the tax imposed by section 4041(c)(1) other than by reason of a prior imposition of tax.

"(3) REFUND OF CERTAIN TAXES ON FUEL USED IN DIESEL-POWERED TRAINS.—For purposes of this subsection, the term 'nontaxable use' includes fuel used in a diesel-powered train. The preceding sentence shall not apply with respect to—

"(A) the Leaking Underground Storage Tank Trust Fund financing rate under sections 4041 and 4081, and

"(B) so much of the rate specified in section 4081(a)(2)(A) as does not exceed—

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1995,

"(ii) 5.55 cents per gallon after September 30, 1995, and before October 1, 1999, and

"(iii) 4.3 cents per gallon after September 30, 1999.

The preceding sentence shall not apply in the case of fuel sold for exclusive use by a State or any political subdivision thereof.

"(4) NO REFUND OF CERTAIN TAXES ON FUEL USED IN COMMERCIAL AVIATION.—In the case of fuel used in commercial aviation (as defined in section 4092(b)) (other than supplies for vessels or aircraft within the meaning of section 4221(d)(3)), paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to—

"(A) the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section, and

"(B) in the case of fuel purchased after September 30, 1995, so much of the rate of tax specified in section 4091(b)(1) as does not exceed 4.3 cents per gallon."

(32) Section 9502 is amended by adding at the end thereof the following new subsection:

"(f) DEFINITION OF AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the Airport and Airway Trust Fund financing rate is—

"(A) in the case of fuel used in an aircraft in noncommercial aviation (as defined in section 4041(c)(4)), 17.5 cents per gallon, and

"(B) in the case of fuel used in an aircraft other than in noncommercial aviation (as so defined), zero.

"(2) ALCOHOL FUELS.—If the rate of tax on any fuel is determined under section 4091(c), the Airport and Airway Trust Fund financing rate is the excess (if any) of the rate of tax determined under section 4091(c) over 4.4 cents per gallon (1⅑ of 4.4 cents per gallon in the case of a rate of tax determined under section 4091(c)(2)).

"(3) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Airport and Airway Trust Fund financing rate is zero with respect to tax received after December 31, 1995."

(33) Paragraph (2) of section 9502(b) is amended by striking "(to the extent attributable to the Highway Trust Fund financing rate and the deficit reduction rate)" and inserting "(to the extent of 14 cents per gallon)".

(34) Paragraph (1) of section 9503(b) is amended—

(A) by striking "gasoline)," in subparagraph (E) and inserting "gasoline and diesel fuel), and",

(B) by striking subparagraph (F), and

(C) by redesignating subparagraph (G) as subparagraph (F).

(35)(A) Subparagraph (B) of section 9503(b)(4) is amended by striking ", 4081, and 4091" and inserting "and 4081" and by striking "rates under such sections" and inserting "rate".

(B) Subparagraph (C) of section 9503(b)(4), as amended by subchapter A, is amended by striking "4091" and inserting "4081".

(36) Paragraph (5) of section 9503(b) is amended by striking ", (E), and (F)" and inserting "and (E)".

(37) Subparagraph (D) of section 9503(c)(6) is amended by striking ", 4081, and 4091" and inserting "and 4081".

(38) Subparagraph (D) of section 9503(c)(4) is amended by striking "rates under such sections" and inserting "rate".

(39) Subparagraph (B) of section 9503(c)(5) is amended by striking "rate under such section" and inserting "rate".

(40) Paragraph (2) of section 9503(e) is amended—

(A) by striking ", 4081, and 4091" and inserting "and 4081", and

(B) by striking ", 4081, or 4091" and inserting "or 4081".

(41) Section 9503 is amended by adding at the end thereof the following new subsection:

"(f) DEFINITION OF HIGHWAY TRUST FUND FINANCING RATE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the Highway Trust Fund financing rate is—

"(A) in the case of gasoline and special motor fuels, 11.5 cents per gallon (14 cents per gallon after September 30, 1995), and

"(B) in the case of diesel fuel, 17.5 cents per gallon (20 cents per gallon after September 30, 1995).

"(2) CERTAIN USES.—

"(A) TRAINS.—In the case of fuel used in a train, the Highway Trust Fund financing rate is zero.

"(B) CERTAIN BUSES.—In the case of diesel fuel used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)), the Highway Trust Fund financing rate is 3 cents per gallon.

"(C) CERTAIN BOATS.—In the case of diesel fuel used in a boat described in clause (iv) of section 6421(e)(2)(B), the Highway Trust Fund financing rate is zero.

"(D) COMPRESSED NATURAL GAS.—In the case of the tax imposed by section 4041(a)(3), the Highway Trust Fund financing rate is zero.

"(E) CERTAIN OTHER NONHIGHWAY USES.—In the case of gasoline and special motor fuels used as described in paragraph (4)(D), (5)(B), or (6)(D) of subsection (c), the Highway Trust Fund financing rate is 11.5 cents per gallon; and, in the case of diesel fuel used as described in subsection (c)(6)(D), the Highway Trust Fund financing rate is 17.5 cents per gallon.

"(3) ALCOHOL FUELS.—

"(A) IN GENERAL.—If the rate of tax on any fuel is determined under section 4041(b)(2)(A), 4041(k), or 4081(c), the Highway Trust Fund financing rate is the excess (if any) of the rate so determined over—

"(i) 6.8 cents per gallon after September 30, 1993, and before October 1, 1999,

"(ii) 4.3 cents per gallon after September 30, 1999.

In the case of a rate of tax determined under section 4081(c), the preceding sentence shall be applied by increasing the rates specified in clauses (i) and (ii) by 0.1 cent.

"(B) FUELS USED TO PRODUCE MIXTURES.—In the case of a rate of tax determined under section 4081(c)(2), subparagraph (A) shall be applied by substituting rates which are 1% of the rates otherwise applicable under clauses (i) and (ii) of subparagraph (A).

"(C) PARTIALLY EXEMPT METHANOL OR ETHANOL FUEL.—In the case of a rate of tax determined under section 4041(m), the Highway Trust Fund financing rate is the excess (if any) of the rate so determined over—

"(i) 5.55 cents per gallon after September 30, 1993, and before October 1, 1995, and

"(ii) 4.3 cents per gallon after September 30, 1995.

"(4) TERMINATION.—Notwithstanding the preceding provisions of this subsection, the Highway Trust Fund financing rate is zero with respect to taxes received in the Treasury after June 30, 2000."

(42) Subsection (b) of section 9508 is amended—

(A) by inserting "and diesel fuel" after "gasoline" in paragraph (2),

(B) by striking "diesel fuel and" in paragraph (3), and

(C) by striking "4091" in the last sentence, as added by subtitle A, and inserting "4081".

(43) The table of subparts for part III of subchapter A of chapter 32 is amended by striking the items relating to subparts A and B and inserting the following new items:

"Subpart A. Gasoline and diesel fuel.

"Subpart B. Aviation fuel."

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

SEC. 13243. FLOOR STOCKS TAX.

(a) IN GENERAL.—There is hereby imposed a floor stocks tax on diesel fuel held by any person on January 1, 1994, if—

(1) no tax was imposed on such fuel under section 4041(a) or 4091 of the Internal Revenue Code of 1986 as in effect on December 31, 1993, and

(2) tax would have been imposed by section 4081 of such Code, as amended by this Act, on any prior removal, entry, or sale of such fuel had such section 4081 applied to such fuel for periods before January 1, 1994.

(b) RATE OF TAX.—The rate of the tax imposed by subsection (a) shall be the amount of tax which would be imposed under section 4081 of the Internal Revenue Code of 1986 if there were a taxable sale of such fuel on such date.

(c) LIABILITY AND PAYMENT OF TAX.—

(1) LIABILITY FOR TAX.—A person holding the diesel fuel on January 1, 1994, to which the tax imposed by this section applies shall be liable for such tax.

(2) METHOD OF PAYMENT.—The tax imposed by this section shall be paid in such manner as the Secretary shall prescribe.

(3) TIME FOR PAYMENT.—The tax imposed by this section shall be paid on or before July 31, 1994.

(d) DEFINITIONS.—For purposes of this section—

(1) DIESEL FUEL.—The term "diesel fuel" has the meaning given such term by section 4083(a) of such Code.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(e) EXCEPTIONS.—

(1) PERSONS ENTITLED TO CREDIT OR REFUND.—The tax imposed by this section shall not apply to fuel held by any person exclusively for any use to the extent a credit or refund of the tax imposed by section 4081 is allowable for such use.

(2) COMPLIANCE WITH DYEING REQUIRED.—Paragraph (1) shall not apply to the holder of any fuel if the holder of such fuel fails to comply with any requirement imposed by the Secretary with respect to dyeing and marking such fuel.

(f) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by this section to the same extent as if such taxes were imposed by such section 4081.

Subpart C—Other Provisions

SEC. 13244. INCREASED DEPOSITS INTO MASS TRANSIT ACCOUNT.

(a) IN GENERAL.—Paragraph (2) of section 9503(e) is amended by striking "1.5 cents" and inserting "2 cents".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts attributable to taxes imposed on or after October 1, 1995.

SEC. 13245. FLOOR STOCKS TAX ON COMMERCIAL AVIATION FUEL HELD ON OCTOBER 1, 1995.

(a) IMPOSITION OF TAX.—In the case of commercial aviation fuel on which tax was imposed under section 4091 of the Internal Revenue Code of 1986 before October 1, 1995, and which is held on such date by any person, there is hereby imposed a floor stocks tax of 4.3 cents per gallon.

(b) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(1) LIABILITY FOR TAX.—A person holding aviation fuel on October 1, 1995, to which the tax imposed by subsection (a) applies shall be liable for such tax.

(2) METHOD OF PAYMENT.—The tax imposed by subsection (a) shall be paid in such manner as the Secretary shall prescribe.

(3) TIME FOR PAYMENT.—The tax imposed by subsection (a) shall be paid on or before April 30, 1996.

(c) DEFINITIONS.—For purposes of this subsection—

(1) HELD BY A PERSON.—Aviation fuel shall be considered as "held by a person" if title thereto has passed to such person (whether or not delivery to the person has been made).

(2) COMMERCIAL AVIATION FUEL.—The term "commercial aviation fuel" means aviation fuel (as defined in section 4093 of such Code) which is held on October 1, 1995, for sale or use in commercial aviation (as defined in section 4092(b) of such Code).

(3) SECRETARY.—The term "Secretary" means the Secretary of the Treasury or his delegate.

(d) EXCEPTION FOR EXEMPT USES.—The tax imposed by subsection (a) shall not apply to aviation fuel held by any person exclusively for any use for which a credit or refund of the entire tax imposed by section 4091 of such Code is allowable for aviation fuel purchased after September 30, 1995, for such use.

(e) EXCEPTION FOR CERTAIN AMOUNTS OF FUEL.—

(1) IN GENERAL.—No tax shall be imposed by subsection (a) on aviation fuel held on October 1, 1995, by any person if the aggregate amount of commercial aviation fuel held by such person on such date does not exceed 2,000 gallons. The preceding sentence shall apply only if such person submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

(2) EXEMPT FUEL.—For purposes of paragraph (1), there shall not be taken into account fuel held by any person which is exempt from the tax imposed by subsection (a) by reason of subsection (d).

(3) CONTROLLED GROUPS.—For purposes of this subsection—

(A) CORPORATIONS.—

(i) IN GENERAL.—All persons treated as a controlled group shall be treated as 1 person.

(ii) CONTROLLED GROUP.—The term "controlled group" has the meaning given to such term by subsection (a) of section 1563 of such Code; except that for such purposes the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in such subsection.

(B) NONINCORPORATED PERSONS UNDER COMMON CONTROL.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of persons under common control where 1 or more of such persons is not a corporation.

(f) OTHER LAW APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code shall, insofar as applicable and not inconsistent with the provisions of this section, apply with respect to the floor stock taxes imposed by subsection (a) to the same extent as if such taxes were imposed by such section 4091.

PART V—COMPLIANCE PROVISIONS

SEC. 13251. MODIFICATIONS TO SUBSTANTIAL UNDERSTATEMENT PENALTY.

(a) REASONABLE BASIS REQUIRED.—Clause (ii) of section 6662(d)(2)(B) (relating to reduction for understatement due to position of taxpayer or disclosed item) is amended to read as follows:

"(ii) any item if—

"(I) the relevant facts affecting the item's tax treatment are adequately disclosed in the return or in a statement attached to the return, and

"(II) there is a reasonable basis for the tax treatment of such item by the taxpayer."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to returns the due dates for which (determined without regard to extensions) are after December 31, 1993.

SEC. 13252. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN FINANCIAL ENTITIES.

(a) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 (relating to information concerning transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6050P. RETURNS RELATING TO THE CANCELLATION OF INDEBTEDNESS BY CERTAIN FINANCIAL ENTITIES.

"(a) IN GENERAL.—Any applicable financial entity which discharges (in whole or in part) the indebtedness of any person during any calendar year shall make a return (at such time and in such form as the Secretary may by regulations prescribe) setting forth—

"(1) the name, address, and TIN of each person whose indebtedness was discharged during such calendar year,

"(2) the date of the discharge and the amount of the indebtedness discharged, and

"(3) such other information as the Secretary may prescribe.

"(b) EXCEPTION.—Subsection (a) shall not apply to any discharge of less than $600.

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

"(1) APPLICABLE FINANCIAL ENTITY.—The term 'applicable financial entity' means—

"(A) any financial institution described in section 581 or 591(a) and any credit union,

"(B) the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the National Credit Union Administration, and any other Federal executive agency (as defined in section 6050M), and any successor or subunit of any of the foregoing, and

"(C) any other corporation which is a direct or indirect subsidiary of an entity referred to in subparagraph (A) but only if, by virtue of being affiliated with such entity, such other corporation is subject to supervision and examination

by a Federal or State agency which regulates entities referred to in subparagraph (A).

"(2) GOVERNMENTAL UNITS.—In the case of an entity described in paragraph (1)(B), any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

"(d) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED TO BE FURNISHED.—Every applicable financial entity required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

"(1) the name and address of the entity required to make such return, and

"(2) the information required to be shown on the return with respect to such person.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made."

(b) PENALTIES.—

(1) RETURNS.—Subparagraph (B) of section 6724(d)(1) is amended by inserting after clause (vii) the following new clause (and by redesignating the following clauses accordingly):

"(viii) section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),".

(2) STATEMENTS.—Paragraph (2) of section 6724(d) is amended by redesignating subparagraphs (P) through (S) as subparagraphs (Q) through (T), respectively, and by inserting after subparagraph (O) the following new subparagraph:

"(P) section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),".

(c) CLERICAL AMENDMENT.—The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6050P. Returns relating to the cancellation of indebtedness by certain financial entities."

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to discharges of indebtedness after December 31, 1993.

(2) GOVERNMENTAL ENTITIES.—In the case of an entity referred to in section 6050P(c)(1)(B) of the Internal Revenue Code of 1986 (as added by this section), the amendments made by this section shall apply to discharges of indebtedness after the date of the enactment of this Act.

PART VI—TREATMENT OF INTANGIBLES

SEC. 13261. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

(a) GENERAL RULE.—Part VI of subchapter B of chapter 1 (relating to itemized deductions for individuals and corporations) is amended by adding at the end thereof the following new section:

"SEC. 197. AMORTIZATION OF GOODWILL AND CERTAIN OTHER INTANGIBLES.

"(a) GENERAL RULE.—A taxpayer shall be entitled to an amortization deduction with respect to any amortizable section 197 intangible. The amount of such deduction shall be determined by amortizing the adjusted basis (for purposes of determining gain) of such intangible ratably over the 15-year period beginning with the month in which such intangible was acquired.

"(b) NO OTHER DEPRECIATION OR AMORTIZATION DEDUCTION ALLOWABLE.—Except as provided in subsection (a), no depreciation or amortization deduction shall be allowable with respect to any amortizable section 197 intangible.

"(c) AMORTIZABLE SECTION 197 INTANGIBLE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'amortizable section 197 intangible' means any section 197 intangible—

"(A) which is acquired by the taxpayer after the date of the enactment of this section, and

"(B) which is held in connection with the conduct of a trade or business or an activity described in section 212.

"(2) EXCLUSION OF SELF-CREATED INTANGIBLES, ETC.—The term 'amortizable section 197 intangible' shall not include any section 197 intangible—

"(A) which is not described in subparagraph (D), (E), or (F) of subsection (d)(1), and

"(B) which is created by the taxpayer.

This paragraph shall not apply if the intangible is created in connection with a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(3) ANTI-CHURNING RULES.—

"For exclusion of intangibles acquired in certain transactions, see subsection (f)(9).

"(d) SECTION 197 INTANGIBLE.—For purposes of this section—

"(1) IN GENERAL.—Except as otherwise provided in this section, the term 'section 197 intangible' means—

"(A) goodwill,

"(B) going concern value,

"(C) any of the following intangible items:

"(i) workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment,

"(ii) business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers),

"(iii) any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item,

"(iv) any customer-based intangible,

"(v) any supplier-based intangible, and

"(vi) any other similar item,

"(D) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof,

"(E) any covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) entered into in connection with an acquisition (directly or indirectly) of an interest in a trade or business or substantial portion thereof, and

"(F) any franchise, trademark, or trade name.

"(2) CUSTOMER-BASED INTANGIBLE.—

"(A) IN GENERAL.—The term 'customer-based intangible' means—

"(i) composition of market,

"(ii) market share, and

"(iii) any other value resulting from future provision of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with customers.

"(B) SPECIAL RULE FOR FINANCIAL INSTITUTIONS.—In the case of a financial institution, the term 'customer-based intangible' includes deposit base and similar items.

"(3) SUPPLIER-BASED INTANGIBLE.—The term 'supplier-based intangible' means any value resulting from future acquisitions of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer.

"(e) EXCEPTIONS.—For purposes of this section, the term 'section 197 intangible' shall not include any of the following:

"(1) FINANCIAL INTERESTS.—Any interest—

"(A) in a corporation, partnership, trust, or estate, or

"(B) under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract.

"(2) LAND.—Any interest in land.

"(3) COMPUTER SOFTWARE.—

"(A) IN GENERAL.—Any—

"(i) computer software which is readily available for purchase by the general public, is subject to a nonexclusive license, and has not been substantially modified, and

"(ii) other computer software which is not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade or business or substantial portion thereof.

"(B) COMPUTER SOFTWARE DEFINED.—For purposes of subparagraph (A), the term 'computer software' means any program designed to cause a computer to perform a desired function. Such term shall not include any data base or similar item unless the data base or item is in the public domain and is incidental to the operation of otherwise qualifying computer software.

"(4) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEPARATELY.—Any of the following not acquired in a transaction (or series of related transactions) involving the acquisition of assets constituting a trade business or substantial portion thereof:

"(A) Any interest in a film, sound recording, video tape, book, or similar property.

"(B) Any right to receive tangible property or services under a contract or granted by a governmental unit or agency or instrumentality thereof.

"(C) Any interest in a patent or copyright.

"(D) To the extent provided in regulations, any right under a contract (or granted by a governmental unit or an agency or instrumentality thereof) if such right—

"(i) has a fixed duration of less than 15 years, or

"(ii) is fixed as to amount and, without regard to this section, would be recoverable under a method similar to the unit-of-production method.

"(5) INTERESTS UNDER LEASES AND DEBT INSTRUMENTS.—Any interest under—

"(A) an existing lease of tangible property, or

"(B) except as provided in subsection (d)(2)(B), any existing indebtedness.

"(6) TREATMENT OF SPORTS FRANCHISES.—A franchise to engage in professional football, basketball, baseball, or other professional sport, and any item acquired in connection with such a franchise.

"(7) MORTGAGE SERVICING.—Any right to service indebtedness which is secured by residential real property unless such right is acquired in a transaction (or series of related transactions) involving the acquisition of assets (other than rights described in this paragraph) constituting a trade or business or substantial portion thereof.

"(8) CERTAIN TRANSACTION COSTS.—Any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C.

"(f) SPECIAL RULES.—

"(1) TREATMENT OF CERTAIN DISPOSITIONS, ETC.—

"(A) IN GENERAL.—If there is a disposition of any amortizable section 197 intangible acquired in a transaction or series of related transactions (or any such intangible becomes worthless) and one or more other amortizable section 197 intangibles acquired in such transaction or series of related transactions are retained—

"(i) no loss shall be recognized by reason of such disposition (or such worthlessness), and

"(ii) appropriate adjustments to the adjusted bases of such retained intangibles shall be made for any loss not recognized under clause (i).

"(B) SPECIAL RULE FOR COVENANTS NOT TO COMPETE.—In the case of any section 197 intangible which is a covenant not to compete (or

other arrangement) described in subsection (d)(1)(E), in no event shall such covenant or other arrangement be treated as disposed of (or becoming worthless) before the disposition of the entire interest described in such subsection in connection with which such covenant (or other arrangement) was entered into.

"(C) SPECIAL RULE.—All persons treated as a single taxpayer under section 41(f)(1) shall be so treated for purposes of this paragraph.

"(2) TREATMENT OF CERTAIN TRANSFERS.—

"(A) IN GENERAL.—In the case of any section 197 intangible transferred in a transaction described in subparagraph (B), the transferee shall be treated as the transferor for purposes of applying this section with respect to so much of the adjusted basis in the hands of the transferee as does not exceed the adjusted basis in the hands of the transferor.

"(B) TRANSACTIONS COVERED.—The transactions described in this subparagraph are—

"(i) any transaction described in section 332, 351, 361, 721, 731, 1031, or 1033, and

"(ii) any transaction between members of the same affiliated group during any taxable year for which a consolidated return is made by such group.

"(3) TREATMENT OF AMOUNTS PAID PURSUANT TO COVENANTS NOT TO COMPETE, ETC.—Any amount paid or incurred pursuant to a covenant or arrangement referred to in subsection (d)(1)(E) shall be treated as an amount chargeable to capital account.

"(4) TREATMENT OF FRANCHISES, ETC.—

"(A) FRANCHISE.—The term 'franchise' has the meaning given to such term by section 1253(b)(1).

"(B) TREATMENT OF RENEWALS.—Any renewal of a franchise, trademark, or trade name (or of a license, a permit, or other right referred to in subsection (d)(1)(D)) shall be treated as an acquisition. The preceding sentence shall only apply with respect to costs incurred in connection with such renewal.

"(C) CERTAIN AMOUNTS NOT TAKEN INTO ACCOUNT.—Any amount to which section 1253(d)(1) applies shall not be taken into account under this section.

"(5) TREATMENT OF CERTAIN REINSURANCE TRANSACTIONS.—In the case of any amortizable section 197 intangible resulting from an assumption reinsurance transaction, the amount taken into account as the adjusted basis of such intangible under this section shall be the excess of—

"(A) the amount paid or incurred by the acquirer under the assumption reinsurance transaction, over

"(B) the amount required to be capitalized under section 848 in connection with such transaction.

Subsection (b) shall not apply to any amount required to be capitalized under section 848.

"(6) TREATMENT OF CERTAIN SUBLEASES.—For purposes of this section, a sublease shall be treated in the same manner as a lease of the underlying property involved.

"(7) TREATMENT AS DEPRECIABLE.—For purposes of this chapter, any amortizable section 197 intangible shall be treated as property which is of a character subject to the allowance for depreciation provided in section 167.

"(8) TREATMENT OF CERTAIN INCREMENTS IN VALUE.—This section shall not apply to any increment in value if, without regard to this section, such increment is properly taken into account in determining the cost of property which is not a section 197 intangible.

"(9) ANTI-CHURNING RULES.—For purposes of this section—

"(A) IN GENERAL.—The term 'amortizable section 197 intangible' shall not include any section 197 intangible which is described in subparagraph (A) or (B) of subsection (d)(1) (or for which depreciation or amortization would not have been allowable but for this section) and which is acquired by the taxpayer after the date of the enactment of this section, if—

"(i) the intangible was held or used at any time on or after July 25, 1991, and on or before such date of enactment by the taxpayer or a related person,

"(ii) the intangible was acquired from a person who held such intangible at any time on or after July 25, 1991, and on or before such date of enactment, and, as part of the transaction, the user of such intangible does not change, or

"(iii) the taxpayer grants the right to use such intangible to a person (or a person related to such person) who held or used such intangible at any time on or after July 25, 1991, and on or before such date of enactment.

For purposes of this subparagraph, the determination of whether the user of property changes as part of a transaction shall be determined in accordance with regulations prescribed by the Secretary. For purposes of this subparagraph, deductions allowable under section 1253(d) shall be treated as deductions allowable for amortization.

"(B) EXCEPTION WHERE GAIN RECOGNIZED.—If—

"(i) subparagraph (A) would not apply to an intangible acquired by the taxpayer but for the last sentence of subparagraph (C)(i), and

"(ii) the person from whom the taxpayer acquired the intangible elects, notwithstanding any other provision of this title—

"(I) to recognize gain on the disposition of the intangible, and

"(II) to pay a tax on such gain which, when added to any other income tax on such gain under this title, equals such gain multiplied by the highest rate of income tax applicable to such person under this title,

then subparagraph (A) shall apply to the intangible only to the extent that the taxpayer's adjusted basis in the intangible exceeds the gain recognized under clause (ii)(I).

"(C) RELATED PERSON DEFINED.—For purposes of this paragraph—

"(i) RELATED PERSON.—A person (hereinafter in this paragraph referred to as the 'related person') is related to any person if—

"(I) the related person bears a relationship to such person specified in section 267(b) or section 707(b)(1), or

"(II) the related person and such person are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)).

For purposes of subclause (I), in applying section 267(b) or 707(b)(1), '20 percent' shall be substituted for '50 percent'.

"(ii) TIME FOR MAKING DETERMINATION.—A person shall be treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

"(D) ACQUISITIONS BY REASON OF DEATH.—Subparagraph (A) shall not apply to the acquisition of any property by the taxpayer if the basis of the property in the hands of the taxpayer is determined under section 1014(a).

"(E) SPECIAL RULE FOR PARTNERSHIPS.—With respect to any increase in the basis of partnership property under section 732, 734, or 743, determinations under this paragraph shall be made at the partner level and each partner shall be treated as having owned and used such partner's proportionate share of the partnership assets.

"(F) ANTI-ABUSE RULES.—The term 'amortizable section 197 intangible' does not include any section 197 intangible acquired in a transaction, one of the principal purposes of which is to avoid the requirement of subsection (c)(1) that the intangible be acquired after the date of the enactment of this section or to avoid the provisions of subparagraph (A).

"(g) REGULATIONS.—The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including such regulations as may be appropriate to prevent avoidance of the purposes of this section through related persons or otherwise."

(b) MODIFICATIONS TO DEPRECIATION RULES.—

(1) TREATMENT OF CERTAIN PROPERTY EXCLUDED FROM SECTION 197.—Section 167 (relating to depreciation deduction) is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) TREATMENT OF CERTAIN PROPERTY EXCLUDED FROM SECTION 197.—

"(1) COMPUTER SOFTWARE.—

"(A) IN GENERAL.—If a depreciation deduction is allowable under subsection (a) with respect to any computer software, such deduction shall be computed by using the straight line method and a useful life of 36 months.

"(B) COMPUTER SOFTWARE.—For purposes of this section, the term 'computer software' has the meaning given to such term by section 197(e)(3)(B); except that such term shall not include any such software which is an amortizable section 197 intangible.

"(2) CERTAIN INTERESTS OR RIGHTS ACQUIRED SEPARATELY.—If a depreciation deduction is allowable under subsection (a) with respect to any property described in subparagraph (B), (C), or (D) of section 197(e)(4), such deduction shall be computed in accordance with regulations prescribed by the Secretary.

"(3) MORTGAGE SERVICING RIGHTS.—If a depreciation deduction is allowable under subsection (a) with respect to any right described in section 197(e)(7), such deduction shall be computed by using the straight line method and a useful life of 108 months."

(2) ALLOCATION OF BASIS IN CASE OF LEASED PROPERTY.—Subsection (c) of section 167 is amended to read as follows:

"(c) BASIS FOR DEPRECIATION.—

"(1) IN GENERAL.—The basis on which exhaustion, wear and tear, and obsolescence are to be allowed in respect of any property shall be the adjusted basis provided in section 1011, for the purpose of determining the gain on the sale or other disposition of such property.

"(2) SPECIAL RULE FOR PROPERTY SUBJECT TO LEASE.—If any property is acquired subject to a lease—

"(A) no portion of the adjusted basis shall be allocated to the leasehold interest, and

"(B) the entire adjusted basis shall be taken into account in determining the depreciation deduction (if any) with respect to the property subject to the lease."

(c) AMENDMENTS TO SECTION 1253.—Subsection (d) of section 1253 is amended by striking paragraphs (2), (3), (4), and (5) and inserting the following:

"(2) OTHER PAYMENTS.—Any amount paid or incurred on account of a transfer, sale, or other disposition of a franchise, trademark, or trade name to which paragraph (1) does not apply shall be treated as an amount chargeable to capital account.

"(3) RENEWALS, ETC.—For purposes of determining the term of a transfer agreement under this section, there shall be taken into account all renewal options (and any other period for which the parties reasonably expect the agreement to be renewed)."

(d) AMENDMENT TO SECTION 848.—Subsection (g) of section 848 is amended by striking "this section" and inserting "this section or section 197".

(e) AMENDMENTS TO SECTION 1060.—

(1) Paragraph (1) of section 1060(b) is amended by striking "goodwill or going concern value" and inserting "section 197 intangibles".

(2) Paragraph (1) of section 1060(d) is amended by striking "goodwill or going concern value (or similar items)" and inserting "section 197 intangibles".

(f) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Subsection (g) of section 167 (as redesignated by subsection (b)) is amended to read as follows:

"(g) CROSS REFERENCES.—

"(1) For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

"(2) For amortization of goodwill and certain other intangibles, see section 197."

(2) Subsection (f) of section 642 is amended by striking "section 169" and inserting "sections 169 and 197".

(3) Subsection (a) of section 1016 is amended by striking paragraph (19) and by redesignating the following paragraphs accordingly.

(4) Subparagraph (C) of section 1245(a)(2) is amended by striking "193, or 1253(d) (2) or (3)" and inserting "or 193".

(5) Paragraph (3) of section 1245(a) is amended by striking "section 185 or 1253(d) (2) or (3)".

(6) The table of sections for part VI of subchapter B of chapter 1 is amended by adding at the end thereof the following new item:

"Sec. 197. Amortization of goodwill and certain other intangibles.".

(g) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section shall apply with respect to property acquired after the date of the enactment of this Act.

(2) ELECTION TO HAVE AMENDMENTS APPLY TO PROPERTY ACQUIRED AFTER JULY 25, 1991.—

(A) IN GENERAL.—If an election under this paragraph applies to the taxpayer—

(i) the amendments made by this section shall apply to property acquired by the taxpayer after July 25, 1991,

(ii) subsection (c)(1)(A) of section 197 of the Internal Revenue Code of 1986 (as added by this section) (and so much of subsection (f)(9)(A) of such section 197 as precedes clause (i) thereof) shall be applied with respect to the taxpayer by treating July 25, 1991, as the date of the enactment of such section, and

(iii) in applying subsection (f)(9) of such section, with respect to any property acquired by the taxpayer on or before the date of the enactment of this Act, only holding or use on July 25, 1991, shall be taken into account.

(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe. Such an election by any taxpayer, once made—

(i) may be revoked only with the consent of the Secretary, and

(ii) shall apply to the taxpayer making such election and any other taxpayer under common control with the taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of such Code) at any time after August 2, 1993, and on or before the date on which such election is made.

(3) ELECTIVE BINDING CONTRACT EXCEPTION.—

(A) IN GENERAL.—The amendments made by this section shall not apply to any acquisition of property by the taxpayer if—

(i) such acquisition is pursuant to a written binding contract in effect on the date of the enactment of this Act and at all times thereafter before such acquisition,

(ii) an election under paragraph (2) does not apply to the taxpayer, and

(iii) the taxpayer makes an election under this paragraph with respect to such contract.

(B) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made—

(i) may be revoked only with the consent of the Secretary, and

(ii) shall apply to all property acquired pursuant to the contract with respect to which such election was made.

SEC. 13262. TREATMENT OF CERTAIN PAYMENTS TO RETIRED OR DECEASED PARTNER.

(a) SECTION 736(b) NOT TO APPLY IN CERTAIN CASES.—Subsection (b) of section 736 (relating to payments for interest in partnership) is amended by adding at the end thereof the following new paragraph:

"(3) LIMITATION ON APPLICATION OF PARAGRAPH (2).—Paragraph (2) shall apply only if—

"(A) capital is not a material income-producing factor for the partnership, and

"(B) the retiring or deceased partner was a general partner in the partnership."

(b) LIMITATION ON DEFINITION OF UNREALIZED RECEIVABLES.—

(1) IN GENERAL.—Subsection (c) of section 751 (defining unrealized receivables) is amended—

(A) by striking "sections 731, 736, and 741" each place they appear and inserting ", sections 731 and 741 (but not for purposes of section 736)", and

(B) by striking "section 731, 736, or 741" each place it appears and inserting "section 731 or 741".

(2) TECHNICAL AMENDMENTS.—

(A) Subsection (e) of section 751 is amended by striking "sections 731, 736, and 741" and inserting "sections 731 and 741".

(B) Section 736 is amended by striking subsection (c).

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply in the case of partners retiring or dying on or after January 5, 1993.

(2) BINDING CONTRACT EXCEPTION.—The amendments made by this section shall not apply to any partner retiring on or after January 5, 1993, if a written contract to purchase such partner's interest in the partnership was binding on January 4, 1993, and at all times thereafter before such purchase.

PART VII—MISCELLANEOUS PROVISIONS

SEC. 13271. DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS OF TAX.

(a) GENERAL RULE.—Subsection (e) of section 6611 is amended to read as follows:

"(e) DISALLOWANCE OF INTEREST ON CERTAIN OVERPAYMENTS.—

"(1) REFUNDS WITHIN 45 DAYS AFTER RETURN IS FILED.—If any overpayment of tax imposed by this title is refunded within 45 days after the last day prescribed for filing the return of such tax (determined without regard to any extension of time for filing the return) or, in the case of a return filed after such last date, is refunded within 45 days after the date the return is filed, no interest shall be allowed under subsection (a) on such overpayment.

"(2) REFUNDS AFTER CLAIM FOR CREDIT OR REFUND.—If—

"(A) the taxpayer files a claim for a credit or refund for any overpayment of tax imposed by this title, and

"(B) such overpayment is refunded within 45 days after such claim is filed,

no interest shall be allowed on such overpayment from the date the claim is filed until the day the refund is made.

"(3) IRS INITIATED ADJUSTMENTS.—If an adjustment initiated by the Secretary, results in a refund or credit of an overpayment, interest on such overpayment shall be computed by subtracting 45 days from the number of days interest would otherwise be allowed with respect to such overpayment."

(b) EFFECTIVE DATES.—

(1) Paragraph (1) of section 6611(e) of the Internal Revenue Code of 1986 (as amended by subsection (a)) shall apply in the case of returns the due date for which (determined without regard to extensions) is on or after January 1, 1994.

(2) Paragraph (2) of section 6611(e) of such Code (as so amended) shall apply in the case of claims for credit or refund of any overpayment filed on or after January 1, 1995, regardless of the taxable period to which such refund relates.

(3) Paragraph (3) of section 6611(e) of such Code (as so amended) shall apply in the case of any refund paid on or after January 1, 1995, regardless of the taxable period to which such refund relates.

SEC. 13272. DENIAL OF DEDUCTION RELATING TO TRAVEL EXPENSES.

(a) IN GENERAL.—Section 274(m) (relating to additional limitations on travel expenses) is amended by adding at the end thereof the following new paragraph:

"(3) TRAVEL EXPENSES OF SPOUSE, DEPENDENT, OR OTHERS.—No deduction shall be allowed under this chapter (other than section 217) for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless—

"(A) the spouse, dependent, or other individual is an employee of the taxpayer,

"(B) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and

"(C) such expenses would otherwise be deductible by the spouse, dependent, or other individual."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to amounts paid or incurred after December 31, 1993.

SEC. 13273. INCREASE IN WITHHOLDING FROM SUPPLEMENTAL WAGE PAYMENTS.

If an employer elects under Treasury Regulation 31.3402 (g)–1 to determine the amount to be deducted and withheld from any supplemental wage payment by using a flat percentage rate, the rate to be used in determining the amount to be so deducted and withheld shall not be less than 28 percent. The preceding sentence shall apply to payments made after December 31, 1993.

Subchapter C—Empowerment Zones, Enterprise Communities, Rural Development Investment Areas, Etc.

PART I—EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS

SEC. 13301. DESIGNATION AND TREATMENT OF EMPOWERMENT ZONES, ENTERPRISE COMMUNITIES, AND RURAL DEVELOPMENT INVESTMENT AREAS.

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

"Subchapter U—Designation and Treatment of Empowerment Zones, Enterprise Communities, and Rural Development Investment Areas

"Part I. Designation.

"Part II. Tax-exempt facility bonds for empowerment zones and enterprise communities.

"Part III. Additional incentives for empowerment zones.

"Part IV. Regulations.

"PART I—DESIGNATION

"Sec. 1391. Designation procedure.

"Sec. 1392. Eligibility criteria.

"Sec. 1393. Definitions and special rules.

"SEC. 1391. DESIGNATION PROCEDURE.

"(a) IN GENERAL.—From among the areas nominated for designation under this section, the appropriate Secretaries may designate empowerment zones and enterprise communities.

"(b) NUMBER OF DESIGNATIONS.—

"(1) ENTERPRISE COMMUNITIES.—The appropriate Secretaries may designate in the aggregate 95 nominated areas as enterprise communities under this section, subject to the availability of eligible nominated areas. Of that number, not more than 65 may be designated in urban areas and not more than 30 may be designated in rural areas.

"(2) EMPOWERMENT ZONES.—The appropriate Secretaries may designate in the aggregate 9 nominated areas as empowerment zones under this section, subject to the availability of eligible nominated areas. Of that number, not more than 6 may be designated in urban areas and not more than 3 may be designated in rural areas. If 6 empowerment zones are designated in urban areas, no less than 1 shall be designated in an urban area the most populous city of which has a population of 500,000 or less and no less than 1 shall be a nominated area which includes areas in 2 States and which has a population of 50,000 or less. The Secretary of Housing and Urban Development shall designate empowerment zones located in urban areas in such a manner that the aggregate population of all such zones does not exceed 750,000.

"(c) PERIOD DESIGNATIONS MAY BE MADE.—A designation may be made under this section only after 1993 and before 1996.

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

"(1) IN GENERAL.—Any designation under this section shall remain in effect during the period beginning on the date of the designation and ending on the earliest of—

"(A) the close of the 10th calendar year beginning on or after such date of designation,

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

"(C) the date the appropriate Secretary revokes the designation.

"(2) REVOCATION OF DESIGNATION.—The appropriate Secretary may revoke the designation under this section of an area if such Secretary determines that the local government or the State in which it is located—

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

"(B) is not complying substantially with, or fails to make progress in achieving the benchmarks set forth in, the strategic plan under subsection (f)(2).

"(e) LIMITATIONS ON DESIGNATIONS.—No area may be designated under subsection (a) unless—

"(1) the area is nominated by 1 or more local governments and the State or States in which it is located for designation under this section,

"(2) such State or States and the local governments have the authority—

"(A) to nominate the area for designation under this section, and

"(B) to provide the assurances described in paragraph (3),

"(3) such State or States and the local governments provide written assurances satisfactory to the appropriate Secretary that the strategic plan described in the application under subsection (f)(2) for such area will be implemented,

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

"(5) such State or States and local governments certify that no portion of the area nominated is already included in an empowerment zone or in an enterprise community or in an area otherwise nominated to be designated under this section.

"(f) APPLICATION.—No area may be designated under subsection (a) unless the application for such designation—

"(1) demonstrates that the nominated area satisfies the eligibility criteria described in section 1392,

"(2) includes a strategic plan for accomplishing the purposes of this subchapter that—

"(A) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area,

"(B) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process,

"(C) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities,

"(D) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities,

"(E) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and

"(F) does not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if—

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

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

"(3) includes such other information as may be required by the appropriate Secretary.

"SEC. 1392. ELIGIBILITY CRITERIA.

"(a) IN GENERAL.—A nominated area shall be eligible for designation under section 1391 only if it meets the following criteria:

"(1) POPULATION.—The nominated area has a maximum population of—

"(A) in the case of an urban area, the lesser of—

"(i) 200,000, or

"(ii) the greater of 50,000 or 10 percent of the population of the most populous city located within the nominated area, and

"(B) in the case of a rural area, 30,000.

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

"(3) SIZE.—The nominated area—

"(A) does not exceed 20 square miles if an urban area or 1,000 square miles if a rural area,

"(B) has a boundary which is continuous, or, except in the case of a rural area located in more than 1 State, consists of not more than 3 noncontiguous parcels,

"(C)(i) in the case of an urban area, is located entirely within no more than 2 contiguous States, and

"(ii) in the case of a rural area, is located entirely within no more than 3 contiguous States, and

"(D) does not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each population census tract in such district is not less than 35 percent (30 percent in the case of an enterprise community).

"(4) POVERTY RATE.—The poverty rate—

"(A) for each population census tract within the nominated area is not less than 20 percent,

"(B) for at least 90 percent of the population census tracts within the nominated area is not less than 25 percent, and

"(C) for at least 50 percent of the population census tracts within the nominated area is not less than 35 percent.

"(b) SPECIAL RULES RELATING TO DETERMINATION OF POVERTY RATE.—For purposes of subsection (a)(4)—

"(1) TREATMENT OF CENSUS TRACTS WITH SMALL POPULATIONS.—

"(A) TRACTS WITH NO POPULATION.—In the case of a population census tract with no population—

"(i) such tract shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4), but

"(ii) such tract shall be treated as having a zero poverty rate for purposes of applying subparagraph (C) thereof.

"(B) TRACTS WITH POPULATIONS OF LESS THAN 2,000.—A population census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of subparagraphs (A) and (B) of subsection (a)(4) if more than 75 percent of such tract is zoned for commercial or industrial use.

"(2) DISCRETION TO ADJUST REQUIREMENTS FOR ENTERPRISE COMMUNITIES.—In determining whether a nominated area is eligible for designation as an enterprise community, the appropriate Secretary may, where necessary to carry out the purposes of this subchapter, reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the population census tracts (or, if fewer, 5 population census tracts) in the nominated area:

"(A) The 20 percent threshold in subsection (a)(4)(A).

"(B) The 25 percent threshold in subsection (a)(4)(B).

"(C) The 35 percent threshold in subsection (a)(4)(C).

If the appropriate Secretary elects to reduce the threshold under subparagraph (C), such Secretary may (in lieu of applying the preceding sentence) reduce by 10 percentage points the threshold under subparagraph (C) for 3 population census tracts.

"(3) EACH NONCONTIGUOUS AREA MUST SATISFY POVERTY RATE RULE.—A nominated area may not include a noncontiguous parcel unless such parcel separately meets (subject to paragraphs (1) and (2)) the criteria set forth in subsection (a)(4).

"(4) AREAS NOT WITHIN CENSUS TRACTS.—In the case of an area which is not tracted for population census tracts, the equivalent county divisions (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of determining poverty rates.

"(c) FACTORS TO CONSIDER.—From among the nominated areas eligible for designation under section 1391 by the appropriate Secretary, such appropriate Secretary shall make designations of empowerment zones and enterprise communities on the basis of—

"(1) the effectiveness of the strategic plan submitted pursuant to section 1391(f)(2) and the assurances made pursuant to section 1391(e)(3), and

"(2) criteria specified by the appropriate Secretary.

"SEC. 1393. DEFINITIONS AND SPECIAL RULES.

"(a) IN GENERAL.—For purposes of this subchapter—

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

"(A) the Secretary of Housing and Urban Development in the case of any nominated area which is located in an urban area, and

"(B) the Secretary of Agriculture in the case of any nominated area which is located in a rural area.

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

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

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

"(3) URBAN AREA.—The term 'urban area' means an area which is not a rural area.

"(4) SPECIAL RULES FOR INDIAN RESERVATIONS.—

"(A) IN GENERAL.—No empowerment zone or enterprise community may include any area within an Indian reservation.

"(B) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' has the meaning given such term by section 168(j)(6).

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

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

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

"(6) NOMINATED AREA.—The term 'nominated area' means an area which is nominated by 1 or more local governments and the State or States in which it is located for designation under section 1391.

"(7) GOVERNMENTS.—If more than 1 State or local government seeks to nominate an area under this part, any reference to, or requirement of, this subchapter shall apply to all such governments.

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

"(9) USE OF CENSUS DATA.—Population and poverty rate shall be determined by the most recent decennial census data available.

"(b) EMPOWERMENT ZONE; ENTERPRISE COMMUNITY.—For purposes of this title, the terms 'empowerment zone' and 'enterprise community' mean areas designated as such under section 1391.

"PART II—TAX-EXEMPT FACILITY BONDS FOR EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

"Sec. 1394. Tax-exempt enterprise zone facility bonds.

"SEC. 1394. TAX-EXEMPT ENTERPRISE ZONE FACILITY BONDS.

"(a) IN GENERAL.—For purposes of part IV of subchapter B of this chapter (relating to tax exemption requirements for State and local bonds), the term 'exempt facility bond' includes any bond issued as part of an issue 95 percent or more of the net proceeds (as defined in section 150(a)(3)) of which are to be used to provide any enterprise zone facility.

"(b) ENTERPRISE ZONE FACILITY.—For purposes of this section—

"(1) IN GENERAL.—The term 'enterprise zone facility' means any qualified zone property the principal user of which is an enterprise zone business, and any land which is functionally related and subordinate to such property.

"(2) QUALIFIED ZONE PROPERTY.—The term 'qualified zone property' has the meaning given such term by section 1397C; except that the references to empowerment zones shall be treated as including references to enterprise communities.

"(3) ENTERPRISE ZONE BUSINESS.—The term 'enterprise zone business' has the meaning given to such term by section 1397B, except that—

"(A) references to empowerment zones shall be treated as including references to enterprise communities, and

"(B) such term includes any trades or businesses which would qualify as an enterprise zone business (determined after the modification of subparagraph (A)) if such trades or businesses were separately incorporated.

"(c) LIMITATION ON AMOUNT OF BONDS.—

"(1) IN GENERAL.—Subsection (a) shall not apply to any issue if the aggregate amount of outstanding enterprise zone facility bonds allocable to any person (taking into account such issue) exceeds—

"(A) $3,000,000 with respect to any 1 empowerment zone or enterprise community, or

"(B) $20,000,000 with respect to all empowerment zones and enterprise communities.

"(2) AGGREGATE ENTERPRISE ZONE FACILITY BOND BENEFIT.—For purposes of subparagraph (A), the aggregate amount of outstanding enterprise zone facility bonds allocable to any person shall be determined under rules similar to the rules of section 144(a)(10), taking into account only bonds to which subsection (a) applies.

"(d) ACQUISITION OF LAND AND EXISTING PROPERTY PERMITTED.—The requirements of sections 147(c)(1)(A) and 147(d) shall not apply to any bond described in subsection (a).

"(e) PENALTY FOR CEASING TO MEET REQUIREMENTS.—

"(1) FAILURES CORRECTED.—An issue which fails to meet 1 or more of the requirements of subsections (a) and (b) shall be treated as meeting such requirements if—

"(A) the issuer and any principal user in good faith attempted to meet such requirements, and

"(B) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered.

"(2) LOSS OF DEDUCTIONS WHERE FACILITY CEASES TO BE QUALIFIED.—No deduction shall be allowed under this chapter for interest on any financing provided from any bond to which subsection (a) applies with respect to any facility to the extent such interest accrues during the period beginning on the first day of the calendar year which includes the date on which—

"(i) substantially all of the facility with respect to which the financing was provided ceases to be used in an empowerment zone or enterprise community, or

"(ii) the principal user of such facility ceases to be an enterprise zone business (as defined in subsection (b)).

"(3) EXCEPTION IF ZONE CEASES.—Paragraphs (1) and (2) shall not apply solely by reason of the termination or revocation of a designation as an empowerment zone or an enterprise community.

"(4) EXCEPTION FOR BANKRUPTCY.—Paragraphs (1) and (2) shall not apply to any cessation resulting from bankruptcy.

"PART III—ADDITIONAL INCENTIVES FOR EMPOWERMENT ZONES

"SUBPART A. Empowerment zone employment credit.

"SUBPART B. Additional expensing.

"SUBPART C. General provisions.

"Subpart A—Empowerment Zone Employment Credit

"Sec. 1396. Empowerment zone employment credit.

"Sec. 1397. Other definitions and special rules.

"SEC. 1396. EMPOWERMENT ZONE EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the empowerment zone employment credit determined under this section with respect to any employer for any taxable year is the applicable percentage of the qualified zone wages paid or incurred during the calendar year which ends with or within such taxable year.

"(b) APPLICABLE PERCENTAGE.—For purposes of this section, the term 'applicable percentage' means the percentage determined in accordance with the following table:

"In the case of wages paid or incurred during calendar year:	The applicable percentage is:
1994 through 2001	20
2002	15
2003	10
2004	5

"(c) QUALIFIED ZONE WAGES.—

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

"(2) ONLY FIRST $15,000 OF WAGES PER YEAR TAKEN INTO ACCOUNT.—With respect to each qualified zone employee, the amount of qualified zone wages which may be taken into account for a calendar year shall not exceed $15,000.

"(3) COORDINATION WITH TARGETED JOBS CREDIT.—

"(A) IN GENERAL.—The term 'qualified zone wages' shall not include wages taken into account in determining the credit under section 51.

"(B) COORDINATION WITH PARAGRAPH (2).—The $15,000 amount in paragraph (2) shall be reduced for any calendar year by the amount of wages paid or incurred during such year which are taken into account in determining the credit under section 51.

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

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

"(A) substantially all of the services performed during such period by such employee for such employer are performed within an empowerment zone in a trade or business of the employer, and

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

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

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

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

"(C) any individual employed by the employer for less than 90 days,

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

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

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

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

exceeds $500,000.

"(3) SPECIAL RULES RELATED TO TERMINATION OF EMPLOYMENT.—

"(A) IN GENERAL.—Paragraph (2)(C) shall not apply to—

"(i) a termination of employment of an individual who before the close of the period referred to in paragraph (2)(C) becomes disabled to perform the services of such employment unless such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

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

"(B) CHANGES IN FORM OF BUSINESS.—For purposes of paragraph (2)(C), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

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

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

"SEC. 1397. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) WAGES.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'wages' has the same meaning as when used in section 51.

"(2) CERTAIN TRAINING AND EDUCATIONAL BENEFITS.—

"(A) IN GENERAL.—The following amounts shall be treated as wages paid to an employee:

"(i) Any amount paid or incurred by an employer which is excludable from the gross income of an employee under section 127, but only to the extent paid or incurred to a person not related to the employer.

"(ii) In the case of an employee who has not attained the age of 19, any amount paid or incurred by an employer for any youth training program operated by such employer in conjunction with local education officials.

"(B) RELATED PERSON.—A person is related to any other person if the person bears a relationship to such other person specified in section 267(b) or 707(b)(1), or such person and such other person are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52). For purposes of the preceding sentence, in applying section 267(b) or 707(b)(1), '10 percent' shall be substituted for '50 percent'.

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

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

"(2) the credit (if any) determined under section 1396 with respect to each such employer shall be its proportionate share of the wages giving rise to such credit.

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

"Subpart B—Additional Expensing

"Sec. 1397A. Increase in expensing under section 179.

"SEC. 1397A. INCREASE IN EXPENSING UNDER SECTION 179.

"(a) GENERAL RULE.—In the case of an enterprise zone business, for purposes of section 179—

"(1) the limitation under section 179(b)(1) shall be increased by the lesser of—

"(A) $20,000, or

"(B) the cost of section 179 property which is qualified zone property placed in service during the taxable year, and

"(2) the amount taken into account under section 179(b)(2) with respect to any section 179 property which is qualified zone property shall be 50 percent of the cost thereof.

"(b) RECAPTURE.—Rules similar to the rules under section 179(d)(10) shall apply with respect to any qualified zone property which ceases to be used in an empowerment zone by an enterprise zone business.

"Subpart C—General Provisions

"Sec. 1397B. Enterprise zone business defined.

"Sec. 1397C. Qualified zone property defined.

"SEC. 1397B. ENTERPRISE ZONE BUSINESS DEFINED.

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

"(1) any qualified business entity, and

"(2) any qualified proprietorship.

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

"(1) every trade or business of such entity is the active conduct of a qualified business within an empowerment zone,

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

"(3) substantially all of the use of the tangible property of such entity (whether owned or leased) is within an empowerment zone,

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

"(5) substantially all of the services performed for such entity by its employees are performed in an empowerment zone,

"(6) at least 35 percent of its employees are residents of an empowerment zone,

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

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

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

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

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

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

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

"(5) at least 35 percent of such employees are residents of an empowerment zone,

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

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

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

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

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

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

"(A) the property is not residential rental property (as defined in section 168(e)(2)), and

"(B) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses.

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

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

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

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

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

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

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

exceeds $500,000.

For purposes of subparagraph (B), rules similar to the rules of section 1397(b) shall apply.

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

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

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

"SEC. 1397C. QUALIFIED ZONE PROPERTY DEFINED.

"(a) GENERAL RULE.—For purposes of this part—

"(1) IN GENERAL.—The term 'qualified zone property' means any property to which section 168 applies (or would apply but for section 179) if—

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

"(B) the original use of which in an empowerment zone commences with the taxpayer, and

"(C) substantially all of the use of which is in an empowerment zone and is in the active conduct of a qualified business by the taxpayer in such zone.

"(2) SPECIAL RULE FOR SUBSTANTIAL RENOVATIONS.—In the case of any property which is substantially renovated by the taxpayer, the requirements of subparagraphs (A) and (B) of paragraph (1) shall be treated as satisfied. For

purposes of the preceding sentence, property shall be treated as substantially renovated by the taxpayer if, during any 24-month period beginning after the date on which the designation of the empowerment zone took effect, additions to basis with respect to such property in the hands of the taxpayer exceed the greater of (i) an amount equal to the adjusted basis at the beginning of such 24-month period in the hands of the taxpayer, or (ii) $5,000.

"(b) SPECIAL RULES FOR SALE-LEASEBACKS.—For purposes of subsection (a)(1)(B), if property is sold and leased back by the taxpayer within 3 months after the date such property was originally placed in service, such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback.

"PART IV—REGULATIONS

"Sec. 1397D. Regulations.

"SEC. 1397D. REGULATIONS.

"The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of parts II and III, including—

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

"(2) regulations preventing abuse of the provisions of parts II and III, and

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

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

"Subchapter U. Designation and treatment of empowerment zones, enterprise communities, and rural development investment areas."

SEC. 13302. TECHNICAL AND CONFORMING AMENDMENTS.

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

(1) Subsection (b) of section 38 (relating to current year business credit) is amended by striking "plus" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", and", and by adding at the end the following new paragraph:

"(9) the empowerment zone employment credit determined under section 1396(a)."

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

"(4) EMPOWERMENT ZONE EMPLOYMENT CREDIT.—No portion of the unused business credit which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit) may be carried to any taxable year ending before January 1, 1994."

(b) DENIAL OF DEDUCTION FOR PORTION OF WAGES EQUAL TO EMPOWERMENT ZONE EMPLOYMENT CREDIT.—

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

(A) by striking "the amount of the credit determined for the taxable year under section 51(a)" and inserting "the sum of the credits determined for the taxable year under sections 51(a) and 1396(a)", and

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

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

"(6) the empowerment zone employment credit determined under section 1396(a)."

(c) EMPOWERMENT ZONE EMPLOYMENT CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

(1) IN GENERAL.—Section 38(c) (relating to limitation based on amount of tax) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

"(2) EMPOWERMENT ZONE EMPLOYMENT CREDIT MAY OFFSET 25 PERCENT OF MINIMUM TAX.—

"(A) IN GENERAL.—In the case of the empowerment zone employment credit credit—

"(i) this section and section 39 shall be applied separately with respect to such credit, and

"(ii) for purposes of applying paragraph (1) to such credit—

"(I) 75 percent of the tentative minimum tax shall be substituted for the tentative minimum tax under subparagraph (A) thereof, and

"(II) the limitation under paragraph (1) (as modified by subclause (I)) shall be reduced by the credit allowed under subsection (a) for the taxable year (other than the empowerment zone employment credit).

"(B) EMPOWERMENT ZONE EMPLOYMENT CREDIT.—For purposes of this paragraph, the term 'empowerment zone employment credit' means the portion of the credit under subsection (a) which is attributable to the credit determined under section 1396 (relating to empowerment zone employment credit)."

(d) AMENDMENT OF TARGETED JOBS CREDIT.—Subparagraph (A) of section 51(i)(1) is amended by inserting ", or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50 percent of the capital and profits interests in the entity," after "of the corporation".

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

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

SEC. 13303. EFFECTIVE DATE.

The amendments made by this part shall take effect on the date of the enactment of this Act.

PART II—CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS

SEC. 13311. CREDIT FOR CONTRIBUTIONS TO CERTAIN COMMUNITY DEVELOPMENT CORPORATIONS.

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

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

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

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

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

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

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

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

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

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

(e) SELECTED COMMUNITY DEVELOPMENT CORPORATIONS.—

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

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

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

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

(2) ONLY 20 CORPORATIONS MAY BE SELECTED.—The Secretary of Housing and Urban Development may select 20 corporations for purposes of this section, subject to the availability of eligible corporations. Such selections may be made only before July 1, 1994. At least 8 of the operational areas of the corporations selected must be rural areas (as defined by section 1393(a)(3) of such Code).

(3) OPERATIONAL AREAS MUST HAVE CERTAIN CHARACTERISTICS.—A corporation may be selected for purposes of this section only if its operational area meets the following criteria:

(A) The area meets the size requirements under section 1392(a)(3).

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

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

(f) QUALIFIED LOW-INCOME ASSISTANCE.—For purposes of this section, the term "qualified low-income assistance" means assistance—

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

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

PART III—INVESTMENT IN INDIAN RESERVATIONS

SEC. 13321. ACCELERATED DEPRECIATION FOR PROPERTY ON INDIAN RESERVATIONS.

(a) IN GENERAL.—Section 168 is amended by adding at the end the following new subsection:

"(j) PROPERTY ON INDIAN RESERVATIONS.—

"(1) IN GENERAL.—For purposes of subsection (a), the applicable recovery period for qualified Indian reservation property shall be determined in accordance with the table contained in paragraph (2) in lieu of the table contained in subsection (c).

"(2) APPLICABLE RECOVERY PERIOD FOR INDIAN RESERVATION PROPERTY.—For purposes of paragraph (1)—

"In the case of:	The applicable recovery period is:
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years.

"(3) DEDUCTION ALLOWED IN COMPUTING MINIMUM TAX.—For purposes of determining alternative minimum taxable income under section 55, the deduction under subsection (a) for property to which paragraph (1) applies shall be determined under this section without regard to any adjustment under section 56.

"(4) QUALIFIED INDIAN RESERVATION PROPERTY DEFINED.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified Indian reservation property' means property which is property described in the table in paragraph (2) and /which is—

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

"(ii) not used or located outside the Indian reservation on a regular basis,

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

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

"(B) EXCEPTION FOR ALTERNATIVE DEPRECIATION PROPERTY.—The term 'qualified Indian reservation property' does not include any property to which the alternative depreciation system under subsection (g) applies, determined—

"(i) without regard to subsection (g)(7) (relating to election to use alternative depreciation system), and

"(ii) after the application of section 280F(b) (relating to listed property with limited business use).

"(C) SPECIAL RULE FOR RESERVATION INFRASTRUCTURE INVESTMENT.—

"(i) IN GENERAL.—Subparagraph (A)(ii) shall not apply to qualified infrastructure property located outside of the Indian reservation if the purpose of such property is to connect with qualified infrastructure property located within the Indian reservation.

"(ii) QUALIFIED INFRASTRUCTURE PROPERTY.—For purposes of this subparagraph, the term 'qualified infrastructure property' means qualified Indian reservation property (determined without regard to subparagraph (A)(ii)) which—

"(I) benefits the tribal infrastructure,

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

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

Such term includes, but is not limited to, roads, power lines, water systems, railroad spurs, and communications facilities.

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

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

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

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

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

"(8) TERMINATION.—This subsection shall not apply to property placed in service after December 31, 2003."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after December 31, 1993.

SEC. 13322. INDIAN EMPLOYMENT CREDIT.

(a) ALLOWANCE OF INDIAN EMPLOYMENT CREDIT.—Section 38(b) (relating to general business credits) is amended by striking "plus" at the end of paragraph (8), by striking the period at the end of paragraph (9) and inserting ", plus", and by adding after paragraph (9) the following new paragraph:

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

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

"SEC. 45A. INDIAN EMPLOYMENT CREDIT.

"(a) AMOUNT OF CREDIT.—For purposes of section 38, the amount of the Indian employment credit determined under this section with respect to any employer for any taxable year is an amount equal to 20 percent of the excess (if any) of —

"(1) the sum of—

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

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

"(2) the sum of the qualified wages and qualified employee health insurance costs (determined as if this section were in effect) which were paid or incurred by the employer (or any predecessor) during calendar year 1993.

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

"(1) QUALIFIED WAGES.—

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

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

"(2) QUALIFIED EMPLOYEE HEALTH INSURANCE COSTS.—

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

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

"(3) LIMITATION.—The aggregate amount of qualified wages and qualified employee health insurance costs taken into account with respect to any employee for any taxable year (and for the base period under subsection (a)(2)) shall not exceed $20,000.

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

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

"(A) the employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe,

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

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

"(2) INDIVIDUALS RECEIVING WAGES IN EXCESS OF $30,000 NOT ELIGIBLE.—An employee shall not be treated as a qualified employee for any taxable year of the employer if the total amount of the wages paid or incurred by such employer to such employee during such taxable year (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of $30,000.

"(3) INFLATION ADJUSTMENT.—The Secretary shall adjust the $30,000 amount under paragraph (2) for years beginning after 1994 at the same time and in the same manner as under section 415(d).

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

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

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

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

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

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

"(7) INDIAN RESERVATION DEFINED.—The term 'Indian reservation' has the meaning given such term by section 168(j)(6).

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

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

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

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

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

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

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

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

"(ii) a termination of employment of an individual who before the close of the period referred to in paragraph (1) becomes disabled to perform the services of such employment unless

such disability is removed before the close of such period and the taxpayer fails to offer reemployment to such individual, or

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

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

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

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

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

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

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

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

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

"(2) CONTROLLED GROUPS.—

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

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

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

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

"(5) SPECIAL RULE FOR SHORT TAXABLE YEARS.—For any taxable year having less than 12 months, the amount determined under subsection (a)(2) shall be multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

"(f) TERMINATION.—This section shall not apply to taxable years beginning after December 31, 2003."

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

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

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

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

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

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

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

"Sec. 45A. Indian employment credit."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to wages paid or incurred after December 31, 1993.

Subchapter D—Other Provisions

PART I—DISCLOSURE PROVISIONS

SEC. 13401. DISCLOSURE OF RETURN INFORMATION FOR ADMINISTRATION OF CERTAIN VETERANS PROGRAMS.

(a) GENERAL RULE.—Subparagraph (D) of section 6103(l)(7) (relating to disclosure of return information to Federal, State, and local agencies administering certain programs) is amended by striking "September 30, 1997" in the second sentence following clause (viii) and inserting "September 30, 1998".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 13402. DISCLOSURE OF RETURN INFORMATION TO CARRY OUT INCOME CONTINGENT REPAYMENT OF STUDENT LOANS.

(a) GENERAL RULE.—Subsection (l) of section 6103 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end thereof the following new paragraph:

"(13) DISCLOSURE OF RETURN INFORMATION TO CARRY OUT INCOME CONTINGENT REPAYMENT OF STUDENT LOANS.—

"(A) IN GENERAL.—The Secretary may, upon written request from the Secretary of Education, disclose to officers and employees of the Department of Education return information with respect to a taxpayer who has received an applicable student loan and whose loan repayment amounts are based in whole or in part on the taxpayer's income. Such return information shall be limited to—

"(i) taxpayer identity information with respect to such taxpayer,

"(ii) the filing status of such taxpayer, and

"(iii) the adjusted gross income of such taxpayer.

"(B) RESTRICTION ON USE OF DISCLOSED INFORMATION.—Return information disclosed under subparagraph (A) may be used by officers and employees of the Department of Education only for the purposes of, and to the extent necessary in, establishing the appropriate income contingent repayment amount for an applicable student loan.

"(C) APPLICABLE STUDENT LOAN.—For purposes of this paragraph, the term 'applicable student loan' means—

"(i) any loan made under the program authorized under part D of title IV of the Higher Education Act of 1965, and

"(ii) any loan made under part B or E of title IV of the Higher Education Act of 1965 which is in default and has been assigned to the Department of Education.

"(D) TERMINATION.—This paragraph shall not apply to any request made after September 30, 1998."

(b) CONFORMING AMENDMENTS.—

(1) So much of paragraph (4) of section 6103(m) as precedes subparagraph (B) thereof is amended to read as follows:

"(4) INDIVIDUALS WHO OWE AN OVERPAYMENT OF FEDERAL PELL GRANTS OR WHO HAVE DEFAULTED ON STUDENT LOANS ADMINISTERED BY THE DEPARTMENT OF EDUCATION.—

"(A) IN GENERAL.—Upon written request by the Secretary of Education, the Secretary may disclose the mailing address of any taxpayer—

"(i) who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or

"(ii) who has defaulted on a loan—

"(I) made under part B, D, or E of title IV of the Higher Education Act of 1965, or

"(II) made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education,

for use only by officers, employees, or agents of the Department of Education for purposes of locating such taxpayer for purposes of collecting such overpayment or loan ."

(2) Subparagraph (B) of section 6103(m)(4) is amended—

(A) in clause (i), by striking "under part B" and inserting "under part B or D"; and

(B) in clause (ii), by striking "under part E" and inserting "under subpart 1 of part A, or part D or E,";

(3) Section 6103(p) is amended—

(A) in paragraph (3)(A), by striking "(11), or (12), (m)" and inserting "(11), (12), or (13), (m)";

(B) in paragraph (4)—

(i) in the matter preceding subparagraph (A), by striking out "(10), or (11)," and inserting "(10), (11), or (13),", and

(ii) in subparagraph (F)(ii), by striking "(11), or (12)," and inserting "(11), (12), or (13),".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 13403. USE OF RETURN INFORMATION FOR INCOME VERIFICATION UNDER CERTAIN HOUSING ASSISTANCE PROGRAMS.

(a) IN GENERAL.—Subparagraph (D) of section 6103(l)(7) (relating to the disclosure of return information to Federal, State, and local agencies administering certain programs) is amended—

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

(2) in clause (viii), by striking the period at the end and inserting "; and";

(3) by inserting after clause (viii) the following new clause:

"(ix) any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs."; and

(4) by adding at the end thereof the following: "Clause (ix) shall not apply after September 30, 1998."

(b) CONFORMING AMENDMENT.—The heading of paragraph (7) of section 6103(l) is amended by inserting after "CODE" the following: ", OR CERTAIN HOUSING ASSISTANCE PROGRAMS".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

PART II—PUBLIC DEBT LIMIT

SEC. 13411. INCREASE IN PUBLIC DEBT LIMIT.

(a) GENERAL RULE.—Subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof "$4,900,000,000,000".

(b) REPEAL OF TEMPORARY INCREASE.—Effective on and after the date of the enactment of this Act, section 1 of Public Law 103-12 is hereby repealed.

PART III—VACCINE PROVISIONS

SEC. 13421. EXCISE TAX ON CERTAIN VACCINES MADE PERMANENT.

(a) TAX.—Subsection (c) of section 4131 (relating to tax on certain vaccines) is amended to read as follows:

"(c) APPLICATION OF SECTION.—The tax imposed by this section shall apply—

"(1) after December 31, 1987, and before January 1, 1993, and

"(2) during periods after the date of the enactment of the Revenue Reconciliation Act of 1993."

(b) TRUST FUND.—Paragraph (1) of section 9510(c) (relating to expenditures from Vaccine Injury Compensation Trust Fund) is amended by striking "and before October 1, 1992,".

(c) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—On any taxable vaccine—

(A) which was sold by the manufacturer, producer, or importer on or before the date of the enactment of this Act,

(B) on which no tax was imposed by section 4131 of the Internal Revenue Code of 1986 (or, if such tax was imposed, was credited or refunded), and

(C) which is held on such date by any person for sale or use,

there is hereby imposed a tax in the amount determined under section 4131(b) of such Code.

(2) LIABILITY FOR TAX AND METHOD OF PAYMENT.—

(A) LIABILITY FOR TAX.—The person holding any taxable vaccine to which the tax imposed by paragraph (1) applies shall be liable for such tax.

(B) METHOD OF PAYMENT.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall prescribe by regulations.

(C) TIME FOR PAYMENT.—The tax imposed by paragraph (1) shall be paid on or before the last day of the 6th month beginning after the date of the enactment of this Act.

(3) DEFINITIONS.—For purposes of this subsection, terms used in this subsection which are also used in section 4131 of such Code shall have the respective meanings such terms have in such section.

(4) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4131 of such Code shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply to the floor stocks taxes imposed by paragraph (1), to the same extent as if such taxes were imposed by such section 4131.

SEC. 13422. CONTINUATION COVERAGE UNDER GROUP HEALTH PLANS OF COSTS OF PEDIATRIC VACCINES.

(a) IN GENERAL.—Paragraph (1) of section 4980B(f) is amended by inserting "the coverage of the costs of pediatric vaccines (as defined under section 2162 of the Public Health Service Act) is not reduced below the coverage provided by the plan as of May 1, 1993, and only if" after "only if".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to plan years beginning after the date of the enactment of this Act.

PART IV—DISASTER RELIEF PROVISIONS

SEC. 13431. MODIFICATION OF INVOLUNTARY CONVERSION RULES FOR CERTAIN DISASTER-RELATED CONVERSIONS.

(a) IN GENERAL.—Section 1033 (relating to involuntary conversions) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) SPECIAL RULES FOR PRINCIPAL RESIDENCES DAMAGED BY PRESIDENTIALLY DECLARED DISASTERS.—

"(1) IN GENERAL.—If the taxpayer's principal residence or any of its contents is compulsorily or involuntarily converted as a result of a Presidentially declared disaster—

"(A) TREATMENT OF INSURANCE PROCEEDS.—

"(i) EXCLUSION FOR UNSCHEDULED PERSONAL PROPERTY.—No gain shall be recognized by reason of the receipt of any insurance proceeds for personal property which was part of such contents and which was not scheduled property for purposes of such insurance.

"(ii) OTHER PROCEEDS TREATED AS COMMON FUND.—In the case of any insurance proceeds (not described in clause (i)) for such residence or contents—

"(I) such proceeds shall be treated as received for the conversion of a single item of property, and

"(II) any property which is similar or related in service or use to the residence so converted (or contents thereof) shall be treated for purposes of subsection (a)(2) as property similar or related in service or use to such single item of property.

"(B) EXTENSION OF REPLACEMENT PERIOD.—Subsection (a)(2)(B) shall be applied with respect to any property so converted by substituting '4 years' for '2 years'.

"(2) PRESIDENTIALLY DECLARED DISASTER.—For purposes of this subsection, the term 'Presidentially declared disaster' means any disaster which, with respect to the area in which the residence is located, resulted in a subsequent determination by the President that such area warrants assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act.

"(3) PRINCIPAL RESIDENCE.—For purposes of this subsection, the term 'principal residence' has the same meaning as when used in section 1034, except that such term shall include a residence not treated as a principal residence solely because the taxpayer does not own the residence.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to property compulsorily or involuntarily converted as a result of disasters for which the determination referred to in section 1033(h)(2) of the Internal Revenue Code of 1986 (as added by this section) is made on or after September 1, 1991, and to taxable years ending on or after such date.

PART V—MISCELLANEOUS PROVISIONS

SEC. 13441. INCREASE IN PRESIDENTIAL ELECTION CAMPAIGN FUND CHECK-OFF.

(a) IN GENERAL.—Section 6096(a) (relating to designation by individuals) is amended—

(1) by striking "$1" each place it appears and inserting "$3", and

(2) by striking "$2" and inserting "$6".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply with respect to tax returns required to be filed after December 31, 1993.

SEC. 13442. SPECIAL RULE FOR HOSPITAL SERVICES.

(a) IN GENERAL.—Section 162 (relating to trade or business deductions), as amended by section 13211, is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

"(n) SPECIAL RULE FOR CERTAIN GROUP HEALTH PLANS.—

"(1) IN GENERAL.—No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

"(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

"(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

"(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

"(2) STATE LAW EXCEPTION.—Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

"(3) GROUP HEALTH PLAN.—For purposes of this subsection, the term 'group health plan' means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family."

(b) EFFECTIVE DATE.—The provisions of this section shall apply to services provided after February 2, 1993, and on or before May 12, 1995.

SEC. 13443. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45B. CREDIT FOR PORTION OF EMPLOYER SOCIAL SECURITY TAXES PAID WITH RESPECT TO EMPLOYEE CASH TIPS.

"(a) GENERAL RULE.—For purposes of section 38, the employer social security credit determined under this section for the taxable year is an amount equal to the excess employer social security tax paid or incurred by the taxpayer during the taxable year.

"(b) EXCESS EMPLOYER SOCIAL SECURITY TAX.—For purposes of this section—

"(1) IN GENERAL.—The term 'excess employer social security tax' means any tax paid by an employer under section 3111 with respect to tips received by an employee during any month, to the extent such tips—

"(A) are deemed to have been paid by the employer to the employee pursuant to section 3121(q), and

"(B) exceed the amount by which the wages (excluding tips) paid by the employer to the employee during such month are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act).

"(2) ONLY TIPS RECEIVED AT FOOD AND BEVERAGE ESTABLISHMENTS TAKEN INTO ACCOUNT.—In applying paragraph (1), there shall be taken into account only tips received from customers in connection with the provision of food or beverages for consumption on the premises of an establishment with respect to which the tipping of employees serving food or beverages by customers is customary.

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this chapter for any amount taken into account in determining the credit under this section.

"(d) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year."

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—

(1) IN GENERAL.—Subsection (b) of section 38 (relating to current year business credit) is

amended by striking "plus" at the end of paragraph (9), by striking the period at the end of paragraph (10) and inserting ", plus", and by adding at the end the following new paragraph:

"(11) the employer social security credit determined under section 45B(a)."

(2) LIMITATION ON CARRYBACKS.—Subsection (d) of section 39 (relating to transitional rules) is amended by adding at the end the following new paragraph:

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

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

"Sec. 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxes paid after December 31, 1993.

SEC. 13444. AVAILABILITY AND USE OF DEATH INFORMATION.

(a) RESTRICTION ON DISCLOSURE OF TAX RETURN INFORMATION.—Subsection (d) of section 6103 is amended by adding at the end thereof the following new paragraph:

"(4) AVAILABILITY AND USE OF DEATH INFORMATION.—

"(A) IN GENERAL.—No returns or return information may be disclosed under paragraph (1) to any agency, body, or commission of any State (or any legal representative thereof) during any period during which a contract meeting the requirements of subparagraph (B) is not in effect between such State and the Secretary of Health and Human Services.

"(B) CONTRACTUAL REQUIREMENTS.—A contract meets the requirements of this subparagraph if—

"(i) such contract requires the State to furnish the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it, and

"(ii) such contract does not include any restriction on the use of information obtained by such Secretary pursuant to such contract, except that such contract may provide that such information is only to be used by the Secretary (or any other Federal agency) for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals.

Any information obtained by the Secretary of Health and Human Services under such a contract shall be exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title 5.

"(C) SPECIAL EXCEPTION.—The provisions of subparagraph (A) shall not apply to any State which on July 1, 1993, was not, pursuant to a contract, furnishing the Secretary of Health and Human Services information concerning individuals with respect to whom death certificates (or equivalent documents maintained by the State or any subdivision thereof) have been officially filed with it."

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) shall take effect on the date one year after the date of the enactment of this Act.

(2) SPECIAL RULE.—The amendment made by subsection (a) shall take effect on the date 2 years after the date of the enactment of this Act in the case of any State if it is established to the satisfaction of the Secretary of the Treasury that—

(A) under the law of such State as in effect on the date of the enactment of this Act, it is impossible for such State to enter into an agreement meeting the requirements of section 6103(d)(4)(B) of the Internal Revenue Code of 1986 (as added by subsection (a)), and

(B) it is likely that such State will enter into such an agreement during the extension period under this paragraph.

CHAPTER 2—HEALTH CARE, HUMAN RESOURCES, INCOME SECURITY, AND CUSTOMS AND TRADE PROVISIONS

Subchapter A—Medicare

SEC. 13500. REFERENCES IN SUBCHAPTER; TABLE OF CONTENTS OF SUBCHAPTER.

(a) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this subchapter 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 subchapter, the terms "OBRA–1986", "OBRA–1987", "OBRA–1989", and "OBRA–1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), respectively.

(c) TABLE OF CONTENTS OF SUBCHAPTER.—The table of contents of this subchapter is as follows:

SUBCHAPTER A—MEDICARE

Sec. 13500. References in subchapter; table of contents of subchapter.

PART I—PROVISIONS RELATING TO PART A

Sec. 13501. Payments for PPS hospitals.
Sec. 13502. Reductions in payments for PPS-exempt hospitals.
Sec. 13503. Reductions in payments for skilled nursing facility services.
Sec. 13504. Reductions in payments for hospice services.
Sec. 13505. Hemophilia pass-through extension.
Sec. 13506. Graduate medical education payments in hospital-owned community health centers.
Sec. 13507. Extension of rural hospital demonstration.
Sec. 13508. Reduction in part A premium for certain individuals with 30 or more quarters of Social Security coverage.

PART II—PROVISIONS RELATING TO PART B

SUBPART A—PHYSICIANS' SERVICES

Sec. 13511. Reduction in default update for conversion factor for 1994 and 1995.
Sec. 13512. Reduction in performance standard rate of increase and increase in maximum reduction permitted in default update.
Sec. 13513. Practice expense relative value units.
Sec. 13514. Separate payment for interpretation of electrocardiograms.
Sec. 13515. Payments for new physicians and practitioners.
Sec. 13516. Payments for anesthesia.
Sec. 13517. Extension of physician payment provisions to nonparticipating suppliers and other persons.
Sec. 13518. Antigens under physician fee schedule.

SUBPART B—OUTPATIENT HOSPITAL SERVICES

Sec. 13521. Extension of 10 percent reduction in payments for capital-related costs of outpatient hospital services.
Sec. 13522. Extension of reduction in payments for other costs of outpatient hospital services.

SUBPART C—AMBULATORY SURGICAL CENTER SERVICES

Sec. 13531. Ambulatory surgical center services.
Sec. 13532. Designation of certain hospitals as eye or eye and ear hospitals.
Sec. 13533. Reduction in payments for intraocular lenses.

SUBPART D—DURABLE MEDICAL EQUIPMENT

Sec. 13541. Payment for parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995.
Sec. 13542. Revisions to payment rules for durable medical equipment.
Sec. 13543. Treatment of nebulizers, aspirators, and certain ventilators.
Sec. 13544. Payment for ostomy supplies and other supplies.
Sec. 13545. Payments for TENS devices.
Sec. 13546. Payments for orthotics, prosthetics, and prosthetic devices.

SUBPART E—OTHER PROVISIONS

Sec. 13551. Payments for clinical diagnostic laboratory tests.
Sec. 13552. Extension of Alzheimer's Disease demonstration projects.
Sec. 13553. Oral cancer drugs.
Sec. 13554. Clarification of coverage of certified nurse-midwife services performed outside the maternity cycle.
Sec. 13555. Increase in annual cap on amount of medicare payment for outpatient physical therapy and occupational therapy services.
Sec. 13556. Rural health clinics and Federally qualified health centers.
Sec. 13557. Extension of municipal health service demonstration projects.

PART III—PROVISIONS RELATING TO PARTS A AND B

Sec. 13561. Medicare as secondary payer.
Sec. 13562. Physician ownership and referral.
Sec. 13563. Direct graduate medical education.
Sec. 13564. Reduction in payments for home health services.
Sec. 13565. Immunosuppressive drug therapy.
Sec. 13566. Reduction in payments for erythropoientin.
Sec. 13567. Extension of social health maintenance organization demonstrations.
Sec. 13568. Timing of claims payment.
Sec. 13569. Extension of waiver for Watts Health Foundation.

PART IV—PROVISION RELATING TO PART B PREMIUM

Sec. 13571. Part B premium.

PART V—PROVISION RELATING TO DATA BANK

Sec. 13581. Medicare and medicaid coverage data bank.PART I—PRO

PART I—PROVISIONS RELATING TO PART A *COM007*

SEC. 13501. PAYMENTS FOR PPS HOSPITALS.

(a) REDUCTIONS IN PAYMENTS.—

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

(A) in subclause (IX)—

(i) by inserting "minus 2.5 percentage points" after "market basket percentage increase" the first place it appears, and

(ii) by striking "plus 1.5 percentage points" and inserting "minus 1.0 percentage point";

(B) in subclause (X)—

(i) by inserting "minus 2.5 percentage points" after "market basket percentage increase", and

(ii) by striking "and" at the end;

(C) in subclause (XI)—

(i) by striking "and each subsequent fiscal year",

(ii) by inserting "minus 2.0 percentage points" after "market basket percentage increase", and

(iii) by striking the period at the end and inserting a comma; and

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

"(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas, and

"(XIII) for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.".

(2) UPDATES FOR SOLE COMMUNITY HOSPITALS AND MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.—

(A) IN GENERAL.—Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)) is amended by adding at the end the following new clause:

"(iv) For purposes of subparagraphs (C) and (D), the 'applicable percentage increase' is—

"(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

"(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1993 that occurred during fiscal year 1994),

"(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

"(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (i).".

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

(i) in subparagraph (B)(ii), by striking ", (C), (D),";

(ii) in subparagraph (C)(i)(II), by striking "or" at the end;

(iii) in clause (ii) of subparagraph (C)—

(I) by striking "period, the target" and inserting "period beginning before fiscal year 1994, the target",

(II) by striking "subparagraph (B)(ii)" and inserting "subparagraph (B)(iv)", and

(III) by striking the period at the end of such clause and inserting a comma;

(iv) in subparagraph (C), by inserting after clause (ii) the following new clauses:

"(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

"(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).";

(v) in clause (ii) of subparagraph (D)—

(I) by striking "period, the target" and inserting "period beginning before fiscal year 1994, the target",

(II) by striking "(B)(ii)" and inserting "(B)(iv)", and

(III) by striking the period at the end of such clause and inserting ", and"; and

(vi) in subparagraph (D), by inserting after clause (ii) the following new clause:

"(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv).".

(3) REDUCTION IN FEDERAL PORTION OF CAPITAL PAYMENT RATE.—Section 1886(g)(1)(A) (42 U.S.C. 1395ww(g)(1)(A)) is amended by adding at the end the following new sentence: "For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on the date of the enactment of the Omnibus Budget Reconciliation Act of 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.".

(b) WAGE INDEX HOLD HARMLESS PROTECTION.—

(1) IN GENERAL.—Section 1886(d)(8)(C) (42 U.S.C. 1395ww(d)(8)(C)) is amended by adding at the end the following new clause:

"(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (1) may not result in a reduction in an urban area's wage index if—

"(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

"(II) the urban area is located in a State that is composed of a single urban area.".

(2) NO STANDARDIZED AMOUNT ADJUSTMENT.—The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act to account for the amendment made by paragraph (1).

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 1991.

(c) TRANSITION FOR HOSPITAL OUTLIER THRESHOLDS.—Section 1886(d)(5)(A) (42 U.S.C. 1395ww(d)(5)(A)) is amended—

(1) in clause (i), by striking "The Secretary" and inserting "For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary";

(2) in clause (ii), by striking the period at the end and inserting the following: ", or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.";

(3) in clause (iii), by striking "shall approximate" and inserting "shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate"; and

(4) by adding at the end the following new clauses:

"(v) The Secretary shall provide that—

"(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

"(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

"(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

"(vi) For purposes of this subparagraph, the term 'day outlier percentage' means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).".

(d) EXTENSION FOR REGIONAL REFERRAL CENTERS.—

(1) EXTENSION OF CLASSIFICATION THROUGH FISCAL YEAR 1994.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

(A) notify such hospital of such failure to qualify,

(B) provide an opportunity for such hospital to decline such reclassification, and

(C) if the hospital—

(i) declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred, or

(ii) fails to decline such reclassification, administer the Social Security Act without regard to paragraph (1).

(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT FOR HOSPITALS LOSING CLASSIFICATION.—

(A) IN GENERAL.—In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the "period of applicability" is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act.

(e) EXTENSION FOR MEDICARE-DEPENDENT, SMALL RURAL HOSPITALS.—

(1) EXTENSION OF ADDITIONAL PAYMENTS.—Section 1886(d)(5)(G) (42 U.S.C. 1395ww (d)(5)(G)) is amended—

(A) in clause (i) in the matter preceding subclause (I), by striking "ending on or before March 31, 1993," and all that follows and inserting the following: "before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).";

(B) by redesignating clauses (ii) and (iii) as clauses (iii) and (iv); and

(C) by inserting after clause (i) the following new clause:

"(ii) The amount determined under this clause is—

"(I) for discharges occurring during the first 3 12-month cost reporting periods that begin on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii); and

"(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, 50 percent of the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D)) exceeds the amount determined under paragraph (1)(A)(iii).".

(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

(A) notify such hospital of such failure to qualify,

(B) provide an opportunity for such hospital to decline such reclassification, and

(C) if the hospital declines such reclassification, administer the Social Security Act (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred.

(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT.—

(A) IN GENERAL.—In the case of a hospital treated as a medicare-dependent, small rural hospital under section 1886(d)(5)(G) of the Social Security Act, the Secretary of Health and Human Services shall make a lump sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, section 1886(d)(5)(G) of such Act had been applied as if the amendments made by paragraph (1) had been in effect.

(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the "period of applicability" is, with respect to a hospital, the period that begins on the first day of the hospital's first 12-month cost reporting period that begins after April 1, 1992, and ends on the date of the enactment of this Act.

(f) EXTENSION OF REGIONAL FLOOR.—Section 1886(d)(1)(A)(iii) (42 U.S.C. 1395ww(d)(1)(A)(iii)) is amended to read as follows:

"(iii) beginning on or after April 1, 1988, is equal to—

"(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

"(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same rural, large urban, or other urban area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.".

SEC. 13502. REDUCTIONS IN PAYMENTS FOR PPS-EXEMPT HOSPITALS.

(a) IN GENERAL.—Section 1886(b)(3)(B) (42 U.S.C. 1395ww(b)(3)(B)), as amended by section 13501(a)(2)(B)(i), is amended—

(1) in clause (ii)—

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

(B) in subclause (IV)—

(i) by striking "subsequent fiscal years" and inserting "a subsequent fiscal year ending on or before September 30, 1993,", and

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

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

"(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase, and

"(VI) subsequent fiscal years is the market basket percentage increase."; and

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

"(v) For purposes of clause (ii)(V)—

"(I) a hospital's 'update adjustment percentage' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this title for the cost reporting period beginning in fiscal year 1990 exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital's applicable reductions under subclause (V) for previous fiscal years; and

"(II) the 'applicable reduction' with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year.".

(b) EFFECT OF PAYMENT REDUCTION ON EXCEPTIONS AND ADJUSTMENTS.—Section 1886(b)(4)(A) (42 U.S.C. 1395ww(b)(4)(A)) is amended—

(1) by inserting "(i)" after "(A)", and

(2) by adding at the end the following:

"(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i).".

SEC. 13503. REDUCTIONS IN PAYMENTS FOR SKILLED NURSING FACILITY SERVICES.

(a) PAYMENTS BASED ON COST LIMITS.—

(1) NO CHANGES IN COST LIMITS.—The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A). The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.

(2) DELAY IN UPDATES.—The last sentence of section 1888(a) (42 U.S.C. 1395yy(a)) is amended by inserting after "October 1, 1992" the following: ", on or after October 1, 1995,".

(3) REPEAL OF EXCESS OVERHEAD ALLOCATIONS FOR HOSPITAL-BASED FACILITIES.—

(A) IN GENERAL.—Section 1888(b) (42 U.S.C. 1395yy(b)) is amended—

(i) by striking "shall recognize" and inserting "may not recognize"; and

(ii) by striking "(as determined by" and all that follows and inserting a period.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall apply to cost reporting periods beginning on or after October 1, 1993.

(b) PAYMENTS DETERMINED ON PROSPECTIVE BASIS.—The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A).

(c) ELIMINATION OF RETURN ON EQUITY FOR PROPRIETARY SKILLED NURSING FACILITIES.—

(1) REPEAL OF REQUIREMENT FOR RETURN ON EQUITY.—(A) Section 1861(v)(1)(B) (42 U.S.C. 1395x(v)(1)(B)) is amended to read as follows:

"(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.".

(B) Section 1878(f)(2) (42 U.S.C. 1395oo(f)(2)) is amended by striking "the rate of return on equity capital established by regulation pursuant to section 1861(v)(1)(B) and in effect at the time" and inserting "the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect October 1, 1993.

SEC. 13504. REDUCTIONS IN PAYMENTS FOR HOSPICE SERVICES.

Section 1814(i)(1)(C) (42 U.S.C. 1395f(i)(1)(C)) is amended by striking "increased by" and all that follows and inserting the following: "increased by—

"(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1886(b)(3)(B)(iii)) for the fiscal year;

"(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

"(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

"(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

"(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point; and

"(VI) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.".

SEC. 13505. HEMOPHILIA PASS-THROUGH EXTENSION.

Effective as if included in the enactment of OBRA–1989, section 6011(d) of such Act is amended by striking "2 years after the date of enactment of this Act" and inserting "September 30, 1994".

SEC. 13506. GRADUATE MEDICAL EDUCATION PAYMENTS IN HOSPITAL-OWNED COMMUNITY HEALTH CENTERS.

Section 1886(d)(5)(B)(iv) (42 U.S.C. 1395ww(d)(5)(B)(iv)) is amended by inserting after "the hospital" the following: "or providing services at any entity receiving a grant under section 330 of the Public Health Service Act that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)".

SEC. 13507. EXTENSION OF RURAL HOSPITAL DEMONSTRATION.

Section 4008(i)(1) of OBRA–1990 is amended by adding at the end the following new sentence: "The Secretary shall continue any such demonstration project until at least July 1, 1997.".

SEC. 13508. REDUCTION IN PART A PREMIUM FOR CERTAIN INDIVIDUALS WITH 30 OR MORE QUARTERS OF SOCIAL SECURITY COVERAGE.

(a) IN GENERAL.—Section 1818(d) (42 U.S.C. 1395i–2(d)) is amended—

(1) in the second sentence of paragraph (2), by striking "Such amount" and inserting "Subject to paragraph (4), the amount of an individual's monthly premium under this section"; and

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

"(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

"For a month in:	The applicable reduction percent is:
1994	25 percent
1995	30 percent
1996	35 percent
1997	40 percent
1998 or subsequent year	45 percent.

"(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual—

"(i) had at least 30 quarters of coverage under title II;

"(ii) was married (and had been married for the previous 1 year period) to an individual who had at least 30 quarters of coverage under such title;

"(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such title; or

"(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such title.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to monthly premiums under section 1818 of the Social Security Act for months beginning with January 1, 1994.

PART II—PROVISIONS RELATING TO PART B

Subpart A—Physicians' Services

SEC. 13511. REDUCTION IN DEFAULT UPDATE FOR CONVERSION FACTOR FOR 1994 AND 1995.

(a) IN GENERAL.—Section 1848 (42 U.S.C. 1395w–4) is amended—

(1) in subsection (d)(3)(A)—

(A) in clause (i), by striking "clause (iii)" and inserting "clauses (iii) through (v)", and

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

"(iv) ADJUSTMENT IN PERCENTAGE INCREASE FOR 1994.—In applying clause (i) for services furnished in 1994, the percentage increase in the appropriate update index shall be reduced by—

"(I) 3.6 percentage points for services included in the category of surgical services (as defined for purposes of subsection (j)(1)), and

"(II) 2.6 percentage points for other services.

"(v) ADJUSTMENT IN PERCENTAGE INCREASE FOR 1995.—In applying clause (i) for services furnished in 1995, the percentage increase in the appropriate update index shall be reduced by 2.7 percentage points.

"(vi) EXCEPTION FOR CATEGORY OF PRIMARY CARE SERVICES.—Clauses (iv) and (v) shall not apply to services included in the category of primary care services (as defined for purposes of subsection (j)(1)).''; and

(2) in subsection (j)(1), by striking "Secretary)" and inserting "Secretary and including anesthesia services), primary care services (as defined in section 1842(i)(4)),".

(b) EFFECTIVE DATES.—The amendments made by this section shall apply to services furnished on or after January 1, 1994; except that amendment made by subsection (a)(2) shall not apply—

(1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act for fiscal years before fiscal year 1994, and

(2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996.

SEC. 13512. REDUCTION IN PERFORMANCE STANDARD RATE OF INCREASE AND INCREASE IN MAXIMUM REDUCTION PERMITTED IN DEFAULT UPDATE.

(a) REDUCTION IN PERFORMANCE STANDARD FACTOR.—Section 1848(f)(2)(B) (42 U.S.C. 1395w–4(f)(2)(B)) is amended—

(1) by striking "and" at the end of clause (ii), and

(2) by striking clause (iii) and inserting the following:

"(iii) for 1993 is 2 percentage points,

"(iv) for 1994 is 3½ percentage points, and

"(v) for each succeeding year is 4 percentage points.".

(b) INCREASE IN MAXIMUM REDUCTION PERMITTED IN DEFAULT UPDATE.—Section 1848(d)(3)(B)(ii) (42 U.S.C. 1395w–4(d)(3)(B)(ii)) is amended—

(1) in subclause (II), by striking "or 1995", and

(2) in subclause (III), by striking "3" and inserting "5".

SEC. 13513. PRACTICE EXPENSE RELATIVE VALUE UNITS.

Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)) is amended by adding at the end the following new subparagraph:

"(E) REDUCTION IN PRACTICE EXPENSE RELATIVE VALUE UNITS FOR CERTAIN SERVICES.—

"(i) IN GENERAL.—Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in—

"(I) 1994, by 25 percent of the number by which the number of practice expense relative value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,

"(II) 1995, by an additional 25 percent of such excess, and

"(III) 1996, by an additional 25 percent of such excess.

"(ii) FLOOR ON REDUCTIONS.—The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.

"(iii) SERVICES COVERED.—For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which—

"(I) there are work relative value units, and

"(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).

"(iv) EXCLUDED SERVICES.—For purposes of clause (iii), 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.".

SEC. 13514. SEPARATE PAYMENT FOR INTERPRETATION OF ELECTROCARDIOGRAMS.

(a) IN GENERAL.—Paragraph (3) of section 1848(b) (42 U.S.C. 1395w–4(b)) is amended to read as follows:

"(3) TREATMENT OF INTERPRETATION OF ELECTROCARDIOGRAMS.—The Secretary—

"(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

"(B) shall adjust the relative values established for visits and consultations under subsection (c) so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.".

(b) ASSURING BUDGET NEUTRALITY.—Section 1848(c)(2) (42 U.S.C. 1395w–4(c)(2)), as amended by section 13513, is further amended by adding at the end the following new subparagraph:

"(F) BUDGET NEUTRALITY ADJUSTMENTS.—The Secretary—

"(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

"(ii) shall reduce the amounts determined under subsection (a)(2)(B)(ii)(I) by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.".

(c) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w–4) is amended—

(1) in subsection (a)(2)(B)(ii)(I), by inserting "and as adjusted under subsection (c)(2)(F)(ii)" after "for 1994";

(2) in subsection (c)(2)(A)(i), by adding at the end the following: "Such relative values are subject to adjustment under subparagraph (F)(i).''; and

(3) in subsection (i)(1)(B), by adding at the end "including adjustments under subsection (c)(2)(F),".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 1994.

SEC. 13515. PAYMENTS FOR NEW PHYSICIANS AND PRACTITIONERS.

(a) EQUAL TREATMENT OF NEW PHYSICIANS AND PRACTITIONERS.—(1) Section 1848(a) (42 U.S.C. 1395w–4(a)) is amended by striking paragraph (4).

(2) Section 1842(b)(4) (42 U.S.C. 1395u(b)(4)) is amended by striking subparagraph (F).

(b) BUDGET NEUTRALITY ADJUSTMENT.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) will not result in expenditures under part B of title XVIII of the Social Security Act in 1994 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

(1) The relative values established under section 1848(c) of such Act for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

(2) The amounts determined under section 1848(a)(2)(B)(ii)(I) of such Act.

(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act, as in effect before the date of the enactment of this Act).

(c) CONFORMING AMENDMENTS.—Section 1848 (42 U.S.C. 1395w–4), as amended by section 13514(c), is amended—

(1) in subsection (a)(2)(B)(ii)(I), by inserting "and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "subsection (c)(2)(F)(ii)";

(2) in subsection (c)(2)(A)(i), by inserting "and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "under subparagraph (F)(i)"; and

(3) in subsection (i)(1)(B), by inserting "and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993" after "under subsection (c)(2)(F)".

(d) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13516. PAYMENTS FOR ANESTHESIA.

(a) PAYMENT TO A PHYSICIAN FOR MEDICAL DIRECTION.—

(1) IN GENERAL.—Section 1848(a) (42 U.S.C. 1395w-4(a)), as amended by section 13515(a)(1), is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULE FOR MEDICAL DIRECTION.—

"(A) IN GENERAL.—With respect to physicians' services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

"(B) AMOUNT.—The amount described in this subparagraph, for a physician's medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

"(i) For services furnished during 1994, 120 percent.

"(ii) For services furnished during 1995, 115 percent.

"(iii) For services furnished during 1996, 110 percent.

"(iv) For services furnished during 1997, 105 percent.

"(v) For services furnished after 1997, 100 percent.".

(2) ELIMINATION OF REDUCTION FOR MEDICAL DIRECTION OF MULTIPLE NURSE ANESTHETISTS AND ESTABLISHMENT OF CONSISTENT BASE AND TIME UNITS.—Paragraph (13) of section 1842(b) (42 U.S.C. 1395u(b)) is amended—

(A) by striking subparagraphs (A) and (B) and inserting the following:

"(13)(A) In determining payments under section 1833(l) and section 1848 for anesthesia services furnished on or after January 1, 1994, the methodology for determining the base and time units used shall be the same for services furnished by physicians, for medical direction by physicians of two, three, or four certified registered nurse anesthetists, or for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of the date of the enactment of Omnibus Budget Reconciliation Act of 1993.";

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

(C) by striking "subparagraph (A) or (B)" in subparagraph (B) (as so redesignated) and inserting "subparagraph (A)".

(b) PAYMENT TO A CERTIFIED REGISTERED NURSE ANESTHETIST FOR MEDICALLY DIRECTED SERVICES.—Section 1833(l)(4)(B) (42 U.S.C. 1395l(l)(4)(B)) is amended—

(1) in clause (i), by inserting "and before January 1, 1994," after "1991,";

(2) in clause (ii)—

(A) by adding "and" at the end of subclause (II),

(B) by striking the comma at the end of subclause (III) and inserting a period, and

(C) by striking subclauses (IV) through (VII); and

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

"(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1848(a)(5)(B) with respect to the physician.".

SEC. 13517. EXTENSION OF PHYSICIAN PAYMENT PROVISIONS TO NONPARTICIPATING SUPPLIERS AND OTHER PERSONS.

(a) IN GENERAL.—Section 1848 (42 U.S.C. 1395w-4) is amended—

(1) in subsection (a)(3)—

(A) in the heading, by inserting "AND SUPPLIERS" after "PHYSICIANS",

(B) by inserting "or a nonparticipating supplier or other person" after "nonparticipating physician", and

(C) by adding at the end the following: "In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3)) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.";

(2) in subsection (g)(1)—

(A) by inserting "or nonparticipating supplier or other person (as defined in section 1842(i)(2))" after "nonparticipating physician",

(B) by inserting "including services which the Secretary excludes pursuant to subsection (j)(3)," after "physician's services (",

(C) by inserting ", supplier, or other person" after "such physician", and

(D) by adding at the end the following: "In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.";

(3) in subsection (g)(2)(C), by inserting "or for nonparticipating suppliers or other persons" after "nonparticipating physicians";

(4) in subsection (g)(2)(D), by inserting "(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)" after "subsection (a)";

(5) in subsection (h)—

(A) by inserting "or nonparticipating supplier or other person furnishing physicians' services (as defined in section 1848(j)(3))" after "physician" the first place it appears,

(B) by inserting ", supplier, or other person" after "physician" the second place it appears, and

(C) by inserting ", suppliers, and other persons" after "physicians" the second place it appears; and

(6) in subsection (j)(3), by inserting ", except for purposes of subsections (a)(3), (g), and (h)" after "tests and".

(b) CONFORMING DEFINITION.—Section 1842(i)(2) (42 U.S.C. 1395u(i)(2)) is amended—

(1) by striking ", and the term" and inserting "; the term", and

(2) by inserting before the period at the end the following: "; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1))".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13518. ANTIGENS UNDER PHYSICIAN FEE SCHEDULE.

(a) IN GENERAL.—Section 1848(j)(3) (42 U.S.C. 1395w-4(j)(3)) is amended by inserting "(2)(G)," after "(2)(D),".

(b) BUDGET NEUTRALITY ADJUSTMENT IN 1995.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1995.

Subpart B—Outpatient Hospital Services

SEC. 13521. EXTENSION OF 10 PERCENT REDUCTION IN PAYMENTS FOR CAPITAL-RELATED COSTS OF OUTPATIENT HOSPITAL SERVICES.

Section 1861(v)(1)(S)(ii)(I) (42 U.S.C. 1395x(v)(1)(S)(ii)(I)) is amended by striking "fiscal year 1992, 1993, 1994, or 1995" and inserting "fiscal years 1992 through 1998".

SEC. 13522. EXTENSION OF REDUCTION IN PAYMENTS FOR OTHER COSTS OF OUTPATIENT HOSPITAL SERVICES.

Section 1861(v)(1)(S)(ii)(II) (42 U.S.C. 1395x(v)(1)(S)(ii)(II)) is amended by striking ", 1992, 1993, 1994, or 1995" and inserting "through 1998".

Subpart C—Ambulatory Surgical Center Services

SEC. 13531. AMBULATORY SURGICAL CENTER SERVICES.

The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act for fiscal year 1994 or for fiscal year 1995.

SEC. 13532. DESIGNATION OF CERTAIN HOSPITALS AS EYE OR EYE AND EAR HOSPITALS.

(a) IN GENERAL.—Section 1833(i) (42 U.S.C. 1395l(i)) is amended—

(1) in paragraph (3)(B)(ii)—

(A) in the matter preceding subclause (I), by striking "the last sentence of this clause" and inserting "paragraph (4)", and

(B) by striking the last sentence; and

(2) by inserting after paragraph (3) the following new paragraph:

"(4)(A) In the case of a hospital that—

"(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

"(ii) receives more than 30 percent of its total revenues from outpatient services, and

"(iii) on October 1, 1987—

"(I) was an eye specialty hospital or an eye and ear specialty hospital, or

"(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

"(B) For purposes of this subparagraph (A)(iii)(II), the term 'eye or eye and ear unit' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to portions of cost reporting periods beginning on or after January 1, 1994.

SEC. 13533. REDUCTION IN PAYMENTS FOR INTRAOCULAR LENSES.

Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150.

Subpart D—Durable Medical Equipment

SEC. 13541. PAYMENT FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT DURING 1994 AND 1995.

In determining the amount of payment under part B of title XVIII of the Social Security Act

with respect to parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.

SEC. 13542. REVISIONS TO PAYMENT RULES FOR DURABLE MEDICAL EQUIPMENT.

(a) BASING NATIONAL PAYMENT LIMITS ON MEDIAN OF LOCAL PAYMENT AMOUNTS.—

(1) INEXPENSIVE AND ROUTINELY PURCHASED ITEMS; ITEMS REQUIRING FREQUENT AND SUBSTANTIAL SERVICING.—(A) Paragraphs (2)(C)(i)(II) and (3)(C)(i)(II) of section 1834(a) (42 U.S.C. 1395m(a)) are each amended—

(i) by striking "1992" the first place it appears and inserting "1992, 1993, and 1994"; and

(ii) by striking "1992" the second place it appears and inserting "the year".

(B) Paragraphs (2)(C)(ii) and (3)(C)(ii) of section 1834(a) (42 U.S.C. 1395m(a)) are each amended—

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

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

(iii) by inserting after subclause (I) the following new subclauses:

"(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

"(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and".

(2) MISCELLANEOUS DEVICES AND ITEMS.—Section 1834(a)(8) (42 U.S.C. 1395m(a)(8)) is amended—

(A) in subparagraph (A)(ii)(III), by striking "1992" and inserting "1992, 1993, and 1994"; and

(B) in subparagraph (B)—

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

(ii) by redesignating clause (ii) as (iv), and

(iii) by inserting after clause (i) the following new clauses:

"(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

"(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and".

(3) OXYGEN AND OXYGEN EQUIPMENT.—Section 1834(a)(9) (42 U.S.C. 1395m(a)(9)) is amended—

(A) in subparagraph (A)(ii)(II), by striking "1991 and 1992" and inserting "1991, 1992, 1993, and 1994"; and

(B) in subparagraph (B)—

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

(ii) by redesignating clause (ii) as (iv), and

(iii) by inserting after clause (i) the following new clauses:

"(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

"(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year; and".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1994.

SEC. 13543. TREATMENT OF NEBULIZERS, ASPIRATORS, AND CERTAIN VENTILATORS.

(a) IN GENERAL.—Section 1834(a)(3)(A) (42 U.S.C. 1395m(a)(3)(A)) is amended by striking "ventilators, aspirators, IPPB machines, and nebulizers" and inserting "IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices".

(b) PAYMENT FOR ACCESSORIES RELATING TO NEBULIZERS, ASPIRATORS, AND CERTAIN VENTILATORS.—Section 1834(a)(2)(A) (42 U.S.C. 1395m(a)) is amended—

(1) by striking "or" at the end of clause (i),

(2) by adding "or" at the end of clause (ii), and

(3) by inserting after clause (ii) the following new clause:

"(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to items furnished on or after January 1, 1994.

SEC. 13544. PAYMENT FOR OSTOMY SUPPLIES AND OTHER SUPPLIES.

(a) OSTOMY SUPPLIES, TRACHEOSTOMY SUPPLIES, AND UROLOGICALS.—

(1) IN GENERAL.—Section 1834(h)(1) (42 U.S.C. 1395m(h)(1)) is amended by adding at the end the following new subparagraph:

"(E) EXCEPTION FOR CERTAIN ITEMS.—Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of section 1834(a)(2).".

(2) CONFORMING AMENDMENT.—Section 1834(h)(1)(B) (42 U.S.C. 1395m(h)(1)(B)) is amended by striking "subparagraph (C)," and inserting "subparagraphs (C) and (E),".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after January 1, 1994.

(b) SURGICAL DRESSINGS.—

(1) IN GENERAL.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

"(i) PAYMENT FOR SURGICAL DRESSINGS.—

"(1) IN GENERAL.—Payment under this subsection for surgical dressings (described in section 1861(s)(5)) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

"(A) the actual charge for the item; or

"(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) (except that in applying such methodology, the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to surgical dressings that are—

"(A) furnished as an incident to a physician's professional service; or

"(B) furnished by a home health agency.".

(2) CONFORMING AMENDMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(A) by striking "and" before "(N)";

(B) with respect to the matter inserted by section 4155(b)(2)(B) of OBRA–1990—

(i) by striking "(M)" and inserting ", (O)", and

(ii) by transferring it and inserting it (as amended) immediately before the semicolon at the end; and

(C) by inserting before the semicolon at the end the following: ", and (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1834(i)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to items furnished on or after January 1, 1994.

SEC. 13545. PAYMENTS FOR TENS DEVICES.

(a) IN GENERAL.—Section 1834(a)(1)(D) (42 U.S.C. 1395m(a)(1)(D)) is amended by striking "15 percent" the second place it appears and inserting "45 percent".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 1994.

SEC. 13546. PAYMENTS FOR ORTHOTICS, PROSTHETICS, AND PROSTHETIC DEVICES.

Section 1834(h)(4)(A) (42 U.S.C. 1395m(h)(4)(A)) is amended—

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

(2) in clause (ii), by striking "a subsequent year" and inserting "1992 and 1993"; and

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

"(iii) for 1994 and 1995, 0 percent, and

"(iv) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;".

Subpart E—Other Provisions

SEC. 13551. PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS.

(a) UPDATE FREEZE.—Section 1833(h)(2)(A)(ii) (42 U.S.C. 1395l(h)(2)(A)(ii)) is amended—

(1) by striking "and" at the end of subclause (II),

(2) by striking the period at the end of subclause (III) and inserting ", and", and

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

"(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995 shall be 0 percent.".

(b) LOWER CAP.—Section 1833(h)(4)(B) (42 U.S.C. 1395l(h)(4)(B)) is amended—

(1) by striking "and" at the end of clause (iii),

(2) by striking clause (iv) and inserting the following:

"(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

"(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

"(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median, and

"(vii) after December 31, 1995, is equal to 76 percent of such median.".

SEC. 13552. EXTENSION OF ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS.

Section 9342 of OBRA–1986, as amended by section 4164(a)(2) of OBRA–1990, is amended—

(1) in subsection (c)(1), by striking "4 years" and inserting "5 years"; and

(2) in subsection (f)—

(A) by striking "$55,000,000" and inserting "$58,000,000", and

(B) by striking "$3,000,000" and inserting "$5,000,000".

SEC. 13553. ORAL CANCER DRUGS.

(a) NEW COVERAGE OF CERTAIN SELF-ADMINISTERED ANTICANCER DRUGS.—Section 1861(s)(2) (42 U.S.C. 1395(s)(2)) is amended—

(1) by striking "and" at the end of subparagraph (O);

(2) by adding "and" at the end of subparagraph (P); and

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

"(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;".

(b) UNIFORM COVERAGE OF "OFF-LABEL" ANTICANCER DRUGS.—Section 1861(t) (42 U.S.C. 1395x(t)) is amended—

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

(2) by striking "(m)(5) of this section" and inserting "(m)(5) and paragraph (2)"; and

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

"(2)(A) For purposes of paragraph (1), the term 'drugs' also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

"(B) In subparagraph (A), the term 'medically accepted indication', with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if—

"(i) the drug has been approved by the Food and Drug Administration; and

"(ii)(I) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information, and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

"(II) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to items furnished on or after January 1, 1994.

SEC. 13554. CLARIFICATION OF COVERAGE OF CERTIFIED NURSE-MIDWIFE SERVICES PERFORMED OUTSIDE THE MATERNITY CYCLE.

(a) IN GENERAL.—Section 1861(gg)(2) (42 U.S.C. 1395x(gg)(2)) is amended by striking ", and performs services" and all that follows and inserting a period.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13555. INCREASE IN ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES.

(a) INCREASE IN ANNUAL LIMITATION.—Section 1833(g) (42 U.S.C. 1395l(g)) is amended by striking "$750" and inserting "$900" each place it appears.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after January 1, 1994.

SEC. 13556. RURAL HEALTH CLINICS AND FEDERALLY QUALIFIED HEALTH CENTERS.

(a) IN GENERAL.—Paragraph (4) of section 1861(aa) (42 U.S.C. 1395x(aa)) is amended—

(1) by striking "or" at the end of subparagraph (B);

(2) by striking the period at the end of subparagraph (C) and inserting "; or"; and

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

"(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990.

SEC. 13557. EXTENSION OF MUNICIPAL HEALTH SERVICE DEMONSTRATION PROJECTS.

Section 9215 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by section 6135 of OBRA–1989, is amended—

(1) by striking "December 31, 1993" and inserting "December 31, 1997", and

(2) in the second sentence, by inserting after "beneficiary costs," the following: "costs to the medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects,".

PART III—PROVISIONS RELATING TO PARTS A AND B

SEC. 13561. MEDICARE AS SECONDARY PAYER.

(a) EXTENSION OF AND MODIFICATIONS TO DATA MATCH PROGRAM.—

(1) Section 1862(b)(5)(C)(iii) (42 U.S.C. 1395y(b)(5)(C)(iii)) is amended by striking "1995" and inserting "1998".

(2) Section 6103(l)(12) of the Internal Revenue Code of 1986 is amended—

(A) in subparagraph (B)(i), by inserting ", above an amount (if any) specified by the Secretary of Health and Human Services," after "section 3401(a))";

(B) in subparagraph (B)(ii), in the matter preceding subclause (I) by inserting ", above an amount (if any) specified by the Secretary of Health and Human Services," after "wages"; and

(C) in subparagraph (F)—

(i) in clause (i), by striking "1995" and inserting "1998",

(ii) in clause (ii)(I), by striking "1994" and inserting "1997", and

(iii) in clause (ii)(II), by striking "1995" and inserting "1998".

(b) EXTENSION OF MEDICARE SECONDARY PAYER TO DISABLED BENEFICIARIES.—Section 1862(b)(1)(B)(iii) (42 U.S.C. 1395y(b)(1)(B)(iii)) is amended by striking "1995" and inserting "1998".

(c) EXTENSION OF 18-MONTH RULE FOR ESRD BENEFICIARIES.—Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended—

(1) in the second sentence of subparagraph (C), by striking "on or before January 1, 1996" and inserting "before October 1, 1998";

(2) in each of subparagraphs (A)(iv) and (B)(ii)—

(A) by striking "Clause (i) shall not apply" and inserting "Subparagraph (C) shall apply instead of clause (i)", and

(B) by inserting "(without regard to entitlement under section 226)" after "individual is, or"; and

(3) in subparagraph (C), by striking "benefits under this title solely by reason of" and inserting "or eligible for benefits under this title under" each place it appears.

(d) APPLICATION OF AGGREGATION RULES.—

(1) IN GENERAL.—Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended by adding at the end the following new subparagraph:

"(E) GENERAL PROVISIONS.—For purposes of this subsection:

"(i) AGGREGATION RULES.—

"(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.

"(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.

"(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.".

(2) CONFORMING AMENDMENT.—Section 5000(b)(2) of the Internal Revenue Code of 1986 (relating to large group health plans) is amended by adding at the end the following: "For purposes of the preceding sentence—

"(A) all employers treated as a single employer under subsection (a) or (b) of section 52 shall be treated as a single employer,

"(B) all employees of the members of an affiliated service group (as defined in section 414(m)) shall be treated as employed by a single employer, and

"(C) leased employees (as defined in section 414(n)(2)) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n). ".

(3) The amendments made by this subsection shall take effect 90 days after the date of the enactment of this Act.

(e) UNIFORM TREATMENT OF CURRENT EMPLOYMENT STATUS.—

(1) IN GENERAL.—Section 1862(b)(1) (42 U.S.C. 1395y(b)(1)) is amended—

(A) in subparagraph (A)(i), by amending subclauses (I) and (II) to read as follows:

"(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this title under section 226(a), and

"(II) shall provide that any individual age 65 or over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.";

(B) in subparagraph (A)(ii), by striking "unless the plan" and all that follows through "employees" and inserting "unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more individuals in current employment status";

(C) in subparagraph (A)(iii), by striking "by virtue of employment" and all that follows through "calendar year or" and inserting "by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and";

(D) in subparagraph (A)(v), by inserting ", without regard to section 5000(d) of such Code" before the period at the end of each subparagraph;

(E) in the heading of subparagraph (B), by striking "ACTIVE";

(F) in subparagraph (B)(i), by striking "clause (iv)(II)) may not take into account that an active individual (as defined in clause (iv)(I))" and inserting "clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer";

(G) by amending clause (iv) of subparagraph (B) to read as follows:

"(iv) LARGE GROUP HEALTH PLAN DEFINED.—In this subparagraph, the term 'large group health plan' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code."; and

(H) by adding at the end of subparagraph (E), as added by subsection (d)(1), the following:

"(ii) CURRENT EMPLOYMENT STATUS DEFINED.—An individual has 'current employment status' with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

"(iii) TREATMENT OF SELF-EMPLOYED PERSONS AS EMPLOYERS.—The term 'employer' includes a self-employed person.".

(2)(A) Section 5000 of the Internal Revenue Code of 1986 is amended—

(i) in subsection (a), by inserting "(including a self-employed person)" after "employer",

(ii) by amending paragraph (1) of subsection (b) to read as follows:

"(1) GROUP HEALTH PLAN.—The term 'group health plan' means a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.", and

(iii) in subsection (c), by striking "of section 1862(b)(1)" and inserting "of paragraph (1), or with the requirements of paragraph (2), of section 1862(b)".

(B) Section 6103(l)(12)(E)(ii) of such Code is amended to read as follows:

"(ii) GROUP HEALTH PLAN.—The term 'group health plan' means any group health plan (as defined in section 5000(b)(1)).".

(f) RETROACTIVE EXEMPTION FOR CERTAIN SITUATIONS INVOLVING RELIGIOUS ORDERS.—Section 1862(b)(1)(D) of the Social Security Act applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.

SEC. 13562. PHYSICIAN OWNERSHIP AND REFERRAL.

(a) IN GENERAL.—Section 1877 (42 U.S.C. 1395nn) is amended—

(1) by amending subsections (a) through (e) to read as follows:

"(a) PROHIBITION OF CERTAIN REFERRALS.—

"(1) IN GENERAL.—Except as provided in subsection (b), if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

"(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this title, and

"(B) the entity may not present or cause to be presented a claim under this title or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

"(2) FINANCIAL RELATIONSHIP SPECIFIED.—For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

"(A) except as provided in subsections (c) and (d), an ownership or investment interest in the entity, or

"(B) except as provided in subsection (e), a compensation arrangement (as defined in subsection (h)(1)) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

"(b) GENERAL EXCEPTIONS TO BOTH OWNERSHIP AND COMPENSATION ARRANGEMENT PROHIBITIONS.—Subsection (a)(1) shall not apply in the following cases:

"(1) PHYSICIANS' SERVICES.—In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4)) as the referring physician.

"(2) IN-OFFICE ANCILLARY SERVICES.—In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)—

"(A) that are furnished—

"(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and

"(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of designated health services, or

"(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice—

"(aa) for the provision of some or all of the group's clinical laboratory services, or

"(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services),

unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and

"(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(3) PREPAID PLANS—In the case of services furnished by an organization—

"(A) with a contract under section 1876 to an individual enrolled with the organization,

"(B) described in section 1833(a)(1)(A) to an individual enrolled with the organization,

"(C) receiving payments on a prepaid basis, under a demonstration project under section 402(a) of the Social Security Amendments of 1967 or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization, or

"(D) that is a qualified health maintenance organization (within the meaning of section 1310(d) of the Public Health Service Act) to an individual enrolled with the organization.

"(4) OTHER PERMISSIBLE EXCEPTIONS.—In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

"(c) GENERAL EXCEPTION RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION FOR OWNERSHIP IN PUBLICLY TRADED SECURITIES AND MUTUAL FUNDS.—Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A):

"(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are—

"(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

"(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

"(B) in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

"(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

"(d) ADDITIONAL EXCEPTIONS RELATED ONLY TO OWNERSHIP OR INVESTMENT PROHIBITION.—The following, if not otherwise excepted under subsection (b), shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A):

"(1) HOSPITALS IN PUERTO RICO.—In the case of designated health services provided by a hospital located in Puerto Rico.

"(2) RURAL PROVIDER.—In the case of designated health services furnished in a rural area (as defined in section 1886(d)(2)(D)) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.

"(3) HOSPITAL OWNERSHIP.—In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if—

"(A) the referring physician is authorized to perform services at the hospital, and

"(B) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

"(e) EXCEPTIONS RELATING TO OTHER COMPENSATION ARRANGEMENTS.—The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B):

"(1) RENTAL OF OFFICE SPACE; RENTAL OF EQUIPMENT.—

"(A) OFFICE SPACE.—Payments made by a lessee to a lessor for the use of premises if—

"(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

"(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

"(iii) the lease provides for a term of rental or lease for at least 1 year,

"(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) EQUIPMENT.—Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

"(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

"(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

"(iii) the lease provides for a term of rental or lease of at least 1 year,

"(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

"(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(2) BONA FIDE EMPLOYMENT RELATIONSHIPS.—Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—

"(A) the employment is for identifiable services,

"(B) the amount of the remuneration under the employment—

"(i) is consistent with the fair market value of the services, and

"(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

"(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

"(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

"(3) PERSONAL SERVICE ARRANGEMENTS.—

"(A) IN GENERAL.—Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if—

"(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

"(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

"(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

"(iv) the term of the arrangement is for at least 1 year,

"(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

"(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(B) PHYSICIAN INCENTIVE PLAN EXCEPTION.—

"(i) IN GENERAL.—In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

"(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

"(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1876(i)(8)(A)(ii), the plan complies with any requirements the Secretary may impose pursuant to such section.

"(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

"(ii) PHYSICIAN INCENTIVE PLAN DEFINED.—For purposes of this subparagraph, the term 'physician incentive plan' means any compensation arrangement between an entity 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 entity.

"(4) REMUNERATION UNRELATED TO THE PROVISION OF DESIGNATED HEALTH SERVICES.—In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

"(5) PHYSICIAN RECRUITMENT.—In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

"(A) the physician is not required to refer patients to the hospital,

"(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

"(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(6) ISOLATED TRANSACTIONS.—In the case of an isolated financial transaction, such as a one-time sale of property or practice, if—

"(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and

"(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(7) CERTAIN GROUP PRACTICE ARRANGEMENTS WITH A HOSPITAL.—

"(A) IN GENERAL.—An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if—

"(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1861(b)(3),

"(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,

"(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,

"(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,

"(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

"(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

"(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(8) PAYMENTS BY A PHYSICIAN FOR ITEMS AND SERVICES.—Payments made by a physician—

"(A) to a laboratory in exchange for the provision of clinical laboratory services, or

"(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.";

(2) by amending subsection (h) to read as follows:

"(h) DEFINITIONS AND SPECIAL RULES.—For purposes of this section:

"(1) COMPENSATION ARRANGEMENT; REMUNERATION.—(A) The term 'compensation arrangement' means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

"(B) The term 'remuneration' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

"(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

"(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

"(ii) The provision of items, devices, or supplies that are used solely to—

"(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

"(II) order or communicate the results of tests or procedures for such entity.

"(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

"(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

"(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

"(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

"(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

"(2) EMPLOYEE.—An individual is considered to be 'employed by' or an 'employee' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

"(3) FAIR MARKET VALUE.—The term 'fair market value' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

"(4) GROUP PRACTICE.—

"(A) DEFINITION OF GROUP PRACTICE.—The term 'group practice' means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

"(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

"(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

"(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

"(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

"(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

"(vi) which meets such other standards as the Secretary may impose by regulation.

"(B) SPECIAL RULES.—

"(i) PROFITS AND PRODUCTIVITY BONUSES.—A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

"(ii) FACULTY PRACTICE PLANS.—In the case of a faculty practice plan associated with a hospital, institution of higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

"(5) REFERRAL; REFERRING PHYSICIAN.—

"(A) PHYSICIANS' SERVICES.—Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a 'referral' by a 'referring physician'.

"(B) OTHER ITEMS.—Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a 'referral' by a 'referring physician'.

"(C) CLARIFICATION RESPECTING CERTAIN SERVICES INTEGRAL TO A CONSULTATION BY CERTAIN SPECIALISTS.—A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a 'referral' by a 'referring physician'.

"(6) DESIGNATED HEALTH SERVICES.—The term 'designated health services' means any of the following items or services:

"(A) Clinical laboratory services.

"(B) Physical therapy services.

"(C) Occupational therapy services.

"(D) Radiology or other diagnostic services.

"(E) Radiation therapy services.

"(F) Durable medical equipment.

"(G) Parenteral and enteral nutrients, equipment, and supplies.

"(H) Prosthetics, orthotics, and prosthetic devices.

"(I) Home health services.

"(J) Outpatient prescription drugs.

"(K) Inpatient and outpatient hospital services.";

(3) in subsection (f), by striking "clinical laboratory services" and inserting "designated health services"; and

(4) in paragraph (1) of subsection (g), by striking "clinical laboratory service" and inserting "designated health service".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to referrals—

(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

(B) made after December 31, 1994, in the case of other designated health services.

(2) EXCEPTIONS.—With respect to referrals made for clinical laboratory services on or before December 31, 1994—

(A) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A) of the Social Security Act, as amended by this section, shall not apply; and

(B) the second sentence of subsection (a)(2), and subsections (b)(2)(B), (c), (d)(2), (e)(1), and (h)(4)(B) of section 1877 of such Act, as in effect on the day before the date of the enactment of this Act, shall apply (instead of the corresponding provision in such section as so amended).

SEC. 13563. DIRECT GRADUATE MEDICAL EDUCATION.

(a) ELIMINATION OF COST-OF-LIVING UPDATE IN PER RESIDENT AMOUNTS FOR DIRECT MEDICAL EDUCATION.—Section 1886(h) (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (2)(D)—

(A) by striking "For each" and inserting "(i) Except as provided in clause (ii), for each", and

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

"(ii) For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hospital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology."; and

(2) in paragraph (5)—

(A) by redesignating subparagraph (H) as subparagraph (I); and

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

"(H) PRIMARY CARE RESIDENT.—The term 'primary care resident' means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.".

(b) INITIAL RESIDENCY PERIOD.—

(1) IN GENERAL.—Section 1886(h)(5)(F) (42 U.S.C. 1395ww(h)(5)(F)) is amended—

(A) by striking "plus one year", and

(B) in clause (ii), by inserting "or a preventive medicine residency or fellowship program" after "fellowship program".

(2) EFFECTIVE DATES.—The amendments made by paragraphs (1)(A) and (1)(B) shall take effect on July 1, 1995, and the date of the enactment of this Act, respectively.

(c) ADJUSTMENT FOR PUBLICLY-FUNDED FAMILY PRACTICE RESIDENCY PROGRAMS.—

(1) IN GENERAL.—Section 1886(h)(5) (42 U.S.C. 1395ww(h)(5)), as amended by subsection (a), is amended by adding at the end the following new subparagraph:

"(J) ADJUSTMENTS FOR CERTAIN FAMILY PRACTICE RESIDENCY PROGRAMS.—

"(i) IN GENERAL.—In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this title or a State plan under title XIX) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

"(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this title if the hospital had not received such funds, and

"(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this title.

"(ii) ADDITIONAL REQUIREMENTS.—A hospital's approved medical residency program meets the requirements of this clause if—

"(I) the program is limited to training for family and community medicine;

"(II) the program is the only approved medical residency program of the hospital; and

"(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to payments under section 1886(h) of the Social Security Act for cost reporting periods beginning on or after October 1, 1992.

(d) ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS ACT.—

(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act in the case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

(2) HOSPITALS AFFECTED.—A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA–1990.

(3) DEFINITIONS.—In this subsection:

(A) The "base cost reporting period" for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

(B) The term "FICA taxes" means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986.

SEC. 13564. REDUCTION IN PAYMENTS FOR HOME HEALTH SERVICES.

(a) IN GENERAL.—

(1) NO CHANGES IN COST LIMITS.—The Secretary of Health and Human Services shall not provide for any change in the per visit cost limits for home health services under section 1861(v)(1)(L) of such Act for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the amendment made by subsection (b)(1). The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1861(v)(1)(L)(ii) of such Act to the payment limits for such services during such cost reporting periods.

(2) DELAY IN UPDATES.—Section 1861(v)(1)(L)(iii) (42 U.S.C. 1395x(v)(1)(L)(iii)) is amended by striking "thereafter," and inserting "thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996),".

(b) ELIMINATION OF ADD-ON FOR OVERHEAD OF HOSPITAL-BASED HOME HEALTH AGENCIES.—

(1) GENERAL RULE.—The first sentence of section 1861(v)(1)(L)(ii) (42 U.S.C. 1395x(v)(1)(L)(ii)) is amended by striking ", with appropriate adjustment for administrative and general costs of hospital-based agencies".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to cost reporting periods beginning on or after October 1, 1993.

SEC. 13565. IMMUNOSUPPRESSIVE DRUG THERAPY.

Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking "title, within" and all that follows and inserting the following: "title, but only in the case of drugs furnished—

"(i) before 1995, within 12 months after the date of the transplant procedure,

"(ii) during 1995, within 18 months after the date of the transplant procedure,

"(iii) during 1996, within 24 months after the date of the transplant procedure,

"(iv) during 1997, within 30 months after the date of the transplant procedure, and

"(v) during any year after 1997, within 36 months after the date of the transplant procedure;".

SEC. 13566. REDUCTION IN PAYMENTS FOR ERYTHROPOIENTIN.

(a) IN GENERAL.—Section 1881(b) (42 U.S.C. 1395rr(b)) is amended—

(1) in paragraph (1)(C), by striking "1861(s)(2)(Q)" and inserting "1861(s)(2)(P)"; and

(2) in paragraph (11)(B)(ii)(I)—

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

(B) by striking "$11" and inserting "$10".

(b) SELF-ADMINISTRATION OF ERYTHROPOIENTIN.—Subparagraph (P) of section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking "home", and

(2) by moving such subparagraph two ems to the left.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to erythropoietin furnished on or after January 1, 1994.

SEC. 13567. EXTENSION OF SOCIAL HEALTH MAINTENANCE ORGANIZATION DEMONSTRATIONS.

(a) EXTENSION OF CURRENT WAIVERS.—Section 4018(b) of OBRA–1987, as amended by section 4207(b)(4)(B) of OBRA–1990, is amended—

(1) in paragraph (1) by striking "December 31, 1995" and inserting "December 31, 1997"; and

(2) in paragraph (4) by striking "March 31, 1996" and inserting "March 31, 1998".

(b) EXPANSION OF DEMONSTRATIONS.—Section 2355 of the Deficit Reduction Act of 1984 is amended—

(1) in the last sentence of subsection (a) by striking "12 months" and inserting "36 months"; and

(2) in subsection (b)(1)(B)—

(A) by striking "or" at the end of clause (iii); and

(B) by redesignating clause (iv) as clause (v) and inserting after clause (iii) the following new clause:

"(iv) integrating acute and chronic care management for patients with end-stage renal disease through expanded community care case management services (and for purposes of a demonstration project conducted under this clause, any requirement under a waiver granted under this section that a project disenroll individuals who develop end-stage renal disease shall not apply); or".

(c) EXPANSION OF NUMBER OF MEMBERS PER SITE.—The Secretary of Health and Human Services may not impose a limit of less than 12,000 on the number of individuals that may participate in a project conducted under section 2355 of the Deficit Reduction Act of 1984.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of OBRA–90.

SEC. 13568. TIMING OF CLAIMS PAYMENT.

(a) IN GENERAL.—Sections 1816(c)(3)(B) (42 U.S.C. 1395h(c)(3)(B)) and 1842(c)(3)(B) (42 U.S.C. 1395u(c)(3)(B)) are each amended by striking clauses (i) and (ii) and inserting the following:

"(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

"(ii) with respect to claims submitted otherwise, 26 days.".

(b) TIME LIMIT OF 30 DAYS FOR CLEAN CLAIMS.—Sections 1816(c)(2)(B)(ii) (42 U.S.C. 1395h(c)(2)(B)(ii)) and 1842(c)(2)(B)(ii) (42 U.S.C. 1395u(c)(2)(B)(ii)) are each amended—

(A) in subclause (IV), by striking "period," and inserting "period ending on or before September 30, 1993,", and

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

"(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to claims received on or after October 1, 1993.

SEC. 13569. EXTENSION OF WAIVER FOR WATTS HEALTH FOUNDATION.

Section 9312(c)(3)(D) of OBRA–1986, as added by section 4018(d) of OBRA–1987 and as amended by section 6212(a)(1) of OBRA–1989, is amended by striking "1994" and inserting "1996".

PART IV—PROVISION RELATING TO PART B PREMIUM

SEC. 13571. PART B PREMIUM.

Section 1839 (42 U.S.C. 1395r) is amended—

(1) in subsection (e)(1)(A), by striking "December 1983 and prior to January 1991 shall be an amount equal to 50 percent" and inserting "after December 1995 and prior to January 1999 shall be an amount equal to 50 percent", and

(2) in subsection (e)(2), by striking "1991" and inserting "1998".

PART V—PROVISION RELATING TO DATA BANK

SEC. 13581. MEDICARE AND MEDICAID COVERAGE DATA BANK.

(a) ESTABLISHMENT OF MEDICARE AND MEDICAID COVERAGE DATA BANK.—Part A of title XI (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new section:

"MEDICARE AND MEDICAID COVERAGE DATA BANK

"SEC. 1144. (a) ESTABLISHMENT OF DATA BANK.—The Secretary shall establish a Medicare and Medicaid Coverage Data Bank (hereafter in this section referred to as the 'Data Bank') to—

"(1) further the purposes of section 1862(b) in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to medicare beneficiaries, and

"(2) assist in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under title XIX with respect to medicaid beneficiaries, upon request by the State agency described in section 1902(a)(5) administering such plan.

"(b) INFORMATION IN DATA BANK.—

"(1) IN GENERAL.—The Data Bank shall contain information obtained pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and subsection (c).

"(2) DISCLOSURE OF INFORMATION IN DATA BANK.—The Secretary is authorized until September 30, 1998—

"(A) (subject to the restriction in subparagraph (D)(i) of section 6103(l)(12) of the Internal Revenue Code of 1986) to disclose any information in the Data Bank obtained pursuant to such section solely for the purposes of such section, and

"(B) (subject to the restriction in subsection (c)(7)) to disclose any other information in the Data Bank to any State agency described in section 1902(a)(5), employer, or group health plan solely for the purposes described in subsection (a).

"(c) REQUIREMENT THAT EMPLOYERS REPORT INFORMATION.—

"(1) REPORTING REQUIREMENT.—

"(A) IN GENERAL.—Any employer described in paragraph (2) shall report to the Secretary (in such form and manner as the Secretary determines will minimize the burden of such reporting) with respect to each electing individual the information required under paragraph (5) for each calendar year beginning on or after January 1, 1994, and before January 1, 1998.

"(B) SPECIAL RULE.—To the extent a group health plan provides information required under paragraph (5) in a form and manner specified by the Secretary (in consultation with the Secretary of Labor) on behalf of an employer in accordance with section 101(f) of Employee Retirement Income Security Act of 1974, the employer

has complied with the reporting requirement under subparagraph (A) with respect to the reporting of such information.

"(2) EMPLOYER DESCRIBED.—An employer is described in this paragraph if such employer has, or contributes to, a group health plan, with respect to which at least 1 employee of such employer is an electing individual.

"(3) ELECTING INDIVIDUAL.—For purposes of this subsection, the term 'electing individual' means an individual associated or formerly associated with the employer in a business relationship who elects coverage under the employer's group health plan.

"(4) CERTAIN INDIVIDUALS EXCLUDED.—For purpose of this subsection, an individual providing service referred to in section 3121(a)(7)(B) of the Internal Revenue Code of 1986 shall not be considered an employee or electing individual with respect to an employer.

"(5) INFORMATION REQUIRED.—For purposes of paragraph (1), each employer shall provide the following information:

"(A) The name and TIN of the electing individual.

"(B) The type of group health plan coverage (single or family) elected by the electing individual.

"(C) The name, address, and identifying number of the group health plan elected by such electing individual.

"(D) The name and TIN of each other individual covered under the group health plan pursuant to such election.

"(E) The period during which such coverage is elected.

"(F) The name, address, and TIN of the employer.

"(6) TIME OF FILING.—For purposes of determining the date for filing the report under paragraph (1), such report shall be treated as a statement described in section 6051(d) of the Internal Revenue Code of 1986.

"(7) LIMITS ON DISCLOSURE OF INFORMATION REPORTED.—

"(A) IN GENERAL.—The disclosure of the information reported under paragraph (1) shall be restricted by the Secretary under rules similar to the rules of subsections (a) and (p) of section 6103 of the Internal Revenue Code of 1986.

"(B) PENALTY FOR UNAUTHORIZED WILLFUL DISCLOSURE OF INFORMATION.—The unauthorized disclosure of any information reported under paragraph (1) shall be subject to the penalty described in paragraph (1), (2), (3), or (4) of section 7213(a) of such Code.

"(9) PENALTY FOR FAILURE TO REPORT.—In the case of the failure of an employer (other than a Federal or other governmental entity) to report under paragraph (1)(A) with respect to each electing individual, the Secretary shall impose a penalty as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

"(d) FEES FOR DATA BANK SERVICES.—The Secretary shall establish fees for services provided under this section which shall remain available, without fiscal year limitation, to the Secretary to cover the administrative costs to the Data Bank of providing such services.

"(f) DEFINITIONS.—In this section:

"(1) MEDICARE BENEFICIARY.—The term 'medicare beneficiary' means an individual entitled to benefits under part A, or enrolled under part B, of title XVIII, but does not include such an individual enrolled in part A under section 1818.

"(2) MEDICAID BENEFICIARY.—The term 'medicaid beneficiary' means an individual entitled to benefits under a State plan for medical assistance under title XIX (including a State plan operating under a Statewide waiver under section 1115).".

"(3) GROUP HEALTH PLAN.—The term 'group health plan' shall have the meaning given to such term by section 5000(b)(1) of the Internal Revenue Code of 1986.

"(4) TIN.—The term 'TIN' shall have the meaning given to such term by section 7701(a)(41) of such Code.".

(b) CONFORMING AMENDMENTS.—

(1) MEDICARE.—Section 1862(b)(5) (42 U.S.C. 1395y(b)(5)) is amended—

(A) in subparagraph (B), by striking "under subparagraph (A)" and all that follows and inserting "under—

"(i) subparagraph (A), and

"(ii) section 1144,

for purposes of carrying out this subsection.", and

(B) in subparagraph (C)(i), by striking "subparagraph (B)" and inserting "subparagraph (B)(i)".

(2) MEDICAID.—Section 1902(a)(25)(A)(i) (42 U.S.C. 1396a(a)(25)(A)(i)) is amended by striking "(as specified" and inserting "(including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1144 and any additional measures as specified".

(c) CONFORMING AMENDMENT RELATING TO DATA MATCHES.—Subsection (a)(8)(B) of section 552a of title 5, United States Code, is amended—

(1) in clause (v), by striking "; or" at the end;

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

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

"(vii) matches performed pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986 and section 1144 of the Social Security Act;".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on January 1, 1994.

Subchapter B—Medicaid

SEC. 13600. REFERENCES IN SUBCHAPTER; TABLE OF CONTENTS OF SUBCHAPTER.

(a) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this subchapter 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 subchapter, the terms "OBRA–1986", "OBRA–1987", "OBRA–1989", and "OBRA–1990" refer to the Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509), the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203), the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239), and the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), respectively.

(c) TABLE OF CONTENTS OF SUBCHAPTER.—The table of contents of this subchapter is as follows:

Sec. 13600. References in subchapter; table of contents of subchapter.

PART I—SERVICES

Sec. 13601. Personal care services furnished outside the home as optional benefit.
Sec. 13602. Additional Federal savings through modifications to drug rebate program.
Sec. 13603. Optional medicaid coverage of TB-related services for certain TB-infected individuals.
Sec. 13604. Limiting Federal medicaid matching payment to bona fide emergency services for undocumented aliens.
Sec. 13605. Coverage of nurse-midwife services performed outside the maternity cycle.
Sec. 13606. Treatment of certain clinics as Federally-qualified health centers.

PART II—ELIGIBILITY

Sec. 13611. Transfers of assets; treatment of certain trusts.
Sec. 13612. Medicaid estate recoveries.

PART III—PAYMENTS

Sec. 13621. Assuring proper payments to disproportionate share hospitals.
Sec. 13622. Liability of third parties to pay for care and services.
Sec. 13623. Medical child support.
Sec. 13624. Application of medicare rules limiting certain physician referrals.
Sec. 13625. State medicaid fraud control.

PART IV—IMMUNIZATIONS

Sec. 13631. Medicaid pediatric immunization provisions.
Sec. 13632. National Vaccine Injury Compensation Program amendments.

PART V—MISCELLANEOUS

Sec. 13641. Increase in limit on Federal medicaid matching payments to Puerto Rico and other territories.
Sec. 13642. Extension of moratorium on treatment of certain facilities as institutions for mental diseases.
Sec. 13643. Demonstration projects.
Sec. 13644. Extension of period of applicability of enrollment mix requirement to certain health maintenance organizations providing services under Dayton Area Health Plan.

PART I—SERVICES

SEC. 13601. PERSONAL CARE SERVICES FURNISHED OUTSIDE THE HOME AS OPTIONAL BENEFIT.

(a) IN GENERAL.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(1) in paragraph (7), by striking "including personal care services" and all that follows through "nursing facility";

(2) by striking "and" at the end of paragraph (21);

(3) in paragraph (24), by striking the comma at the end and inserting a semicolon;

(4) by redesignating paragraphs (22), (23), and (24) as paragraphs (25), (22), and (23), respectively, by striking the semicolon at the end of paragraph (25), as so redesignated, and inserting a period, and by transferring and inserting paragraph (25) after paragraph (23), as so redesignated; and

(5) by inserting after paragraph (23), as so redesignated, the following new paragraph:

"(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location; and".

(b) CONFORMING AMENDMENTS.—(1) Section 1902(a)(10)(C)(iv) (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by striking "through (21)" and inserting "through (24)".

(2) Section 1902(j) (42 U.S.C. 1396a(j)) is amended by striking "through (22)" and inserting "through (25)".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 4721(a) of OBRA–1990.

SEC. 13602. ADDITIONAL FEDERAL SAVINGS THROUGH MODIFICATIONS TO DRUG REBATE PROGRAM.

(a) CHANGES IN REBATE PROGRAM.—

(1) IN GENERAL.—Section 1927 (42 U.S.C. 1396r–8) is amended by striking subsection (c) and all that follows through "(2)" in subsection (f)(2) and inserting the following:

"(c) DETERMINATION OF AMOUNT OF REBATE.—

"(1) BASIC REBATE FOR SINGLE SOURCE DRUGS AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8)) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

"(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

"(ii) subject to subparagraph (B)(ii), the greater of—

"(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

"(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the rebate period.

"(B) RANGE OF REBATES REQUIRED.—

"(i) MINIMUM REBATE PERCENTAGE.—For purposes of subparagraph (A)(ii)(II), the 'minimum rebate percentage' for rebate periods beginning—

"(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;

"(II) after September 30, 1992, and before January 1, 1994, is 15.7 percent;

"(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent;

"(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent; and

"(V) after December 31, 1995, is 15.1 percent.

"(ii) TEMPORARY LIMITATION ON MAXIMUM REBATE AMOUNT.—In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

"(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or

"(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

"(C) BEST PRICE DEFINED.—For purposes of this section—

"(i) IN GENERAL.—The term 'best price' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

"(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, United States Code, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B);

"(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

"(III) any prices used under a State pharmaceutical assistance program; and

"(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

"(ii) SPECIAL RULES.—The term 'best price'—

"(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

"(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and

"(III) shall not take into account prices that are merely nominal in amount.

"(2) ADDITIONAL REBATE FOR SINGLE SOURCE AND INNOVATOR MULTIPLE SOURCE DRUGS.—

"(A) IN GENERAL.—The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

"(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and

"(ii) the amount (if any) by which—

"(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

"(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (U.S. city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

"(B) TREATMENT OF SUBSEQUENTLY APPROVED DRUGS.—In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting 'the first full calendar quarter after the day on which the drug was first marketed' for 'the calendar quarter beginning July 1, 1990' and 'the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed' for 'September 1990'.

"(3) REBATE FOR OTHER DRUGS.—

"(A) IN GENERAL.—The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

"(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

"(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.

"(B) APPLICABLE PERCENTAGE DEFINED.—For purposes of subparagraph (A)(i), the 'applicable percentage' for rebate periods beginning—

"(i) before January 1, 1994, is 10 percent, and

"(ii) after December 31, 1993, is 11 percent.

"(d) LIMITATIONS ON COVERAGE OF DRUGS.—

"(1) PERMISSIBLE RESTRICTIONS.—(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

"(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

"(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6));

"(ii) the drug is contained in the list referred to in paragraph (2);

"(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) or in effect pursuant to subsection (a)(4); or

"(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

"(2) LIST OF DRUGS SUBJECT TO RESTRICTION.—The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

"(A) Agents when used for anorexia, weight loss, or weight gain.

"(B) Agents when used to promote fertility.

"(C) Agents when used for cosmetic purposes or hair growth.

"(D) Agents when used for the symptomatic relief of cough and colds.

"(E) Agents when used to promote smoking cessation.

"(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

"(G) Nonprescription drugs.

"(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

"(I) Barbiturates.

"(J) Benzodiazepines.

"(3) UPDATE OF DRUG LISTINGS.—The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

"(4) REQUIREMENTS FOR FORMULARIES.—A State may establish a formulary if the formulary meets the following requirements:

"(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3)).

"(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

"(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6)), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

"(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

"(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

"(5) REQUIREMENTS OF PRIOR AUTHORIZATION PROGRAMS.—A State plan under this title may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6)) only if the system providing for such approval—

"(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

"(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the

dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

"(6) OTHER PERMISSIBLE RESTRICTIONS.—A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this Act.

"(e) TREATMENT OF PHARMACY REIMBURSEMENT LIMITS.—

"(1) IN GENERAL.—During the period beginning on January 1, 1991, and ending on December 31, 1994—

"(A) a State may not reduce the payment limits established by regulation under this title or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

"(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

"(2) SPECIAL RULE.—If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

"(3) EFFECT ON STATE MAXIMUM ALLOWABLE COST LIMITATIONS.—This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

"(4)".

(2) CONFORMING AMENDMENTS.—Section 1927 (42 U.S.C. 1396r–8) is amended as follows:

(A) In subsection (b)—

(i) in paragraph (1)(A)—

(I) by striking "each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)" and inserting "for a rebate period", and

(II) by striking "dispensed under the plan during the quarter (or other period as the Secretary may specify) and inserting "dispensed after December 31, 1990, for which payment was made under the State plan for such period";

(ii) in paragraph (2)(A)—

(I) by striking "calendar quarter" and "the quarter" and inserting "rebate period" and "the period", respectively,

(II) by striking "dosage units" and inserting "units of each dosage form and strength and package size", and

(III) by inserting "after December 31, 1990, for which payment was made" after "dispensed"; and

(iii) in paragraph (3)(A)(i), by striking "quarter" each place it appears and inserting "rebate period under the agreement".

(B) In subsection (k)—

(i) in paragraph (1)—

(I) by striking "calendar quarter" and inserting "rebate period", and

(II) by inserting before the period at the end the following: ", after deducting customary prompt pay discounts";

(ii) in paragraph (3)—

(I) in subparagraph (E), by striking "**** emergency room visits",

(II) in subparagraph (F), by striking "services" and inserting "services and services provided by an intermediate care facility for the mentally retarded", and

(III) in the matter following subparagraph (H)—

(a) by striking "which is used" and inserting "for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used"; and

(b) by adding at the end the following: "Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C)) for such drug, biological product, or insulin.";

(iii) in paragraph (6), by striking ", which appears" and all that follows and inserting "or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i).";

(iv) in paragraph (7)(A)(i), by striking "calendar quarter" and inserting "rebate period"; and

(v) by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

"(8) REBATE PERIOD.—The term 'rebate period' means, with respect to an agreement under subsection (a), a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.".

(b) LIMITING FEDERAL PAYMENTS FOR CERTAIN DRUGS.—Paragraph (10) of section 1903(i) (42 U.S.C. 1396b(i)) (as inserted by section 4401(a)(1)(B) of OBRA–1990) is amended to read as follows:

"(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1927 with respect to such drugs or unless section 1927(a)(3) applies, and

"(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1927(k)) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug;".

(c) ELIMINATION OF PROHIBITION AGAINST STATE USE OF FORMULARIES TO ACHIEVE FEDERAL SAVINGS.—Paragraph (54) of section 1902(a) (42 U.S.C. 1396a(a)) is amended to read as follows:

"(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1927(k)), comply with the applicable requirements of section 1927;".

(d) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect as if included in the enactment of OBRA–1990.

(2) The amendment made by subsection (a)(1) (insofar as such subsection amends section 1927(d) of the Social Security Act) and the amendment made by subsection (c) shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.

SEC. 13603. OPTIONAL MEDICAID COVERAGE OF TB-RELATED SERVICES FOR CERTAIN TB-INFECTED INDIVIDUALS.

(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) by striking "or" at the end of subclause (X),

(2) by adding "or" at the end of subclause (XI), and

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

"(XII) who are described in subsection (z)(1) (relating to certain TB-infected individuals);".

(b) GROUP AND BENEFIT DESCRIBED.—Section 1902 is amended by adding at the end the following new subsection:

"(z)(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i)—

"(A) who are infected with tuberculosis;

"(B) whose income (as determined under the State plan under this title with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan; and

"(C) whose resources (as determined under the State plan under this title with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) may have and obtain medical assistance under the plan.

"(2) For purposes of subsection (a)(10), the term 'TB-related services' means each of the following services relating to treatment of infection with tuberculosis:

"(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 infection).

"(D) 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 (XI)" and inserting ", (XI)",

(2) by striking "individuals, and (XI)" and inserting "individuals, (XII)", and

(3) by inserting before the semicolon at the end the following: ", and (XIII) the medical assistance made available to an individual described in subsection (z)(1) who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2))".

(d) CONFORMING EXPANSION OF CASE MANAGEMENT SERVICES OPTION.—Section 1915(g)(1) (42 U.S.C. 1396n(g)(1)) is amended by inserting "or to individuals described in section 1902(z)(1)(A)" after "or with either,".

(e) CONFORMING AMENDMENT.—Section 1905(a) (42 U.S.C. 1396d(a)) is amended—

(1) by striking "or" at the end of clause (ix),

(2) by adding "or" at the end of clause (x),

(3) by inserting after clause (x) the following new clause:

"(xi) individuals described in section 1902(z)(1),", and

(4) by amending paragraph (19) to read as follows:

"(19) case management services (as defined in section 1915(g)(2)) and TB-related services described in section 1902(z)(2)(F);".

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 13604. LIMITING FEDERAL MEDICAID MATCHING PAYMENT TO BONA FIDE EMERGENCY SERVICES FOR UNDOCUMENTED ALIENS.

(a) IN GENERAL.—Section 1903(v)(2) (42 U.S.C. 1396b(v)(2)) is amended—

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

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

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

"(C) such care and services are not related to an organ transplant procedure.".

(b) EFFECTIVE DATES.—(1) Subject to paragraph (2), the amendments made by subsection (a) shall apply as if included in the enactment of OBRA–1986.

(2) The Secretary of Health and Human Services shall not disallow expenditures made for the care and services described in section 1903(v)(2)(C) of the Social Security Act, as added by subsection (a), furnished before the date of the enactment of this Act.

SEC. 13605. COVERAGE OF NURSE-MIDWIFE SERVICES PERFORMED OUTSIDE THE MATERNITY CYCLE.

(a) IN GENERAL.—Section 1905(a)(17) (42 U.S.C. 1396d(a)(17)) is amended by inserting before the semicolon at the end the following: ", and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after October 1, 1993.

SEC. 13606. TREATMENT OF CERTAIN CLINICS AS FEDERALLY-QUALIFIED HEALTH CENTERS.

(a) IN GENERAL.—Section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended—

(1) by striking "or" at the end of clause (i),

(2) by striking the semicolon at the end of clause (ii)(II) and inserting a comma,

(3) by moving clause (ii) 4 ems to the left,

(4) by adding "or" at the end of clause (iii), and

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

"(iv) was treated by the Secretary, for purposes of part B of title XVIII, as a comprehensive Federally funded health center as of January 1, 1990;".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to calendar quarters beginning on or after July 1, 1993.

PART II—ELIGIBILITY

SEC. 13611. TRANSFERS OF ASSETS; TREATMENT OF CERTAIN TRUSTS.

(a) PERIODS OF INELIGIBILITY FOR TRANSFERS OF ASSETS.—

(1) IN GENERAL.—Section 1917(c)(1) (42 U.S.C. 1396p(c)(1)) is amended to read as follows:

"(1)(A) In order to meet the requirements of this subsection for purposes of section 1902(a)(18), the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

"(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d), 60 months) before the date specified in clause (ii).

"(ii) The date specified in this clause, with respect to—

"(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

"(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

"(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

"(I) Nursing facility services.

"(II) A level of care in any institution equivalent to that of nursing facility services.

"(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1915.

"(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1905(a), and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

"(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

"(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

"(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

"(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

"(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

"(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

"(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

"(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

"(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

"(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) EXCEPTIONS.—Section 1917(c) is amended—

(A) in paragraph (2)(A), by striking "resources" and inserting "assets";

(B) by amending paragraph (2)(B) to read as follows:

"(B) the assets—

"(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

"(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

"(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

"(iv) were transferred to a trust (including a trust described in subsection (d)(4)) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1614(a)(3));";

(C) in paragraph (2)(C)—

(i) by striking "resources" each place it appears and inserting "assets",

(ii) by striking "any",

(iii) by striking "or (ii)" and inserting "(ii)", and

(iv) by striking "; or" and inserting ", or (iii) all assets transferred for less than fair market value have been returned to the individual; or";

(D) by amending paragraph (2)(D) to read as follows:

"(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;";

(E) by striking paragraph (3) and inserting the following:

"(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset."; and

(F) by adding at the end of paragraph (4) the following: "In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.".

(b) TREATMENT OF TRUST AMOUNTS.—Section 1917 (42 U.S.C. 1396p) is amended by adding at the end the following:

"(d)(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this title, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

"(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

"(i) The individual.

"(ii) The individual's spouse.

"(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

"(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"(B) In the case of a trust the corpus of which includes assets of an individual (as determined under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

"(C) Subject to paragraph (4), this subsection shall apply without regard to—

"(i) the purposes for which a trust is established,

"(ii) whether the trustees have or exercise any discretion under the trust,

"(iii) any restrictions on when or whether distributions may be made from the trust, or

"(iv) any restrictions on the use of distributions from the trust.

"(3)(A) In the case of a revocable trust—

"(i) the corpus of the trust shall be considered resources available to the individual,

"(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

"(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c).

"(B) In the case of an irrevocable trust—

"(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

"(I) to or for the benefit of the individual, shall be considered income of the individual, and

"(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c); and

"(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c), and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

"(4) This subsection shall not apply to any of the following trusts:

"(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1614(a)(3)) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title.

"(B) A trust established in a State for the benefit of an individual if—

"(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

"(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title, and

"(iii) the State makes medical assistance available to individuals described in section 1902(a)(10)(A)(ii)(V), but does not make such assistance available to individuals for nursing facility services under section 1902(a)(10)(C).

"(C) A trust containing the assets of an individual who is disabled (as defined in section 1614(a)(3)) that meets the following conditions:

"(i) The trust is established and managed by a non-profit association.

"(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

"(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

"(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title.

"(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.".

"(6) The term 'trust' includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.".

(c) DEFINITIONS.—Section 1917 (42 U.S.C. 1396p), as amended by subsection (b), is further amended by adding at the end the following new subsection:

"(e) In this section, the following definitions shall apply:

"(1) The term 'assets', with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action—

"(A) by the individual or such individual's spouse,

"(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

"(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

"(2) The term 'income' has the meaning given such term in section 1612.

"(3) The term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1902(a)(10)(A)(ii)(VI).

"(4) The term 'noninstitutionalized individual' means an individual receiving any of the services specified in subsection (c)(1)(C)(ii).

"(5) The term 'resources' has the meaning given such term in section 1613, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.".

(d) CONFORMING AMENDMENTS.—

(1) Section 1902 (42 U.S.C. 1396a) is amended—

(A) in subsection (a)(18), by striking "and transfers of assets" and inserting ", transfers of assets, and treatment of certain trusts";

(B) in subsection (a)(51)—

(i) by striking "(A)"; and

(ii) by striking ", and (B)" and all that follows and inserting a semicolon; and

(C) by striking subsection (k).

(2) Section 1924(b)(2)(B)(i) (42 U.S.C. 1396r–5(b)(2)(B)(i)) is amended by striking "1902(k)" and inserting "1917(d)".

(e) EFFECTIVE DATES.—(1) The amendments made by this section shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) The amendments made by this section shall not apply—

(A) to medical assistance provided for services furnished before October 1, 1993,

(B) with respect to assets disposed of on or before the date of the enactment of this Act, or

(C) with respect to trusts established on or before the date of the enactment of this Act.

(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment 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 preceding 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. 13612. MEDICAID ESTATE RECOVERIES.

(a) MANDATE TO SEEK RECOVERY.—Section 1917(b)(1) (42 U.S.C. 1396p(b)(1)) is amended by striking "except—" and all that follows and inserting the following: "except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

"(A) In the case of an individual described in subsection (a)(1)(B), the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

"(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of—

"(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

"(ii) at the option of the State, any items or services under the State plan.

"(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

"(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources—

"(I) to the extent that payments are made under a long-term care insurance policy; or

"(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.".

(b) HARDSHIP WAIVER.—Section 1917(b) (42 U.S.C. 1396p(b)) is amended by adding at the end the following new paragraph:

"(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.".

(c) DEFINITION OF ESTATE.—Section 1917(b) (42 U.S.C. 1396p(b)), as amended by subsection (b), is amended by adding at the end the following new paragraph:

"(4) For purposes of this subsection, the term 'estate', with respect to a deceased individual—

"(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

"(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.".

(d) EFFECTIVE DATES.—(1)(A) Except as provided in subparagraph (B), the amendments made by this section shall apply to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments 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 preceding 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.

(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993.

PART III—PAYMENTS

SEC. 13621. ASSURING PROPER PAYMENTS TO DISPROPORTIONATE SHARE HOSPITALS.

(a) DISPROPORTIONATE SHARE HOSPITALS REQUIRED TO PROVIDE MINIMUM LEVEL OF SERVICES TO MEDICAID PATIENTS.—

(1) IN GENERAL.—Section 1923 (42 U.S.C. 1396r-4) is amended—

(A) in subsection (a)(1)(A), by striking "requirement" and inserting "requirements";

(B) in subsection (b)(1), by striking "requirement" and inserting "requirements";

(C) in the heading to subsection (d), by striking "REQUIREMENT" and inserting "REQUIREMENTS";

(D) by adding at the end of subsection (d) the following new paragraph:

"(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this title or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2)) of not less than 1 percent.";

(E) in subsection (e)(1)—

(i) by striking "and" before "(B)", and

(ii) by inserting before the period at the end the following: ", and (C) the plan meets the requirement of subsection (d)(3) and such payment adjustments are made consistent with the last sentence of subsection (c)"; and

(F) in subsection (e)(2)—

(i) in subparagraph (A), by inserting "(other than the last sentence of subsection (c))" after "(c)",

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

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

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

"(C) subsection (d)(3) shall apply.".

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to payments to States under section 1903(a) of the Social Security Act for payments to hospitals made under State plans after—

(A) the end of the State fiscal year that ends during 1994, or

(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

(b) LIMITING AMOUNT OF HOSPITAL PAYMENT ADJUSTMENT TO UNCOVERED COSTS.—

(1) IN GENERAL.—Section 1923 (42 U.S.C. 1396r-4) is amended by adding at the end the following new subsection:

"(g) LIMIT ON AMOUNT OF PAYMENT TO HOSPITAL.—

"(1) AMOUNT OF ADJUSTMENT SUBJECT TO UNCOMPENSATED COSTS.—

"(A) IN GENERAL.—A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this title, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

"(B) LIMIT TO PUBLIC HOSPITALS DURING TRANSITION PERIOD.—With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

"(C) MODIFICATIONS FOR PRIVATE HOSPITALS.—With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

"(2) ADDITIONAL AMOUNT DURING TRANSITION PERIOD FOR CERTAIN HOSPITALS WITH HIGH DISPROPORTIONATE SHARE.—

"(A) IN GENERAL.—In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act, title V, title XVIII, or from third party payors (not including the State plan under this title) that are used for providing such services during the year.

"(B) HOSPITALS WITH HIGH DISPROPORTIONATE SHARE DEFINED.—In subparagraph (A), a hospital is a 'hospital with high disproportionate share' if—

"(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

"(ii) the hospital—

"(I) meets the requirement described in subsection (b)(1)(A), or

"(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

"(C) APPLICABLE MINIMUM AMOUNT DEFINED.—In subparagraph (A), the 'applicable minimum amount' for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.".

(2) CONFORMING AMENDMENTS.—Section 1923 is amended—

(A) in subsection (c) in the matter preceding paragraph (1), by striking "subsection (f)" and inserting "subsections (f) and (g)"; and

(B) in subsection (e)(2) (as amended by subsection (a)(1)(F))—

(i) by striking "and" at the end of subparagraph (B);

(ii) by striking the period at the end of subparagraph (C) and inserting ", and"; and

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

"(D) subsection (g) shall apply.".

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to payments to States under section 1903(a) of the Social Security Act for payments to hospitals made under State plans after—

(i) the end of the State fiscal year that ends during 1994, or

(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

(B) DELAY IN IMPLEMENTATION FOR PRIVATE HOSPITALS.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

SEC. 13622. LIABILITY OF THIRD PARTIES TO PAY FOR CARE AND SERVICES.

(a) LIABILITY OF ERISA PLANS.—(1) Section 1902(a)(25)(A) (42 U.S.C. 1396a(a)(25)(A)) is amended by striking "insurers)" and inserting "insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations)".

(2) Section 1903(o) (42 U.S.C. 1396b(o)) is amended by striking "regulation)" and inserting "regulation and including a group health plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974)), a service benefit plan, and a health maintenance organization)".

(b) REQUIRING STATE TO PROHIBIT INSURERS FROM TAKING MEDICAID STATUS INTO ACCOUNT.—Section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by adding "and" at the end of subparagraph (G); and

(3) by adding after subparagraph (G) the following new subparagraph:

"(H) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a service benefit plan, and a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this title for such State, or any other State;".

(c) STATE RIGHT TO THIRD PARTY PAYMENTS.—Section 1902(a)(25) (42 U.S.C. 1396a(a)(25)), as amended by subsection (b), is amended—

(1) by striking "and" at the end of subparagraph (G);

(2) by adding "and" at the end of subparagraph (H); and

(3) by adding after subparagraph (H) the following new subparagraph:

"(I) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services;".

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a)(1), (b), and (c) shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the preceding 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.

(3) The amendment made by subsection (a)(2) shall apply to items and services furnished on or after October 1, 1993.

SEC. 13623. MEDICAL CHILD SUPPORT.

(a) STATE PLAN REQUIREMENT.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(1) by striking "and" at the end of paragraph (54);

(2) in the paragraph (55) inserted by section 4602(a)(3) of OBRA–1990, by striking the period at the end and inserting a semicolon;

(3) by redesignating the paragraph (55) inserted by section 4604(b)(3) of OBRA–1990 as paragraph (56), by transferring and inserting it after the paragraph (55) inserted by section 4602(a)(3) of such Act, and by striking the period at the end and inserting a semicolon;

(4) by placing paragraphs (57) and (58), inserted by section 4751(a)(1)(C) of OBRA–1990, immediately after paragraph (56), as redesignated by paragraph (3);

(5) in the paragraph (58) inserted by section 4751(a)(1)(C) of OBRA–1990, by striking the period at the end and inserting a semicolon;

(6) by redesignating the paragraph (58) inserted by section 4752(c)(1)(C) of OBRA–1990 as paragraph (59) and by transferring and inserting it after the paragraph (58) inserted by section 4751(a)(1)(C) of such Act, and by striking the period at the end and inserting "; and"; and

(7) by inserting after paragraph (59) the following new paragraph:

"(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1908.".

(b) MEDICAL CHILD SUPPORT LAWS.—Title XIX (42 U.S.C. 1936 et seq.) is amended by inserting after section 1907 the following new section:

"REQUIRED LAWS RELATING TO MEDICAL CHILD SUPPORT

"SEC. 1908. (a) IN GENERAL.—The laws relating to medical child support, which a State is required to have in effect under section 1902(a)(60), are as follows:

"(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

"(A) the child was born out of wedlock,

"(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

"(C) the child does not reside with the parent or in the insurer's service area.

"(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

"(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

"(i) such court or administrative order is no longer in effect, or

"(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

"(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

"(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

"(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this title or part D of title IV; and

"(C) not to disenroll (or eliminate coverage of) any such child unless—

"(i) the employer is provided satisfactory written evidence that—

"(I) such court or administrative order is no longer in effect, or

"(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

"(ii) the employer has eliminated family health coverage for all of its employees; and

"(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Credit Protection Act), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

"(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this title and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

"(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

"(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

"(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

"(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

"(6) A law that permits the State agency under this title to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

"(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this title,

"(B) has received payment from a third party for the costs of such services to such child, but

"(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this title, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

"(b) DEFINITION.—For purposes of this section, the term 'insurer' includes a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, a health maintenance organization, and an entity offering a service benefit plan.".

(c) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by this section apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(2) In the case of a State plan under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the preceding 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. 13624. APPLICATION OF MEDICARE RULES LIMITING CERTAIN PHYSICIAN REFERRALS.

(a) IN GENERAL.—Section 1903 (42 U.S.C.1396b) is amended by inserting after subsection (r) the following new subsection:

"(s) Notwithstanding the preceding provisions of this section, no payment shall be made to a State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1877) furnished to an individual on the basis of a referral that would result in the denial of payment for the service under title XVIII if such title provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this title in the same manner as such subsections apply to a provider of such a service for which payment may be made under such title.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to referrals made on or after December 31, 1994.

SEC. 13625. STATE MEDICAID FRAUD CONTROL.

(a) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by section 13623(a), is amended—

(1) by striking "and" at the end of paragraph (59);

(2) by striking the period at the end of paragraph (60) and inserting "; and"; and

(3) by inserting after paragraph (60) the following new paragraph:

"(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1903(q) that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit.".

(b) EFFECTIVE DATE.—Section 1902(a)(61) of the Social Security Act (as added by subsection (a)) shall take effect January 1, 1995, and the standards referred to in such section shall be established not later than March 31, 1994.

PART IV—IMMUNIZATIONS

SEC. 13631. MEDICAID PEDIATRIC IMMUNIZATION PROVISIONS.

(a) STATE PLAN REQUIREMENT FOR PEDIATRIC IMMUNIZATION DISTRIBUTION PROGRAM.—Section 1902(a) (42 U.S.C. 1396a(a)), as amended by sections 13623(a) and 13625(a), is amended—

(1) by striking "and" at the end of paragraph (60);

(2) by striking the period at the end of paragraph (61) and inserting "; and"; and

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

"(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1928.".

(b) DESCRIPTION OF REQUIRED PROGRAM.—Title XIX is amended—

(1) by redesignating section 1928 as section 1931 and by moving such section to the end of such title, and

(2) by inserting after section 1927 the following new section:

"PROGRAM FOR DISTRIBUTION OF PEDIATRIC VACCINES

"SEC. 1928. (a) ESTABLISHMENT OF PROGRAM.—

"(1) IN GENERAL.—In order to meet the requirement of section 1902(a)(62), each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

"(A) each vaccine-eligible child (as defined in subsection (b)), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8)) from a program-registered provider (as defined in subsection (c)) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

"(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

"(2) DELIVERY OF SUFFICIENT QUANTITIES OF PEDIATRIC VACCINES TO IMMUNIZE FEDERALLY VACCINE-ELIGIBLE CHILDREN.—

"(A) IN GENERAL.—The Secretary shall provide under subsection (d) for the purchase and delivery on behalf of each State meeting the requirement of section 1902(a)(62) (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all Federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

"(B) SPECIAL RULES WHERE VACCINE IS UNAVAILABLE.—To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d), the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to Federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

"(C) SPECIAL RULES WHERE STATE IS A MANUFACTURER.—

"(i) PAYMENTS IN LIEU OF VACCINES.—In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

"(ii) DETERMINATION OF VALUE.—In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d). If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

"(b) VACCINE-ELIGIBLE CHILDREN.—For purposes of this section:

"(1) IN GENERAL.—The term 'vaccine-eligible child' means a child who is a Federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

"(2) FEDERALLY VACCINE-ELIGIBLE CHILD.—

"(A) IN GENERAL.—The term 'Federally vaccine-eligible child' means any of the following children:

"(i) A medicaid-eligible child.

"(ii) A child who is not insured.

"(iii) A child who (I) is administered a qualified pediatric vaccine by a Federally-qualified health center (as defined in section 1905(l)(2)(B)) or a rural health clinic (as defined in section 1905(l)(1)), and (II) is not insured with respect to the vaccine.

"(iv) A child who is an Indian (as defined in subsection (h)(3)).

"(B) DEFINITIONS.—In subparagraph (A):

"(i) The term 'medicaid-eligible' means, with respect to a child, a child who is entitled to medical assistance under a state plan approved under this title.

"(ii) The term 'insured' means, with respect to a child—

"(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974; and

"(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

"(3) STATE VACCINE-ELIGIBLE CHILD.—The term 'State vaccine-eligible child' means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B).

"(c) PROGRAM-REGISTERED PROVIDERS.—

"(1) DEFINED.—In this section, except as otherwise provided, the term 'program-registered provider' means, with respect to a State, any health care provider that—

"(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 333(e) of the Public Health Service Act), without regard to whether or not the provider participates in the plan under this title;

"(B) submits to the State an executed provider agreement described in paragraph (2); and

"(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

"(2) PROVIDER AGREEMENT.—A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

"(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

"(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

"(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1902(a)(7).

"(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e), except in such cases

as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

"(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

"(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

"(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a Federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

"(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

"(3) ENCOURAGING INVOLVEMENT OF PROVIDERS.—Each program under this section shall provide, in accordance with criteria established by the Secretary—

"(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act, and health programs or facilities operated by Indian tribes or tribal organizations; and

"(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

"(4) STATE REQUIREMENTS.—Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1915(b).

"(d) NEGOTIATION OF CONTRACTS WITH MANUFACTURERS.—

"(1) IN GENERAL.—For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A).

"(2) AUTHORITY TO DECLINE CONTRACTS.—The Secretary may decline to enter into such contracts and may modify or extend such contracts.

"(3) CONTRACT PRICE.—

"(A) IN GENERAL.—The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

"(B) NEGOTIATION OF DISCOUNTED PRICE FOR CURRENT VACCINES.—With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 317(j)(1) of the Public Health Service Act as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

"(C) NEGOTIATION OF DISCOUNTED PRICE FOR NEW VACCINES.—With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

"(4) QUANTITIES AND TERMS OF DELIVERY.—Under such contracts—

"(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for Federally vaccine-eligible children; and

"(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not Federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after the date of the enactment of the Omnibus Budget Reconciliation Act of 1993.

"(5) CHARGES FOR SHIPPING AND HANDLING.—The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

"(6) ASSURING ADEQUATE SUPPLY OF VACCINES.—The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

"(7) MULTIPLE SUPPLIERS.—In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

"(e) USE OF PEDIATRIC VACCINES LIST.—The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

"(f) REQUIREMENT OF STATE MAINTENANCE OF IMMUNIZATION LAWS.—In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

"(g) TERMINATION.—This section, and the requirement of section 1902(a)(62), shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

"(h) DEFINITIONS.—For purposes of this section:

"(1) The term 'child' means an individual 18 years of age or younger.

"(2) The term 'immunization' means an immunization against a vaccine-preventable disease.

"(3) The terms 'Indian', 'Indian tribe' and 'tribal organization' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act.

"(4) The term 'manufacturer' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term 'manufacture' means to manufacture, import, process, or distribute a vaccine.

"(5) The term 'parent' includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

"(6) The term 'pediatric vaccine' means a vaccine included on the list under subsection (e).

"(7) The term 'program-registered provider' has the meaning given such term in subsection (c).

"(8) The term 'qualified pediatric vaccine' means a pediatric vaccine with respect to which a contract is in effect under subsection (d).

"(9) The terms 'vaccine-eligible child', 'Federally vaccine-eligible child', and 'State vaccine-eligible child' have the meaning given such terms in subsection (b).".

(c) LIMITATION ON MEDICAID PAYMENTS.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by section 2(b)(2) of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991, is amended—

(1) in the paragraph (10) inserted by section 4401(a)(1)(B) of OBRA–1990, by striking all that follows "1927(g)" and inserting a semicolon;

(2) by redesignating the paragraph (12) inserted by section 4752(a)(2) of OBRA–1990 as paragraph (11), by transferring and inserting it after the paragraph (10) inserted by section 4401(a)(1)(B) of OBRA–1990, and by striking the period at the end and inserting a semicolon;

(3) by redesignating the paragraph (14) inserted by section 4752(e) of OBRA–1990 as paragraph (12), by transferring and inserting it after paragraph (11), as redesignated by paragraph (2), and by striking the period at the end and inserting a semicolon;

(4) by redesignating the paragraph (11) inserted by section 4801(e)(16)(A) of OBRA–1990 as paragraph (13), by transferring and inserting it after paragraph (12), as redesignated by paragraph (3), and by striking the period at the end and inserting "; or"; and

(5) by inserting after paragraph (13), as so redesignated, the following new paragraph:

"(14) with respect to any amount expended on administrative costs to carry out the program under section 1928.".

(d) CONTINUED COVERAGE OF COSTS OF A PEDIATRIC VACCINE UNDER CERTAIN GROUP HEALTH PLANS.—

(1) REQUIREMENT.—The requirement of this paragraph, with respect to a group health plan for plan years beginning after the date of the enactment of this Act, is that the group health plan not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act) below the coverage it provided as of May 1, 1993.

(2) ENFORCEMENT.—For purposes of section 2207 of the Public Health Service Act, the requirement of paragraph (1) is deemed a requirement of title XXII of such Act.

(e) AVAILABILITY OF MEDICAID PAYMENTS FOR CHILDHOOD VACCINE REPLACEMENT PROGRAMS.—

(1) IN GENERAL.—Section 1902(a)(32) (42 U.S.C. 1396a(a)(32)) is amended—

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

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

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

"(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);".

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

(f) OUTREACH AND EDUCATION.—

(1) IN GENERAL.—Section 1902(a) (42 U.S.C. 1396a(a)) is amended—

(A) in paragraph (11)(B)—

(i) by striking "effective July 1, 1969,",

(ii) by striking "and" before "(ii)", and

(iii) by striking "to him under section 1903" and inserting "to the individual under section 1903, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services";

(B) in paragraph (11)(C), by inserting ", including the provision of information and education on pediatric vaccinations and the delivery of immunization services," after "operations under this title"; and

(C) in paragraph (43)(A), by inserting before the comma at the end the following: "and the need for age-appropriate immunizations against vaccine-preventable diseases".

(2) COVERAGE OF PUBLIC HOUSING HEALTH CENTERS AND CERTAIN INDIAN HEALTH CARE PROVIDERS AS FEDERALLY-QUALIFIED HEALTH CENTERS.—Section 1905(l)(2)(B) (42 U.S.C. 1396d(l)(2)(B)) is amended—

(A) by striking "or 340" each place it appears and inserting "340, or 340A", and

(B) by inserting "or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services" after "93–638)".

(3) EFFECTIVE DATES.—(A) Except as provided in subparagraph (B), the amendments made by this subsection shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(g) SCHEDULE OF IMMUNIZATIONS UNDER EPSDT.—

(1) IN GENERAL.—Section 1905(r)(1) (42 U.S.C. 1396d(r)(1)) is amended—

(A) in subparagraph (A)(i), by inserting "and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines" after "child health care"; and

(B) in subparagraph (B)(iii), by inserting "(according to the schedule referred to in section 1928(c)(2)(B)(i) for pediatric vaccines)" after "appropriate immunizations".

(2) EFFECTIVE DATE.—The amendments made by subparagraphs (A) and (B) of paragraph (1) shall first apply 90 days after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act (as amended by such respective subparagraphs) is first established.

(h) DENIAL OF FEDERAL FINANCIAL PARTICIPATION FOR INAPPROPRIATE ADMINISTRATION OF SINGLE-ANTIGEN VACCINE.—

(1) IN GENERAL.—Section 1903(i) (42 U.S.C. 1396b(i)), as amended by subsection (c), is amended—

(A) in paragraph (13), by striking "or" at the end,

(B) in paragraph (14), by striking the period at the end and inserting "; or", and

(C) by inserting after paragraph (14) the following new paragraph:

"(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary).".

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall apply to amounts expended for vaccines administered on or after October 1, 1993.

(i) EFFECTIVE DATE.—Except as otherwise provided in this section, the amendments made by this section shall apply to payments under State plans approved under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1994.

SEC. 13632. NATIONAL VACCINE INJURY COMPENSATION PROGRAM AMENDMENTS.

(a) AMENDMENT OF VACCINE INJURY TABLE.—

(1) FILING.—Section 2116(b) of the Public Health Service Act (42 U.S.C. 300aa–16(b)) is amended by striking "such person may file" and inserting "or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 2111(b)(2), file".

(2) ADDITIONAL VACCINES.—Section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa-14) is amended to read as follows:

"(e) ADDITIONAL VACCINES.—

"(1) VACCINES RECOMMENDED BEFORE AUGUST 1, 1993.—By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) to include—

"(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention before August 1, 1993, for routine administration to children,

"(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

"(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

"(2) VACCINES RECOMMENDED AFTER AUGUST 1, 1993.—When after August 1, 1993, the Centers for Disease Control and Prevention recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) to include—

"(A) vaccines which were recommended for routine administration to children,

"(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

"(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.".

(3) EFFECTIVE DATE.—A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa-14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa-14(a)).

(b) INCREASED SPENDING.—Section 2115(j) of the Public Health Service Act (42 U.S.C. 300aa–15(j)) is amended by striking "$80,000,000 for each succeeding fiscal year" and inserting in lieu thereof "$110,000,000 for each succeeding fiscal year".

(c) EXTENSION OF TIME FOR DECISION.—Section 2112(d)(3)(D) of the Public Health Service Act (42 U.S.C. 300aa–12(d)(3)(D)) is amended by striking "540 days" and inserting "30 months (but for not more than 6 months at a time)".

PART V—MISCELLANEOUS

SEC. 13641. INCREASE IN LIMIT ON FEDERAL MEDICAID MATCHING PAYMENTS TO PUERTO RICO AND OTHER TERRITORIES.

(a) IN GENERAL.—Paragraphs (1) through (5) of section 1108(c) (42 U.S.C. 1308(c)) are amended to read as follows:

"(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph 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;

"(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

"(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

"(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

"(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply beginning with fiscal year 1994.

SEC. 13642. EXTENSION OF MORATORIUM ON TREATMENT OF CERTAIN FACILITIES AS INSTITUTIONS FOR MENTAL DISEASES.

Effective as if included in the enactment of OBRA–1989, section 6408(a)(3) of such Act is amended by striking "180 days" and all that follows and inserting "December 31, 1995.".

SEC. 13643. DEMONSTRATION PROJECTS.

(a) EXTENSION OF DEMONSTRATION PROJECT ON THE EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES.—Effective as if included in the enactment of OBRA–1990, section 4745 of such Act is amended—

(1) in paragraph (1) of subsection (e), by striking "$12,000,000 in each of fiscal years 1991, 1992, and 1993, and to no more than $4,000,000 in fiscal year 1994" and inserting "$40,000,000"; and

(2) in paragraph (2) of subsection (f) by striking "January 1, 1995" and inserting "one year after the termination of the projects".

(b) RENEWAL OF UNFUNDED DEMONSTRATION PROJECT FOR LOW-INCOME PREGNANT WOMEN AND CHILDREN.—Effective as if included in the enactment of OBRA–1989, section 6407 of such Act is amended—

(1) in subsection (f), by striking "$10,000,000 in each of fiscal years 1990, 1991, and 1992" and inserting "$30,000,000"; and

(2) in subsection (g)(2), by striking "January 1, 1994" and inserting "one year after the termination of the demonstration projects".

(c) APPLICATION OF SPOUSAL IMPOVERISHMENT RULES TO THE ON LOK FRAIL ELDERLY DEMONSTRATION PROJECT.—(1) Section 1924(a)(5), as added by section 4744(b)(1) of OBRA–1990, is amended by striking "1986." and inserting "1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.".

(2) Section 603(c) of the Social Security Amendments of 1983 is amended—

(A) by striking "(c)" and inserting "(c)(1)";

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B); and

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

"(2) Section 1924 of the Social Security Act shall apply to any individual receiving services from an organization receiving a waiver under this subsection.".

SEC. 13644. EXTENSION OF PERIOD OF APPLICABILITY OF ENROLLMENT MIX REQUIREMENT TO CERTAIN HEALTH MAINTENANCE ORGANIZATIONS PROVIDING SERVICES UNDER DAYTON AREA HEALTH PLAN.

Section 2 of Public Law 102–276 is amended by striking "January 31, 1994" and inserting "December 31, 1995".

Subchapter C—Human Resources and Income Security Amendments

SEC. 13701. TABLE OF CONTENTS.

The table of contents of this subchapter is as follows:

Subchapter C—Human Resources and Income Security Amendments

Sec. 13701. Table of contents.
Sec. 13702. References.

PART I—CHILD WELFARE SERVICES, FOSTER CARE, AND ADOPTION ASSISTANCE

Sec. 13711. Entitlement funding for services designed to strengthen and preserve families.
Sec. 13712. Entitlement funding for State courts to assess and improve handling of proceedings relating to foster care and adoption.
Sec. 13713. Enhanced match for automated data systems.
Sec. 13714. Permanent extension of independent living program.
Sec. 13715. Training of agency staff and foster and adoptive parents.
Sec. 13716. Moratorium on collection of disallowances.

PART II—CHILD SUPPORT ENFORCEMENT

Sec. 13721. State paternity establishment programs.

PART III—SUPPLEMENTAL SECURITY INCOME

Sec. 13731. Fees for Federal administration of State supplementary payments.
Sec. 13732. Exclusion from income and resources of State relocation assistance.
Sec. 13733. Prevention of adverse effects on eligibility for, and amount of, benefits when spouse or parent of beneficiary is absent from the household due to active military service.
Sec. 13734. Eligibility for children of Armed Forces personnel residing outside the United States other than in foreign countries.
Sec. 13735. Valuation of certain in-kind support and maintenance when there is a cost of living adjustment in benefits.
Sec. 13736. Exclusion from income of certain amounts received by Indians from interests held in trust.

PART IV—AID TO FAMILIES WITH DEPENDENT CHILDREN

Sec. 13741. 50 percent Federal match of State administrative costs.
Sec. 13742. Increase in stepparent income disregard.

PART V—UNEMPLOYMENT INSURANCE

Sec. 13751. Extension of current Federal unemployment rate.

PART VI—SOCIAL SERVICES IN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Sec. 13761. Increase in block grants to States for social services.

SEC. 13702. REFERENCES.

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

PART I—CHILD WELFARE SERVICES, FOSTER CARE, AND ADOPTION ASSISTANCE

SEC. 13711. ENTITLEMENT FUNDING FOR SERVICES DESIGNED TO STRENGTHEN AND PRESERVE FAMILIES.

(a) IN GENERAL.—Part B of title IV (42 U.S.C. 620–628) is amended—

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

"PART B—CHILD AND FAMILY SERVICES

"Subpart 1—Child Welfare Services"; and

(2) by adding at the end the following:

"Subpart 2—Family Preservation and Support Services

"SEC. 430. PURPOSES; LIMITATIONS ON AUTHORIZATIONS OF APPROPRIATIONS; RESERVATION OF CERTAIN AMOUNTS.

"(a) PURPOSES; LIMITATIONS ON AUTHORIZATION OF APPROPRIATIONS.—For the purpose of encouraging and enabling each State to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services, there are authorized to be appropriated to the Secretary the amounts described in subsection (b) for the fiscal years specified in subsection (b).

"(b) DESCRIPTION OF AMOUNTS.—The amount described in this subsection is—

"(1) for fiscal year 1994, $60,000,000;
"(2) for fiscal year 1995, $150,000,000;
"(3) for fiscal year 1996, $225,000,000;
"(4) for fiscal year 1997, $240,000,000; or
"(5) for fiscal year 1998, the greater of—
"(A) $255,000,000; or
"(B) the amount described in this subsection for fiscal year 1997, increased by the inflation percentage applicable to fiscal year 1998.

"(c) INFLATION PERCENTAGE.—For purposes of subsection (b)(5)(B) of this section, the inflation percentage applicable to any fiscal year is the percentage (if any) by which—

"(1) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on December 31 of the immediately preceding fiscal year; exceeds

"(2) the average of the Consumer Price Index (as so defined) for the 12-month period ending on December 31 of the 2nd preceding fiscal year.

"(d) RESERVATION OF CERTAIN AMOUNTS.—

"(1) EVALUATION, RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE.—The Secretary shall reserve $2,000,000 of the amount described in subsection (b) for fiscal year 1994, and $6,000,000 of the amounts so described for each of fiscal years 1995, 1996, 1997, and 1998, for expenditure by the Secretary—

"(A) for research, training, and technical assistance related to the program under this subpart; and

"(B) for evaluation of State programs funded under this subpart and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart.

"(2) STATE COURT ASSESSMENTS.—The Secretary shall reserve $5,000,000 of the amount described in subsection (b) for fiscal year 1995, and $10,000,000 of the amounts so described for each of fiscal years 1996, 1997, and 1998, for grants under section 13712 of the Omnibus Budget Reconciliation Act of 1993.

"(3) INDIAN TRIBES.—The Secretary shall reserve 1 percent of the amounts described in subsection (b) for each fiscal year, for allotment to Indian tribes in accordance with section 433(a).

"SEC. 431. DEFINITIONS.

"(a) IN GENERAL.—As used in this subpart:

"(1) FAMILY PRESERVATION SERVICES.—The term 'family preservation services' means services for children and families designed to help

families (including adoptive and extended families) at risk or in crisis, including—

"(A) service programs designed to help children—

"(i) where appropriate, return to families from which they have been removed; or

"(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

"(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

"(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

"(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

"(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

"(2) FAMILY SUPPORT SERVICES.—The term 'family support services' means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development.

"(3) STATE AGENCY.—The term 'State agency' means the State agency responsible for administering the program under subpart 1.

"(4) STATE.—The term 'State' includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

"(5) TRIBAL ORGANIZATION.—The term 'tribal organization' means the recognized governing body of any Indian tribe.

"(6) INDIAN TRIBE.—The term 'Indian tribe' means any Indian tribe (as defined in section 482(i)(5)) and any Alaska Native organization (as defined in section 482(i)(7)(A)).

"(b) OTHER TERMS.—For other definitions of other terms used in this subpart, see section 475.

"SEC. 432. STATE PLANS.

"(a) PLAN REQUIREMENTS.—A State plan meets the requirements of this subsection if the plan—

"(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

"(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

"(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

"(C) contains assurances that the State—

"(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

"(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b)) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

"(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services or benefits under other Federal or federally assisted programs serving the same populations;

"(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 434 for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services and community-based family support services with significant portions of such expenditures for each such program;

"(5) contains assurances that the State will—

"(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services and community-based family support services) of—

"(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;

"(ii) the populations which the programs will serve; and

"(iii) the geographic areas in the State in which the services will be available; and

"(B) perform the activities described in subparagraph (A)—

"(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and

"(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

"(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

"(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

"(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A); and

"(8) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.

"(b) APPROVAL OF PLANS.—

"(1) IN GENERAL.—The Secretary shall approve a plan that meets the requirements of subsection (a) only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and family support services).

"(2) PLANS OF INDIAN TRIBES.—

"(A) EXEMPTION FROM INAPPROPRIATE REQUIREMENTS.—The Secretary may exempt a plan submitted by an Indian tribe from any requirement of this section that the Secretary determines would be inappropriate to apply to the Indian tribe, taking into account the resources, needs, and other circumstances of the Indian tribe.

"(B) SPECIAL RULE.—Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 433(a) if allotments were made under section 433(a) to all Indian tribes with plans approved under this subpart with the same or larger numbers of children.

"SEC. 433. ALLOTMENTS TO STATES.

"(a) INDIAN TRIBES.—From the amount reserved pursuant to section 430(d)(3) for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

"(b) TERRITORIES.—From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 421.

"(c) OTHER STATES.—

"(1) IN GENERAL.—From the amount described in section 430(b) for any fiscal year that remains after applying section 430(d) and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

"(2) FOOD STAMP PERCENTAGE DEFINED.—

"(A) IN GENERAL.—As used in paragraph (1) of this subsection, the term 'food stamp percentage' means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 16(c) of the Food Stamp Act of 1977, expressed as a percentage of the average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

"(B) FISCAL YEARS USED IN CALCULATION.—For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this subsection, for which such data are available to the Secretary.

"SEC. 434. PAYMENTS TO STATES.

"(a) ENTITLEMENT.—

"(1) GENERAL RULE.—Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of—

"(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

"(B) the allotment of the State under section 433 for the fiscal year.

"(2) SPECIAL RULE.—Upon submission by a State to the Secretary during fiscal year 1994 of an application in such form and containing such information as the Secretary may require (including, if the State is seeking payment of an amount pursuant to subparagraph (B) of this paragraph, a description of the services to be provided with the amount), the State shall be entitled to payment of an amount equal to the sum of—

"(A) such amount, not exceeding $1,000,000, from the allotment of the State under section 433 for fiscal year 1994, as the State may require to

develop and submit a plan for approval under section 432; and

"(B) an amount equal to the lesser of—

"(i) 75 percent of the expenditures by the State for services to children and families in accordance with the application and the expenditure rules of section 432(a)(4); or

"(ii) the allotment of the State under section 433 for fiscal year 1994, reduced by any amount paid to the State pursuant to subparagraph (A) of this paragraph.

"(b) PROHIBITIONS.—

"(1) NO USE OF OTHER FEDERAL FUNDS FOR STATE MATCH.—Each State receiving an amount paid under paragraph (1) or (2)(B) of subsection (a) may not expend any Federal funds to meet the costs of services described in this subpart not covered by the amount so paid.

"(2) AVAILABILITY OF FUNDS.—A State may not expend any amount paid under subsection (a)(1) for any fiscal year after the end of the immediately succeeding fiscal year.

"(c) DIRECT PAYMENTS TO TRIBAL ORGANIZATIONS OF INDIAN TRIBES.—The Secretary shall pay any amount to which an Indian tribe is entitled under this section directly to the tribal organization of the Indian tribe.

"SEC. 435. EVALUATIONS.

"(a) EVALUATIONS.—

"(1) IN GENERAL.—The Secretary shall evaluate the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, any may evaluate and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

"(2) CRITERIA TO BE USED.—In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as—

"(A) State agencies administering programs under this part and part E;

"(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

"(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

"(b) COORDINATION OF EVALUATIONS.—The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.".

(b) CONFORMING AMENDMENTS.—

(1) Section 422 (42 U.S.C. 622) is amended—

(A) in subsection (a), by striking "this part" and inserting "this subpart";

(B) in subsection (b), by striking "this part" each place such term appears and inserting "this subpart"; and

(C) in subsection (b)(2), by inserting "under the State plan approved under subpart 2 of this part," after "part A of this title,".

(2) Section 423(a) (42 U.S.C. 623(a)) is amended by striking "this part" and inserting "this subpart".

(3) Section 428(a) (42 U.S.C. 628(a)) is amended by striking "this part" each place such term appears and inserting "this subpart".

(4) Section 471(a)(2) (42 U.S.C. 671(a)(2)) is amended by inserting "subpart 1 of" before "part B".

(c) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to calendar quarters beginning on or after October 1, 1993.

SEC. 13712. ENTITLEMENT FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION.

(a) IN GENERAL.—The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of title IV of the Social Security Act, for the purpose of enabling such courts—

(1) to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)—

(A) that implement parts B and E of title IV of such Act;

(B) that determine the advisability or appropriateness of foster care placement;

(C) that determine whether to terminate parental rights; and

(D) that determine whether to approve the adoption or other permanent placement of a child; and

(2) to implement changes deemed necessary as a result of the assessments.

(b) APPLICATIONS.—In order to be eligible for a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary shall require.

(c) ALLOTMENTS.—

(1) IN GENERAL.—Each highest State court which has an application approved under subsection (b), and is conducting assessment activities in accordance with this section, shall be entitled to payment, for each of fiscal years 1995 through 1998, from amounts reserved pursuant to section 430(d)(2) of the Social Security Act, of an amount equal to the sum of—

(A) for fiscal year 1995, $75,000 plus the amount described in paragraph (2) for fiscal year 1995; and

(B) for each of fiscal years 1996 through 1998, $85,000 plus the amount described in paragraph (2) for each of such fiscal years.

(2) FORMULA.—The amount described in this paragraph for any fiscal year is the amount that bears the same ratio to the amount reserved pursuant to section 430(d)(2) of the Social Security Act for the fiscal year (reduced by the dollar amount specified in paragraph (1) of this subsection for the fiscal year) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b).

(d) USE OF GRANT FUNDS.—Each highest State court which receives funds paid under this section may use such funds to pay—

(1) any or all costs of activities under this section in fiscal year 1995; and

(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 1996, 1997, and 1998.

SEC. 13713. ENHANCED MATCH FOR AUTOMATED DATA SYSTEMS.

(a) PAYMENTS TO STATES.—

(1) IN GENERAL.—Section 474(a)(3) (42 U.S.C. 674(a)(3)) is amended—

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

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

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

"(C) 75 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 75 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

"(i) meet the requirements imposed by regulations promulgated pursuant to section 479(b)(2);

"(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

"(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A (for the purposes of facilitating verification of eligibility of foster children); and

"(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B or this part; and

"(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and".

(2) TREATMENT OF STATE EXPENDITURES FOR DATA COLLECTION AND INFORMATION RETRIEVAL SYSTEMS.—Section 474 (42 U.S.C. 674) is amended by adding at the end the following:

"(e) AUTOMATED DATA COLLECTION EXPENDITURES.—The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C), without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on October 1, 1993.

(b) TERMINATION OF ENHANCED MATCH.—

(1) IN GENERAL.—Section 474(a)(3)(C) (42 U.S.C. 674(a)(3)(C)), as amended by subsection (a) of this section, is amended by striking "75 percent" each place such term appears and inserting "50 percent".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to expenditures during fiscal years beginning on or after October 1, 1996.

SEC. 13714. PERMANENT EXTENSION OF INDEPENDENT LIVING PROGRAM.

(a) IN GENERAL.—Section 477 (42 U.S.C. 677) is amended—

(1) in subsection (a)(1), by striking the 3rd sentence;

(2) in subsection (c), by striking "of the fiscal years 1988 through 1992" and inserting "succeeding fiscal year";

(3) in subsection (e)(1)(A), by striking "each of the fiscal years 1987 through 1992" and inserting "fiscal year 1987 and any succeeding fiscal year";

(4) in subsection (e)(1)(B), by striking "fiscal years 1991 and 1992" and inserting "fiscal year 1991 and any succeeding fiscal year"; and

(5) in subsection (e)(1)(C)(ii), by striking "fiscal year 1992" and inserting "any succeeding fiscal year".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to activities engaged in on or after October 1, 1992.

SEC. 13715. TRAINING OF AGENCY STAFF AND FOSTER AND ADOPTIVE PARENTS.

Section 8006(b) of the Omnibus Budget Reconciliation Act of 1989 (42 U.S.C. 674 note) is amended by inserting ", and to expenditures made on or after October 1, 1993" before the period.

SEC. 13716. MORATORIUM ON COLLECTION OF DISALLOWANCES.

The Secretary of Health and Human Services shall not, before October 1, 1994—

(1) reduce any payment to, withhold any payment from, or seek any repayment from any State under part B or E of title IV of the Social Security Act by reason of a determination made in connection with a review of State compliance with section 427 of such Act for any Federal fiscal year before fiscal year 1995; or

(2) reduce any payment to, withhold any payment from, or seek any repayment from any State under such part E by reason of a determination made in connection with any on-site Federal financial review, or any audit conducted by the Inspector General using similar methodologies.

PART II—CHILD SUPPORT ENFORCEMENT

SEC. 13721. STATE PATERNITY ESTABLISHMENT PROGRAMS.

(a) PERFORMANCE STANDARDS.—Section 452(g) (42 U.S.C. 652(g)) is amended—

(1) in paragraph (1)—

(A) by striking "1991" and inserting "1994";

(B) by inserting "is based on reliable data and" before "equals or exceeds";

(C) by inserting "(rounded to the nearest whole percentage point)" before "equals"; and

(D) by striking subparagraphs (A), (B), and (C) and inserting the following:

"(A) 75 percent;

"(B) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

"(C) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

"(D) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

"(E) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points."; and

(2) in paragraph (2)—

(A) in subparagraph (A)—

(i) by striking "(or under all such plans)" each place such term appears and inserting "or E";

(ii) in clause (i), by inserting "during the fiscal year" before the comma;

(iii) in clause (ii)—

(I) in subclause (I), by striking "for such" and inserting "as of the end of the"; and

(II) in subclause (II), by striking "for the" and inserting "as of the end of the";

(iv) in clause (iii), by inserting "or acknowledged during the fiscal year" before the comma; and

(v) in the matter following clause (iii)—

(I) by striking "have been" and inserting "were";

(II) by inserting "during the immediately preceding fiscal year" after "wedlock";

(III) by striking "is being" and inserting "was being";

(IV) by striking "for such" and inserting "as of the end of such preceding";

(V) by striking "are being" and inserting "were being"; and

(VI) by striking "for the" and inserting "as of the end of such preceding";

(B) by striking subparagraph (B) and inserting the following:

"(B) the term 'reliable data' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.";

(C) by inserting "unless paternity is established for such child" after "the death of a parent"; and

(D) by inserting "or any child with respect to whom the State agency administering the plan under part E determines (as provided in section 454(4)(B)) that it is against the best interests of such child to do so" after "cooperate under section 402(a)(26)".

(b) STATE PLAN REQUIREMENTS FOR THE ESTABLISHMENT OF PATERNITY.—Section 466(a) (42 U.S.C. 666(a)) is amended—

(1) in paragraph (2)—

(A) by striking "at the option of the State,"; and

(B) by inserting "or paternity establishment" after "support order issuance and enforcement";

(2) in paragraph (5), by adding at the end the following:

"(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child.

"(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

"(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

"(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

"(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

"(H) Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendent and any additional showing required by State law."; and

(3) by inserting after paragraph (10) the following new paragraph:

"(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.".

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective with respect to a State on the later of—

(1) October 1, 1993 or,

(2) the date of enactment by the legislature of such State of all laws required by such amendments,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

PART III—SUPPLEMENTAL SECURITY INCOME

SEC. 13731. FEES FOR FEDERAL ADMINISTRATION OF STATE SUPPLEMENTARY PAYMENTS.

(a) IN GENERAL.—

(1) OPTIONAL STATE SUPPLEMENTARY PAYMENTS.—Section 1616(d) (42 U.S.C. 1382e(d)) is amended—

(A) by inserting "(1)" after "(d)";

(B) by inserting ", plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)" before the period; and

(C) by adding after and below the end the following:

"(2)(A) The Secretary shall assess each State an administration fee in an amount equal to—

"(i) the number of supplementary payments made by the Secretary on behalf of the State under this section for any month in a fiscal year; multiplied by

"(ii) the applicable rate for the fiscal year.

"(B) As used in subparagraph (A), the term 'applicable rate' means—

"(i) for fiscal year 1994, $1.67;

"(ii) for fiscal year 1995, $3.33;

"(iii) for fiscal year 1996, $5.00; and

"(iv) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Secretary determines is appropriate for the State.

"(C) Upon making a determination under subparagraph (B)(iv), the Secretary shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

"(D) All fees assessed pursuant to this paragraph shall be transferred to the Secretary at the same time that amounts for such supplementary payments are required to be so transferred.

"(3)(A) The Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

"(B) The additional services fee shall be in an amount that the Secretary determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

"(4) All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.".

(2) MANDATORY STATE SUPPLEMENTARY PAYMENTS.—Section 212(b)(3) of Public Law 93-66 (42 U.S.C. 1382 note) is amended—

(A) by inserting "(A)" after "(3)";

(B) by inserting ", plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C)" before the period; and

(C) by adding after and below the end the following:

"(B)(i) The Secretary shall assess each State an administration fee in an amount equal to—

"(I) the number of supplementary payments made by the Secretary on behalf of the State under this subsection for any month in a fiscal year; multiplied by

"(II) the applicable rate for the fiscal year.

"(ii) As used in clause (i), the term 'applicable rate' means—

"(I) for fiscal year 1994, $1.67;

"(II) for fiscal year 1995, $3.33;

"(III) for fiscal year 1996, $5.00; and

"(IV) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Secretary determines is appropriate for the State, taking into account the complexity of administering the State's supplementary payment program.

"(iii) Upon making a determination under clause (ii)(IV), the Secretary shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

"(iv) All fees assessed pursuant to this subparagraph shall be transferred to the Secretary at the same time that amounts for such supplementary payments are required to be so transferred.

"(C)(i) The Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

"(ii) The additional services fee shall be in an amount that the Secretary determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

"(D) All administration fees and additional services fees collected pursuant to this paragraph shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act or section 212(a) of Public Law 93-66 for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.

SEC. 13732. EXCLUSION FROM INCOME AND RESOURCES OF STATE RELOCATION ASSISTANCE.

Section 5035(c) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 1382a note; 104 Stat. 1388-225) is amended by striking "in the 3-year period that begins on" and inserting "on or after".

SEC. 13733. PREVENTION OF ADVERSE EFFECTS ON ELIGIBILITY FOR, AND AMOUNT OF, BENEFITS WHEN SPOUSE OR PARENT OF BENEFICIARY IS ABSENT FROM THE HOUSEHOLD DUE TO ACTIVE MILITARY SERVICE.

(a) ABSENT PERSON GENERALLY DEEMED TO BE LIVING IN THE HOUSEHOLD.—Section 1614(f) (42 U.S.C. 1382c(f)) is amended by adding at the end the following:

"(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.".

(b) EXCLUSION FROM INCOME OF HOSTILE FIRE PAY RECEIVED WHILE IN ACTIVE MILITARY SERVICE.—Section 1612(b) (42 U.S.C. 1382a(b)) is amended—

(1) in paragraph (18), by striking "and" the 2nd place such term appears;

(2) in paragraph (19), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(20) special pay received pursuant to section 310 of title 37, United States Code.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act.

SEC. 13734. ELIGIBILITY FOR CHILDREN OF ARMED FORCES PERSONNEL RESIDING OUTSIDE THE UNITED STATES OTHER THAN IN FOREIGN COUNTRIES.

(a) IN GENERAL.—Section 1614(a)(1)(B)(ii) (42 U.S.C. 1382c(a)(1)(B)(ii)) is amended by striking "the District of Columbia" and all that follows to the period and inserting "and who, for the month before the parent reported for such assignment, received a benefit under this title".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the 1st day of the 3rd month that begins after the date of the enactment of this Act.

SEC. 13735. VALUATION OF CERTAIN IN-KIND SUPPORT AND MAINTENANCE WHEN THERE IS A COST OF LIVING ADJUSTMENT IN BENEFITS.

(a) IN GENERAL.—Section 1611(c) (42 U.S.C. 1382(c)) is amended—

(1) in paragraph (1), by striking "and (5)" and inserting "(5), and (6)"; and

(2) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(3) by inserting after paragraph (5) the following:

"(6) The dollar amount in effect under subsection (b) as a result of any increase in benefits under this title by reason of section 1617 shall be used to determine the value of any in-kind support and maintenance required to be taken into account in determining the benefit payable under this title to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to benefits paid for months after the calendar year 1994.

SEC. 13736. EXCLUSION FROM INCOME OF CERTAIN AMOUNTS RECEIVED BY INDIANS FROM INTERESTS HELD IN TRUST.

(a) IN GENERAL.—Section 8 of the Act of October 19, 1973, (25 U.S.C. 1408) is amended by inserting ", and up to $2,000 per year of income received by individual Indians that is derived from such interests shall not be considered income," after "resource".

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1994.

PART IV—AID TO FAMILIES WITH DEPENDENT CHILDREN

SEC. 13741. 50 PERCENT FEDERAL MATCH OF STATE ADMINISTRATIVE COSTS.

(a) AFDC MATCHING.—Section 403(a)(3) (42 U.S.C. 603(a)(3)) is amended to read as follows:

"(3) in the case of any State, 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a) other than services furnished pursuant to section 402(g); and".

(b) TERRITORIAL PROGRAMS FOR AGED, BLIND, AND DISABLED.—Sections 3(a)(4), 1003(a)(3), 1403(a)(3), and 1603(a)(4) (42 U.S.C. 303(a)(3), 1203(a)(3), 1353(a)(3), and 1383 note) (as in effect as provided by section 303 of the Social Security Amendments of 1972) are each amended by striking "the sum of" and all that follows and inserting "50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

(2) SPECIAL RULE.—In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendments made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act.

SEC. 13742. INCREASE IN STEPPARENT INCOME DISREGARD.

(a) IN GENERAL.—Section 402(a)(31) (42 U.S.C. 602(a)(31)) is amended by striking "$75" and inserting "$90".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1993, and shall apply to payments under part A of title IV of the Social Security Act for fiscal year 1994 and such payments for succeeding fiscal years.

PART V—UNEMPLOYMENT INSURANCE

SEC. 13751. EXTENSION OF CURRENT FEDERAL UNEMPLOYMENT RATE.

Section 3301 of the Internal Revenue Code of 1986 is amended—

(1) by striking "1996" in paragraph (1) and inserting "1998", and

(2) by striking "1997" in paragraph (2) and inserting "1999".

PART VI—SOCIAL SERVICES IN EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

SEC. 13761. INCREASE IN BLOCK GRANTS TO STATES FOR SOCIAL SERVICES.

Title XX (42 U.S.C. 1397-1397e) is amended by adding at the end the following:

"SEC. 2007. ADDITIONAL GRANTS.

"(a) ENTITLEMENT.—

"(1) IN GENERAL.—In addition to any payment under section 2002, each State shall be entitled to—

"(A) 2 grants under this section for each qualified empowerment zone in the State; and

"(B) 1 grant under this section for each qualified enterprise community in the State.

"(2) AMOUNT OF GRANTS.—

"(A) EMPOWERMENT GRANTS.—The amount of each grant to a State under this section for a qualified empowerment zone shall be—

"(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

"(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

"(B) ENTERPRISE GRANTS.—The amount of the grant to a State under this section for a qualified enterprise community shall be 1/95 of $280,000,000, multiplied by that proportion of the population of the community that resides in the State.

"(C) POPULATION DETERMINATIONS.—The Secretary shall make population determinations for purposes of this paragraph based on the most recent decennial census data available.

"(3) TIMING OF GRANTS.—

"(A) QUALIFIED EMPOWERMENT ZONES.—With respect to each qualified empowerment zone, the Secretary shall make—

"(i) 1 grant under this section to each State in which the zone lies, on the date of the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

"(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

"(B) QUALIFIED ENTERPRISE COMMUNITIES.—With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

"(4) FUNDING.—$1,000,000,000 shall be made available to the Secretary for grants under this section.

"(b) PROGRAM OPTIONS.—Notwithstanding section 2005(a):

"(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

"(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with—

"(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

"(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

"(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

"(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to—

"(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

"(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

"(C) support programs that promote home ownership, education, or other routes to economic independence for low income families and individuals.

"(c) USE OF GRANTS.—

"(1) IN GENERAL.—Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant—

"(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 2001;

"(B) in accordance with the strategic plan for the area; and

"(C) for activities that benefit residents of the area for which the grant is made.

"(2) TECHNICAL ASSISTANCE.—A State may use a portion of any grant made under this section in the manner described in section 2002(e).

"(d) REMITTANCE OF CERTAIN AMOUNTS.—

"(1) PORTION OF GRANT UPON TERMINATION OF DESIGNATION.—Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

"(2) AMOUNTS PAID TO THE STATES AND NOT OBLIGATED WITHIN 2 YEARS.—Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

"(e) DEFINITIONS.—As used in this section:

"(1) QUALIFIED EMPOWERMENT ZONE.—The term 'qualified empowerment zone' means, with respect to a State, an area—

"(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

"(B) with respect to which the designation is in effect;

"(C) the strategic plan for which is a qualified plan; and

"(D) part or all of which is in the State.

"(2) QUALIFIED ENTERPRISE COMMUNITY.—The term 'qualified enterprise community' means, with respect to a State, an area—

"(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

"(B) with respect to which the designation is in effect;

"(C) the strategic plan for which is a qualified plan; and

"(D) part or all of which is in the State.

"(3) STRATEGIC PLAN.—The term 'strategic plan' means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

"(4) QUALIFIED PLAN.—The term 'qualified plan' means, with respect to an area, a plan that—

"(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;

"(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;

"(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and

"(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b), explains the reasons why not.

"(5) RURAL AREA.—The term 'rural area' has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

"(6) URBAN AREA.—The term 'urban area' has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.".

Subchapter D—Customs and Trade Provisions

SEC. 13800. TABLE OF CONTENTS.

SUBCHAPTER D—CUSTOMS AND TRADE PROVISIONS

Sec. 13800. Table of contents.

PART I—EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

Sec. 13801. Extension of authority to levy customs user fees.

Sec. 13802. Generalized system of preferences.

Sec. 13803. Extension of trade adjustment assistance program.

PART II—CUSTOMS OFFICER PAY REFORM

Sec. 13811. Overtime and premium pay for customs officers.

Sec. 13812. Additional benefits for customs officers.

Sec. 13813. Reimbursements from the customs user fee account.

PART I—EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

SEC. 13801. EXTENSION OF AUTHORITY TO LEVY CUSTOMS USER FEES.

Section 13031(j)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(j)(3)) is amended by striking out "1995" and inserting "1998".

SEC. 13802. GENERALIZED SYSTEM OF PREFERENCES.

(a) TREATMENT OF COUNTRIES FORMERLY WITHIN THE UNION OF SOVIET SOCIALIST REPUBLICS.—The table in section 502(b) of the Trade Act of 1974 (19 U.S.C. 2462(b)) is amended by striking out "Union of Soviet Socialist Republics".

(b) EXTENSION OF DUTY-FREE TREATMENT UNDER SYSTEM.—

(1) IN GENERAL.—Section 505(a) of the Trade Act of 1974 (19 U.S.C. 2465(a)) is amended by striking out "July 4, 1993" and inserting "September 30, 1994".

(2) RETROACTIVE APPLICATION FOR CERTAIN LIQUIDATIONS AND RELIQUIDATIONS.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the appropriate customs officer within 180 days after the date of the enactment of this Act, the entry—

(A) of any article to which duty-free treatment under title V of the Trade Act of 1974 would have applied if the entry had been made on July 4, 1993, and

(B) that was made after July 4, 1993, and before such date of enactment,

shall be liquidated or reliquidated as free of duty, and the Secretary of the Treasury shall refund any duty paid with respect to such entry. As used in this paragraph, the term "entry" includes a withdrawal from warehouse for consumption.

SEC. 13803. EXTENSION OF TRADE ADJUSTMENT ASSISTANCE PROGRAM.

(a) EXTENSION.—

(1) Section 285 of the Trade Act of 1974 (19 U.S.C. 2271, preceding note) is amended—

(A) by striking "No" and all that follows through "and no duty" in subsection (b) and inserting "No duty"; and

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

"(c) No assistance, vouchers, allowances, or other payments may be provided under chapter 2, and no technical assistance may be provided under chapter 3, after September 30, 1998.".

(2) Sections 245 and 256(b) of the Trade Act of 1974 (19 U.S.C. 2317 and 2346(b)) are each amended by striking "1988, 1989, 1990, 1991, 1992, and 1993" and inserting "1993, 1994, 1995, 1996, 1997, and 1998".

(b) TRAINING.—Section 236(a)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2296(a)(2)(A)) is amended by inserting before the end period ", except that for fiscal year 1997, the total amount of payments made under paragraph (1) shall not exceed $70,000,000".

PART II—CUSTOMS OFFICER PAY REFORM

SEC. 13811. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) IN GENERAL.—Section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267) is amended to read as follows:

"SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

"(a) OVERTIME PAY.—

"(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of

the basic pay of the officer. For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

"(2) SPECIAL PROVISIONS RELATING TO OVERTIME WORK ON CALLBACK BASIS.—

"(A) MINIMUM DURATION.—Any work for which compensation is authorized under paragraph (1) and for which the customs officer is required to return to the officer's place of work shall be treated as being not less than 2 hours in duration; but only if such work begins at least 1 hour after the end of any previous regularly scheduled work assignment and ends at least 1 hour before the beginning of the following regularly scheduled work assignment.

"(B) COMPENSATION FOR COMMUTING TIME.—

"(i) IN GENERAL.—Except as provided in clause (ii), in addition to the compensation authorized under paragraph (1) for work to which subparagraph (A) applies, the customs officer is entitled to be paid, as compensation for commuting time, an amount equal to 3 times the hourly rate of basic pay of the officer.

"(ii) EXCEPTION.—Compensation for commuting time is not payable under clause (i) if the work for which compensation is authorized under paragraph (1)—

"(I) does not commence within 16 hours of the customs officer's last regularly scheduled work assignment, or

"(II) commences within 2 hours of the next regularly scheduled work assignment of the customs officer.

"(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

"(1) NIGHT WORK DIFFERENTIAL.—

"(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

"(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

"(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.

"(2) SUNDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a Sunday that is not a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 50 percent of that basic rate.

"(3) HOLIDAY DIFFERENTIAL.—A customs officer who performs any regularly scheduled work on a holiday is entitled to pay for that work at the officer's hourly rate of basic pay plus premium pay amounting to 100 percent of that basic rate.

"(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose.

"(c) LIMITATIONS.—

"(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.

"(2) EXCLUSIVITY OF PAY UNDER THIS SECTION.—A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) for time worked may not receive pay or other compensation for that work under any other provision of law.

"(d) REGULATIONS.—The Secretary of the Treasury shall promulgate regulations to prevent—

"(1) abuse of callback work assignments and commuting time compensation authorized under subsection (a)(2); and

"(2) the disproportionately more frequent assignment of overtime work to customs officers who are near to retirement.

"(e) DEFINITIONS.—As used in this section:

"(1) The term 'customs officer' means an individual performing those functions specified by regulation by the Secretary of the Treasury for a customs inspector or canine enforcement officer. Such functions shall be consistent with such applicable standards as may be promulgated by the Office of Personnel Management.

"(2) The term 'holiday' means any day designated as a holiday under a Federal statute or Executive order.".

(b) NECESSARY CONFORMING AMENDMENTS.—

(1) Section 2 of the Act of June 3, 1944 (19 U.S.C. 1451a), is repealed.

(2) Section 450 of the Tariff Act of 1930 (19 U.S.C. 1450) is amended—

(A) by striking out "at night" in the section heading and inserting "during overtime hours";

(B) by striking out "at night" and inserting "during overtime hours"; and

(C) by inserting "aircraft," immediately before "vessel".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) apply to customs inspectional services provided on or after January 1, 1994.

SEC. 13812. ADDITIONAL BENEFITS FOR CUSTOMS OFFICERS.

(a) TREATMENT OF CERTAIN PAY FOR RETIREMENT PURPOSES.—Section 8331(3) of title 5, United States Code, is amended—

(1) by striking out "and" at the end of subparagraph (C);

(2) by striking out the semicolon at the end of subparagraph (D) and inserting "; and";

(3) by adding after subparagraph (D) the following:

"(E) with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory maximum in overtime pay for customs officers which is in effect for the year involved;"; and

(4) by striking out "subparagraphs (B), (C), and (D) of this paragraph," and inserting "subparagraphs (B), (C), (D), and (E) of this paragraph".

(b) FOREIGN LANGUAGE PROFICIENCY AWARDS.—Cash awards for foreign language proficiency may, under regulations prescribed by the Secretary of the Treasury, be paid to customs officers (as referred to in section 5(e)(1) of the Act of February 13, 1911) to the same extent and in the same manner as would be allowable under subchapter III of chapter 45 of title 5, United States Code, with respect to law enforcement officers (as defined by section 4521 of such title).

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a) AMENDMENTS.—The amendments made by subsection (a) take effect on January 1, 1994, and apply only with respect to service performed on or after such date.

(2) SUBSECTION (b).—Subsection (b) takes effect on January 1, 1994.

SEC. 13813. REIMBURSEMENTS FROM THE CUSTOMS USER FEE ACCOUNT.

Section 13031(f)(3) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)(3)) is amended—

(1) by amending clause (i) of subparagraph (A) to read as follows: "(i) in—

"(I) paying overtime compensation under section 5(a) of the Act of February 13, 1911,

"(II) paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the cost of the premium pay for that year calculated under such section 5(b) as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993 and the cost of such pay calculated under subchapter V of chapter 55 of title 5, United States Code,

"(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

"(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

"(V) paying foreign language proficiency awards under section 13812(b) of the Omnibus Budget Reconciliation Act of 1993, and";

(2) by inserting before the flush sentence appearing after clause (ii) of subparagraph (A) the following sentence: "The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i).";

(3) by striking out "except for costs described in subparagraph (A)(i) (I) and (II)," in subparagraph (B)(i); and

(4) by amending subparagraph (C)—

(A) by striking out "to fully reimburse inspectional overtime and preclearance costs" in clause (i) and inserting "to reimburse costs described in subparagraph (A)(i)"; and

(B) by inserting after clause (ii) of subparagraph (C) the following:

"(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between—

"(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267), as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

"(II) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 5 of the Act of February 13, 1911, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, and under section 8331(3) of title 5, United States Code, as amended by section 13812(a)(1) of such Act of 1993, plus the actual cost that is incurred during that fiscal year for foreign language proficiency awards under section 13812(b) of such Act of 1993,

and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the difference calculated under this clause, or $18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).".

CHAPTER 3—FOOD STAMP PROGRAM

SEC. 13901. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This chapter may be cited as the "Mickey Leland Childhood Hunger Relief Act".

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

CHAPTER 3—FOOD STAMP PROGRAM

Sec. 13901. Short title; table of contents.
Sec. 13902. References to Act.

SUBCHAPTER A—ENSURING ADEQUATE FOOD ASSISTANCE

Sec. 13911. Helping low-income high school students.
Sec. 13912. Families with high shelter expenses.
Sec. 13913. Resource exclusion for earned income tax credits.
Sec. 13914. Homeless families in transitional housing.
Sec. 13915. Households benefiting from general assistance vendor payments.
Sec. 13916. Continuing benefits to eligible households.
Sec. 13917. Improving the nutritional status of children in Puerto Rico.

SUBCHAPTER B—PROMOTING SELF-SUFFICIENCY

Sec. 13921. Child support payments to non-household members.
Sec. 13922. Improving access to employment and training activities.
Sec. 13923. Vehicles needed to seek and continue employment and for household transportation.
Sec. 13924. Vehicles necessary to carry fuel or water.
Sec. 13925. Testing resource accumulation.

SUBCHAPTER C—SIMPLIFYING THE PROVISION OF FOOD ASSISTANCE

Sec. 13931. Simplifying the household definition for households with children and others.
Sec. 13932. Eligibility of children of parents participating in drug or alcohol treatment programs.

SUBCHAPTER D—IMPROVING PROGRAM INTEGRITY

Sec. 13941. Additional means of claims collection.
Sec. 13942. Disqualification of recipients for trading firearms, ammunition, explosives, or controlled substances for coupons.
Sec. 13943. Increased cap for civil money penalty for trafficking in coupons.
Sec. 13944. Increased cap for civil money penalty for selling firearms, ammunition, explosives, or controlled substances for coupons.

SUBCHAPTER E—IMPROVING FOOD STAMP PROGRAM MANAGEMENT

Sec. 13951. Expedited claim collection; adjustments to error rate calculations.

SUBCHAPTER F—UNIFORM REIMBURSEMENT RATES

Sec. 13961. Uniform reimbursement rates.
Sec. 13962. Mandatory funding for nutrition programs.

SUBCHAPTER G—IMPLEMENTATION AND EFFECTIVE DATES

Sec. 13971. Implementation and effective dates.

SEC. 13902. REFERENCES TO THE ACT.

Except as otherwise provided in this chapter, references in this chapter to "the Act" and sections of the Act shall be deemed to be references to the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.) and the sections of such Act.

Subchapter A—Ensuring Adequate Food Assistance

SEC. 13911. HELPING LOW-INCOME HIGH SCHOOL STUDENTS.

Section 5(d)(7) of the Act (7 U.S.C. 2014(d)(7)) is amended by striking "who is a student, and who has not attained his eighteenth birthday" and inserting "who is an elementary or secondary school student, and who is 21 years of age or younger".

SEC. 13912. FAMILIES WITH HIGH SHELTER EXPENSES.

(a) COMPUTATION.—Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended—

(1) in the fourth sentence by striking ": Provided, That the amount" and all that follows through "June 30"; and

(2) in the fifth sentence by striking "under clause (2) of the preceding sentence".

(b) LIMITATIONS.—

(1) INTERIM CAPS.—Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended by inserting after the fourth sentence the following:

"In the 15-month period ending September 30, 1995, such excess shelter expense deduction shall not exceed $231 a month in the 48 contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $402, $330, $280, and $171 a month, respectively. In the 15-month period ending December 31, 1996, such excess shelter expense deduction shall not exceed $247 a month in the 48 contiguous States and the District of Columbia, and shall not exceed, in Alaska, Hawaii, Guam, and the Virgin Islands of the United States, $429, $353, $300, and $182 a month, respectively.".

(2) SUBSEQUENT REMOVAL OF CAP.—Section 5(e) of the Act (7 U.S.C. 2014(e)), as amended by paragraph (1), is amended by striking the fifth and sixth sentences.

SEC. 13913. RESOURCE EXCLUSION FOR EARNED INCOME TAX CREDITS.

Section 5(g)(3) of the Act (7 U.S.C. 2014(g)(3)) is amended by adding at the end the following: "The Secretary shall also exclude from financial resources any earned income tax credits received by any member of the household for a period of 12 months from receipt if such member was participating in the food stamp program at the time the credits were received and participated in such program continuously during the 12-month period.".

SEC. 13914. HOMELESS FAMILIES IN TRANSITIONAL HOUSING.

Section 5(k)(2)(F) of the Act (7 U.S.C. 2014(k)(2)(F)) is amended to read as follows:

"(F) housing assistance payments made to a third party on behalf of the household residing in transitional housing for the homeless;".

SEC. 13915. HOUSEHOLDS BENEFITING FROM GENERAL ASSISTANCE VENDOR PAYMENTS.

Section 5(k)(1)(B) of the Act (7 U.S.C. 2014(k)(1)(B)) is amended by striking "living expenses" and inserting "housing expenses, not including energy or utility-cost assistance,".

SEC. 13916. CONTINUING BENEFITS TO ELIGIBLE HOUSEHOLDS.

Section 8(c)(2)(B) of the Act (7 U.S.C. 2017(c)(2)(B)) is amended by inserting "of more than one month in" after "following any period".

SEC. 13917. IMPROVING THE NUTRITIONAL STATUS OF CHILDREN IN PUERTO RICO.

Section 19(a)(1)(A) of the Act (7 U.S.C. 2028(a)(1)(A)) is amended—

(1) by striking "$1,091,000,000" and inserting "$1,097,000,000"; and

(2) by striking "$1,133,000,000" and inserting "$1,143,000,000".

Subchapter B—Promoting Self-Sufficiency

SEC. 13921. CHILD SUPPORT PAYMENTS TO NON-HOUSEHOLD MEMBERS.

Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended by adding at the end the following:

"Before determining the excess shelter expense deduction, all households shall be entitled to a deduction for child support payments made by a household member to or for an individual who is not a member of the household if such household member was legally obligated to make such payments, except that the Secretary is authorized to prescribe by regulation the methods, including calculation on a retrospective basis, that State agencies shall use to determine the amount of the deduction for child support payments.".

SEC. 13922. IMPROVING ACCESS TO EMPLOYMENT AND TRAINING ACTIVITIES.

(a) DEPENDENT CARE DEDUCTION.—Section 5(e) of the Act (7 U.S.C. 2014(e)) is amended in clause (1) of the fourth sentence—

(1) by striking "$160 a month for each dependent" and inserting "$200 a month for each dependent child under 2 years of age and $175 a month for each other dependent"; and

(2) by striking ", regardless of the dependent's age,".

(b) REIMBURSEMENTS TO PARTICIPANTS IN EMPLOYMENT AND TRAINING PROGRAMS.—Section 6(d)(4)(I)(i)(II) of the Act (7 U.S.C. 2015(d)(4)(I)(i)(II)) is amended to read as follows:

"(II) the actual costs of such dependent care expenses that are determined by the State agency to be necessary for the participation of an individual in the program (other than an individual who is the caretaker relative of a dependent in a family receiving benefits under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) in a local area where an employment, training, or education program under title IV of such Act is in operation, or was in operation, on the date of enactment of the Hunger Prevention Act of 1988) up to any limit set by the State agency (which limit shall not be less than the limit for the dependent care deduction under section 5(e)), but in no event shall such payment or reimbursements exceed the applicable local market rate as determined by procedures consistent with any such determination under the Social Security Act. Individuals subject to the program under this paragraph may not be required to participate if dependent costs exceed the limit established by the State agency under this subclause or other actual costs exceed any limit established under subclause (I).".

(c) CONFORMING AMENDMENT.—Section 16(h)(3) of the Act (7 U.S.C. 2025(h)(3)) is amended by striking "representing $160 per month per dependent" and inserting "equal to the payment made under section 6(d)(4)(I)(i)(II) but not more than the applicable local market rate,".

SEC. 13923. VEHICLES NEEDED TO SEEK AND CONTINUE EMPLOYMENT AND FOR HOUSEHOLD TRANSPORTATION.

Section 5(g)(2) of the Act (7 U.S.C. 2014(g)(2)) is amended by striking "$4,500" and inserting the following:

"a level set by the Secretary, which shall be $4,500 through August 31, 1994, $4,550 beginning September 1, 1994, through September 30, 1995, $4,600 beginning October 1, 1995, through September 30, 1996, and $5,000 beginning October 1, 1996, as adjusted on such date and on each October 1 thereafter to reflect changes in the new car component of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics for the 12-month period ending on June 30 preceding the date of such adjustment and rounded to the nearest $50".

SEC. 13924. VEHICLES NECESSARY TO CARRY FUEL OR WATER.

Section 5(g)(2) of the Act (7 U.S.C. 2014(g)(2)) is amended by adding at the end the following:

"The Secretary shall exclude from financial resources the value of a vehicle that a household depends upon to carry fuel for heating or water for home use when such transported fuel or water is the primary source of fuel or water for the household.".

SEC. 13925. TESTING RESOURCE ACCUMULATION.

Section 17 of the Act (7 U.S.C. 2026) is amended by adding at the end the following:

"(k) The Secretary shall conduct, under such terms and conditions as the Secretary shall prescribe, for a period not to exceed 4 years, projects to test allowing not more than 11,000 eligible households, in the aggregate, to accumulate resources up to $10,000 each (which shall be excluded from consideration as a resource) for later expenditure for a purpose directly related to improving the education, training, or employability (including self-employment) of household members, for the purchase of a home for the household, for a change of the household's residence, or for making major repairs to the household's home.".

Subchapter C—Simplifying the Provision of Food Assistance

SEC. 13931. SIMPLIFYING THE HOUSEHOLD DEFINITION FOR HOUSEHOLDS WITH CHILDREN AND OTHERS.

Section 3(i) of the Act (7 U.S.C. 2012(i)) is amended—

(1) in the first sentence—

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

(B) by striking ", or (3) a parent of minor children and that parent's children" and all that follows through "parents and children, or siblings, who live together", and inserting the following:

". Spouses who live together, parents and their children 21 years of age or younger (who are not themselves parents living with their children or married and living with their spouses) who live together, and children (excluding foster children) under 18 years of age who live with and are under the parental control of a person other than their parent together with the person exercising parental control"; and

(C) striking ", unless one of" and all that follows through "disabled member"; and

(2) in the second sentence by striking "clause (1) of the preceding sentence" and inserting "the preceding sentences".

SEC. 13932. ELIGIBILITY OF CHILDREN OF PARENTS PARTICIPATING IN DRUG OR ALCOHOL ABUSE TREATMENT PROGRAMS.

Section 3 of the Act (7 U.S.C. 2012) is amended—

(1) in the last sentence of subsection (i) by inserting ", together with their children," after "narcotics addicts or alcoholics"; and

(2) in subsection (g)(5) by inserting ", and their children," after "or alcoholics".

Subchapter D—Improving Program Integrity

SEC. 13941. ADDITIONAL MEANS OF CLAIMS COLLECTION.

(a) SAFEGUARDS.—Section 11(e)(8) of the Act (7 U.S.C. 2020(e)(8)) is amended—

(1) by striking "and (B)" and inserting "(B)"; and

(2) by striking the semicolon at the end and inserting the following:

", and (C) such safeguards shall not prevent the use by, or disclosure of such information, to agencies of the Federal Government (including the United States Postal Service) for purposes of collecting the amount of an overissuance of coupons, as determined under section 13(b) of this Act and excluding claims arising from an error of the State agency, that has not been recovered pursuant to such section, from Federal pay (including salaries and pensions) as authorized pursuant to section 5514 of title 5 of the United States Code;".

(b) RECOVERY.—Section 13 of the Act (7 U.S.C. 2022) is amended by adding at the end the following:

"(d) The amount of an overissuance of coupons as determined under subsection (b) and except for claims arising from an error of the State agency, that has not been recovered pursuant to such subsection may be recovered from Federal pay (including salaries and pensions) as authorized by section 5514 of title 5 of the United States Code.".

SEC. 13942. DISQUALIFICATION OF RECIPIENTS FOR TRADING FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES FOR COUPONS.

Section 6(b)(1) of the Act (7 U.S.C. 2015(b)(1)) is amended by striking subdivisions (ii) and (iii) and inserting the following:

"(ii) for a period of 1 year upon—

"(I) the second occasion of any such determination; or

"(II) the first occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for coupons; and

"(iii) permanently upon—

"(I) the third occasion of any such determination;

"(II) the second occasion of a finding by a Federal, State, or local court of the trading of a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) for coupons; or

"(III) the first occasion of a finding by a Federal, State, or local court of the trading of firearms, ammunition, or explosives for coupons.".

SEC. 13943. INCREASED CAP FOR CIVIL MONEY PENALTY FOR TRAFFICKING IN COUPONS.

Section 12(b)(3)(B) of the Act (7 U.S.C. 2021(b)(3)(B)) is amended by striking "during a 2-year period" and inserting "for violations occurring during a single investigation".

SEC. 13944. INCREASED CAP FOR CIVIL MONEY PENALTY FOR SELLING FIREARMS, AMMUNITION, EXPLOSIVES, OR CONTROLLED SUBSTANCES FOR COUPONS.

Section 12(b)(3)(C) of the Act (7 U.S.C. 2021(b)(3)(C)) is amended—

(1) by striking "substances (as the term is" and inserting "substance (as"; and

(2) by striking "during a 2-year period" and inserting "for violations occurring during a single investigation".

Subchapter E—Improving Food Stamp Program Management

SEC. 13951. EXPEDITED CLAIM COLLECTION; ADJUSTMENTS TO ERROR RATE CALCULATIONS.

(a) COLLECTION AND DISPOSITION OF CLAIMS.—Section 13(a)(1) of the Act (7 U.S.C. 2022(a)(1)) is amended—

(1) in the fifth sentence by striking "(after a determination on any request for a waiver for good cause related to the claim has been made by the Secretary)"; and

(2) in the sixth sentence by striking "2 years" and inserting "1 year".

(b) ADMINISTRATIVE AND JUDICIAL REVIEW.—Section 14(a) of the Act (7 U.S.C. 2023(a)) is amended—

(1) in the sixth sentence by inserting after "pursuant to section 16(c)" the following: "(including determinations as to whether there is good cause for not imposing all or a portion of the penalty)"; and

(2) by striking the last sentence.

(c) QUALITY CONTROL SYSTEM.—Section 16(c) of the Act (7 U.S.C. 2025(c)) is amended—

(1) in paragraph (1)(C)—

(A) by striking "payment error tolerance level" and inserting "national performance measure"; and

(B) by striking "equal to" and all that follows through the first period and inserting the following: "equal to—

"(i) the product of—

"(I) the value of all allotments issued by the State agency in the fiscal year; times

"(II) the lesser of—

"(aa) the ratio of—

"(aaa) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year; to

"(bbb) the national performance measure for the fiscal year, or

"(bb) 1; times

"(III) the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year.";

(2) in paragraph (3)(A) by striking "60 days (or 90 days at the discretion of the Secretary)" and inserting "120 days";

(3) in paragraph (6) by striking "shall be used to establish" and all that follows through "level" the last place it appears; and

(4) by adding at the end the following:

"(8)(A) This paragraph applies to the determination of whether a payment is due by a State agency for a fiscal year under paragraph (1)(C).

"(B) Not later than 180 days after the end of the fiscal year, the case review and all arbitrations of State-Federal difference cases shall be completed.

"(C) Not later than 30 days thereafter, the Secretary shall—

"(i) determine final error rates, the national average payment error rate, and the amounts of payment claimed against State agencies; and

"(ii) notify State agencies of the payment claims.

"(D) A State agency desiring to appeal a payment claim determined under subparagraph (C) shall submit to an administrative law judge—

"(i) a notice of appeal, not later than 10 days after receiving a notice of the claim; and

"(ii) evidence in support of the appeal of the State agency, not later than 60 days after receiving a notice of the claim.

"(E) Not later than 60 days after a State agency submits evidence in support of the appeal, the Secretary shall submit responsive evidence to the administrative law judge to the extent such evidence exists.

"(F) Not later than 30 days after the Secretary submits responsive evidence, the State agency shall submit rebuttal evidence to the administrative law judge to the extent such evidence exists.

"(G) The administrative law judge, after an evidentiary hearing, shall decide the appeal—

"(i) not later than 60 days after receipt of rebuttal evidence submitted by the State agency; or

"(ii) if the State agency does not submit rebuttal evidence, not later than 90 days after the State agency submits the notice of appeal and evidence in support of the appeal.

"(H) In considering a claim under this paragraph, the administrative law judge shall consider all grounds for denying the claim, in whole or in part, including the contention of a State agency that the claim should be waived, in whole or in part, for good cause.

"(I) The deadlines in subparagraphs (D), (E), (F), and (G) shall be extended by the administrative law judge for cause shown.

"(9) As used in this subsection, the term 'good cause' includes—

"(A) a natural disaster or civil disorder that adversely affects food stamp program operations;

"(B) a strike by employees of a State agency who are necessary for the determination of eligibility and processing of case changes under the food stamp program;

"(C) a significant growth in food stamp caseload in a State prior to or during a fiscal year, such as a 15 percent growth in caseload;

"(D) a change in the food stamp program or other Federal or State program that has a substantial adverse impact on the management of the food stamp program of a State; and

"(E) a significant circumstance beyond the control of the State agency.".

Subchapter F—Uniform Reimbursement Rates

SEC. 13961. UNIFORM REIMBURSEMENT RATES.

Section 16 of the Act (7 U.S.C. 2025) is amended—

(1) in the first sentence of subsection (a)—

(A) by striking "and (5)" and inserting "(5)";

(B) by inserting before ": Provided," the following: ", (6) automated data processing and information retrieval systems subject to the conditions set forth in subsection (g), (7) food stamp program investigations and prosecutions, and (8) implementing and operating the immigration status verification system established under section 1137(d) of the Social Security Act (42 U.S.C. 1320b–7(d))"; and

(C) in the proviso, by striking "authorized to pay each State agency an amount not less than 75 per centum of the costs of State food stamp program investigations and prosecutions, and is further";

(2) in subsection (g) by striking "an amount equal to 63 percent effective on October 1, 1991, of" and inserting "the amount provided under subsection (a)(6) for";

(3) by striking subsection (j); and

(4) by redesignating subsection (k) as subsection (j).

SEC. 13962. MANDATORY FUNDING FOR NUTRITION PROGRAMS.

Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall pay to the Secretary of Agriculture $230,000 for each of the fiscal years 1994, 1995, and 1996 for the purchase, processing, and distribution of additional commodities which are relatively lower in saturated fats, are a good source of calcium, are relatively low in sodium and sugars, or are high in iron, and which are a good source of protein or other valuable nutrients. Such commodities shall be easy for low-income families to use, be not easily spoilable, and be easy to handle. Such commodities shall include low-sodium peanut butters, low-fat or low-sodium cheeses, lower fat canned meats, fruits and vegetables, or other similar foods. The Secretary shall select 2 States to carry out this 3-year required effort to improve the health of low-income individuals and to test the acceptability by, ease of storage and preparation by, and impact on low-income participants in the emergency food assistance program established under the Emergency Food Assistance Act of 1983 (7 U.S.C. 612 note). These additional commodities shall be provided to each such State and such State shall be entitled to receive such commodities during each such fiscal year 1994, 1995, and 1996 and in addition to any commodities provided under other Federal programs. Out of $230,000 required to be provided each year to the Secretary of Agriculture by the Secretary of the Treasury, $220,000 ($110,000 per State) shall be used by the Secretary of Agriculture to purchase, process and distribute the commodities to such States and $10,000 ($5,000 per State) shall be provided to such States for State and local payments for costs associated with the distribution of commodities by emergency feeding organizations in such States.

Subchapter G—Implementation and Effective Dates

SEC. 13971. IMPLEMENTATION AND EFFECTIVE DATES.

(a) GENERAL EFFECTIVE DATE AND IMPLEMENTATION.—Except as provided in subsection (b), this chapter and the amendments made by this chapter shall take effect, and shall be implemented beginning on, October 1, 1993.

(b) SPECIAL EFFECTIVE DATES AND IMPLEMENTATION.—(1)(A) Except as provided in subparagraph (B), section 13951 shall take effect on October 1, 1991.

(B) The amendment made by section 13951(c)(2) shall take effect on October 1, 1992.

(2)(A) Except as provided in subparagraph (B), the amendments made by section 13961 shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

(B) In the case of a State whose legislature meet biennially, and does not have a regular session scheduled in calendar year 1994, and that demonstrates to the satisfaction of the Secretary of Agriculture that there is no mechanism, under the constitution and laws of the State, for appropriating the additional funds required by the amendments made by this section before the next such regular legislative session, the Secretary may delay the effective date of all or part of the amendments made by section 13961 until the beginning date of a calendar quarter that is not later than the first calendar quarter beginning after the close of the first regular session of the State legislature after the date of enactment of this Act.

(3) Sections 13912(a) and 13912(b)(1) shall take effect, and shall be implemented beginning on, July 1, 1994.

(4) Sections 13911, 13913, 13914, 13915, 13916, 13922, 13924, 13931, 13932, and 13942 shall take effect, and shall be implemented beginning on, September 1, 1994.

(5)(A) Except as provided in subparagraph (B), section 13921 shall take effect, and shall be implemented beginning on, September 1, 1994.

(B) State agencies shall implement the amendment made by section 13921 not later than October 1, 1995.

(6) Section 13912(b)(2) shall take effect, and shall be implemented beginning on, January 1, 1997.

CHAPTER 4—TIMBER SALES

SEC. 13981. TABLE OF CONTENTS.

The table of contents of this chapter is as follows:

CHAPTER 4—TIMBER SALES

Sec. 13981. Table of contents.
Sec. 13982. Sharing of forest service timber sale receipts.
Sec. 13983. Sharing of bureau of land management timber sale receipts.

SEC. 13982. SHARING OF FOREST SERVICE TIMBER SALE RECEIPTS.

(a) DEFINITIONS.—As used in this section:

(1) APPLICABLE PERCENTAGE.—The term "applicable percentage" means—

(A) for fiscal year 1994, 85 percent; and

(B) for each of fiscal years 1995 through 2003, 3 percentage points less than the applicable percentage for the preceding fiscal year.

(2) 25-PERCENT PAYMENTS TO STATES.—The term "25-percent payments to States" means the 25 percent payments authorized by the Act of May 23, 1908 (35 Stat. 260, chapter 192; 16 U.S.C. 500) for the States of Washington, Oregon, and California for the benefit of counties in which national forests are situated and that are affected by decisions related to the northern spotted owl.

(3) SPECIAL PAYMENT AMOUNT.—The term "special payment amount" means the amount determined by multiplying—

(A) the applicable percentage; by

(B) the annual average of the 25-percent payments to States made to a county pursuant to such Acts during the 5-year period consisting of fiscal years 1986 through 1990.

(b) PAYMENTS.—

(1) IN GENERAL.—In lieu of making the 25-percent payments to States, the Secretary of the Treasury shall make payments to States, for the benefit of counties, that are eligible to receive the 25-percent payments to States as of the date of enactment of this Act in accordance with paragraph (2).

(2) AMOUNT OF PAYMENTS.—

(A) FISCAL YEARS 1994 THROUGH 1998.—For each of fiscal years 1994 through 1998, the payment to each State for the benefit of each county in the State referred to in paragraph (1) shall be equal to the sum of the special payment amounts for each county in the State.

(B) FISCAL YEARS 1999 THROUGH 2003.—

(i) IN GENERAL.—For each of fiscal years 1999 through 2003, the payment to each State for the benefit of each county in the State referred to in paragraph (1) shall be equal to the sum of the payments for each county in the State as calculated under clause (ii).

(ii) PAYMENTS FOR COUNTIES.—The payment for each county referred to in clause (i) shall be equal to the greater of—

(I) the special payment amount for the county; or

(II) the share of the 25-percent payments to States allocable to the county.

SEC. 13983. SHARING OF BUREAU OF LAND MANAGEMENT TIMBER SALE RECEIPTS.

(a) DEFINITIONS.—As used in this section:

(1) APPLICABLE PERCENTAGE.—The term "applicable percentage" means—

(A) for fiscal year 1994, 85 percent; and

(B) for each of fiscal years 1995 through 2003, 3 percentage points less than the applicable percentage for the preceding fiscal year.

(2) 50-PERCENT PAYMENTS TO COUNTIES.—The term "50-percent payments to counties" means the 50-percent share paid to counties in the States of Oregon and California pursuant to title II of the Act of August 28, 1937 (50 Stat. 875, chapter 876; 43 U.S.C. 1181f), and the payments made to counties pursuant to the Act of May 24, 1939 (53 Stat. 753, chapter 144; 43 U.S.C. 1181f–1 et seq.).

(3) SPECIAL PAYMENT AMOUNT.—The term "special payment amount" means the amount determined by multiplying—

(A) the applicable percentage; by

(B) the annual average of the 50-percent payments to counties made to a county pursuant to such Acts during the 5-year period consisting of fiscal years 1986 through 1990.

(b) PAYMENTS.—

(1) IN GENERAL.—In lieu of making the 50-percent payments to counties, the Secretary of the Treasury shall make payments to counties that are eligible to receive the 50-percent payments as of the date of enactment of this Act in accordance with paragraph (2).

(2) AMOUNT OF PAYMENTS.—

(A) FISCAL YEARS 1994 THROUGH 1998.—For each of fiscal years 1994 through 1998, the Secretary of the Treasury shall pay to each county referred to in paragraph (1) the special payment amount.

(B) FISCAL YEARS 1999 THROUGH 2003.—For each of fiscal years 1999 through 2003, the Secretary of the Treasury shall pay to each county referred to in paragraph (1) the greater of—

(i) the special payment amount; or

(ii) the share of the 50-percent payments to counties allocable to the county.

TITLE XIV—BUDGET PROCESS PROVISIONS

SEC. 14001. PURPOSE.

The Congress declares that it is essential to—

(1) preserve the deficit reduction achieved by this Act;

(2) extend the system of discretionary spending limits for the single discretionary category set forth in section 601 of the Congressional Budget Act of 1974;

(3) extend the pay-as-you-go enforcement system; and

(4) prohibit the consideration of direct spending or receipts legislation that would decrease the pay-as-you-go surplus achieved by this Act and created under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

SEC. 14002. DISCRETIONARY SPENDING LIMITS.

(a) DEFINITION OF "DISCRETIONARY SPENDING LIMIT".—Section 601(a)(2) of the Congressional Budget Act of 1974 is amended—

(1) in subparagraph (D) by striking the word "and"; and

(2) by inserting after subparagraph (E) the following:

"and

"(F) with respect to fiscal years 1996, 1997, and 1998, for the discretionary category, the amounts set forth for those years in section 12(b)(1) of House Concurrent Resolution 64 (One Hundred Third Congress);".

(b) POINT OF ORDER IN THE SENATE.—Section 601(b)(1) of the Congressional Budget Act of 1974 is amended to read as follows:

"(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 for fiscal year 1995, 1996, 1997, or 1998 (or amendment, motion, or conference report on such a resolution) that would exceed any of the discretionary spending limits in this section.".

(c) CONFORMING AMENDMENTS.—(1) Section 251 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(A) in subsection (a) by striking "FISCAL YEARS 1991–1995 ENFORCEMENT.—" and inserting "FISCAL YEARS 1991–1998 ENFORCEMENT.—";

(B) in subsection (b)(1)—

(i) in the matter before subparagraph (A), by—

(I) striking "When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, or 1995" and inserting "When the President submits the budget under section 1105(a) of title 31, United States Code, for budget year 1992, 1993, 1994, 1995, 1996, 1997, or 1998"; and

(II) striking "the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1995" and inserting "the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear through 1998";

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

"(iii) For a budget submitted for budget year 1996, 1997, or 1998, the adjustments shall be those necessary to reflect changes in inflation estimates since those of March 31, 1993, set forth on page 46 of House Conference Report 103–48.";

(iii) in the matter before subparagraph (A) in paragraph (2) by—

(I) striking "When OMB submits a sequestration report under section 254 (g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995" and inserting "When OMB submits a sequestration report under section 254 (g) or (h) for fiscal year 1991, 1992, 1993, 1994, 1995, 1996, 1997, or 1998"; and

(II) striking "for the fiscal year and each succeeding year through 1995," and inserting "for the fiscal year and each succeeding year through 1998,";

(iv) in paragraph (2)(D)(i), by striking "for fiscal year 1991, 1992, 1993, 1994, or 1995," and inserting "for any fiscal year,";

(v) in paragraph (2)(E), by—

(I) striking the final word "and" in subparagraph (ii); and

(II) inserting before the final period the following:

"; and

"(iv) if, for fiscal years 1994, 1995, 1996, 1997, and 1998, the amount of new budget authority provided in appropriation Acts exceeds the discretionary spending limit on new budget authority due to technical estimates made by the director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for any one fiscal year) equal to 0.1 percent of the adjusted discretionary spending limit on new budget authority for that fiscal year"; and

(vi) in paragraph (2)(F), by inserting immediately before the final period the following: ", and not to exceed 0.5 percent of the adjusted discretionary spending limit on outlays for the fiscal year in fiscal year 1996, 1997, or 1998".

(2) REPORTS.—Sections 254(d)(2) and 254(g)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 are each amended by striking "1995" and inserting "1998".

(3) EXPIRATION.—(A) Notwithstanding section 275(b) of the Balanced Budget and Emergency Deficit Control Act of 1985, sections 250, 251, 252, and 254 through 258C of that Act shall expire on September 30, 1998.

(B) Section 607 of the Congressional Budget Act of 1974 is amended by striking "shall apply to fiscal years 1991 to 1995" and inserting "shall apply to fiscal years 1991 to 1998".

SEC. 14003. ENFORCING PAY-AS-YOU-GO.

(a) Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended—

(1) in subsection (a), by striking "FISCAL YEAR 1992–1995 ENFORCEMENT." and inserting "FISCAL YEAR 1992–1998 ENFORCEMENT.";

(2) in subsection (d), by striking "estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995" both places that it appears and inserting "estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1998" both places; and

(3) in subsection (e), by striking "for fiscal year 1991, 1992, 1993, 1994, or 1995," and inserting "for any fiscal year from 1991 through 1998,".

(b) Section 254(g)(3) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by striking "1995" and inserting "1998".

(c) Upon enactment of this Act, the director of the Office of Management and Budget shall reduce the balances of direct spending and receipts legislation applicable to each fiscal year under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 by an amount equal to the net deficit reduction achieved through the enactment in this Act of direct spending and receipts legislation for that year.

SEC. 14004. EXERCISE OF RULE-MAKING POWERS.

The Congress enacts the provisions of this part—

(1) as an exercise of the rule-making power of the Senate and the House of Representatives, respectively, and as such these provisions shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

And the Senate agree to the same.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

MARTIN OLAV SABO,
RICHARD GEPHARDT,

As additional conferees from the Committee on the Budget, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

CHARLIE STENHOLM,
EARL POMEROY,
DALE E. KILDEE,

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

LOUISE SLAUGHTER,
ALAN MOLLOHAN,
BART GORDON,

As additional conferees from the Committee on the Budget, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

BARNEY FRANK,
LUCIEN E. BLACKWELL,
LYNN C. WOOLSEY,
RICK LAZIO,

As additional conferees from the Committee on the Budget, for consideration of title IV and sections 5117, 13233, 13263, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

DALE E. KILDEE,
DAVID E. PRICE,
BARBARA B. KENNELLY,

As additional conferees from the Committee on the Budget, for consideration of sections 5000–187, 13234, 13242, 13264, 13400–571, and 14411 of the House bill, and sections 7000–501, 7601(c), 7801, 7802(b) and (c), 7904, 7951, 12101–02, and 12321 of the Senate amendment, and modifications committed to conference:

TONY BEILENSON,
LOUISE SLAUGHTER,
HARRY JOHNSTON,

As additional conferees from the Committee on the Budget, for consideration of sections 5200–44, 5301, and 9006–07 of the House bill, and sections 4001–11 and 6001 of the Senate amendment, and modifications committed to conference:

JOHN BRYANT,
WILLIAM J. COYNE,
JERRY F. COSTELLO,

As additional conferees from the Committee on the Budget, for consideration of title VII and that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7) and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, and section 5187(b) of the House bill, and title XI, section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, sections 12045(7), 12047(a), and 12105 of the Senate amendment, and modifications committed to conference:

MICHAEL A. ANDREWS,
ALAN MOLLOHAN,
LYNN C. WOOLSEY,

As additional conferees from the Committee on the Budget, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

BARBARA B. KENNELY,
JERRY F. COSTELLO,
PATSY T. MINK,

As additional conferees from the Committee on the Budget, for consideration of title IX and sections 1402, 5301, and 11002 of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

JOHN BRYANT,
PATSY T. MINK,
LUCIEN E. BLACKWELL,

As additional conferees from the Committee on the Budget, for consideration of titles VI and X and sections 13702 and 13704 of the House bill, and title IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

HOWARD L. BERMAN,
MICHAEL A. ANDREWS,
BART GORDON,

Provided, that for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, Mr. Pomeroy is appointed in lieu of Mr. Berman; Messrs, Cox and Smith of Michigan are appointed in lieu of Messrs. Kolbe and Miller of Florida.

EARL POMEROY,

As additional conferees from the Committee on the Budget, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

BOB WISE,
JERRY F. COSTELLO,
HOWARD L. BERMAN,

As additional conferees from the Committee on the Budget, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901(b) and (c) of the Senate amendment, and modifications committed to conference:

DAVID E. PRICE,
WILLIAM J. COYNE,
HARRY JOHNSTON,

As additional conferees from the Committee on the Budget, for consideration of sections 4032, 4033(3), 8002, 9004, 11001, 12004(b), 13001–20, 13201–84, 13601–02, and 13604–705 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7433, 7601–03, 7701–02, 7901(a) and (c), 7902–03, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, 12055, 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

WILLIAM J. COYNE,
TONY BEILENSON,

As additional conferees from the Committee on the Budget, for consideration of title XV and XVI, section 1405(c) of the House bill, those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, section 4029, those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, 9008, and 13560 of the House bill, and title XIV, that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

CHARLIE STENHOLM,
BOB WISE,
BARNEY FRANK,

As additional conferees from the Committee on Agriculture, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

KIKA DE LA GARZA,
CHARLIE ROSE,
DAN GLICKMAN,
HAROLD L. VOLKMER,
TIMOTHY J. PENNY,

As additional conferees from the Committee on Armed Services, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

RONALD V. DELLUMS,
G.V. MONTGOMERY,
PAT SCHROEDER,
EARL HUTTO,
IKE SKELTON,

Provided, for consideration of section 12009 of the House bill, and section 13003 of the Senate amendment, Mr. McCurdy is appointed in lieu of Mr. Montgomery, and Mr. Hunter is appointed in lieu of Mr. Stump.

DAVE MCCURDY,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

HENRY B. GONZALEZ,
STEVE NEAL,
JOHN J. LAFALCE,
BRUCE F. VENTO,
CHARLES SCHUMER,
JAMES A. LEACH,
MARGE ROUKEMA,

As additional conferees from the Committee on Education and Labor, for consideration of title IV and sections 5117, 13233, 13263–64, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM L. CLAY,
GEORGE MILLER,
AUSTIN J. MURPHY,
PAT WILLIAMS,

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

WILLIAM F. GOODLING,
THOMAS E. PETRI,
(Except for sections 5117, 13233, 13263, 13264, 13270, and 13420, of the House bill and sections 7904 and 12101 of the Senate amendment)

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

MARGE ROUKEMA,

As additional conferees from the Committee on Energy and Commerce, for consideration of [communications] sections 5200–44 of the House bill, and sections 4001–11 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
EDWARD J. MARKEY,
BILLY TAUZIN,
THOMAS J. MANTON,
LYNN SCHENK,
CARLOS J. MOORHEAD,
JACK FIELDS,
MICHAEL G. OXLEY,

As additional conferees from the Committee on Energy and Commerce, for consideration of [health] sections 5000–5091, 5100–87, 13010 (a) and (c), 13413(e), 13234, 13242, 13264, 13431–13571, and 14411 of the House bill, and sections 1105(b), 7000, 7201–7501, 7601(c), 7801, 7802 (b) and (c), 7904, 7951, 12101–12205, and 12321 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
EDOLPHUS TOWNS,
JIM SLATTERY,

As additional conferees from the Committee on Energy and Commerce, for consideration of [energy] sections 5301 and 9006–07 of the House bill, and section 6001 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
CRAIG A. WASHINGTON,
MIKE KREIDLER,
AL SWIFT,
CARLOS J. MOORHEAD,
MIKE BILIRAKIS,
JOE BARTON,

As additional conferees from the Committee on Foreign Affairs, for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

LEE H. HAMILTON,
HOWARD L. BERMAN,
ENI FALEOMAVAEGA,
M.G. MARTINEZ,
ROBERT E. ANDREWS,
BENJAMIN A. GILMAN,
OLYMPIA SNOWE,
HENRY J. HYDE,

As additional conferees from the Committee on Government Operations, for consideration of section 1405(c) of the House bill, and that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
GLENN ENGLISH,
COLLINS C. PETERSON,
TOM BARRETT,
CRAIG A. WASHINGTON,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, and sections 4029 and 13560 of the House bill, and those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
CARDISS COLLINS,
EDOLPHUS TOWNS,
HENRY A. WAXMAN,
JOHN M. SPRATT, Jr.,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
JOHN M. SPRATT, Jr.,
MIKE SYNAR,
DONALD M. PAYNE,

As additional conferees from the Committee on Government Operations, for consideration of section 9008 of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
CARDISS COLLINS,
JOHN M. SPRATT, Jr.,
MIKE SYNAR,
CRAIG A. WASHINGTON,

As additional conferees from the Committee on Government Operations, for consideration of title XVI and sections 15001–111, 15206, and 15301 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
JOHN M. SPRATT, Jr.,
HENRY A. WAXMAN,
CARDISS COLLINS,
MIKE SYNAR,

As additional conferees from the Committee on the Judiciary, for consideration of title

VII of the House bill, and title XI and section 12047(a) of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
WILLIAM J. HUGHES,
DON EDWARDS,
JOHN CONYERS, Jr.,
MIKE SYNAR,
CARLOS J. MOORHEAD,
HOWARD COBLE,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7), and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, of the House bill, and section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, and section 12045(7) of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS, Jr.,
MIKE SYNAR,
PAT SCHROEDER,
HOWARD L. BERMAN,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of section 5187(b) of the House bill, and section 12105 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN BRYANT,
DAN GLICKMAN,
BARNEY FRANK,
HOWARD L. BERMAN,
GEORGE W. GEKAS,
JIM RAMSTAD,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

GERRY E. STUDDS,
BILLY TAUZIN,
WILLIAM O. LIPINSKI,
SOLOMON P. ORTIZ,
THOMAS J. MANTON,
JACK FIELDS,

Provided, for consideration of title VIII of the House bill, and section 4051 of the Senate amendment, Mr. Inhofe is appointed: for consideration of section 9004 of the House bill, Mr. Saxton is appointed.

JAMES M. INHOFE,
JIM SAXTON,

As additional conferees from the Committee on Natural Resources, for consideration of title IX and sections 1402, 5301, and 11002, of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

GEORGE MILLER,
BRUCE F. VENTO,
RON DE LUGO,
RICHARD LEHMAN,
BILL RICHARDSON,

As additional conferees from the Committee on Post Office and Civil Service, for consideration of title X and sections 13702 and 13704 of the House bill, and titles IX and X and sections 12103-04 of the Senate amendment, and modifications committed to conference:

WILLIAM L. CLAY,
PAT SCHROEDER,
FRANK MCCLOSKEY,
ELEANOR H. NORTON,
BARBARA-ROSE COLLINS,
CONSTANCE MORELLA,

As additional conferees from the Committee on Public Works and Transportation, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

NORMAN Y. MINETA,
JIM OBERSTAR,
DOUGLAS APPLEGATE,
NICK J. RAHALL II,
ROBERT A BORSKI,
BUD SHUSTER,
BILL CLINGER,
SHERWOOD L. BOEHLERT,

As additional conferees from the Committee on Rules, for consideration of title XVI and sections 13560, 13605, and 15201-15212 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
TONY BEILENSON,
MARTIN FROST,
DAVID BONIOR,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901 (b) and (c) of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
LANE EVANS,
J. ROY ROWLAND,
JIM SLATTERY,
GEORGE E. SANGMEISTER,
BOB STUMP,

As additional conferees from the Committee on Ways and Means, for consideration of title XIV (except sections 14402(d) and 14411) and section 13603 of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13001-20 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
ANDREW JACOBS, Jr.,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13201-84 of the House bill, and sections 7601-03 and 7802 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
HAROLD FORD,

As additional conferees from the Committee on Ways and Means, for consideration of title XVI of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
PETE STARK,

As additional conferees from the Committee on Ways and Means, for consideration of sections 4032, 4033(3), 5000-91, 5117, those portions of section 5181 which add new sections 2161 and 2173(b) to the Public Health Service Act, sections 5181(b), 8002, 9004, 11001, 12004(b), 13400-571, 13601-02, 13604-705, 14402(d), 14411, and 15301 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7000-305, 7433, 7701-02, 7901(a) and (c), 7902-04, 7950-54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, sections 12055, 12101-02, that portion of section 12202 which adds a new section 2148(b) to the Public Health Service Act, sections 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,

Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
PAUL SARBANES,

From the Committee on the Budget:

JIM SASSER,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSTON,

From the Committee on Commerce, Science, and Transportation:

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
JOHN BREAUX,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,

From the Committee on Environment and Pubic Works:

MAX BAUCUS,
DANIEL PATRICK MOYNIHAN,

From the Committee on Finance:

DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
BILL BRADLEY,
GEORGE J. MITCHELL,
DAVID PRYOR,
DON RIEGLE,
JOHN D. ROCKEFELLER IV,

From the Committee on Foreign Relations:

CLAIBORNE PELL,
JOHN F. KERRY,

From the Committee on Governmental Affairs:

JOHN GLENN,
CARL LEVIN,
DAVID PRYOR,

From the Committee on the Judiciary:

DENNIS DECONCINI,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
CHRISTOPHER J. DODD,
PAUL SIMON,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PAUL WELLSTONE,
HARRIS WOFFORD,

From the Committee on Veterans' Affairs:

JAY ROCKEFELLER,
DENNIS DECONCINI,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The difference between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

OVERVIEW

The Conference Agreement on the Omnibus Budget Reconciliation Act of 1993 is a carefully crafted, rational and constructive compromise which implements the basic objectives of both the House and the Senate bills. It embodies the President's economic program and meets the objectives of the House and Senate conferees. It confirms and extends those budget process changes enacted in the Budget Enforcement Act of 1990 which have exercised effective discipline over the Federal budget.

In February of this year, President Clinton proposed to move the American economy in a new direction. The Congressional budget resolution passed in March adopted and strengthened the President's budget proposal. By passing this conference agreement, the Congress will fulfill the promise of the budget resolution. This conference agreement, unlike the substitute bills that were offered in both Houses, will:

Reduce Federal deficits by approximately $500 billion over the five years 1994–1998, with more than half the reduction coming from spending cuts and the remainder from tax increases;

Restore fairness to our tax system;

Shift the nation's priorities towards investment.

With the passage of this conference agreement, America will begin to move to a new path of lower deficits and higher wages and standards of living for America's working families.

The economic policies of the 1980's and early 1990's were based on lower taxes for the wealthy, large government deficits, and high interest rates. The results were that:

The income and living standards of the American worker stagnated. From 1980 to 1992, the weekly earnings of the typical full-time worker rose less than 0.1 percent per year in real terms (after removing the effects of inflation).

We borrowed nearly a trillion dollars (net) from foreigners. At the end of 1980, U.S. holdings of assets abroad exceeded foreign holdings here by $393 billion; at the end of 1992, foreign assets here exceeded our assets abroad by $521 billion.

Consequently, our international trade balance deteriorated, from a current-account *surplus* of $2 billion in 1980 to a deficit that peaked at $167 billion in 1987 and was still $66 billion in 1992.

The economic gains that took place benefited the wealthy most; the distribution of income and wealth became much more unequal.

These policies—and the results they produced—were repudiated by the American people in the 1992 election. This conference agreement represents the response of the President and the Congress, working together, to the need for change.

The expectation that a deficit reduction plan such as this would become law has already laid the groundwork for a better future. Long-term interest rates have come down about 1 percentage point since November 1992. In recent testimony to the Congress, Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, confirmed that the belief by capital markets in a deficit-reduction package has "tilted long-term rates down in the last several months." Already this decline has benefited consumers and businesses. For example, a reduction of 1 percentage point in the mortgage interest rate lowers the *monthly* payment on the mortgage on a typical home by about $70.

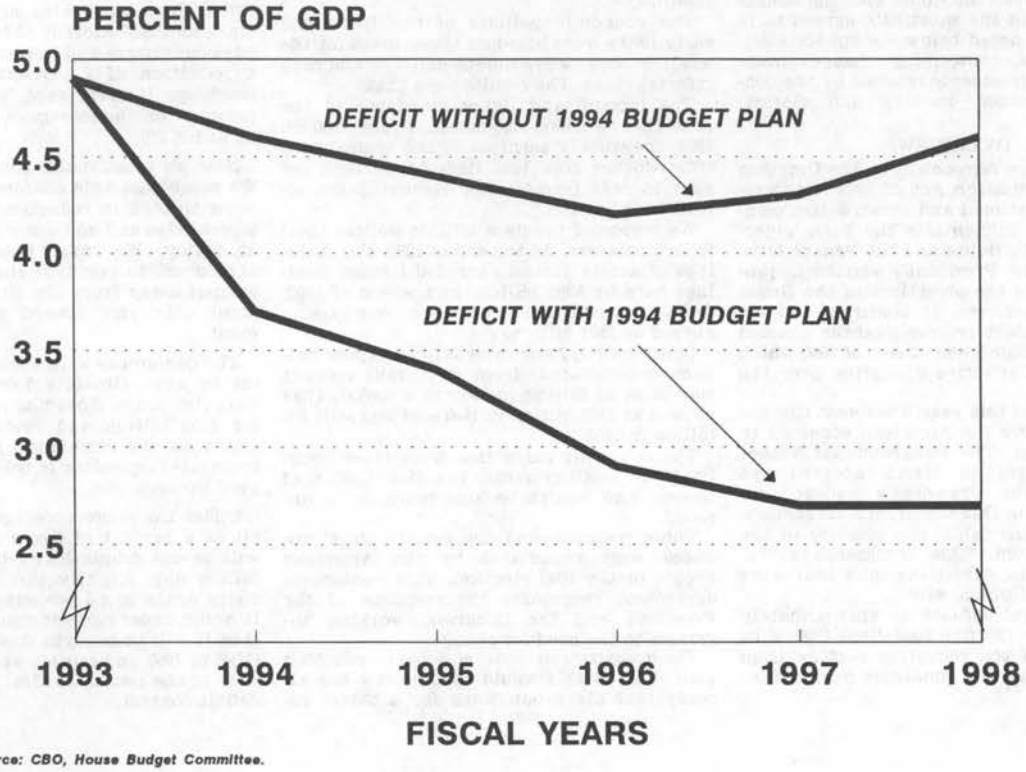
Now we must make good on the promise. We must pass this conference agreement in order to lock in reductions in long-term interest rates and end uncertainty about budget policy. We must pass this conference agreement to begin to channel our nation's savings away from the financing of government debt and toward productive investment.

The conference agreement reduces the deficit by approximately $500 billion over the next five years. Spending reductions account for $255 billion and revenue increases account for the remainder. Discretionary (appropriated) spending is below 1993 levels each year through 1998.

Under the conference agreement, the deficit as a percent of Gross Domestic Product will be cut dramatically by 1998. Instead of falling only slightly through 1996 and then rising again to 4.6 percent of GDP in 1998, as it would under current spending and tax policies, it will be brought down to 2.7 percent of GDP in 1997 and remain at that level in 1998. This is the necessary first step in long-term deficit control.

Figure 1

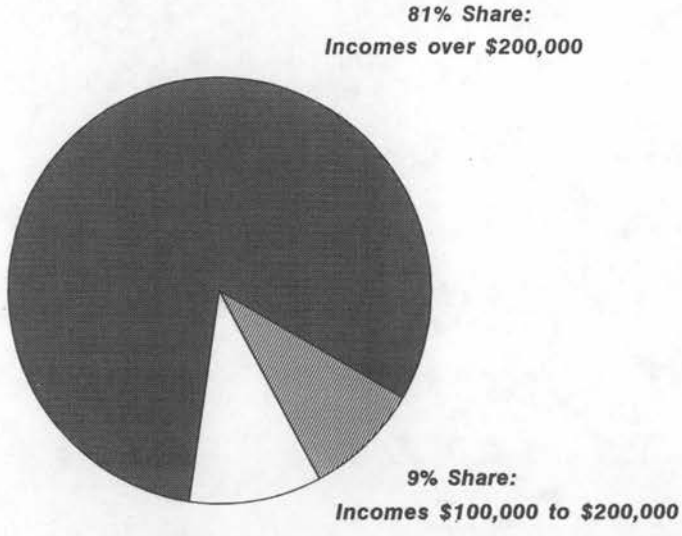
DEFICIT REDUCTION FROM THE 5-YEAR ECONOMIC PACKAGE



Source: CBO, House Budget Committee.

Figure 2

DISTRIBUTION OF HIGHER TAXES UNDER BUDGET PLAN



Source: CBO.

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

Every policy change in this conference agreement is specific and enforceable. It changes entitlement law, changes tax law, and establishes new caps on discretionary spending to ensure that appropriations do not exceed the levels established in the budget resolution.

This conference agreement will improve in important ways the lives of all Americans:

It reduces the huge drain on the nation's savings pool that the deficit represents. Every dollar of deficit reduction means either a dollar more for *private* investment in housing, plant, and equipment, or a dollar not borrowed overseas. Increases in private investment are required to raise standards of living and give American workers more tools to improve their productivity and earnings. Reduction in borrowing overseas means more jobs kept in the United States.

The conference agreement includes $48 billion in tax incentives for investment, jobs, and rewarding work, aimed specifically at small business, distressed communities and the working poor.

This conference agreement specifically mandates—and finances—increases in childhood immunization and family preservation and support. For immunization, $500 million over five years is included to provide free vaccines to children who have no health insurance coverage or are eligible for Medicaid, with an additional $85 million to build vaccine stockpiles.

Other Presidential programs for investment in people and in the physical infrastructure of our country can be financed by redirecting spending within the overall caps on discretionary spending.

More than half of the deficit reduction is made on the spending side. The conference agreement mandates $88 billion in net entitlement cuts. The caps on discretionary spending will reduce outlays by $102 billion compared with a continuation of current policies. Debt service savings, changes in debt management and miscellaneous effects will account for another $65 billion.

But the budget can't be brought under control by spending cuts alone—not without making deep cuts in vital benefit programs, inflicting undue hardship, and short-changing investment programs.

Alternative plans offered in both the House and the Senate which did not include revenues failed to come near President Clinton's $500 billion deficit reduction target. Chairman Greenspan indicated that financial markets would react "appropriately negatively" to any perception that we were backing off the $500 billion commitment.

Furthermore, the additional spending cuts in these alternative plans fell mainly on the poor and the elderly. A budget balanced by spending cuts alone will place an unfair burden on those who can least afford it.

This legislation improves the progressivity of the tax structure and requires those who benefited from the policies of the 1980's and early 1990's to pay their share of the bill that has come due.

The revenue component is a net increase of $241 billion.

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

Most of the tax increases affect *only* higher-income individuals and corporations. The exception is the gasoline tax, which will cost the average household less than one dollar a week. Overall, the Congressional Budget Office estimates that 81 percent of the tax increase will fall on households with incomes over $200,000. Furthermore, 76 percent of the net tax increase will be on the wealthiest 1 percent of the population.

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

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

The expanded Earned Income Tax Credit allows a full-time minimum wage worker with one or two children to bring his or her family up to the poverty line. It encourages work. The proposal will reduce the U.S. child poverty rate, which was one of every four children under age six in 1991. In 1991, 5.5 million poor persons lived in families with children in which someone was employed full-time, year-round.

The conference agreement increases funding for Food Stamps by $2.5 billion over the next five years, targeted to the estimated 5.5 million hungry children and an additional 6 million children at risk of hunger in America. The elimination of the shelter cost cap will assist the most needy families with children, who are most at risk of homelessness.

The Omnibus Budget Reconciliation Act of 1993 represents a major step forward in dealing with the two deficits which became chronic in the last decade—the Federal budget deficit and the deficit in investment in the earning power and well-being of America's workers and their children. It begins a serious program of economic reconstruction. And it represents the first real attempt in more than a decade to invest in America's future and that of our children and grandchildren.

TITLE I—AGRICULTURE

(Numbers in parentheses refer to the section numbers of the provisions in the House Bill (H), the Senate Amendment (S), and the Conference Report (CR))

The Managers on the part of the House and the Senate on title I of the bill met to resolve a number of issues in disagreement between the House Bill and the Senate Amendment. A number of provisions agreed to by the Managers are included in the Conference Substitute. However, a number of provisions that were agreed to by the Managers were subsequently removed from the Conference Substitute pursuant to the Manager's agreement that provisions potentially violative of Section 313 of the Congressional Budget Act of 1974, commonly referred to as the "Byrd Rule", be removed from the conference Substitute.

The Byrd Rule provides, in pertinent part, that during Senate debate on a reconciliation conference report, any Senator may make a point of order against extraneous material that, if sustained, will result in the extraneous material being stricken and result in the conference report being sent back to the House. The Rule also provides guidance as to what constitutes extraneous matter in a reconciliation conference report.

SUBTITLE A—COMMODITY PROGRAMS

UPLAND COTTON. (H. 1103; S. 1103; CR. 1101)

Triple Base. (H. 1103(a))

The *House Bill* amends section 103B(c)(1)(C)(ii) of the Agricultural Act of 1949 ('49 Act) to decrease eligible payment acres under the cotton program from 85% to 80% of the crop base, less the Acreage Conservation Reserve (ACR) requirement for the crop, beginning with crop year 1994.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

50/92 Program. (S. 1103(a); CR. 1101(a)(4))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 103B(c)(1)(D) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops, except in the case of prevented planting, reduced acres, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The *Conference Substitute* adopts the *Senate* provision.

Provisions Necessary to the Operation of the Program. (H. 1103(b); CR. 1101(b))

The *House Bill* extends the provisions of the price support program through crop year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*, with an amendment to extend the provisions of the price support program through crop year 1997 including bases and yields, deficiency and land diversion payments, and payment limits. However, certain provisions relating to cotton skiprow practices, extra long staple cotton, cottonseed and cottonseed oil support, preliminary allotments for the 1998 cotton crop, suspension of marketing quotas and acreage allotments, and related provisions, and the suspension of parity-based price support provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

The Managers understand that certain of these deleted provisions might be considered necessary in order to prevent potential conflicts between different price support and other provisions of law. It is a well settled legal convention that a later enacted statute takes precedence over a prior enacted conflicting law. The Managers intend that, consistent with this principle, any amendments made or provisions of law extended by this bill should take precedence over any provisions of law that may appear to be in conflict with the operation of the cotton price support program in its current manner as a result of the failure to extend certain of these provisions beyond 1995.

Acreage Limitation Program. (S. 1103(b); CR. 1101(a)(5))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 103B(e)(1)(D) of the '49 Act to amend, effective for the 1995 crop, the requirement that the Secretary achieve a ratio of carryover to total disappearance of upland cotton (stocks-to-use ratio) from the present 30 percent to 29½ percent.

The *Conference Substitute* adopts the *Senate* provision with an amendment to require, effective for the 1997 crop of upland cotton, that the Secretary achieve a ratio of carryover to total disappearance of upland cotton (stocks-to-use ratio) of 29 percent.

WHEAT. (H. 1101; S. 1101; CR. 1102)

Triple Base. (H. 1101(a))

The *House Bill* amends section 107(B)(c)(1)(C)(ii) of the '49 Act to decrease eligible payment acres under the wheat program from 85 percent of the crop base, less

the ACR requirement for the crop, beginning with crop year 1994.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

0/92 Program. (S. 1101; CR. 1102(a)(4))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 107B(c)(1)(E) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85 percent of payment acres for the 1994 and 1995 crops; except in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92 percent of payment acres).

The *Conference Substitute* adopts the *Senate* provision with an amendment to extend the 0/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H. 1101(b))

The *House Bill* extends the provisions of the price support program through crop year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute* with an amendment to extend the provisions of the price support program through crop year 1997. However, these provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

FEED GRAINS. (H. 1102; S. 1102; CR. 1103)

Triple Base. (H. 1102(a))

The *House Bill* amends section 105B(c)(1)(C) of the '49 Act to decrease eligible payment acres under the feed grains program from 85% to 80% of the crop base, less the ACR requirement for the crop, beginning with crop year 1994.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

0/92 Program. (S.1102(a); CR.1103(a)(4))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 105B(c)(1)(E) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops; except in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The *Conference Substitute* adopts the *Senate* provision with an amendment to extend the 0/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H.1102(b))

The *House Bill* extends the provisions of the price support program through crop year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provisions in the *Conference Substitute*, with an amendment to extend the provisions of the price support program through crop year 1997. However, these provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Deficiency Payments for Barley. (S.1102(b); CR.1103(a)(4)))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 105B(c)(1)(B)(iii)(IV)(bb) of the '49 Act to make a technical correction to extend the feed barley formula through crop year 1995.

The Managers agreed to include the *Senate* provision in the *Conference Substitute*, however, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

RICE (H.1104; S.1104; CR.1104)

Triple Base. (H.1104(a))

The *House Bill* amends section 101B(c)(1)(C)(ii) of the '49 Act to decrease eligible payment acres under the rice program from 85% to 80% of the crop base, less the ACR requirement for the crop, beginning with crop year 1994.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

50/92 Program. (S.1104; CR.1104)

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 101B(c)(1)(D) of the '49 Act to reduce the acres eligible for deficiency payments under the program to 85% of payment acres for the 1994 and 1995 crops, except in the case of prevented planting, reduced yields, or planting of alternative crops (in which case payments would be made on 92% of payment acres).

The *Conference Substitute* adopts the *Senate* provision with an amendment to extend the 50/92 program through 1997.

Provisions Necessary to the Operation of the Program. (H.1104(b))

The *House Bill* extends the provisions of the price support program through crop year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include to include the *House* provision in the *Conference Substitute* with an amendment to extend the provisions of the price support program through crop year 1997. However, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

DAIRY (H.1105; S.1105; CR.1105)

Butter/Powder. (H.1105(a); S.1105(a)(1); CR.1105(a)(3))

The *House Bill* amends section 204(c)(3) of the '49 Act to readjust the purchase prices for butter (to no more than $0.65/pound) and nonfat dry milk (to no less than $1.034/pound) beginning on the date of enactment.

The *Senate Amendment* is identical to the House provision except for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Reduction in Price Received. (H.1105(b); S.1105(a)(2); CR.1105(a)(4))

The *House Bill* amends section 204(h)(2)(B) of the '49 Act to extend the reduction in the price received by milk producers for the 1996 through 1998 calendar years at the reduced level of 10 cents per hundredweight.

The *Senate Amendment* is comparable to the House provision except that it extends the 10 cent reduction in price through the 1996 calendar year only.

The *Conference Substitute* adopts the *Senate* provision.

Provisions Necessary to the Operation of the Program. (H.1105(c)(1); S.1105(c); CR.1105(b))

The *House Bill* extends the provisions of the dairy price support program through the 1998 calendar year.

The *Senate Amendment* extends the dairy price support program through the 1996 calendar year.

The *Conference Substitute* adopts the *House* provision with an amendment to extend the provisions of the price support program through 1996.

Conforming amendments to Extend Other Dairy Provisions. (H.1105(a)(2)–(5))

The *House Bill* extends certain programs through calendar year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*, with an amendment to extend these provisions through 1997. However, certain provisions were extended only through 1996 and other provisions relating to transfer of dairy products to military and veterans hospitals, the Dairy Indemnity Program, the Dairy Export Incentive Program, and Export Sales of Dairy Products were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Bovine Growth Hormone. (S.1105(b); CR.1105(c))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 204 of the '49 Act to provide that, from the date of enactment through September 30, 1994, it shall be unlawful to use, market, or sell bovine growth hormone for commercial purposes.

The *Conference Substitute* adopts the *Senate* provision with an amendment. The amendment: (1) changes the period of the prohibition on the sale of bovine growth hormone to the 90–day period immediately following the date on which the Food and Drug Administration first approves the sale of bovine growth hormone; and (2) requires a ten percent reduction in the assessment on dairy producers imposed by the Omnibus Budget Reconciliation Act of 1990 during such 90–day period.

TOBACCO. (H.1106; S.1106; CR.1106)

Marketing Assessment. (H.1106(a))

The *House Bill* amends section 106(g) of the '49 Act to increase the marketing assessment by 10 percent (to .55 percent of the national price support level) for the 1994 through 1998 crops.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

Extension of Marketing Assessment. (H.1106(b); S.1106(b)(1)(A))

The *House Bill* extends the marketing assessment through the 1998 crop.

The *Senate Amendment* is identical to the *House* provision.

The Managers agreed to include the *House* and the *Senate* provisions in the *Conference Substitute*, however, the provision was deleted in order to comply with the Byrd Rule.

Importer Contribution to Marketing Assessment. (S.1106(b)(1)(B)l CR.1106(b)(1))

The *House Bill* contains no similar provision.

The *Senate Amendment* adds a new subsection (h) to section 106 of the '49 Act to provide that, subject to a monetary penalty for nonpayment, a marketing assessment must be paid by importers of tobacco produced outside of the United States, calculated by multiplying the number of pounds imported times the sum of the per pound marketing assessments imposed on purchasers of domestic Burley and domestic Flue-cured tobacco.

The *Conference Substitute* adopts the *Senate* provision.

Quotas and Allotments. (H.1106(c))

The *House Bill* amends certain quota and allotment provisions in order to improve the effectiveness of the program.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*, with amendments directing the Secretary of Agriculture to conduct a referendum in the State of Virginia to determine whether growers favor cross-county leasing of certain marketing quotas. If such a referendum was approved, leasing would be permitted only between farms in adjacent counties as of the date of enactment of the provision. However, these provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Domestic Marketing Assessment. (S.1106(a); CR.1106(a))

The *House Bill* contains no similar provision.

The *Senate Amendment* adds a new section 320C to the Agricultural Adjustment Act of 1938 (1938 Act) to require domestic manufacturers of cigarettes to certify annually to the Secretary the United States, produced percentage of the total quantity of tobacco used by the domestic manufacturers who fail to use at least 75 percent domestic tobacco in cigarettes, or to certify the percentage of domestic tobacco used, shall pay a nonrefundable marketing assessment to the Commodity Credit Corporation (CCC), calculated by multiplying—

(1) the quantity of imported tobacco used by the manufacturer to produce cigarettes in the prior calendar year in excess of 25 percent of total tobacco used, by

(2) the difference between—

(a) the average price per pound of domestic Burley tobacco and domestic Flue-cured tobacco during the preceding year; and

(b) the average price per pound of unmanufactured imported tobacco during the preceding year, as determined by the Secretary.

A domestic manufacturer who uses less than 75 percent domestically grown tobacco also shall purchase from producer-owned cooperative marketing associations a quantity of tobacco (equally divided between Burley and Flue-Cured tobacco) equal to the quantity of imported tobacco used by the manufacturer in excess of 25 percent of all tobacco used to produce cigarettes during the preceding year. Failure to purchase the required amounts of Burley or Flue-cured tobacco from the associations shall result in a penalty in an amount equal to 75 percent of the total purchase shortage.

The *Conference Substitute* adopts the *Senate* provision with amendments. Under the *Conference Substitute*, manufacturers of domestic cigarettes are required to make reports and maintain sufficient records for carrying out the requirements. The *Conference Substitute* clarifies that any person who provides false information or who fails to provide required information is to be subject to applicable Federal criminal sanctions.

The Managers recognize that Turkish and Oriental tobaccos are not grown in the United States. In setting a domestic content standard, the Managers' intent and belief is that the level is sufficient to permit continued importation of Turkish and Oriental tobaccos necessary to maintain current manufacturing blends.

The *Conference Substitute* also contains provisions authorizing the Secretary of Agriculture to reduce the domestic content percentage level under the provision to respond to natural disasters which cause reduced tobacco production. Whenever the Secretary, in consultation with producer-owned cooperative marketing associations, determines that disastrous losses have occurred to an annual crop of Burley or Flue-cured tobacco, and that pool inventories for the kind of tobacco involved have been depleted, the Secretary may reduce the domestic tobacco percentage for cigarettes below 75 percent to a level that approximately reflects the reduced availability of domestic supplies due to disaster losses to such crop. The *Conference Substitute* details guidelines the Secretary is to follow in determining whether disastrous losses have occurred and the extent to which such losses should be factored into a determination of the domestic tobacco percentage.

Importer Contributions to No Net Cost Tobacco Fund. (S. 1106(b)(2); CR.1106(b)(2) and (3))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends sections 106A and 106B of the 1949 Act to require each importer of Flue-cured or Burley tobacco to pay an assessment to the applicable association funds, or the Commodity Credit Corporation No Net Cost Tobacco Accounts, equal to the product of—

(1) the number of pounds imported; and

(2) the sum of the amount of per pound producer contributions and purchaser assessments that are required of domestic producers and purchasers.

Failure by an importer to pay into the No Net Cost Fund or Account will result in a penalty equal to 75 percent of the average market price for the respective kind of tobacco on the quantity of tobacco as to which the failure occurs.

The *Conference Substitute* adopts the *Senate* provision.

Fees for Inspecting Imported Tobacco. (S.1106(c); CR.1106(c))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 213(d) of the Tobacco Adjustment Act of 1983 to require the Secretary to collect from importers an amount for user fees paid for inspection services provided at a rate comparable to those fees and charges collected in connection with inspection of tobacco produced in the United States.

The *Conference Substitute* adopts the *Senate* provision.

Quota Reduction Floor. (S.1106(d); CR.1106(d))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends sections 319(c) and 317(c) of the 1938 Act, respectively, to extend the Burley and Flue-cured tobacco quota reduction floors to 1996, and authorize the Secretary to reduce the 1995 and 1996 Burley and Flue-cured national marketing quotas by more than 10% of the preceding year's national marketing quotas if the use of the statutory minimum national marketing quota would cause inventories of burley or flue-cured tobacco to exceed 150 percent of the applicable reserve stock level.

The *Conference Substitute* adopts the *Senate* provisions.

SUGAR. (H.1107; S.1107; CR.1107)

Marketing Assessment. (H.1107(a); S.1107; CR.1107(a))

The *House Bill* amends section 206(i) of the '49 Act to increase the current marketing assessment by 10% to 0.198 cents per pound of raw cane sugar, and 0.2123 cents per pound of beet sugar, for all marketings during fiscal years 1995 through 1999.

The *Senate Amendment* is comparable to the *House* provision except it does not require the assessments beyond the fiscal year 1996.

The *Conference Substitute* adopts the *House* provision with an amendment to increase the marketing assessment for fiscal years 1995 through 1998 to an amount equal to 1.1 percent of the loan level for raw cane sugar, and 1.1794 percent of such loan level per pound of beet sugar. Processors of sugarcane or sugar beets who knowingly market sugar in excess of their allocated allotment under section 359d of the Agricultural Adjustment Act of 1938 are required to pay an additional assessment equal to double the applicable marketing assessment.

Provisions Necessary to the Operation of the Program. (H.1107(b); CR.1107(b))

The *House Bill* extends the sugar price support program through the 1998 crops.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* adopts the HOUSE provision with an amendment to extend the provisions of the price support program through the 1997 crops.

OILSEEDS. (H.1108; S.1108; CR.1108)

Provisions Necessary to the Operation of the Program. (H.1108(a); CR.1108))

The *House Bill* extends the provisions of the oilseeds program through the 1998 marketing year.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include in the *Conference Substitute* the *House* provision with an amendment to extend the provisions of the price support program through the 1997 marketing year. However, the provision was deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Loan Level. (S.1108(a); CR.1108(3))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 205(c) of the '49 Act to lower the soybean loan rate to $4.92 per bushel from $5.02 per bushel and the minor oilseed loan rate to $0.087 per pound from $4.089 per pound for the 1994 through 1995 crops.

The *Conference Substitute* adopts the *Senate* provision with an amendment to extend the changed loan rates through 1997.

Loan Maturity. (S.1108(b); CR.1108(4))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 205(h) of the '49 Act to provide that oilseed loans for the 1994 and 1995 crops shall mature 9 months after the application is made, but in no case later than the last day of the fiscal year in which they are made.

The *Conference Substitute* adopts the *Senate* provision with an amendment to apply the provision through the 1997 crop.

Loan Origination Fee. (S.1108(c); CR.1108(5))

The *House Bill* contains no similar provision.

The *Senate Amendment* amends section 205(m) of the '49 Act to limit the applicability of the loan origination fee to the 1991 through 1993 crops of soybeans and minor oilseeds.

The *Conference Substitute* adopts the *Senate* provision.

PEANUTS (H.1109; S.1109; CR.1109)

Additional Marketing Assessment. (H.1109(a))

The *House Bill* amends section 108B of the '49 Act to establish an additional marketing assessment of 2 percent in addition to the current 1 percent required in section 108B of the national average quota or additional peanut support rate per pound for the 1993 through 1998 crops of peanuts. Producers and handlers of peanuts would each pay one-half of the additional assessment. Assessments collected would be used to defray realized losses of the peanut program. Monies assessed would be put into a reserve account and used to cover losses incurred by the

Commodity Credit Corporation (CCC) for the sale or disposal of peanuts for which price support has been provided.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

Provisions Necessary to the Operation of the Program. (H.1109(b); CR.1109(c))

The *House Bill* extends the peanut price support program through crop year 1998.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute* with an amendment to extend the provisions of the price support program through crop year 1997. However, the provisions of the *House Bill* that extended current provisions relating to Peanut Experimental and Research Programs, the suspension of marketing quotas, acreage allotments, and certain price support provisions, producer referenda on proundage quotas, transfer of quota, and others through 1997 were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

The Managers understand that certain of these deleted provisions might be considered necessary in order to prevent potential conflicts between different price support and other provisions of law. It is a well settled legal convention that a later enacted statute takes precedence over a prior enacted conflicting law. The Managers intended that, consistent with this principle, any amendments made or provisions of law extended by this bill should take precedence over any provisions of law that may appear to be in conflict with the operation of the peanut price support program in its current manner as a result of the failure to extend certain of these provisions beyond 1995.

Assessment Under Marketing Agreement. (H.1109(c); CR.1109(b))

The *House Bill* adds a new provision to section 8b(b)(1) of the Agricultural Adjustment Act (7 U.S.C. 608(b)(1)(l)), which authorizes the Secretary, if assessments exist under a marketing agreement entered into under the authority of section 8b of the Agricultural Adjustment Act, to apply the assessment to all peanut handlers, regardless of whether they have entered into such agreement.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* adopts the *House* provision with an amendment to exempt nonparticipating peanut handlers from assessments for purposes of indemnifying producers for peanuts rejected under the agreement.

Marketing Assessment. (H.1109(b); S.1109; CR.1109(a)(3))

The *House Bill* amends section 108B(g) of the '49 Act to extend the current marketing assessment on peanut producers and first purchasers through the 1998 crop.

The *Senate Amendment* amends section 108B(g) of the '49 Act to increase the total marketing assessment by 10% for the 1994 through 1997 crops, with producers paying 0.6%, and first purchasers paying 0.5%, of the product of the applicable national average support rate times the quantity of peanuts marketed.

The Manager agreed to include the *Senate* provision with an amendment to increase and extend marketing assessments through the 1997 crop, with further increases in the last two years, and to split the increased marketing assessment between producers and first purchasers as follows:

	Total assessment	Producer	1st purchaser
1993	1.0	0.5	0.5
1994	1.1	.55	.55
1995	1.1	.55	.55
1996	1.15	.6	.55
1997	1.2	.65	.55

Honey. (H.1110; S.1110; CR.1110)

Support Rate. (H.1110(a); S.1110(a); CR.1110(2))

The *House Bill* amends section 207(a) of the '49 Act to reduce the minimum price support level for honey from 53.8 cents per pound to 50 cents per pound for the 1994 through 1997 crop years.

The *Senate Amendment* amends section 207(a) of the '49 Act to reduce the minimum price support level for honey from 53.8 cents per pound to 47 cents per pound for the 1994 through 1997 crop years.

The *Conference Substitute* adopts the *Senate* provision with an amendment to ratchet down the support rate for crop years 1994 through 1998. The price support level per pound for honey under the amendment will be as set out in the following table:

Crop year and price support rate:
1993—53.8 cents (current law).
1994—50 cents.
1995—50 cents.
1996—49 cents.
1997—48 cents.
1998—47 cents.

Payment Limitations. (H.1110(b); S.1110(b); CR.1110(3))

The *House Bill* amends section 207(e) of the '49 Act to reduce the amount of payments that may be received by a person from $125,000 in the 1994 crop year to $100,000 in the 1995 crop year, $75,000 in the 1996 crop year, and $50,000 in the 1997 and subsequent crop years.

The *Senate Amendment* is comparable to the House provision, except it does not apply beyond the 1997 crop year.

The *Conference Substitute* adopts the *House* provision with an amendment to extend the payment limit only through 1998.

Provision Necessary to the Operation of the Program. (H.1110(c); S. 1110(c); CR.1110))

The *House Bill* extends the honey price support program through the 1998 crop year.

The *Senate Amendment* extends the honey price support program through the 1997 crop year.

The *Conference Substitute* adopts the *House* provision.

Marketing Assessment. (H.1110(d); CR.1110(4))

The *House Bill* amends section 207(i) of the '49 Act to eliminate the honey marketing assessment beginning in crop year 1994.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* adopts the *House* provision.

WOOL and MOHAIR (H.1111; S.1111; CR.1111)

Payment Limitations. (H.1111(a); S.1111(a); CR.1111(2))

The *House Bill* amends section 704(b) of the National Wool Act of 1954 to reduce the amount of incentive payments that a person may receive to $125,000 in the 1994 marketing year, to $100,000 in the 1995 marketing year, $75,000 in the 1996 marketing year, and $50,000 in the 1997 and subsequent marketing years.

The *Senate Amendment* is comparable to the House provision except it does not apply beyond the 1997 marketing year.

The *Conference Substitute* adopts the *Senate* provision.

Marketing Charges. (H.1111(b); S.1111(d); CR.1111(3))

The *House Bill* amends section 706 of the National Wool Act of 1954 to reduce outlays by prohibiting the Secretary from deducting specified marketing charges in determining net sales proceeds for shorn wool and shorn mohair.

The *Senate Amendment* is identical to the House provision, except for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Provisions Necessary to the Operation of the Program. (H.1111(c); S.1111(e)(2); CR.1111(1))

The *House Bill* extends the price support program for wool and mohair through the 1998 marketing year.

The *Senate Amendment* extends the price support program for wool and mohair through the 1997 marketing year.

The *Conference Substitute* adopts the *Senate* provision.

Marketing Assessment. (H.1111(d); S.1111(c); CR.1111(2)(B))

The *House Bill* amends section 704(c) of the National Wool Act of 1954 to eliminate the wool and mohair marketing assessment beginning with the 1993 marketing year.

The *Senate Amendment* is identical to the *House* provision, except for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Policy of Congress. (H.1111(e)(1))

The *House Bill* amends section 702 of the National Wool Act of 1954 to strike the reference to wool as a strategic commodity and to strike the finding that the wool promotion policy is a measure of national security.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* contains no similar provision.

The Managers agreed to include the *House* provision in the *Conference Substitute*, however, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Cap on Price Support for Shorn Wool; Technical Deletion of Obsolete Language. (H.1111(e)(2); S.1111(e)(1) & 1111(b))

The *House Bill* amends section 703(b)(3) of the National Wool Act of 1954 to eliminate obsolete language which does not affect the current calculation of price support for wool.

The *Senate Amendment* revises section 703(b)(3) of the National Wool Act of 1954 to prohibit the support price for shorn wool for the 1994 through 1997 marketing years from exceeding the support price for the 1993 marketing year. This section also eliminates obsolete language.

Section 1111(e)(1) also strikes "1982" and inserts "1990", which is consistent with the *House* provision.

The Managers agreed to include the *House* provision, however, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

Advertising and Sales Promotion Program. (H.1111(e)(3))

The *House Bill* adds a new section 708(b) of the National Wool Act of 1954 to require that funds of the Commodity Credit Corporation be used to provide funds for a wool and mohair promotion program if funding for a marketing year would be less than was available in the previous marketing year.

The *Senate Amendment* contains no similar provision.

The *Conference Substitute* deletes the *House* provision.

Conforming Amendments To Extension of Commodity Titles (H.1112)

The *House Bill* extends all other provisions of titles I–XI of the 1990 Farm Bill through

1998. This includes, among others, programs such as Deficiency Payments, the Acreage Base and Yield System, the National Cost of Production Standards Review Board, and the Options Pilot Program.

The *Senate Amendment* contains no similar provision.

The Managers agreed to include the *House* provisions with an amendment to extend the provisions through 1997. However, the provisions were subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

SUBTITLE B—RESTRUCTURING OF RURAL ELECTRIFICATION LOAN PROGRAMS

Restructuring of Certain Loan Programs. (H.1201; S.1201)

The *House Bill* amends sections 2, 4, 7, 13, 18, 203, 305, 307, 309, 314, 406, and 408 of, adds new sections 306C and 306D to, the REAct, and makes certain amendments to the Consolidated Farm and Rural Development Act, to restructure the Rural Electrification Administration (REA) direct and insured electric and telephone loan programs, to target assistance provided under such programs, to reduce the cost of the programs, and to delete the current authority for the REA to make electric and telephone loans at 2% interest rates.

The *Senate Amendment* is similar to the House provision except that it does not amend section 7 of the REAct, it omits certain provisions of the House bill, and includes other provisions not included in the House bill, in addition to a number of other technical differences.

The Managers agreed to resolve the provisions of Subtitle B of title I to include those provisions indicated below. However, a number of these items were subsequently deleted from the Conference Substitute in order to comply with the Byrd Rule.

Insured Electric Loans (H.1201(a)(1); S.1201(a)(1))

The *House Bill* amends section 305(c) of the REAct to establish a hardship loan program under which the Administrator is directed to make electric loans and charge interest of 5% annually, if—

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

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

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

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

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

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

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

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

Section 305(c)(2) provides that the program's 7% interest rate cap will not apply to certain borrowers with more than 17 consumers per line mile if the purpose of the loan is to furnish or improve electric service to consumers in an urban area. Section 305(c)(2) also makes available a prepayment option to borrowers. Section 305(c)(3) prohibits the Administrator from requiring that borrowers of hardship loans obtain credit elsewhere as a condition of obtaining such REA electric loan.

Section 305(c)(2)(C)(ii) allows borrowers to select the term of their loan repayment, up to 35 years.

The *Senate Amendment* is identical to the House provision except—

(1) for technical differences; and

(2) that section 305(c)(2)(C)(ii) of the Senate provision allows borrowers to select the term of their loan repayment, up to 35 years, subject to the REA Administrator's authority to prohibit an applicant from selecting a term that would result in the total term of the loan being greater than the useful life of the assets being financed.

The Managers agreed to adopt the *Senate* provision with a number of technical amendments. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Insured Telephone Loans. (H. 1201(a)(1); S. 1201(a)(1))

The *House Bill* amends section 305(d) of the REAct to delete the current authority for the REA to make telephone loans at 2% interest and establishes a multi-leveled telephone loan program.

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

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

(2) the applicant is capable of producing income or margins, before interest payments on the loan applied for, not less than that necessary to service interest requirements on all outstanding debt and not more than three times such interest service requirements; and

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

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

New section 305(d)(2) establishes a cost-of-money loan program under which the Administrator is directed to make telephone loans and charge interest at a rate equal to the current cost of money to the Federal Government and limits the interest that may be charged under the program to 7% if—

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

(2) the applicant is capable of producing income or margins, before interest payments on the loan applied for, not less than that necessary to service interest requirements on all outstanding debt, and not greater than five times such interest service requirements; and

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

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

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

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

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

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

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

The *Senate Amendment* is identical to the *House* provision except—

(1) for technical differences;

(2) section 305(d)(1)(A)(ii) as added by the Senate provision requires an applicant for a loan to be capable of producing net income or margins, after interest payments on the loan applied for, of not less than the amount necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements;

(3) section 305(d)(2)(B) requires the Administrator to offer cost-of-money loan program applicants the option to include a prepayment right in the loan agreements, on terms consistent with similar provisions of commercial loans.

(4) that section 305(d)(3)(B)(vi) of the REAct as added by the Senate provision requires that telecommunications modernization plan to provide for such additional requirements for service standards as maybe required by the Administrator; and

(5) that section 305(d)(3)(C) of the REAct as added by the Senate provision provides for a grace period during which loans maybe made to a borrower serving a State that does not have an approved telecommunication modernization plan if the loan is made less than 1 year after the REA Administrator has adopted final regulations to implement the modernization plan requirement.

The Managers agreed to adopt the *House* provision with a number amendments, including an amendment to exclude from eligibility for telephone loans under the hardship program applicants with an average number of subscribers per mile of line in the area included in the proposed loan of more than 17. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Program Purposes. (H. 1201(a)(2)(A); S. 1201(a)(2)(A))

The *House Bill* amends section 408(a) of the REAct to strike the first and second purposes and to require that RTB loans be made (1) "for the purchase and installation of telephone lines, systems, and facilities (other than buildings used primarily for administrative purposes, vehicles not used primarily

in construction, and personal customer premise equipment) directly related to the furnishing, improvement, or extension of rural telecommunications service or the acquisition of a rural telecommunications capability", and (2) for the purchase of class B stock.

The *Senate Amendment* similarly amends section 408(a), except—

(1) for certain technical differences; and

(2) the Senate provision does not delete purpose (1), as currently included in section 408(a) of the REAct.

The Managers agree to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Program Eligibility. (H. 1201(a)(2)(B)(i); S. 1201(a)(2)(B)(i))

The *House Bill* amends section 408(b)(4) of the REAct to provide that the RTB may make a loan to an applicant only if—

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

(2) The applicant is capable of producing net income or margins, *before* interest payments on the loan applied for, of not less than that necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements; and

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

The *Senate Amendment* is identical to the House provision, except—

(1) for technical differences; and

(2) the Senate provision requires an applicant for a loan to be capable of producing net income or margins, *after* interest payments on the loan applied for, of not less than that necessary to service interest requirements on all outstanding debt and not greater than five times such interest service requirements.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Telephone Bank Loan Prepayments. (H. 1201(a)(2)(B)(ii); S. 1201(a)(2)(B)(ii))

The *House Bill* amends section 408(b)(8) of the REAct to extend the prepayment authority under such section to allow the prepayment at face value of RTB loans made after the date of enactment of Omnibus Budget Reconciliation Act of 1993 (OBRA '93). The amendment also requires that the RTB must use funds from such prepayments to repay obligations issued to the U.S. Treasury under section 407(b) of the REAct, and that in repaying such obligations the Governor must first repay the advances bearing the greatest rate of interest.

The *Senate Amendment* is identical to the House provision, except that the Senate Amendment does not require the RTB to give priority, in repaying obligations issued to the U.S. Treasury with funds from prepayments, to the repayment of advances bearing the greatest rate of interest.

The Managers agreed to adopt the *House* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Telephone Bank—Concurrent Loan Authority. (H. 1201(a)(2)(B)(iii); S. 1201(a)(2)(B)(iii))

The *House Bill* adds new paragraphs (9) and (10) to section 408 of the REAct that require the Governor of the RTB, on the request of an RTB loan applicant, to—

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

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

The *Senate Amendment* is identical to the House provision, except for technical differences.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Telephone Bank—Interest Rates. (H. 1201(a)(2)(C))

The *House Bill* adds a new section 408(e) to the REAct to require that RTB loans and advances made on or after November 5, 1990 must bear an interest rate as determined under section 408 of the REAct. The application of the section is limited to loans obligated after the date of enactment of OBRA '93.

The *Senate Amendment* contains no comparable provision.

The Managers agreed to adopt the *House* provision with an amendment to clarify that funds are not authorized under section 408(e) until actually appropriated. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Authorization of Appropriations. (H. 1201(a)(3); S. 1201(a)(3))

The *House Bill* amends section 314 of the REAct to require that loans be made for the REA electric and telephone programs at the following levels:

(1) Electric hardship loans—$125 million per year through 1998, adjusted for inflation after 1994.

(2) Electric municipal rate loans—$600 million per year through 1998, adjusted for inflation after 1994.

(3) Telephone hardship loans—$125 million per year through 1998, adjusted for inflation after 1994.

(4) Telephone cost-of-money loans—$198 million per year through 1998, adjusted for inflation after 1994.

The *Senate Amendment* is comparable to the *House* provision, except for technical differences.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rule of Interpretation. (H. 1201(a)(4))

The *House Bill* adds at the end of section 309(a) of the REAct a sentence to clarify that section 309(a) shall not be construed to make section 408(b)(2) or section 412 applicable to title III of the REAct.

Section 408(b)(2) of the REAct provides, in pertinent part, that all loans made pursuant to the REAct for facilities for telephone systems with an average subscriber density of three or fewer per line mile shall be made under section 201 of the REAct, unless the borrower elects to have such loan made by the RTB. Section 412 prohibits the making of a section 201 loan to any borrower that during the immediately preceding year had a net worth in excess of 20 percent of its assets, unless the Administrator finds that the borrower cannot obtain such a loan from the RTB or from other reliable sources at reasonable rates of interest and terms and conditions.

The *Senate Amendment* contains no comparable provision.

The Managers agreed to adopt the *House* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Demand Side Management Programs. (H. 1201(a)(5)(A) & (B); S. 1201(a)(4)(A) & (B))

The *House Bill* amends section 2 and 4 of the Rural Electrification Act of 1936 (REAct) to clarify that the rural electric loan program may be used to furnish *and improve* electric service, and to assist electric borrowers to implement demand side management and energy conservation programs.

The *Senate Amendment* is identical to the House provision, except for technical differences.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Protection Against Municipal Condemnation. (H. 1201(a)(5)(C))

The *House Bill* amends section 7 of the REAct to extend the provisions of section 306(b) of the Consolidated Farm and Rural Development Act (regarding rural water associations) to REAct rural electric and telephone borrowers. The provision would also prohibit municipal and other governmentally-owned utilities from curtailing or limiting the ability of rural electric and telephone borrowers from continuing to service their current territories.

The *Senate Amendment* contains no comparable provision.

The Managers agreed to adopt the *House* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Area Definition—Electric Program. (H. 1201(a)(5)(D); S. 1201(a)(4)(C))

The *House Bill* amends section 13 of the REAct to change the definition of "rural area", for purposes of titles I, III, IV, and V of the Act, to mean those areas not within an urban *or urbanized* area, as defined by the Bureau of the Census.

The *Senate Amendment* is similar to the House provision, except that it defines rural area to mean those areas not within an urban area, as defined by the Bureau of the Census.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Rural Area Definition—Title II Telephone Program. (H. 1201(a)(5)(E); S. 1201(a)(4)(D))

The *House Bill* amends section 203(b) of the REAct to change the definition of "rural area" for purposes of title II of the Act to mean those areas not within a city, village, or borough in excess of 5,000 inhabitants.

The *Senate Amendment* is identical to the House provision.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Miscellaneous Amendments—Title III. (H. 1201(a)(5)(F); S. 1201(a)(4)(E) & (F))

The *House Bill* amends section 307 of the REAct to prohibit the Administrator from requesting that an electric loan applicant apply for and accept a loan from other sources in an amount exceeding 30 percent of the credit needs of the applicant.

The *Senate Amendment* is identical to the House provision. Section 1201(a)(4)(E) makes technical amendments to section 305 of the REAct not included in the House provision.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

RTB Investments. (H. 1201(a)(5)(G); S. 1201(a)(4)(G))

The *House Bill* adds a new subsection (i) to section 406 of the REAct to authorize the RTB to invest funds from the RTB Equity Account in obligations of the United States.

The *Senate Amendment* is identical to the House provision.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Loan Origination Fee Prohibition. (H. 1201(a)(5)(H); S. 1201(a)(4)(H))

The *House Bill* adds a new subsection (b) to section 18 of the REAct to prohibit the Administrator and the Governor from charging any fee or charge not expressly provided for in the Act in connection with any loan under the Act.

The *Senate Amendment* is similar to the House provision, except that in new subsection (b) of section 18, it prohibits the charging of fees in connection with any loan *made or guaranteed* under the Act.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Consultants—Generally. (S. 1201(a)(4)(H))

The *House Bill* contains no comparable provision.

The *Senate Amendment* adds a new subsection (c) to section 18 of the REAct that—

(1) in new paragraph (1), authorizes the Administrator to permit a borrower to voluntarily provide funds for use by the Administrator in obtaining technical, engineering, legal or other assistance required in the review of an application for a loan or loan guarantee;

(2) in new paragraph (2), requires the Administrator to ensure that a consultant hired for such a purpose must have no financial or other conflict of interest in the outcome of the application of the borrower;

(3) in new paragraph (3), prohibits the Administrator from requiring a borrower to pay consultancy costs as a condition of processing a loan application, without the consent of the borrower;

(4) in new paragraph (4), authorizes the Administrator to enter into such contracts, grants, or cooperative agreements as are necessary to carry out section 18 of the REAct, without regard to any requirements for competition, section 3709 of the Revised Statutes, and section 3324 of title 31, United States Code; and

(5) in new paragraph (5), provides that nothing in the new subsection (c) may limit the Administrator's authority to retain consultants from funds otherwise made available to the Administrator.

The Managers agreed to adopt the *Senate* provision with an amendment to delete the clause in paragraph (4) that authorizes the Administrator to enter into such contracts "without regard to any requirements for competition, section 3709 of the Revised Statutes, and section 3324 of title 31, U.S.C." However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Distribution Borrower Eligibility; Administrative Prohibitions. (H. 1201(a)(5)(I); S. 1201(a)(4)(I))

The *House Bill* adds a new section 306C to the REAct to provide that—

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

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

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

(1) requiring prior approval of;

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

(3) denying or delaying the granting of a lien accommodation to, any electric borrower whose net worth exceeds 110 percent of the outstanding principal balance on all loans made or guaranteed to the borrower by the Administrator.

The *Senate Amendment* is similar to the *House* provision, except that, with regard to new section 306C, it also provides that a default by a borrower from which the distribution borrower purchases wholesale power shall not—

(1) reduce the eligibility of the distribution borrower for assistance under the REAct; or

(2) be the cause, directly or indirectly, or imposing any requirement of restriction on the borrower as a condition of assistance, except as necessary to implement a debt restructuring agreed on by the power supply borrower and the Government.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Water and Waste Loan Eligibility. (H.1201(b); S.1021(b))

The *House Bill* amends section 306(a)(1) of the Consolidated Farm and Rural Development Act to expand the eligibility for water and waste loans under section 306(a)(1) to include any borrower to whom a loan has been made under the REAct.

The *Senate Amendment* is identical to the *House* provision, except for technical differences.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Regulations. (H.1201(c); S.1201(d))

The *House Bill* requires the Administrator of the Rural Development Administration, not later than October 1, 1993, to issue interim final rules to implement the amendments made by section 1201.

The *Senate Amendment* requires that interim final rules to implement the amendments made by section 1201 must be issued not later than October 1, 1993 by—

(1) the REA Administrator in the case of amendments to programs administered by the Administrator; and

(2) the Rural Development Administration Administrator in the case of amendments to programs administered by the Administrator.

The Managers agreed to adopt the *Senate* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

Transfer of REAct Administration to RDA. (H.1202(a))

The *House Bill* amends section 1 of the REAct to provide that the Administrator of the Rural Development Administration shall carry out the REAct under the supervision of the Secretary of Agriculture, and makes a number of conforming amendments.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Other REA Functions Transferred to RDA. (H.1202(b))

The *House Bill* adds a new subsection (g) to section 364 of the Consolidated Farm and Rural Development Act to—

(1) transfer the rights, interests, obligations, and duties of the REA Administrator to the RDA Administrator;

(2) provide that any reference in law to the REA be deemed to be a reference to the RDA;

(3) clarify that the transfer of such authorities shall not abate or effect any proceedings involving the REA; and

(4) transfer all REA personnel to the RDA.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Structure of the Rural Development Administration. (H. 1202(c))

The *House Bill* adds a new subsection (h) to section 364 of the Consolidated Farm and Rural Development Act to—

(1) require the appointment of a Deputy Administrator for rural utilities to administer the programs authorized under the REAct and the RDA ruralwater and waste disposal program; and

(2) authorize the appointment of 4 Assistant RDA Administrators responsible for electric; telephone; water and sewer; and rural utility engineering, management, and accounting programs and functions.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Rural Development Program Eligibility. (H. 1202(d); S. 1201(c))

The *House Bill* adds a new subsection (i) to section 364 of the Consolidated Farm and Rural. Development Act to provide that a borrower of a loan or loan guarantee under the REAct shall be eligible for assistance under all programs administered by the RDA, and to require the RDA Administrator to encourage and facilitate the full participation of REA borrowers in RDA programs.

The *Senate Amendment* is identical to the House provision, except for technical differences.

The Managers agreed to adopt the *House* provision. However, the provision was *deleted* from the Conference Substitute in order to comply with the Byrd Rule.

Technical Assistance Unit. (H. 1202(d))

The *House Bill* adds a new subsection (j) to section 364 of the Consolidated Farm and Rural Development Act to require the RDA Administrator to provide all RDA program borrowers advice and guidance on community and economic development activities. Section 1202(d)(2) repeals section 11A of the REAct.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Regulations; Electric Loan Prepayment. (H. 1202(e); CR. 1201)

The *House Bill* requires the RDA Administrator, not later than January 1, 1994, to issue interim final rules to implement the amendments made by section 1202.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

The Managers agreed to adopt the *House* provision. However, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

The *Conference Substitute* also adopts an amendment included in section 1201 of the

Substitute to provide for the refinancing of Federal Financing Bank electric loans made under section 306 of the Rural Electrification Act.

The adoption of new section 306C shall not be construed to affect the ability of rural electric cooperatives to prepay without penalty outstanding Rural Electrification Act (REA) guaranteed loans from the Federal Financing Bank (FFB) outstanding on July 2, 1986 under REA section 306A (whereby, a cooperative can prepay without penalty so long as the Secretary of the Treasury does not determine that the prepayment will have an adverse effect on the operation of the FFB) and Public Law No. 100-202 (whereby, a cooperative can prepay without penalty based only on the affirmative approval of the Secretary of the Treasury).

SUBTITLE C—AGRICULTURAL TRADE

Acreage Reduction Requirements. (H. 1112(j); S. 1402; CR. 1301)

Minimum ARPs. (S. 1402(a); CR. 1301(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* amends section 1104 of the Omnibus Budget Reconciliation Act 1990 to eliminate the minimum set-aside requirements under the Acreage Reduction Programs for the 1991 through 1995 crops of grain sorghum and barley.

The *Conference Substitute* adopts the *Senate* provision.

Waiver Authority. (H:1112(j); S:1402(b); CR.1301(b))

The *House Bill* extends certain provisions of section 1302 of the OBRA-90 which authorize the Secretary to waive any minimum ARP for the 1993 through 1998 crops of wheat, feed grains, upland cotton, or rice.

The *Senate Amendment* amends section 1302 of the OBRA-90 to eliminate the "GATT Trigger" authority to waive minimum ARPs or agricultural spending cuts required by OBRA-90.

The *Conference Substitute* adopts the *Senate* provision.

The Omnibus Budget Reconciliation Act of 1990 (OBRA-90) gives the Secretary the authority to waive the minimum acreage reduction program (ARP) rates specified in law, because no GATT agreement was reached by dates specified in OBRA-90.

Title I eliminates the authority to waive minimum ARPs previously specified in law, but retains "GATT trigger" language with regard to wheat and feed grain marketing loans and spending on export programs.

Eliminating the "GATT trigger" authority has the effect of reestablishing minimum ARPs for wheat and corn put in place by OBRA-90. However, these minimum ARPs do not apply if market conditions indicate stock-to-use levels would fall below triggers established in OBRA-90 (20 percent for corn, and 34 percent for wheat). The Managers intend that the Secretary look ahead to the estimated stock-to-use ratio for the year in question. As a result, the Secretary should have adequate discretion to set ARPs that can properly respond to an expected small crop or high export demand.

The Managers strongly intend that the minimum ARPs established for the 1991 through 1995 period by OBRA-90 should not be assumed to apply to the 1996 and subsequent crops.

The Managers are aware of the mandate contained in section 1302 of the OBRA-90, requiring the Secretary of Agriculture to increase by $1 billion for the period beginning October 1, 1993, and ending September 30, 1995, the level of export promotion programs, since no agricultural trade agreement was reached under the General Agreement on Tariffs and Trade (GATT) by June 30, 1992. The Managers will aggressively pursue fulfillment of this mandate.

Marketing Loans for Wheat and Feed Grains. (H:1112(j))

The *House Bill* also extends the marketing loan requirement through 1998.

The *Senate Amendment* contains no comparable provision.

The Managers agreed to adopt the *House* provision, however, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

MARKET PROMOTION PROGRAM (H:1402; S:1502; CR.1302).

Maximum Expenditures Under the Market Promotion Program. (H:1401(a); S:1401(a); CR.1302(a))

The *House Bill* amends section 211(c)(1) of the Agricultural Trade Act of 1978 to reduce the minimum and the maximum amount of funds made available for the Market Promotion Program to $147,734,000 for each of the fiscal years 1994 through 1998.

The *Senate Amendment* amends subsection 211(c) of the Agricultural Trade Act of 1978 to reduce the funding level for fiscal years 1994 and 1995 for the Market Promotion Program to equal the sum of—

(A) not less than $33,000,000 for—

(1) branded promotion activities of small-sized commercial entities and medium-sized commercial entities that are beginning exporters; and

(2) non-branded promotion that only benefits small-sized commercial entities, medium-sized commercial entities, small-sized agricultural producers, and medium-sized agricultural producers; and

(B) not less than $77,000,000 for program activities by any eligible trade organization, including organizations specified above.

The Secretary has discretion to determine which commercial entities are beginning exporters; and which agricultural producers are small-sized or medium-sized.

The *Conference Substitute* adopts the *Senate* provision with an amendment to section 211(c)(1) of the Agricultural Trade Act of 1978 to reduce the minimum funding authorization for the Market Promotion Program established in section 203 of such Act (hereinafter the "program") to $110,000,000 for each of the fiscal years 1994 through 1997.

Extension of program. (H:1401; S:1401; CR.1302(a))

The *House Bill* extends funding for the Market Promotion Program through fiscal year 1998.

The *Senate Amendment* does not extend the funding level for the Market Promotion Program beyond fiscal year 1995.

The *Conference Substitute* adopts the *House* provision with an amendment to extend funding for the Market Promotion Program through fiscal year 1997.

Definitions. (S:1401(b))

The *House Bill* contains no comparable provision.

The *Senate Amendment* amends section 102 of the Agricultural Trade Act of 1978 to define a commercial entity as a cooperative or private organization that exports or promotes an agricultural commodity, including an entity that controls, is controlled by, or is under common control with such a cooperative or private organization. The section also defines a small-sized commercial entity as having not more than 50 employees, and a medium-sized commercial entity as having between 51 and 500 employees.

The *Conference Substitute* deletes the *Senate* provision.

Secretarial Actions to Achieve Savings. (CR. 1302(b))

Section 1302(b) of the *Conference Substitute* includes several actions to enable the Secretary of Agriculture (the "Secretary") to achieve the savings required by this section in the program as follows:

Requirement of Unfair Trade Practices

Section 1302(b)(1) amends section 203(c)(2) of such Act to require the Secretary to provide assistance under the program only to counter or offset the adverse effects of an unfair trade practice of a foreign country such as an unfair subsidy or import quota, or an other unfair trade practice; except the Secretary may waive this requirement in the case of activities conducted by small entities operating through regional State-related organizations. The Managers agree that the Secretary may offset unfair trade practices by targeting markets other than those in which the unfair trade practice exists.

Guidelines

Section 1302(b)(2) provides that the Secretary should implement changes in the program beginning with fiscal year 1994 in order to improve the effectiveness of the program and to meet the following objectives:

Priority for Small Entities

Section 1302(b)(2)(A) provides that the Secretary should give priority under the branded program to small entities. The Secretary in determining what is a small entity for reason of granting priority funding should refer to the Standard Industrial Classification (SIC) Codes and Size Standards (13 CFR 121.601) issued by the Small Business Administration. Where the size or annual sales data are not listed in the SBA regulation, the Secretary should refer to the SIC for other agricultural products.

Graduation

Section 1302(b)(2)(B) provides that the Secretary should not provide assistance under the program to promote a specific branded product in a single market for more than 5 years unless the Secretary determines that further assistance is necessary in order to meet the objectives of the Program. The Managers agree that the Secretary may provide assistance for more than 5 years where necessary in order to meet the objectives of the program; for example, small entities beginning to export. The Secretary may terminate assistance in less than 5 years if warranted.

Contribution Level

Section 1302(b)(2)(C) provides that the Secretary should require a minimum contribution level of 10 percent from an eligible trade organization that receives assistance for nonbranded promotion, and that the Secretary may increase the contribution level in any subsequent year that an eligible trade organization receives assistance for nonbranded promotion. The Managers intend that the Secretary should take into account the ability of participants to increase their contribution beyond the minimum contribution.

Additionality

Section 1302(b)(2)(D) provides that the Secretary should require each participant in the program to certify that any federal funds received supplement, but do not supplant, private or third party participant funds or other contributions to program activities. The Managers agree that the Secretary should conduct spot checks to ensure compliance with this requirement, and may assess penalties for false certification, consistent

with compliance provisions in section 402 of the Agricultural Trade Act of 1978 (7 U.S.C. 5662). Also the Secretary may take into account marketing strategies, including planned variations in expenditures from year to year in various countries, market and crop conditions, and other factors, in implementing this requirement.

Independent Audits

Section 1302(b)(2)(E) provides that if, as a result of an evaluation or audit of activities of a participant under the program, the Secretary determines that a further review is justified in order to ensure compliance with the requirements of the program, the Secretary should require the participant to contract for an independent audit of the program activities, including activities of any subcontractor. The Managers agree that any costs of an evaluation or audit required by the Secretary under this paragraph shall be solely the responsibility of the participant, and not paid with program funds.

Tobacco ban

Section 1302(b)(3) requires that no funds made available under the program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

Regulations

Section 1302(c) requires the Secretary to issue regulations to implement this section and the amendment made by this section not later than 90 days after enactment of this Act.

END-USE CERTIFICATES (S: 1403)

In General. (S. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* amends the Agricultural Trade Act of 1978 by adding a new section 404 to require end-use certifications on imported wheat and barley.

The *Conference Substitute* deletes the Senate provision.

The Managers agreed to adopt a substitute provision for section 1403 of the Senate Amendment, however, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

The deleted provision was a free-standing provision that established an end-use requirement for the following: (1) wheat imported into the United States from any foreign country or instrumentality that requires, as of the effective date of this section, end-use certificates on United States-produced wheat; and (2) barely imported into the United States from any foreign country or instrumentality that requires, as of the effective date of this section, end-use certificate on United States-produced barely. The purpose of the end-use requirements was to ensure that foreign agricultural commodities are not used in United States export programs.

Definitions. (S. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* defines "covered foreign commodity" (imported wheat and barely) and "end-use certificate".

The *Conference Substitute* deletes the Senate provision.

Purpose. (S. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires the Secretary to improve monitoring of the end use of the covered foreign commodity to ensure that agricultural exports under agricultural trade programs are entirely produced in the United States.

The *Conference Substitute* deletes the *Senate* provision.

Requirement of Certificate. (S. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires the Commissioner of Customs to prohibit the entry of the covered foreign commodity unless the importer presents an end-use certificate consistent with this section.

The *Conference Substitute* deletes the *Senate* provision.

Maintenance of Certification. (S. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that the end-use certificate be maintained with the covered foreign commodity until it reaches its end use.

The *Conference Substitute* deletes the *Senate* provision.

Certification. (S:1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires importers or consignees of covered foreign commodities to certify every quarter to the Secretary of Agriculture whether those covered foreign commodities have been used or transferred.

The *Conference Substitute* deletes the *Senate* provision.

Compliance. (S:1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* ensures that the compliance requirements of section 402 of that Act apply to importers or consignees subject to this section.

The *Conference Substitute* deletes the *Senate* provision.

Effective Date. (S:1403(b))

The *House Bill* contains no comparable provision.

The *Senate Amendment* states that the amendments made by this section are effective 120 days after the date of enactment.

The *Conference Substitute* deletes the *Senate* provision.

EXPORTS OF VEGETABLE OIL. (S:1404)

The *House Bill* contains no comparable provision.

The *Senate Amendment* provides a sense of Congress that the Secretary of Agriculture should continue to aggressively promote the export of vegetable oil through the Export Enhancement Program and other available authorities.

The Managers agreed to adopt the *Senate* provision, however, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

SUBTITLE D—MISCELLANEOUS

ADMISSION, ENTRANCE, AND RECREATION FEES (H:1402; S:1503; CR.1401)

Authority to impose fees. (H:1402(a); S:1503(b)(1), (2); CR.1401(b))

The *House Bill* authorizes the Secretary of Agriculture to charge—

(a) entrance or admission fees at National Monuments, National Volcanic Monuments, National Scenic Areas, and areas of concentrated public use administered by the Secretary; and

(b) recreation use fees at lands administered by the Secretary for specialized outdoor recreation sites, equipment, services, or facilities (including visitors' centers, picnic tables, boat launching facilities, or campgrounds).

The *Senate Amendment* is identical to the House provision, except for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Amount of fees. (H:1402(b); S:1503(c); CR.1401(c))

The *House Bill* clarifies that the amount of the admission, entrance, and recreation use fees will be determined by the Secretary.

The *Senate Amendment* is identical to the House provision, except for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Definitions. (H:1402(c); S:1503(a); CR.1401(a))

The *House Bill* defines the terms "area of concentrated public use" "boat launching facility", "campground", and "Secretary" for purposes of section 1402.

The *Senate Amendment* is identical to the House provision, but for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

STEWARDSHIP INCENTIVE PROGRAM. (S:1503(b)(2))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires the Forest Service to reimburse the Agricultural Stabilization and Conservation Service for administrative costs of the Stewardship Incentive Program for actual costs of services, except that these costs shall not exceed 10 percent of total annual appropriations for the program.

The Managers agreed to include the *Senate* provision, however, the provision was subsequently *deleted* from the *Conference Substitute* in order to comply with the Byrd Rule.

ENVIRONMENTAL CONSERVATION ACREAGE RESERVE PROGRAM AMENDMENTS (H:1404; S:1502; CR.1402)

Conservation Reserve Program. (H:1404(a)(1); S:1502(1) and (2); CR.1502(b))

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

The *Senate Amendment* is identical to the *House* provision, but for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Wetlands Reserve Program. (H:1404(a)(2); S:1502(3); CR.1402(c))

The *House Bill* amends section 1237(b) of the FSA of 1985 to require the Secretary to enroll in the Wetlands Reserve Program not less than 330,000 acres by the end of calendar year 1995, and not less than 975,000 acres through the year 2000.

The *Senate Amendment* is identical to the *House* provision, but for technical differences.

The *Conference Substitute* adopts the *Senate* provision.

Use of Commodity Credit Corporation. (H:1404(b); S:1502(4); CR.1402(d))

The *House Bill* amends section 1241 of the FSA of 1985 to require the Secretary to use the funds of the Commodity Credit Corporation to fund conservation programs in subtitle D of such Act.

The *Senate Amendment* is identical to the *House* provision, but for technical differences.

The *Conference Substitute* adopts the *Senate* provision with an amendment to clarify that Commodity Credit Corporation funds are to be used for the Conservation Reserve Program and Wetlands Reserve Program only, however the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

CROP INSURANCE (H:1405(a), (b), (c); CR. 1403))

Levels of Coverage. (H:1405(a))

The *House Bill* adds a new section 508B to the Federal Crop Insurance Act (FCIA).

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

Level I coverage is available only to producers who do not purchase insurance at coverage levels II, III, or IV. Coverage level I must provide indemnification to producers for losses in yields to the extent such losses exceed 65 percent of the determined yield of the commodity for the farm.

Level II, III, and IV must provide indemnification to producers for losses in yield to the extent these losses exceed 50, 35, and 25 percent, respectively, of the average proven yield for the commodity for the farm based on the actual documented production history, or, if such records are unavailable or insufficient, on an approved adjusted recorded or appraised yield for a representative period.

New FCIA section 508B(b) defines the term "determined yield" as ASCS yield for program crops and recorded or appraised average yield, as adjusted, for other commodities.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

ASCS Yields. (H:1405(a))

The *House Bill* provides that a producer may elect to use the ASCS yield for a crop of a commodity for a farm rather than the determined yield for the farm for coverage levels II, III, and IV, subject to an additional premium for the coverage. The FCIC may not provide any premium subsidy or administrative subsidy for such additional coverage.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Price Elections. (H:1405(a))

The *House Bill* provides that the FCIC must establish a high and low price election for each commodity for which insurance is available. The high price may not be less than the projected market price of the commodity. Level I coverage may be offered only at the low price election. Levels II, III and IV shall be offered at a price election which is equal to or less than the high price election.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Information/Annual Reports. (H:1405(a))

The *House Bill* provides that the FCIC must provide producers with adequate insurance-related information at the time of application. New section 508B(f) requires FCIC to file annual reports to Congress.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Premium Subsidies. (H:1405(b))

The *House Bill* revises paragraph (3) of FCIA section 508(e) to require the FCIC to pay the full premium for each producer Level I coverage, and, for Levels II, III, and IV, a premium equal to the amount that would have been paid under Level I coverage.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Reinsurance. (H:1405(c))

The *House Bill* revises subsection (h) of FCIA section 508 to direct the FCIC to provide reinsurance to private and governmental insurers, subject to principles under the Office of Federal Procurement Policy Act (41 U.S.C. 401, et seq.).

Payment of operating and administration costs authorized, but for coverage level I policies, insurers will be paid only $50 per policy, of which $25.50 shall be paid by the policyholder at the time of application and $24.50 shall be paid by the corporation.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Actuarial Soundness. (S:1501(a); CR. 1501(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* adds a new subsection (n) to FCIA section 506 which requires the FCIC to take such actions as are necessary to improve the actuarial soundness of Federal multiperil crop insurance to achieve, on and after October 1, 1995, an overall loss ratio of not greater than 1.1. These steps include those discussed under items (117), (118), (119) and (120), below.

The *Conference Substitute* adopts the *Senate* provision.

Actual Production History Records. (S:1501(a); CR. 1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that FCIC must institute appropriate requirements for documentation of the actual production history of agricultural producers to establish recorded or appraised yields for Federal crop insurance coverage that better reflect the associated actuarial risks, except that the FCIC may not carry out this paragraph in a manner that would prevent beginning farmers, as defined by FCIC, from obtaining adequate Federal crop insuranee (*See* item below that describes Conforming Amendments/Implementing Rules).

The *Conference Substitute* adopts the *Senate* provision. In so doing, the Managers reiterate the expectation stated in the report of the Senate Committee on Agriculture, Nutrition, and Forestry with respect to this provision that the FCIC, in finalizing plans to go forward with the program outlined in its May 26, 1993 "Informational memorandum" for the 1994 crop years, will make appropriate adjustments to its actual production history (APH) rules to avoid drastic impacts on a producer's insured yield resulting from catastrophic loss during the development of the producer's multi-year history. The Mangers stress that the relevant statutory language is intended to be broad enough to accommodate such adjustment.

A possible "catastrophic yield adjustment" was considered in the earlier FCIC Managers' Bulletin MGR-92-056; others have suggested so-called "caps" and "cups" in annual changes to an individual participant's yield. This issue is an important concern to the Managers and to a wide range of program users. A resolution of this issue as part of the package prior to implementation will greatly enhance the viability of the new rules and their acceptance among farm producers.

The Managers expect that the FCIC will analyze promptly these issues and concerns raised by the APH program outlined in the May 26, 1993 memorandum and appraise them of how it has resolved them before it finalizes its plans and rules for applying that program to the 1994 crop year. Should the FCIC be unable to resolve these issues and concerns on time for implementation for some or all of the 1994 crop year, the Managers expect that the FCIC will delay that implementation temporarily.

Area Yield Pilot Program. (S:1501(a); CR.1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that FCIC shall establish in counties, to the extent practicable, a crop insurance option to individual multiperil coverage based on area yields that allows an insured producer to qualify for an indemnity if a loss has occurred in a specified area in which the producer's farm is located.

The *Conference Substitute* adopts the *Senate* provision.

Tracking System. (S:1501(a); CR.1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that FCIC must create a database that contains the social security account numbers of participating producers and use the numbers to identify producers who are high risk for actuarial purposes and producers who have not documented at least four years of production history, to assess the performance of insurance providers, and for other purposes permitted by law.

The *Conference Substitute* adopts the *Senate* provision.

Other Measures Necessary to Achieve a Loss Ratio of 1.1. (S:1501(a); CR.1403(a))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that FCIC must take other measures authorized by law to improve the actuarial soundness of the Federal crop insurance program while maintaining fairness and effective coverage for producers.

The *Conference Substitute* adopts the *Senate* provision.

Conforming Amendments/Implementing Rules. (S:1501(b); CR.1403(b))

The *House Bill* contains no comparable provision.

The *Senate Amendment* contains amendments to FCIA sections 508 and 508A to provide FCIC with flexible authority to implement items described above under Actual Production History Records and Area Yield Pilot Program items. Yield coverage shall be offered based on 4-building-to-10 years of actual production history, or, in the absence thereof, not less than 65% of the transition yield.

The *Conference Substitute* adopts the *Senate* provision.

Regulations. (S:1501(c)(2); CR.1403(c)(2))

The *House Bill* contains no comparable provision.

The *Senate Amendment* requires that not later than 30 days after the date of enactment, the Secretary of Agriculture shall publish for public comment proposed regulations to implement the amendments made by this section.

The *Conference Substitute* adopts the *Senate* provision.

Effective Date. (H:1405(d); S:1401(c)(1); CR.1403(c)(1))

The *House Bill* provides that the amendments made by section 1405 apply beginning with crops to be harvested in 1995.

The *Senate Amendment* provides that, except as provided by section 1501(c)(2), the new section and the amendments made by it shall become effective on October 1, 1993.

The *Conference Substitute* adopts the *Senate* provision.

Consistent with the concern for greater actuarial soundness and the required improvement in overall program loss ratio mandated under this legislation and in order to explore various alternatives to providing risk protection for agricultural producers, the Managers encourage the Federal Crop Insurance Corporation to carry out, beginning in 1994, a pilot program to make available to producers in States (including Minnesota, North Dakota, and Mississippi) revenue insurance under which producers may be indemnified based on their average cost of production. At the conclusion of the pilot program, the Corporation would be expected to evaluate the program and report to Congress thereon.

SENSE OF THE SENATE REGARDING DEFICIT REDUCTION. (S:1504)

The *House Bill* contains no comparable provision.

The *Senate Amendment* is a sense of the Senate that farmers should not have to pay more than their fair share necessary to achieve the desired level of deficit reduction, including consideration of any energy or other tax, user fees and reduction in interest rates which affect agriculture, of any budget reduction measure.

The Managers agreed to include the *Senate* provision in the *Conference Substitute*, however, the provision was subsequently deleted from the *Conference Substitute* in order to comply with the Byrd Rule.

TITLE II—COMMITTEE ON ARMED SERVICES

The House bill contained a provision (sec. 2001) that would provide a full cost of living adjustment (COLA) on a delayed schedule for all nondisabled military retirees. COLAs would be delayed by four months in fiscal year 1994 and by three additional months for each of the next four years. The House provision would exclude survivor benefits and disabled retirees from the COLA delay.

The Senate bill contained a provision (sec. 2001) that would delay COLAs for nondisabled retirees in fiscal years 1994 through 1997 by nine months, from January 1 of each year to October 1. In fiscal year 1998, the COLA would be delayed eight months, from January 1 until September 1. The Senate provision would also exclude survivor benefits and disabled retirees from the delay.

The conferees agree to delay COLAs for nondisabled retirees by three months in fiscal year 1994 and by nine months in fiscal years 1995, 1996, 1997 and 1998. The fiscal year 1994 COLA would be paid on April 1, 1994. COLAs for fiscal years 1995 through 1998 would be paid on October 1. COLA increases would revert to their normal date under current law on January 1, 1999, beginning with the fiscal year 1999 COLA.

COLAs for disabled retirees and for survivor benefits would not be affected by this provision and will continue to be paid at the same dates provided under current law. The COLA delay applies to all members of the uniformed services, including the Coast Guard and commissioned members of the Public Health Service and the National Oceanic and Atmospheric Administration.

The House bill also contained a provision (sec. 2002) that would freeze military pay in fiscal year 1994 and reduce the amount of the pay raise up one percentage point in fiscal years 1995 through 1998.

The Senate bill contained no similar provision.

The House recedes. The savings in the defense budget that would have resulted from the House provision will be achieved through reductions contained in the National Defense Authorization Act for Fiscal Year 1994.

TITLE III—BANKING AND HOUSING PROGRAM PROVISIONS

SECTION 3001—DEPOSITOR PREFERENCE

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

Twenty-nine states have depositor preference laws. Under this provision, state laws that govern the distribution of receivership assets for thrifts and state-chartered banks will be preempted if, and to the extent, they are inconsistent with this law.

The House and Senate passed similar provisions to implement depositor preference. However, the House specifically referenced the payment of claims of employees of the failed institution as a priority for payment after depositors have been paid. The Senate is silent on this issue. The House recedes to the Senate on this provision.

By remaining silent on this issue, it is the conferees' intent that the FDIC interpret the depositor preference provision for the payment of administrative expenses of the receiver as including ordinary and necessary expenses of the institution that are unpaid at the time of failure, but only those that the receiver determines are necessary to maintain services and facilities to effect an orderly resolution of the institution. Thus, the conferees intend that the FDIC continue its current practice of paying these expenses prior to paying deposits or other expenses if it determines such payment is required for an orderly resolution of the institution. These expenses are limited to pre-existing obligations of the institution for expenses such as the salaries of employees, utility bills and data processing. Golden parachutes or other expenses that do not preserve the value or the operation of the failed institution in preparation for resolution are not considered administrative expenses of the receiver.

The conferees intend that the FDIC promulgate regulations regarding the meaning of "administrative expenses." Prior to the implementation of such regulations, it is the conferees' intent that the FDIC continue its current practice of paying these expenses before paying depositors.

The terms of this provision also apply to the RTC and its resolution of institutions.

SECTION 3002—FEDERAL RESERVE SURPLUS FUNDS

This provision requires the Federal Reserve Board to transfer $106 million in fiscal year 1997 and $107 million in fiscal year 1998 from the surplus funds of Federal Reserve banks to the Treasury. At the end of 1992, the Federal Reserve System had in excess of $3 billion in surplus funds. The Federal Reserve's practice has been to match the dollar amount of its surplus funds with that of its paid in capital. Under this provision, in fiscal years 1997 and 1998, surplus accounts of the Federal Reserve banks are limited to 3% of member banks' paid up capital stock and surplus less the amounts required to be transferred to the Treasury from these accounts by this provision.

The Committee intends that the $213 million to be transferred to the Treasury in fiscal years 1997 and 1998 from the surplus accounts of the Federal Reserve banks be in addition to, and not in any way diminish, the amounts the Federal Reserve Board would otherwise transfer to the Treasury. Additionally, once the funds are transferred to the Treasury from the surplus account, the Federal Reserve is prohibited from replenishing those funds during fiscal years 1997 and 1998.

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

GENERAL

Both House and Senate bills contain a provision amending section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, aimed at preventing fraud and abuse in housing programs. The legislation authorizes HUD to utilize income return data, pursuant to the Internal Revenue Code and to verify or cross-match the income of applicants and participants of HUD programs. The differences between the two bills were primarily technical in nature. The conference report contains the Senate provision, as amended.

CONSENT FORMS

The House bill amended section 904(b) of the McKinney Act to give HUD the authority to require applicants and participants of HUD programs that involve initial and periodic review of income (including the Indian Housing Program under title II of the Untied States Housing Act of 1937), to sign a consent form authorizing HUD to request the Commissioner of Social Security and the Secretary of the Treasury to release return information pursuant to the Internal Revenue Code. The Senate bill had a similar amendment to section 904(b), but made no specific reference to "Indian housing programs" in that section. Instead, the Senate bill adds a new section 904(a)(4) of the McKinney Act, defining the term "program of the Department of Housing and Urban Development" to include "Indian housing programs assisted under title II of the United States Housing Act of 1937." The conference report contains the Senate provision. The sole purpose for the release of information is to verify the applicant's or participant's eligibility or level of benefits.

APPLICANT, PARTICIPANT, AND PUBLIC HOUSING AGENCY PROTECTIONS

The House bill, in a subsection entitled "Applicant and Participant Protections", amended section 904(c)(2)(A) of the McKinney Act to protect applicants for, and recipients of, benefits under HUD programs from improper use of return information. The Senate bill contained a similar provision except that the subsection in the Senate bill was entitled "Applicant, Participant, and Public Housing Agency Protections." The conference report contains the Senate provision. The legislation limits the use of this information to: 1) verification of eligibility for, or level of, benefits; and 2) informing an owner or public housing agency that an applicant's or participant's eligibility for or level of benefits is uncertain, and requesting the verification of income information.

HEARING REQUIREMENT

The House bill amended section 904(c)(2)(C) of the McKinney Act to require that an applicant or participant be given the opportunity to contest findings based on verified

information made by the agency or owner at a hearing that provides the basic elements of due process. The Senate chose to subject eligibility and recertification decisions made with information obtained through this program to the same due process and fair hearing requirements which ordinarily apply to these determinations. For this reason, the Senate bill did not contain a similar provision. The conference report adopts the Senate position.

After implementation of the changes to section 904 of the McKinney Act, the conferees direct HUD to include in the subsequent annual report to Congress, under section 8 of the Department of Housing and Urban Development Act, a report describing and analyzing the use of information, obtained pursuant to the HUD-IRS income matching program (ie., section 6103(1)(7)(D)(ix) of the Internal Revenue Code and section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988).

The report should include: 1) an analysis of the effect of this program upon applicants for and participants in covered housing assistance programs, including an analysis of any erroneous rejections, terminations or reductions of assistance; 2) a review of the adequacy of procedures used to protect applicants for and participants in covered housing assistance programs from adverse actions due to erroneous determinations of income; 3) a description of the inadequacies in such procedures and proposals for correcting such inadequacies; 4) a review of any privacy rights consideration raised by this section; 5) a description of the costs and savings associated with the program under this section.

This report is necessary because of concerns that potential errors in the implementation of this new income-matching program could have a negative impact on low-income tenants through possible criminal prosecutions, rent increases, payments for unreported income, terminations of assistance and possible evictions.

The conferees note that there is currently no uniformity in tenant protections through hearings or other methods across the various HUD assisted housing programs. The conferees are concerned that tenants under all assisted housing programs have access to adequate procedures to challenge terminations of assistance or evictions.

The conferees believe that public housing authorities and entities administering subsidized housing assistance, as covered under this program, should have the flexibility to enter into repayment plans, in lieu of requiring lump-sum payments, when tenants are found to have underreported income and to owe additional rent. The conferees direct HUD to issue guidelines making it clear that such flexibility exists.

PENALTY PROVISION

Both the House and Senate bills contain a provision amending section 904(c) of the McKinney Act to provide penalties for misuse of this program. Both bills: 1) make it a misdemeanor, punishable by fine of up to $5000, to obtain information through this program under false pretenses or to disclose such information to an unauthorized person; 2) authorize civil actions for damages against owners and public housing agencies who have violated the requirements of this program. The conference agreement contains a provision originally included in the Senate bill in another form which would extend the penalty provision to include requesting information pursuant to the section without first obtaining the signed consent of the concerned individual.

OPERATING SUBSIDY ADJUSTMENTS

The Senate bill amended section 9(a) of the United States Housing Act of 1937 to require that adjustments to a public housing agency's operating subsidy, made by HUD, reflect actual changes in rental income collections resulting from the application of section 904 of the McKinney Act. The House bill did not contain a similar provision. The conference report does not contain the Senate provision.

The conferees direct HUD to make adjustments to a public housing agency's operating subsidy only to reflect actual changes in rental income collections resulting from the application of section 904 of the McKinney Act.

AMENDMENTS TO IRS CODE

Title III of the Senate bill included amendments to section 6103(1)(7)(D) of the Internal Revenue Code to permit the IRS to provide these data to the HUD Secretary. Similar provisions were also included in Title VII of the Senate bill and Title XIV of the House bill. This conference report includes a similar provision in another title.

SECTION 3004—GOVERNMENT NATIONAL MORTGAGE ASSOCIATION REAL ESTATE MORTGAGE INVESTMENT CONDUIT FEES

GENERAL

Both House and Senate bills amended section 306(g)(3) of the National Housing Act to give the Government National Mortgage Association (GNMA) the authority to charge flexible fees in a new multiclass security program known as Real Estate Mortgage Investment Conduits (REMICs), with some differences. The conference report contains the Senate provision.

FEES

The House bill specifically required that fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or a pool of securities or notes guarantied by GNMA, shall be charged by GNMA in an amount not to exceed the value, as determined by GNMA, of the guarantee or commitment to guarantee. The Senate bill contained a similar provision. The conference report contains the Senate provision.

ACCRUAL OF BENEFIT TO FUTURE MORTGAGORS

The House bill required GNMA to take such action as may be necessary to reasonably assure that such portion of the value of the guarantees or commitments to guarantee as GNMA determines is appropriate accrues to the benefit of future mortgagors under the mortgages by or upon which such securities or notes are backed. The Senate bill contained a similar provision. The conference report contains the Senate provision.

Consistent with this provision, the conferees expect GNMA to take such action that it deems appropriate to ensure that as much as possible of the value of the GNMA guarantee is passed on to future Farmers Home Administration (FmHA), Federal Housing Administration (FHA), and Veterans Administration (VA) homeowners.

REPORTING REQUIREMENTS

The House bill required GNMA to submit a report to Congress for each fiscal year, describing any activities of GNMA with respect to guaranteeing and making commitments to guarantee multiclass securities. The Senate bill contained a similar provision, but required the information to be provided in GNMA's annual report, rather than a separate annual report to Congress.

The conferees direct GNMA, in its annual report, to provide a summary of each activity of GNMA pertaining to GNMA's multiclass securities program. Each summary shall contain a description of the activity and shall include: 1) information pertaining to the size of the transactions closed, the number of mortgages involved, the amount of fees charged and earned, those persons or entities receiving payments for services provided and the amounts of such payments; and 2) an estimate of the portion of the benefit of the multiclass securities program accruing to mortgagors as well as a description of any action taken by GNMA to ensure such accrual.

CONSULTATION

The Senate bill requires GNMA to consult with persons or entities as it deems appropriate, to ensure the efficient commencement and operation of the multiclass securities program. The House bill did not contain a similar provision. The conference report contains the Senate provision.

The conferees anticipate that GNMA, in designing its REMICs program, will wish to consult with the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) and other entities experienced in REMICs markets. The conferees encourage such discussions and the conference report grants GNMA explicit authorization for them. However, care should be taken to ensure that such consultation does not result in the provision of an unfair competitive or financial advantage. GNMA is also given authority to contract with persons or entities to perform certain functions in the administration of its ongoing multiclass securities program. GNMA should be careful to avoid contracting for advice or assistance in connection with the administration of its REMIC program with persons or entities whose other financial interests significantly conflict those of GNMA.

FNMA CONTRACTING RIGHTS

The Senate bill provided that no State, local or Federal law shall preclude or limit the exercise by GNMA of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program. The House bill did not contain a similar provision. The conference report contains the Senate provision.

The conferees understand that similar language has been in existing law since 1980, in section 306(g)(1) of the National Housing Act, with regard to the GNMA Mortgage-Backed Securities program. The conferees have thus added this provision to apply similarly to the GNMA REMIC program.

REPORT TO CONGRESS PRIOR TO COMMENCEMENT OF PROGRAM

The Senate bill required GNMA, prior to the commencement of the multiclass securities program, to provide the Senate and House Banking Committees, a report describing GNMA's design of the program, including program elements that ensure minimization of risks arising from the operation of the program. The House bill did not contain a similar provision. The conference report does not contain the Senate provision.

The conferees direct that prior to the commencement of the multiclass securities program, GNMA shall provide to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Banking, Finance and Urban Affairs a report describing GNMA's design of the multiclass securities program, including program elements that ensure the minimization of risks

arising from the operation of the multiclass securities program, such as: 1) any industry proven safeguards, including capital standards for sponsors and provisions for indemnification from private parties for events that may result in GNMA's liability under its guaranty or commitment to guaranty; and 2) the sufficiency of GNMA's staff resources to administer the multiclass securities program.

SECTION 3005—MUTUAL MORTGAGE INSURANCE FUND PROGRAMS

Both House and Senate bills had identical provisions.

TITLE IV—STUDENT LOAN AND ERISA PROVISIONS

Unless otherwise noted section references are to sections of the Higher Education Act of 1965, as proposed to be added or amended by the conference report.

CONTRACTUAL RIGHT

House bill

No provision.

Senate amendment

Section 452(c) clarifies that an eligible borrower has a contractual right to receive a direct loan if they attend an institution that participates in direct lending.

Conference agreement

The Senate recedes.

DELIVERY OF FUNDS

House bill

No provision.

Senate amendment

Section 452(d) provides that funds under the direct student loan program shall be delivered to the institution in the same manner as Pell funds are delivered to the institution.

Conference agreement

The House recedes. The conferees believe that the Department of Education should allow the use of a master disbursement check in the part B programs, so that all institutions can receive the benefit of the efficiencies available to institutions able to use electronic funds transfer for loan disbursement. A master check disbursement would allow a lender or disbursement agency to combine the funds of all students at an institution into a single check.

PHASE IN

House bill

Section 453 provides that the phase-in schedule for the direct student loan program would be 4% of the sum of the new student loan volume under parts D and B in 1994–95, 25% in 1995–96, 60% in 1996–97 and 100% in 1997–98.

Senate amendment

Section 453 provides that the phase-in schedule for the direct student loan program would be 5% of the new student loan volume in 1994–95, 30% in 1995–96, 40% in 1996–97 and 50% in 1997–98 and fiscal year 1998. Section 453 also defines new student loan volume as the estimated sum of loans made under parts D and B, where the Secretary will base the estimate on the most recent available data.

Conference agreement

The conference agreement provides that the phase-in schedule for the direct student loan program would be 5% of the new student loan volume in 1994–95, 40% in 1995–96, 50% in 1996–97, 50% in 1997–98 and 60% in the academic year beginning in fiscal year 1998. Beginning in 1996–97, the percent phase-in goal may be exceeded, if the Secretary determines that a higher percentage is warranted by the number of institutions that want to participate in the programs and meet the eligibility criteria. The agreement also defines new student loan volume as the estimated sum of loans made under parts D and B, where the Secretary will base the estimate on the most recent available data.

PARTICIPATING INSTITUTIONS

House bill

Section 453(b) requires the Secretary to categorize institutions according to anticipated loan volume, length of academic program and control of institution.

Senate amendment

Section 453(b) is similar to the House provision. In addition, the Senate amendment requires the Secretary, to the extent possible, to categorize institutions according to highest degree offered, size of student enrollment, percentage of students borrowing under part B, geographic location, annual loan volume, default experience and composition of the student body. The Senate amendment also postpones these requirements until the 1995–96 academic year.

Conference agreement

The House recedes with an amendment striking "percentage of students borrowing under part B" and "composition of the student body" from the Senate's list. It is the intent of the conferees that the Secretary, in selecting institutions for participation, is required to ensure that a representative and proportional sample of all types of eligible postsecondary institutions of higher education are included in each academic year beginning with 1995–96. The conferees further note that the Secretary can only require the participation of institutions in the program if the requirement for a representative and proportional sample of all types of eligible postsecondary institutions is not achieved. The conferees emphasize their commitment to a varied and balanced selection of all eligible institutions as the Federal Direct Student Loan Program is phased-in and during the selection of additional institutions as the program expands. It is further the understanding of the conferees that an institution withdrawing or terminated from the program under this part shall not be penalized for such action, unless the institution was terminated because of fraud and abuse. The conferees expect that the Department will ensure that procedure that an institution withdrawing from the part D program will not be excluded from participation in the programs authorized under part B.

30-DAY DELAYED DISBURSEMENT

House bill

Section 454(a) provides that first year students will not have the first disbursement of their loan delayed 30 days.

Senate amendment

Section 454(a) contains a similar provision.

Conference agreement

The conference agreement deletes both of these provisions.

SIMULTANEOUS PARTICIPATION

House bill

Section 454(a) provides that institutions cannot participate in part D and part B at the same time.

Senate amendment

Section 454(a) provides that, at the discretion of the Secretary, institutions may participate in part D and part B at the same time.

Conference agreement

The House recedes with an amendment clarifying that a student may only borrow under one program per period of enrollment.

CONSULTATION WITH INSTITUTIONS OF HIGHER EDUCATION

House bill

No provision.

Senate amendment

Section 454(a)(5) requires the Secretary to consult with institutions of higher education in establishing a quality assurance system.

Conference agreement

The House recedes.

SUPPLEMENTAL LOANS FOR STUDENTS

House bill

Section 455(a) provides that Federal Direct Supplemental Loans for Students under part D are to have the same terms, conditions and benefits as Supplemental Loans for Students under part B.

Senate amendment

Section 455(a) merges the Federal Supplemental Loans for Students program and the Federal Unsubsidized Stafford loan program into one loan program under part D—Federal Direct Unsubsidized Stafford loans.

Conference agreement

The House recedes with an amendment providing that an independent student's loan limit under the Federal Direct Unsubsidized Loan program would equal the student's loan limit under the Federal Supplemental Loan for Students program (as in effect upon enactment) plus his or her loan limit under the Federal Direct Stafford Loan program minus the amount of any assistance the student received under Federal Direct Stafford Loan program.

DESIGNATION OF LOANS

House bill

Section 455(a)(2) names the part D loans that are similar to section 428 loans as Federal Direct Student Loans and loans that are similar to section 428H loans as Federal Direct Unsubsidized Student Loans.

Senate amendment

Section 455(a)(2) names these loans Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans.

Conference agreement

The House recedes.

INTEREST RATE CAP

House bill

No provision.

Senate amendment

Section 455(b) changes the interest rate cap on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans from 9 percent to 8.25 percent beginning with loans first disbursed on or after July 1, 1994.

Conference agreement

The House recedes.

INTEREST RATES

House bill

No provision.

Senate amendment

Section 455(b) sets the interest rate on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans at the 91-day T-bill +2.5 percent while the student is in school and during any grace or deferment period. This provision applies to loans first disbursed on or after July 1, 1994.

Conference agreement

The House recedes with an amendment that maintains current law for academic

year 1994–95 and applies this provision to loans first disbursed on or after July 1, 1995.

INTEREST RATES (FEDERAL DIRECT STAFFORD LOANS AND FEDERAL DIRECT UNSUBSIDIZED STAFFORD LOANS)

House bill

Section 455(b) changes the interest rate on Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans to the bond equivalent rate of the security with a comparable maturity plus one percent for loans made on or after July 1, 1997.

Senate amendment

No provision.

Conference agreement

The Senate recedes with an amendment to apply this to loans made on or after July 1, 1998.

INTEREST RATE (FEDERAL DIRECT SUPPLEMENTAL LOANS FOR STUDENTS)

House bill

Section 455(b) changes the interest rate on Federal Direct Supplemental Loans for Student loans to the bond equivalent rate of the security with a comparable maturity plus 1.5 percent for loans made on or after July 1, 1997.

Senate amendment

No provision.

Conference agreement

The House recedes.

INTEREST RATE FOR PLUS LOANS

House bill

Section 455(b) changes the interest rate on Federal Direct PLUS Loans to the bond equivalent rate of the security with a comparable maturity plus 2.1 percent for loans made on or after July 1, 1997.

Senate amendment

Section 455(b) lowers the interest rate cap on Federal Direct PLUS Loans to 9 percent for loans first disbursed on or after July 1, 1994.

Conference agreement

The conference agreement incorporates both provisions, changing the effective date of the House provision to July 1, 1998.

ORIGINATION FEE

House bill

Section 455(c) sets the student's loan fee at 5 percent for years 1994–95 through 1996–97 and at 3.65 percent for years 1997–98 and beyond under part D.

Senate amendment

Section 455(c) the student's loan origination fee at 4 percent under part D, beginning in academic year 1994–95.

Conference agreement

The House recedes.

INCOME CONTINGENT REPAYMENT PLAN

House bill

Section 455(d) designates the income contingent repayment plan an EXCEL Account and permits the Secretary to determine the length of repayment.

Senate amendment

Section 455(d) limits the income contingent repayment term to 20 years.

Conference agreement

The House recedes on the name. The Senate recedes on the length with an amendment permitting the Secretary to determine the length of the repayment but providing that the repayment terms will not exceed 25 years.

REPAYMENT SCHEDULES

House bill

Section 455(e) provides that the income contingent repayments will be measured as a percentage of the appropriate portion of the borrower's annual income.

Senate amendment

Section 455(e) provides that the payments will vary in relation to the appropriate portion of the borrower's income.

Conference agreement

The House recedes.

ELIGIBLE INSTITUTIONS

House bill

No provision.

Senate amendment

Section 455(f) specifies that an eligible institution is one as defined under section 435.

Conference agreement

The House recedes with an amendment providing that an eligible institution under part D must meet the definition under section 435(a).

REQUIREMENT FOR REGULATIONS

House bill

No provision.

Senate amendment

Section 455(g) requires the Secretary to establish the terms and conditions of the Federal Direct Consolidation Loan Program pursuant to regulations.

Conference agreement

The House recedes with an amendment to require this for academic years 1995–96 and beyond.

OPTICALLY IMAGED DOCUMENTS

House bill

No provision.

Senate amendment

Section 455(i) allows optically imaged documents to be used in any loan proceeding.

Conference agreement

The Senate recedes.

DISCHARGEABILITY IN BANKRUPTCY

House bill

Section 455(i) provides that loans under this part will not be dischargeable in bankruptcy.

Senate amendment

The Senate has a similar provision (section 455(j)).

Conference agreement

The conference agreement contains no provision with respect to dischargeability in bankruptcy. The conferees determined to delete these provisions from both the House bill and the Senate amendment. The conferees believe that current provisions of the Bankruptcy Code are sufficient to protect against unnecessary discharge of direct student loans in bankruptcy. Section 523(a)(8) of the Bankruptcy Code operates to prevent the discharge of federally guaranteed education loans except in cases where the loan first became due more than seven years before the date of the filing of the bankruptcy petition, or where failure to allow the discharge would impose an undue hardship on the borrower and the borrower's dependents. [11 U.S.C. 523 (a)(8)] This limitation on discharge of education loans applies to wage earner cases filed under Chapter 13 of the Bankruptcy Code. [11 U.S.C. 1328(a)(2)] It is the intent of the conferees that loans made pursuant to the Federal Direct Student Loan Program would be subject to these same limitations on discharge.

COMMON FINANCIAL REPORTING FORM

House bill

No provision.

Senate amendment

Section 455(k) provides that the common financial reporting form will be the application form for part D loans and that the Secretary should develop, print and distribute a standard promissory note and loan disclosure form.

Conference agreement

The House recedes with an amendment to exclude PLUS loans from this requirement.

LOAN DISBURSEMENT

House bill

No provision.

Senate amendment

Section 455(l) specifies that loans will be disbursed to the student by crediting the student's account and that any remaining funds will be returned to the student in the same manner as under part B. The Senate amendment further specifies that the payment periods will be consistent with the Pell grant payment periods.

Conference agreement

The House recedes with an amendment requiring this disbursement to be applied, rather than credited, to a student's account and providing that the student must acknowledge that his or her loan proceeds will be disbursed in this manner. It is the intent of the conferees that direct loans be disbursed to students in a manner consistent with the Federal Pell Grant program except that a system shall be developed to ensure that students retain the authority to cancel or approve the final disbursement of loan proceeds as is currently provided by the requirement that students sign the loan check.

MAINTENANCE OF FUNDS

House bill

No provision.

Senate amendment

Section 455(m) provides that 1) an institution shall maintain financial records in a manner consistent with other Title IV programs; 2) that an institution may maintain part D loan funds in the same account as other student financial aid; 3) that reconciliation shall be in the same manner and schedule as the Pell quarterly schedule; and 4) that transaction histories are maintained using the same system as used under the Pell grant program.

Conference agreement

The House recedes on the first provision. The House recedes on the second provision with an amendment allowing the Secretary to require separate accounts by regulation. The House recedes on the third provision with an amendment allowing for a different schedule than the Pell schedule, including monthly reconciliation of payments. The House recedes on the fourth provision. It is the intent of the conferees that institutions of higher education be able to maintain uniform financial records, distribution systems, and methods of reconciliation for all of their Federal student aid programs. The purpose of this and other amendments on this issue is to ease the burden on institutions and to make it clear to them as to how the Federal Direct Student Loan Program will operate by using the Federal Pell Grant delivery system that is well known and efficient model.

CONTRACTUAL RIGHT

House bill

No provision.

Senate amendment

Section 455(n) stipulates that an eligible student has a contractual right against the

United States for a loan made under this part if the student is attending an institution that participates in direct lending.

Conference agreement

The Senate recedes.

CONTRACTS FOR SUPPLIES AND SERVICES

House bill

Section 456(a)(1) specifically allows the Secretary to contract with lenders and guaranty agencies if they otherwise are qualified and comply with the applicable procedures.

Senate amendment

Section 456(a)(1) mandates, for the servicing of loans, the Secretary contract only with entities that have extensive experience and a demonstrated record in loan servicing and collection.

Conference agreement

The conference agreement incorporates both provisions. In addition, the conference agreement requires the Secretary, to the extent practicable and consistent with the purposes of the program, to give special consideration to state agencies with a history of quality performance. The conference agreement further allows state agencies to apply for contracts in consortia. The conferees note the importance of ensuring that in contracting with alternative loan originators, the Department of Education shall require that such originators equitably serve all students attending eligible institutions.

CONTRACTING EXEMPTIONS

House bill

Section 456(a)(2) provides that, in order to obtain an exemption from the Federal Property and Administrative Services Act, the Office of Federal Procurement Policy Act and the Small Business Act, the Secretary must determine in writing that the Government's need for the services and supplies to be provided under the contract is of such an unusual and compelling urgency that sources from which the Secretary solicits bids or proposals must be limited, that the Secretary notifies Congress in writing in not more than 30 days after the award of the contract, and that the exemption from the requirements is in the public interest and necessary for the orderly transition from the loan programs under part B to direct lending.

Senate amendment

Section 456(20 provides for these exemptions if the exemption is in the public interest and necessary for the orderly transition from part B to part D.

Conference agreement

The conference agreement contains neither provision.

GAO REPORT

House bill

No provision.

Senate amendment

Sections 459(c), (d), and (e) require the General Accounting Office to submit an interim final report by January 1, 1997 on the Federal Direct Student Loan Program that includes—1) administrative costs, including cost per loan, incurred by participating institutions; 2) administrative costs, including costs per loan, incurred by the Department of Education and its contractors for origination, data systems, servicing and collection; 3) an evaluation of its effectiveness in providing services, including organization, financial aid packaging, tracking of student status, responsiveness to student inquiries and processing of deferments, forbearances and repayments; 4) frequency and cost of borrowers delinquency and default and associated costs to institutions and servicers, including costs incurred by improper origination or servicing; 5) timeliness of capital availability and cost of loan capital; 6) effectiveness of the income contingent repayment option; 7) comparison of institutions participating in the direct loans with the control group concerning items 1–6; 8) evaluation of the administrative performance of the Department; 9) reasons why institutions chose not to participate or withdrew or were terminated from the Federal Direct Student Loan Program; 10) an analysis of the experience of borrowers with loans under both parts B and D and recommendations of effective repayment procedures for them; 11) comparison of the cost of loan capital for parts B and D; 12) an analysis of instructions which participation as part of a consortia; and 13) recommendations for modifications, continuation, expansion, suspension or termination of the part D program or the replacement of all or some of the part B programs. The Senate amendment further provides for a final report from the General Accounting Office by May 1, 1998 including the same matters discussed above. Further, the Senate amendment requires the Secretary to select a control group of institutions participating in part B which is comparable to the institutions participating in part D. Finally, the Senate amendment provides that in reporting costs, the General Accounting Office should report separately nonrecurrent costs, administrative costs incurred by institutions because of the General Accounting Office's reporting requirements, and normal operating costs for the Federal Direct Student Loan Program.

Conference agreement

The Senate recedes.

CONSULTATION

House bill

No provision.

Senate amendment

Section 458 requires the Secretary to develop the notices implementing the Federal Direct Student Loan program in academic year 1994–95 in consultation with the higher education community.

Conference agreement

The House recedes.

NEGOTIATED RULEMAKING

House bill

No provision.

Senate amendment

Section 458(a)(2) requires that regulations for years 1995–96 and beyond be developed through negotiated rulemaking, including consolidation loans.

Conference agreement

The House recedes with an amendment making this requirement applicable to the extent practicable. It is the intention of the conferees that the Secretary immediately begin the negotiated rulemaking process so as to develop through that process the standards, criteria, procedures and regulations necessary to implement the Federal Direct Student Loan program for the 1995–96 academic year and subsequent academic years. However, should the Secretary find it necessary to develop such standards, criteria, procedures, and regulations outside of that process in order to avoid violating the Master Calendar provided in section 482 of the Higher Education Act relative to the 1995–96 academic year, the conferees intend that the Secretary do so. Nevertheless, should the Secretary find it necessary to exercise this option for the 1995–96 academic year, the conferees intend that such standards, criteria, procedures, and regulations for the 1996–97 academic year and subsequent academic years by subject to the negotiated rulemaking process.

ADMINISTRATIVE EXPENSES

House bill

Section 459 provides $261 million in funding for administrative costs in FY 1994, $346 million in FY 1995, $552 million in FY 1996, $596 million in FY 1997 and $749 million in FY 1998, with a four year cap of $2.504 billion.

Senate amendment

Section 460 provides $20 million in funding for administrative costs in FY 1994, $70 million in FY 1995, $170 million in FY 1996, $305 million in FY 1997 and $480 million in FY 1998, with a four year cap of $1.045 billion.

Conference agreement

The conference agreement provides $260 million in funding for administrative costs in FY 1994, $345 million in FY 1995, $550 million in FY 1996, $595 million in FY 1997 and $750 million in FY 1998, with a four year cap of $2.5 billion. The conferees intend that these caps not apply to funds recovered from guaranty agency reserves and used for the purposes specified in section 459.

BUDGET JUSTIFICATION

House bill

No provision.

Senate amendment

Section 460(c) requires the Secretary to include, in the Department's annual budget justification, a detailed description of use of administrative funds.

Conference agreement

The House recedes.

NOTIFICATION

House bill

No provision.

Senate amendment

Section 460(d) requires the Secretary to notify the authorizing and appropriations committees in the House and Senate when the Secretary draws funds from future years allocations for administrative expenses.

Conference agreement

The House recedes.

STUDENT LOAN REFORM COMMISSION

House bill

No provision.

Senate amendment

Section 460A establishes the National Student Loan Reform Commission to monitor, evaluate, and report on the implementation of the Federal Direct Student Loan Program and the continued operation of the Federal Family Education Loan Program. The Senate amendment authorizes up to $2 million per year in mandatory spending, for each of fiscal years 1994–1998, for the expenses of the bipartisan 15 member commission. The Senate amendment further requires the commission to submit to the Congress and the President no later than January 1, 1997, its final recommendations on the advisability of replacing the Federal Family Education Loan Program with a full-scale direct lending program.

Conference agreement

The Senate recedes. The conferees intend, however, that the duties that would have been assigned to the National Student Loan

Reform Commission pursuant to the Senate bill be performed instead by the Advisory Committee on Student Financial Assistance (established by section 491 of the Higher Education Act). Specifically, it is the intent of the conferees that the Advisory Committee on Student Financial Assistance advise the Secretary and the Congress on the operation of the Federal Direct Student Loan Program and the Federal Family Education Loan Program. The conferees further intend that the Advisory Committee evaluate and report to the Congress on these program on not less than an annual basis, with final recommendations on the advisability of proceeding to full direct lending to be submitted to the Secretary and the Congress no later than January 1, 1997.

STUDENT LOAN MARKETING ASSOCIATION

House bill

Section 4021(d) of the House bill requires the Student Loan Marketing Association (Sallie Mae) to make lender-of-last-resort loans. The House bill stipulates that Sallie Mae does not have to make these loans to institutions with high default rates, institutions that have participated in part B less than 18 months, or institutions currently subject to an emergency action or an L, S or T proceeding.

Senate amendment

Section 12041 of the Senate amendment is similar. The Senate amendment does not include the House exceptions. The Senate further stipulates that Sallie Mae must begin making these loans by no later than July 1, 1994.

Conference agreement

The conference agreement requires the Student Loan Marketing Association to make lender-of-last-resort loans beginning no later than 90 days after date of enactment. The conference agreement does not include the exemptions contained in the House bill. The conference agreement further provides that lender-of-last-resort loans will be delivered in a timely fashion and that students will have no additional eligibility requirements than they do for the other part B loans. The conferees note that this section and section 4041(a) of this Act would expand the "lender-of-last-resort" provisions in the Higher Education Act, under which a lender is designated to make loans to eligible students who are unable to obtain loans from eligible lenders through the usual process. However, certain Federal Trade Commission (FTC) regulations, commonly known as the "Holder Rule," require a notice be included in consumer loan contracts in which the lender and the seller have a business or referral arrangement notifying the consumer that the holder of the contract may be subject to defenses to repayment raised by the consumer. The Holder Rule applies to student loan borrowers attending for-profit institutions, and the new Federal Family Education Loan promissory note includes the required notice. It is the conferees' understanding that the Holder Rule does not create liability for a lender-of-last-resort if the institution provides information to a student regarding the lender-of-last-resort services available in a state. The conferees understand that the FTC has provided an informal opinion to the Department that the Holder Rule is not applicable if the institution provides such information. The conferees urge the FTC to confirm this interpretation in formal guidance to ensure that student loan access under the lender-of-last-resort provisions is not jeopardized.

RESERVE FUNDS

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to require the return of all of the reserve funds of a guaranty agency in order to ensure the proper maintenance of such agency's funds or assets.

Conference agreement

The House recedes with an amendment requiring that regulations for this provision be developed through negotiated rulemaking and that these regulations contain a provision for administrative due process. The amendment provides that the Secretary, in making a determination to direct a guaranty agency to return assets, shall make such determination based on standards developed through the negotiated rulemaking process and published by the Secretary in regulations, and that those standards shall include procedures for administrative due process. The conferees have included this language so that the Secretary and the higher education community will engage in a full and open discussion of this issue, and actively cooperate to develop these standards, However, the conferees wish to emphasize that this language is not intended to diminish the longstanding and judicially-supported view that a guaranty agency's assets are dedicated to the loan programs and may not be used for unauthorized purposes. It is the conferees further intention that all references to guaranty agencies reserves contained in amendments to section 422 refer only to the "Federal portion" of such reserves.

GUARANTY AGENCY ACTIVITY

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to direct a guaranty agency to cease activities involving its reserve funds if the Secretary determines there may be a misapplication, misuse or improper expenditure of these funds.

Conference agreement

The House recedes. While this language does not cover the ability of the Department to recover reserve funds in the case of misuse, misapplication or improper expenditure of the funds, it is the intent of the conferees that when negotiated rulemaking is conducted on the issue of reserve funds, the issue of recovery in the case of misuse, misapplication or improper expenditure will be addressed. However, it is the intent of the conferees that the Department has the ability to recover reserve funds in the case of misuse, misapplication or improper expenditure without regulations developed through negotiated rulemaking.

SUSPENSION OF CONTRACT

House bill

No provision.

Senate amendment

Section 422(g) allows the Secretary to suspend or cease a guaranty agency contract if the Secretary finds misuse of guaranty agency's funds or unnecessary and improper benefits to the officers or directors of a guaranty agency.

Conference agreement

The House recedes.

PENALTIES

House bill

No provision.

Senate amendment

Section 422(g) provides that violations relating to misuse of guaranty agency reserve funds are subject to the same criminal penalties as fraud and abuse in the student aid programs (section 490 of the Higher Education Act).

Conference agreement

The House recedes.

ELIGIBILITY OF GUARANTY AGENCIES TO FILE FOR BANKRUPTCY

House bill

Section 4025(7) prohibits a guaranty agency from filing for bankruptcy.

Senate amendment

Section 12045(7) contains a similar provision.

Conference agreement

The conference agreement removes these provisions from both bills. The conferees do not intend that bankruptcy serve as a vehicle to frustrate or delay the policies embedded in Higher Education Act relative to the Federal Family Education Loan program and the transition from the Family Federal Education Loan program to the Federal Direct Student Loan program. The conferees intend that the Department retain and use its considerable power and authority with respect to the guaranty agency and its assets in the event a guaranty agency is threatened with insolvency and/or is eligible to file for bankruptcy protection.

ADMINISTRATIVE COST ALLOWANCE

House bill

Section 4026 of the House bill eliminates guaranty agency's administrative cost allowance after fiscal year 1994.

Senate amendment

No provision.

Conference agreement

The Senate recedes. It is the understanding of the conferees that the Department of Education will pay on a timely basis to each guaranty agency an amount equivalent to that which they otherwise would have received under the administrative cost allowance provision terminated in this legislation. It is the intention of the conferees that funding for this payment will come from the administrative funds provided under section 458.

DIRECT CONSOLIDATION LOANS

House bill

Section 428C allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan with income-sensitive repayment terms acceptable to the borrower.

Senate amendment

Section 428C allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan. The Senate amendment allows these direct consolidation loans to have repayment provisions similar to regular consolidation loans as well as the income contingent repayment plan provided by both bills.

Conference agreement

The conference agreement allows a borrower to obtain a direct consolidation loan from the Secretary, if he or she is unable to obtain a consolidation loan or a consolidation loan with income-sensitive repayment terms acceptable to the borrower. The conference agreement further allows these direct consolidation loans to have repayment

provisions similar to regular consolidation loans as well as the income contingent repayment plan provided by both bills. The conference agreement also includes a conforming amendment to prevent institutions from using consolidation loans to circumvent the default rate cut off provisions of the Higher Education Act.

INTEREST RATES (CONSOLIDATION LOANS)

House bill

Section 4027(3) of the House bill changes the interest rates on consolidation loans to the weighted average rounded upward to the nearest whole percent, effective July 1, 1994.

Senate amendment

No provision.

Conference agreement

The Senate recedes.

STUDY OF THE STUDENT LOAN MARKETING ASSOCIATION

House bill

Section 4028 of the House bill directs the Secretaries of Education and Treasury to conduct a study of the future of the Student Loan Marketing Association.

Senate amendment

No provision.

Conference agreement

The House recedes.

OPTICALLY IMAGED DOCUMENTS

House bill

No provision.

Senate amendment

Section 12047 of the Senate amendment provides for the use of optically imaged documents, including promissory notes and repayment agreements, in any proceeding with respect to these programs or loans. This section also provides that an optically imaged copy of any document or record may be introduced as evidence in any proceeding with respect to these programs or loans in any court.

Conference agreement

The Senate recedes.

CONSOLIDATION OF PROGRAMS

House bill

No provision.

Senate amendment

Section 10248 the Senate amendment changes the annual loan limits on unsubsidized loans to equal the loan limits on the Federal Supplemental Loans for Students program for independent students and students whose parents are unable to borrow under the Federal PLUS program. For these same students, the aggregate loan limit would be raised to reflect the increases in the annual limits.

Conference agreement

The House recedes with an amendment providing that an independent student's loan limit under the Federal Unsubsidized Stafford Loan program would equal the student's loan limit under the Federal Supplemental Loan for Students program plus his or her loan limit under Federal Stafford Loan program minus the amount of any assistance the student received under the Federal Stafford Loan program.

AMORTIZATION OF INTEREST RATES

House bill

No provision.

Senate amendment

Section 12048(a)(3) of the Senate amendment sets the interest rate used to calculate the amortized interest prior to repayment as the applicable interest rate at the time of repayment. The Senate amendment further defines the repayment period to commence when the first payment of principal is due.

Conference agreement

The House recedes.

CONSOLIDATION OPTIONS

House bill

No provisions.

Senate amendment

Section 12048(a)(4) of the Senate amendment allows lenders to consolidate all Federal Unsubsidized Stafford, Federal Supplemental Loan for Students and Federal PLUS loans into a single repayment schedule, with interest set at the weighted average of the interest rates on the loans rounded to the nearest whole percent. This provision allows for the extension of the repayment period but forbids the payments of additional insurance premiums.

Conference agreement

The Senate recedes.

REFINANCING (VARIABLE INTEREST RATE)

House bill

No provision.

Senate amendment

Section 12048(a)(4) of the Senate amendment allows a lender to refinance a Federal Unsubsidized Stafford loan, a Federal Supplemental Loan for Students or Federal PLUS loan in order to obtain more favorable interest rates for the borrower. The lender could charge an administrative fee of up to $100. If the borrower is denied refinancing from the borrower's original lender, another lender may refinance the loan and may charge additional insurance in place of the administrative costs. Holders must notify borrowers of refinancing options.

Conference agreement

The Senate recedes.

REPEAL OF SUPPLEMENTAL LOANS FOR STUDENTS PROGRAM

House bill

No provision.

Senate amendment

Section 12048(b) of the Senate amendment repeals the Supplemental Loans for Students program effective July 1, 1994.

Conference agreement

The House recedes.

ORIGINATION FEE; INSURANCE PREMIUM

House bill

No provision.

Senate amendment

Section 12049 of the Senate amendment changes the 6.5 percent origination fee/insurance premium in the Unsubsidized loan program to a 3 percent origination fee. The Senate amendment also provides for up to a 1 percent guaranty agency insurance premium for unsubsidized loans. Both of these provisions take effect in the 1994-95 academic year.

Conference agreement

The House recedes.

DELAYED DISBURSEMENT

House bill

No provision.

Senate amendment

Section 12050 of the Senate amendment eliminates the 30-day delayed disbursement requirement for first year borrowers in the Federal Family Education Loan program.

Conference agreement

The Senate recedes.

SECRETARY'S EQUITABLE SHARE

House bill

No provision.

Senate amendment

Section 12021 of the Senate amendment lowers the percentage of collections that guaranty agencies may retain from 30 percent to 27 percent.

Conference agreement

The House recedes.

INTEREST RATES

House bill

No provision.

Senate amendment

Section 12022 of the Senate amendment lowers the cap on PLUS loan interest rates from 10 percent to 9 percent and lowers the cap on Federal Stafford Loan program and Federal Unsubsidized Stafford Loan program interest rates from 9 percent to 8.25 percent, effective July 1, 1994.

Conference agreement

The House recedes.

INTEREST RATES (IN-SCHOOL GRACE PERIOD)

House bill

No provision.

Senate amendment

Section 12022(4) of the Senate amendment lowers the interest rate on all loans in the Federal Family Education Loan Program during the in-school and deferment and grace periods to 91-day T-bill plus 2.5 percent, effective July 1, 1994.

Conference agreement

The House recedes with an amendment applying this to loans first disbursed on or after July 1, 1995.

ORIGINATION FEES (STAFFORD, SLS, AND PLUS)

House bill

No provision.

Senate amendment

Section 12023(1) of the Senate amendment lowers the origination fee from 5 percent to 3 percent on Federal Stafford, Supplemental Loans for Students and PLUS loans.

Conference agreement

The House recedes.

LENDER ORIGINATION FEE

House bill

No provision.

Senate amendment

Section 12023(4) of the Senate amendment institutes a 0.5 percent lender origination fee to be collected from the lenders and distributed in the same manner as student loan origination fees.

Conference agreement

The House recedes.

OFFSET FEE

House bill

No provision.

Senate amendment

Section 12024 of the Senate amendment provides that the Student Loan Marketing Association should pay an annual fee (paid on a monthly basis) of 0.3 percent of the principal amount of each part B loan which the Student Loan Marketing Association holds.

Conference agreement

The conference agreement provides that the Student Loan Marketing Association

should pay an annual fee (paid on a monthly basis) of 0.3 percent of the principal amount of each part B loan which the Student Loan Marketing Association acquires on or after date of enactment. The conference agreement further provides that the Secretary shall increase this fee to 1.0 percent if he determines that the Student Loan Marketing Association has substantially failed to comply with the requirement to make lender-of-last-resort loans.

TAX EXEMPT FLOOR

House bill

No provision.

Senate amendment

Section 12025 of the Senate amendment lowers the guaranteed special allowance for secondary markets from a minimum of 9.5 percent to 8.5 percent of the special allowance for other lenders.

Conference agreement

The conference agreement lowers the guaranteed special allowance for secondary markets from a minimum of 9.5 percent to the special allowance for other lenders.

INTEREST RATES (CONSOLIDATION LOANS)

House bill

No provision.

Senate amendment

Section 12026(a)(1) of the Senate amendment changes the interest rate for consolidation loans to the 91-day t-bill plus 3.1 percent, with a maximum of 9 percent.

Conference agreement

The Senate recedes.

INTEREST PAYMENT REBATE FEE

House bill

No provision.

Senate amendment

Section 12026(a)(2) of the Senate amendment requires holders of consolidation loans to pay the Secretary an annual rebate fee (calculated and paid on a monthly basis) of 0.7 percent of the principal plus accrued interest on the consolidation loan.

Conference agreement

The conference agreement requires holders of consolidation loans obtained after October 1, 1993 to pay the Secretary an annual rebate fee (calculated and paid on a monthly basis) of 1.05 percent of the principal plus accrued interest on the consolidation loan.

INSURANCE PREMIUM

House bill

No provision.

Senate amendment

Section 12027(a) of the Senate amendment lowers the maximum guaranty agency insurance premium from 3 percent to 1 percent.

Conference agreement

The House recedes.

REINSURANCE FEES

House bill

No provision.

Senate amendment

Section 12027(b) of the Senate amendment eliminates guaranty agency reinsurance fees, effective July 1, 1994.

Conference agreement

The House recedes with an amendment changing the effective date to October 1, 1993.

LOAN TRANSFER FEE

House bill

No provision.

Senate amendment

Section 12028 of the Senate amendment provides for a loan transfer fee of 0.25 percent of the principal and accrued unpaid interest on any loan sold, payable by the buyer of the loan. This provision is effective October 1, 1993 and exempts the sale of loans to an affiliate of the lender, the sale of loans pursuant to merger, or the sale that results from the sale of a substantial portion of the lender's total business or student loan business.

Conference agreement

The Senate recedes.

GUARANTY AGENCY REIMBURSEMENT PERCENTAGE

House bill

No provision.

Senate amendment

Section 12029(a) of the Senate amendment lowers the guaranty agency reimbursement percentages from 100/90/80 percent to 98/88/78 percent. However, loans made under a lender-of-last resort program and loans made under an agreement resulting from guaranty agency insolvency are exempt from this reduction.

Conference agreement

The House recedes.

RISK SHARING

House bill

No provision.

Senate amendment

Section 12029(b) of the Senate amendment provides that the Student Loan Marketing Association would receive 95 percent payment on defaulted loans from the Federal Government, effective October 1, 1993.

Conference agreement

The conference agreement provides that all holders of loans be allowed 98 percent payment on defaulted loans from the guaranty agency or the Secretary, as appropriate, effective October 1, 1993. Lender-of-last-resort loans would receive 100 percent insurance from the guaranty agency or the Secretary, as appropriate.

PLUS LOAN MAXIMUM

House bill

No provision.

Senate amendment

Section 12030(a) of the Senate amendment sets the maximum PLUS loan at $10,000, effective July 1, 1994.

Conference agreement

The Senate recedes.

MULTIPLE DISBURSEMENT OF PLUS LOANS

House bill

No provision.

Senate amendment

Section 12030(b) of the Senate amendment requires multiple disbursement of PLUS loans.

Conference agreement

The House recedes.

BALANCED BUDGET ACT AMENDMENT

House bill

Section 4029 of the House bill amends the Balanced Budget and Emergency Deficit Control Act of 1985 to provide for a mandatory increase of 0.5 percent for fees paid by students in the Federal Direct Student Loan Program in the event of a sequestration.

Senate amendment

No provision.

Conference agreement

The House recedes.

EFFECTIVE DATE

House bill

Section 4031(a) of the House bill specifically provides an effective date for all of the student loan amendments as the date of enactment.

Senate amendment

No provision.

Conference agreement

The conference agreement provides a general effective date and separate effective dates for many provisions.

EFFECTIVE DATE (SECTION 428C AMENDMENTS)

House bill

Section 4031(b) of the House bill provides an effective date for the changes to section 428C of July 1, 1994. The House bill also provides that the changes made with respect to deferments of consolidation loans would be effective upon enactment.

Senate amendment

The Senate amendment provides only the July 1, 1994, effective date.

Conference agreement

The Senate recedes.

IRS STUDY

House bill

Section 4032 of the House bill directs the Secretary of Education in consultation with the Secretary of Treasury to conduct a study on the feasibility of having I.R.S. collect student loans, the results of which the Secretary of Education shall report to Congress in 6 months.

Senate amendment

Section 457 directs the Secretaries of Education and Treasury to submit a plan to the President to provide for I.R.S. collection of student loans and to evaluate other options for wage withholding. If the President determines that options contained in the plan would further the purposes of this part, the Secretaries of Education and Treasury would implement those options. The Senate amendment further provides a method for funding the implementation of the plan.

Conference agreement

The conference agreement deletes both provisions. Accordingly, the managers request that the Secretaries of Education and Treasury jointly develop a plan for the involvement of the Internal Revenue Service in the collection of student loans, including an analysis of its feasibility, the additional resources that would be required for the IRS, the enforcement procedures that should be used, the effect on the collection of ordinary income taxes, and the effect on the management of Federal student loan collections and on borrower repayment of such loans. The Secretaries are further requested to submit to the Congress the plan for implementing such a collection system, together with the results of the feasibility analysis and any legislative recommendations they may deem advisable, no later than six months after the date of enactment of this bill.

IRS COLLECTION

House bill

Section 4033 of the House bill expresses the sense of the Committee on Education and Labor to support I.R.S. collection of student loans.

Senate amendment

No provision.

Conference agreement

The House recedes. The House bill contained a section expressing the sense of the

Education and Labor Committee that although it lacked jurisdiction over amendments to the International Revenue Code, it would support provisions providing for the collection of student loans using the Internal Revenue Service, as well as amendments to the Higher Education Act, in the manner proposed by H.R. 2073, introduced by Mr. Petri on May 11, 1993. The managers on the part of both Houses reaffirm that IRS collection of student loans should be explored and that the following principles behind H.R. 2073 provide a useful guide to that exploration:

1. That IRS collection should be as convenient as possible for borrowers.

2. That it should impose no additional burden on employers.

3. That to produce the simplest, most efficient program and minimize burdens on the IRS, it should conform as closely as possible to the operations of the IRS in collecting the regular individual income tax, self employment tax, and social security taxes on tip income not reported to an employer.

4. That in the case of income dependent loans:

a. the repayment schedules should accommodate large loan volumes,

b. payments should be kept manageable for borrowers, including borrowers with dependents,

c. no payments should be required of borrowers whose incomes fall below the income tax filing threshold,

d. payments should generally be directly proportional to the amount borrowed (to discourage over borrowing),

e. borrowers should be excused from further payments when they have repaid their loans at some effective interest rate,

f. most borrowers should finish in a reasonable period of time,

g. borrowers should be allowed to repay, without penalty, in any year, more than they owe under the income-dependent schedules, in order to complete their obligations more rapidly, and

h. there should be adequate treatment of marriage, including:

no excessive marriage penalties or subsidies,

no ability to avoid payment by shifting income between spouses,

equal payments for couples with equal joint income and borrowing, and

fair allocation of a joint payment between two spouses' accounts (in case of later divorce).

5. That the combination of IRS collection and an income-dependent repayment option provides an opportunity further to streamline student loan programs and to target subsidies more fairly based on the ability to repay loans, which can be determined by post-school income.

DISCLOSURE OF TAX RETURN INFORMATION

House bill

No provision.

Senate amendment

Section 12055 describes the income tax return disclosure process for borrowers choosing income contingent repayment by amending the Internal Revenue Code.

Conference agreement

The Senate recedes. The conferees note that this provision appears in the section of this Act amending the Internal Revenue Code.

COST SHARING BY STATES

House bill

Section 428(n) permits States to pass on to institutions State default fees.

Senate amendment

Section 428(n) requires states to charge institutions a fee based on their cohort default rate.

Conference agreement

The Senate recedes. The conferees attempted to find other means to generate the cost savings produced by this part, but the conferences were unable to find other sources of revenue. This provision is not intended to place undue burdens on states. States will be reimbursed for the costs of performing the functions contained in section 494B of the Higher Education Act.

TEMPORARY RULES GOVERNING PREEMPTION OF CERTAIN STATE LAWS

House bill

Section 4203 of the House bill amends section 514(b) of ERISA to provide 2-year exemptions from preemption for certain provisions of state law, as follows:

(1) the Hawaii Prepaid Health Care Act;

(2) subtitle 2 of title 19 of the Annotated Code of Maryland, which establishes the Health Services Cost Review Commission and authorizes an all-payer hospital rate setting system;

(3) Section 295.52 of the Minnesota Statutes (relating to the 2% gross revenues tax on providers), section 19 of Article 9 of the Minnesota Health Right Act (permitting providers to pass the above tax), and other specified sections of such Act (relating to data collection); and

(4) specified sections of the New York Public Health Law relating to the all-payer hospital rate setting system, the 13% surcharge, uniform hospital charges, the variable surcharge for HMOs, and the allowances for bad debt, charity care, health services, financially distressed hospitals, and excessive malpractice insurance.

Senate amendment

No provision

Conference agreement

The House recedes.

COORDINATION OF ERISA PREEMPTION RULES

House bill

Section 4201 of the House bill amended section 514(b)(8) of ERISA to exempt from preemption certain additional provisions of state laws.

In 1986, ERISA was amended to add subsection (b)(8) in order to facilitate the ability of the states to assure that Medicaid was the secondary payor for all eligible individuals also covered under group health plans. Under the amendments to title XIX of the Social Security Act contained in title V of the House bill, additional requirements relating to third-party payors are imposed on the states as a condition of receiving Federal matching Medicaid funds. The amendments to ERISA under section 4201 permit states to enforce laws enacted as a result of these additional Medicaid requirements.

Senate amendment

Similar to House bill.

Conference agreement

The Senate recedes with an amendment.

Under the conference agreement, group health plans are required to pay benefits in accordance with any assignments of rights on behalf of participants and beneficiaries that is required by Title XIX of the Social Security Act. In enrolling individuals under group health plans, plans are precluded from taking into account the fact that an individual is eligible for or provided assistance under Title XIX.

In addition, under the conference agreement and consistent with provisions title V of this Act, to the extent that payment has been made under Title XIX, states would acquire the right of any other party to payment. State laws enforcing these rights must be honored by group health plans since those laws would be exempt from ERISA's preemption.

MEDICAL CHILD SUPPORT ORDERS

House bill

No provision.

Senate amendment

Section 12301(a) of the Senate amendment amends section 514(b)(8) of ERISA to require group health plans to comply with state laws relating to assignment of rights of payment and child health insurance support.

Conference agreement

The House recedes with an amendment.

Under the conference agreement, group health plans are required to honor "qualified medical child support orders." The term "medical child support order" means generally any judgment, decree, or order (including approval of a settlement agreement) issued by a court of competent jurisdiction providing for child support or health benefit coverage for a child of a participant. The child on whose behalf such an order is issued is an "alternative recipient" and will be treated as a participant under the plans. An order is "qualified" and must be honored by the plan if it meets certain specified requirements.

In addition, group health plans that provide for coverage for dependent children must treat dependent children placed for adoption in the home of participants under the plan the same as dependent children who are the natural children of participants, irrespective of whether that adoption has become final. For purposes of these provisions, a child is defined as an individual who has not attained age 18 as of the date of adoption or placement for adoption.

MEDICAL AND MEDICAID COVERAGE DATA BANK

House bill

Section 5117 of the House bill, as reported by the Committee on Energy and Commerce, established a Health Coverage Clearinghouse in order to identify third parties which may be liable for payment as primary payors for health care items and services for Medicaid beneficiaries. Under the House bill, qualified employers are required to provide information to the clearinghouse with respect to every individual who has received wages from such employers and for whom group health plan coverage is available. The information to be provided includes the name and taxpayer identification number of the individual, the name, address, and taxpayer identification number of the employer, and whether the employer has made available group health plan coverage for the individual and his or her family.

Senate amendment

Sections 7904 and 12101 of the Senate amendment (as reported by the Senate Finance and Senate Labor and Human Resources Committee, respectively) establish similar clearinghouses and impose similar requirements on employers.

Conference agreement

A full description of the conference agreement appears in the statement of managers describing section 13581. Conforming amendments to ERISA, ensuring that group health plans furnish required data needed for employer compliance, are adopted as part of section 4301 of the conference agreement.

TEA INSPECTION FEES

Current law

The Tea Importation Act (21 U.S.C. 41 et seq.) establishes a program under which the Secretary of Health and Human Services sets standards for tea, through the Board of Tea Experts, and operates a program under which tea and tea products are examined for inspection into the United States. Under the law, a fee of 3.5 cents for each hundredweight of tea is required from each importer or consignee.

Conference agreement

Under the conference agreement, the fee on imported tea is increased from 3.5 cents to 10 cents per hundredweight of tea. This increase should provide that expenses of the Food and Drug Administration associated with the standardization and inspection of tea, including expenses associated with the Board of Tea Experts, will be funded by fees paid by the industry. Provision is made such that the fees will not exceed the actual cost of these activities.

TITLE V—TRANSPORTATION AND PUBLIC WORKS PROVISIONS

SECTION 5001—RECREATIONAL USER FEES

House bill

Authorizes the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. New fees established under the authorization are limited to $3 per private, noncommercial vehicle. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Senate amendment

Authorizes the Secretary of the Army to charge fees for the use of developed recreation sites and facilities, and deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Conference agreement

Adopts a combination of the two provisions authorizing the Secretary of the Army to establish and collect fees for the use of developed recreation sites and facilities. The new fees are limited to $3 per private, noncommercial vehicle transporting not more than 8 persons. It also deletes the existing requirement for one free campground at Corps facilities where camping is permitted.

Individual conferees on this issue want to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this conference report.

Aircraft registration fees (sec. 11001 of the House bill and sec. 313(f) of the Federal Aviation Act of 1958)

Present law

Under present law (sec. 313(f) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1354(f)), the Administrator of the Federal Aviation Administration (FAA) may establish and collect such fees as may be necessary to cover the costs associated with issuance of certificates of registration of aircraft, issuance of airman certificates to pilots, and processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The current FAA aircraft registration fee is a one-time fee of $5. The other fees are not being collected.

The maximum fee schedule authorized under present law is as follows:

Type of fee	Statutory authorized maximum amount
Renewal of aircraft registration ..	$15.00
Registration of aircraft after transfer of ownership	25.00
Airman's pilot certificate	12.00
Processing of form major repair or alteration of a fuel tank or fuel system of an aircraft	7.50

The amount of fees collected are to be credited to the FAA for expense of carrying out Titles V and VI of the Federal Aviation Act of 1958.

House bill

Imposing of fees.—The House bill (sec. 11001) replaces the current FAA fee schedule with the following fees:

Type of fee	Amount (in dollars)
Annual aircraft registration fee:	
Aircraft 3,500 lbs. and under	$40
Aircraft over 3,500–6,500 lbs.	175
Aircraft over 6,500–10,000 lbs.	500
Aircraft over 10,000–100,000 lbs.	1,500
Aircraft over 100,000 lbs.	2,000
Aircraft transfer fee (average based on aircraft weight, to be set by FAA)	200
Aviation Medical Examiner's fee	500
Pilot's certificate fee (triennial)	12
Continues authorization of fee for processing of forms for major repairs and alterations of fuel tanks and fuel systems of aircraft	7.50

Exemptions.—The annual aircraft registration fee and the aircraft transfer fee do not apply to (1) commercial air carrier, (2) aircraft owned by or operated exclusively for, the United States Government (3) a dealer's registered aircraft. (4) aircraft without an engine driven electrical system, and (5) balloons or gliders.

Deposit of fee revenues.—The fees under the House bill are to be deposited in the Airport and Airway Trust Fund.

Effective date.—The provision applies to fiscal years beginning after September 30, 1993 (fiscal year 1994).

Senate amendment

No provision.

Conference agreement

The conference agreement is that the House recede to the Senate and not include these fees from the House bill.

Each conferee on this issue wants to make it clear that his or her position on the issue does not necessarily reflect his or her position on other issues of this Conference Report.

TITLE VI—COMMUNICATIONS LICENSING AND SPECTRUM ALLOCATION IMPROVEMENT

Section 6001 of H.R. 2264 provides for the orderly transfer of frequencies, including frequencies that can be licensed utilizing competitive bidding procedures, from the Federal Government to the Federal Communications Commission.

SECTION 6001—TRANSFER OF AUCTIONABLE FREQUENCIES

SECTION 111

House bill

Section 117 defines "allocation", "assignment", "commercial provider", and "the Act".

Senate amendment

Section 4011 of the Senate Amendment is virtually identical, except this section also defines the terms "Commission" and "Secretary".

Conference agreement

The conferees adopted the House provision, except the term "commercial provider" was deleted

FINDINGS

House bill

Section 111 sets forth congressional findings concerning the Federal Government's use of the spectrum, the scarcity of assignable frequencies for licensing by the Commission, and the fact that reassignment of the spectrum can produce significant economic returns.

Senate amendment

Section 4002(1)–(7) of the Senate Amendment sets forth congressional findings with respect to reallocation of spectrum that are similar to the House provision, except the Senate amendment finds that a reassignment of Federal Government spectrum can be accomplished without an adverse impact on amateur radio licenses that currently share spectrum with Government users.

Conference agreement

The Conference Agreement eliminates the findings section of the House bill and Senate Amendment because these provisions do not have a budgetary impact and could violate the Byrd rule. However, the conferees believe that these findings and conclusions are important and lay the predicate for this legislation, and incorporate the findings of both bills herein by reference.

SECTION 112

House bill

Section 112(a) requires the Assistant Secretary and the Chairman of the Commission to meet at least biannually to conduct joint spectrum planning. Section 112(b) requires a report by the Assistant Secretary and the Chairman to the Committee on Energy and Commerce and the Committee on Commerce, Science, and Transportation, the Secretary, and the Commission, on the joint planning activities. Section 112(c) sets forth the analysis that should be included in the first annual report.

Senate amendment

Section 4003(a) of the Senate Amendment is essentially the same as the House provision. Section 4003(b) requires a similar report as the House provision, but includes the requirement of recommendations for actions developed pursuant to the planning activities. The Senate Amendment also requires recommendations for the reform of the process of allocating spectrum between Federal uses and non-Federal uses.

Conference agreement

Section 112 of the Conference Agreement contains the provision on national spectrum allocation planning. The conferees adopted the language from both the House bill and the Senate Amendment with respect to the requirement of annual meetings between the Assistant Secretary and the Chairman of the Commission. One of the purposes of these annual meetings is to plan for the shared use of spectrum between commercial and Federal Government users. Such planning will provide certainty to potential bidders for commercial licenses and will thus increase the value of such licenses.

The conferees also added an issue for the joint spectrum planning activity, namely the extent to which licenses for spectrum use can be issued subject to the Commission's auction authority under section 309(j) of the 1934 Act. The purpose of this provision is to ensure that the Secretary and the Commission are reviewing all relevant issues of spectrum management.

Due to concerns about the non-budgetary impact of the reporting requirements, the Conference Agreement removes the statutory requirement concerning reports by the Secretary and the Commission about the scope of their planning activities and what progress had been made. Nonetheless, the conferees find this report necessary and expect the Assistant Secretary and the Chairman of the Commission to submit a joint annual report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, and to include an analysis of the effect on spectrum efficiency and the cost of equipment to Federal spectrum users of maintaining separate allocations for Federal Government and non-Federal licensees for the same or similar services.

SECTION 113

House bill

Section 113(a) requires the Secretary to submit a report within 24 months to the President and Congress, identifying and recommending for reallocation frequencies that are assigned to Federal Government stations and are not required for the present or identifiable future needs of the Federal Government. The frequencies are to be those which are, or will be, feasible to make available during the next 15 years and have the greatest potential for commercial use.

Subsection (b) requires that the spectrum identified for reallocation must be located below 5 gHz, except that a maximum of 20 megahertz of the identified frequencies may be located between 5 and 6 gigahertz. Subsection (c) requires the Secretary to consider a number of factors affecting the usefulness and appropriateness of identified spectrum. Subsection (c)(4) provides additional criteria which the Secretary must consider in identifying reallocable spectrum, including the requirement that frequencies that Federal power agencies are licensed to use may only be eligible for mixed use in geographically separate areas and shall not be subject to withdrawal as part of the minimum 200 Mhz that is required by section 113(b) of this chapter.

Subsection (d) describes the procedures for the identification of frequencies. The Secretary is required to prepare and submit to Congress, within 12 months, a report which makes preliminary identification of frequencies to be reallocated. The Secretary is to convene an Advisory Committee to review the frequencies identified in the preliminary report.

Subsection (e) requires the Secretary to include a timetable for reallocation that recommends immediate and delayed effective dates by which the President shall withdraw or limit assignments on the frequencies specified in the report. To expedite the availability of at least a portion of the spectrum to be reassigned, this section authorizes the Secretary to identify an initial 30 megahertz of spectrum to be made available for reallocation immediately upon issuance of the report.

Senate amendment

Section 4004 of the Senate Amendment is similar to the House provision, with a number of exceptions. First, section 4004(b)(1) requires that all of the 200 megahertz identified by the Secretary be below 5 gigahertz. Next, it adds the requirement that at least one-half of the 200 megahertz identified by the Secretary for reallocation fall below 3 gigahertz. Paragraph (b)(2)(C) also requires any sharing of spectrum between Federal and non-Federal users be subject to coordination procedures established by both the Commission and the Secretary. The Senate Amendment also directed the Secretary to seek to avoid excessive disruption of amateur licensees.

With respect to frequencies assigned to Federal power agencies, paragraph (c)(4) provides that the criteria for eligibility of spectrum shall be deemed not to be met for any frequency assigned to such an agency.

The timetable for the preliminary report on allocable frequencies in subsection (d)(2) of the Senate Amendment is for 6 months; the House provision allowed 12 months. Subsection (d)(5) provides that within 18 months of enactment the Secretary shall prepare and submit a final report that recommends reallocation of at least 170 megahertz. In addition, the Senate Amendment provided for public comment on the report and direct discussion among commercial representatives and Federal Government users, but did not provide for an advisory committee.

In order to ensure the spectrum identified by the Secretary would be of maximum use, subsection (d)(6) requires that none of the 200 megahertz may be frequencies identified for reallocation by international agreement. Moreover, the Senate Amendment requires that none of the spectrum identified for immediate reallocation as part of the Secretary's 6-month report be allocated for mixed use, and that at least one-half of the spectrum identified for immediate reallocation must be below 3 gigahertz.

Conference agreement

Section 113 of the Conference Agreement reflects the House provision with a number of key portions of the Senate Amendment. The conferees adopted the Senate position regarding 6 months as the time period in which the Secretary must prepare and submit a preliminary report identifying reallocable spectrum, and 18 months in which to submit a final report. Given the fact that this legislation has passed the House three times in six years, the conferees are confident that this legislation comes as no surprise for the Secretary, and that this deadline can be met.

The Conference Agreement adopts the Senate language requiring that all spectrum identified by the Secretary be below 5 gigahertz, and that one-half be below 3 gigahertz. This provision was included since it guarantees that the spectrum identified by the Secretary will be useful to the commercial sector, and this will advance the primary goals of the legislation.

In order to encourage the maximum usefulness of the spectrum that will be reallocated in the near future, the conferees increased the amount of spectrum subject to this expedited process from 30 megahertz to 50 megahertz. Moreover, the conferees agreed to the Senate language requiring that one-half of such spectrum be below 3 gigahertz, and that none of the spectrum be allocated for mixed use.

The Conference Agreement adopts the Senate language that any operational sharing permitted under this paragraph must be subject to coordination and interference standards worked out by the Secretary and the Commission.

With respect to obtaining input on the Secretary's preliminary identification of reallocable spectrum, the Conference Agreement adopts the Senate language on public comment and direct discussions between commercial representatives and Federal Government users in lieu of the House provision on advisory committees. However, the conferees also added a provision requiring the Commission to submit to the Secretary its analysis of the public comments received by the Secretary and its recommendations for responses to such comments. The intent of this provision is to ensure that the Secretary gets another expert analysis of the numerous technical, regulatory and commercial issues that will be generated by the preliminary identification report. The Commission's processes and analysis will serve the same purposes as the Advisory Committee that was required by the House bill, but will not cause delays and increase expenditures.

In order to afford some protection to amateur licensees, the Conference Agreement adopts the Senate language directing the Secretary to seek to avoid excessive disruption of existing use of Federal Government frequencies by amateur radio licensees. The conferees believe the concerns of amateurs should be taken into consideration, and that the Secretary should seek to avoid excessive disruption.

The Conference Agreement adopts the Senate language providing that spectrum scheduled for reallocation by international agreement would not be eligible for identification by the Secretary. With respect to the Federal power agencies, the Conference Agreement incorporated the Senate language.

The conferees note that in assessing the criteria for identifying reallocable spectrum, the Secretary must assume that there will be reasonable rates of scientific progress and growth in demand for telecommunications services, and that the frequencies identified for reassignment will be assigned by the Commission within a fifteen-year period. These assumptions will help to assure that the frequencies that are reallocated will be able to be utilized as the state of radio art advances, as well as help stimulate the development of new spectrum-dependent technologies.

The conferees also observe that these delayed effective dates shall permit the earliest possible reallocation of the frequency bands, while taking into consideration the relationship between the cost to the Federal Government of changing to different frequencies and the commercial benefits of reassignment of these frequencies.

SECTION 114

House bill

Section 114(a) requires the President to withdraw the assignment to a Government station of any frequency recommended in the Secretary's report for immediate reallocation within six months after receiving such report. The President also is required to limit the assignment to a Government station of any frequency the report recommends for immediate mixed use. Subsection (b) recognizes that exceptions may be required to the recommendations made by the Secretary and provides procedures to be utilized by the President when the criteria established in subsection (b) are met. Subsection (c) limits the ability of the President to delegate the functions assigned by the Act.

Senate amendment

Section 4005 of the Senate Amendment is similar to the House provision, with these exceptions. The Senate Amendment provides that a ground for the President removing spectrum from the list identified by the Secretary and substituting other spectrum is that the identified spectrum will disrupt amateur radio licensees. Subsection (c) authorizes those Federal users who are displaced by virtue of a reallocation to be reimbursed, from the revenues generated by the

competitive bidding, for their incremental costs directly attributable to the displacement. Subsection (d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of its frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

Conference agreement

Section 114 of the Conference Agreement reflects the decision of the conferees to adopt the House provision with the following changes. The conference agreement incorporated the Senate language regarding disruption to amateur licensees as a grounds for substituting identified spectrum.

With regard to federal agencies getting reimbursed for costs associated with any reallocation of spectrum, the conference agreement does not include any statutory authorization in the Conference Agreement. However, the conferees believe that any Federal agency whose operation is displaced from a frequency assignment should be reimbursed for the incremental costs such agency incurs. Such costs must be directly attributable to the displacement from the frequency.

The Senate language with respect to implementation of new technologies and additional reallocation is generally incorporated in the Conference Agreement in section 117. However, the conferees concluded that the Commission should make any allocation decisions pertinent to such sharing in a timely manner and in accordance with the expedited timetable set forth in section 7 of the Communications Act of 1934.

The conferees find that the timetables authorized under this section will allow optimal use of frequencies that have been selected for reallocation and should impose only a minimal financial burden on the Government.

SECTION 115

House bill

Section 115 states that no less than one year after the President notifies the Commission of a frequency band to be reallocated, pursuant to section 114(a)(5), the Commission is required to submit to the President and Congress a plan for distribution of the reassigned frequencies. This plan shall not propose the immediate distribution of frequencies, and must take into account the timetable recommended by the Secretary.

Senate amendment

The differences between the Senate Amendment and the House Bill are few. Section 4006(b) requires consultation by the Commission with the Assistant Secretary, whereas the House language leaves such consultation at the Commission's discretion. More significantly, the Senate requires the Commission to not just submit a plan, but to implement it as well. Subsection (b)(2) directs the Commission to contain appropriate provisions to ensure the safety of life and property. Finally, subsection (c) amends section 303 of the Communications Act of 1934 by stipulating that any frequencies reallocated could be licensed by the Commission, but that any such assignment shall be expressly subject to the right of the President to reclaim that frequency.

Conference agreement

The Conference Agreement adopted the Senate language with one significant change. In order to ensure that the 50 megahertz of spectrum identified for immediate reallocation by section 13(e)(2) be allocated and assigned on an expedited basis by the Commission, the conferees agreed that the Commission shall have rules in place in 18 months allocating such spectrum and shall propose regulations to assign such frequencies.

The Conference Agreement provides that the Commission shall both submit a plan and begin to implement that plan on distribution and allocation of frequencies, and consequently adopted the Senate language. The Conference Agreement also provides that in developing its plan, the Commission shall contain appropriate provisions to ensure the safety of life and property in accordance with section 1 of the 1934 Act. The conferees agreed to delete subsection (c) of the Senate Amendment.

The Conferees note that advances in low power (e.g., below 5 mW) biomedical telemetry systems may greatly improve the quality and significantly decrease the cost of certain health care services. These systems are designed to operate in either the VHF or UHF bands. The Conferees believe that the NTIA and the FCC should carefully consider the needs of hospitals and other health care providers for inference-free radio spectrum in their respective allocation decisions made pursuant to this Act.

SECTION 116

House bill

This section establishes the process by which the President can reclaim frequencies which already have been reallocated to the Commission for reassignment. Subsection (e) stipulates that nothing contained in this chapter limits or otherwise affects the President's authority under sections 305 and 706 of the Communications Act, including the ability to withdraw or limit the use of all frequencies utilized by Government users.

Senate amendment

Section 4011 of the Senate Amendment is virtually identical to the House provision, except that subsection (e) sets forth a rule of construction that nothing in this section shall be construed to limit or otherwise affect the authority of the President under section 706.

Conference agreement

The conferees adopted the Senate provision.

SECTION 117

House bill

No provision.

Senate amendment

Section 4005(d) clarifies that nothing in this subtitle prevents or limits additional reallocation of spectrum from the Federal Government to commercial or other users. The subsection also provides that the Secretary can permit the sharing of Government frequencies to facilitate implementation of new technologies, and that the Commission shall expedite the allocation and associated licensing of any such frequencies.

Conference agreement

Section 117(a) of the Conference Agreement is similar to the Senate provision in section 4005(d). Subsection (b) adds a new section 104(e) to the NTIA Organization Act (47 U.S.C. 903), to require the Secretary and the NTIA to amend their rules and regulations to require that any person (other than an agency or instrumentality of the United States) utilizing a frequency that is allocated for the use of government stations, or utilizing a radio station belonging to the United States for any non-government application, must submit proof to the NTIA that such person has obtained a license from the Commission. The subsection further requires that the NTIA retain on file proof that such licenses have been obtained, and that the Secretary and the NTIA certify to Congress that such licenses have been obtained.

The conferees find it necessary to include this provision because it has become evident that some persons, despite clear law to the contrary, make use of frequencies assigned to government stations without obtaining a license from the Commission. This practice offends the essence of Title III of the Communications Act of 1934, circumvents the licensing fee process, and undermines the mission of the FCC as the agency charged with licensing all non-Federal users of the spectrum. The conferees are committed to terminating this practice immediately, and thus have placed these obligations on the Secretary as well as NTIA.

SECTION 6002—AUTHORITY TO USE COMPETITIVE BIDDING

Section 6002 of H.R. 2264 amends the Communications Act of 1934 (47 U.S.C. 151 *et seq.*) to permit the Federal Communications Commission (FCC) to utilize a system of competitive bidding to issue licenses for the use of frequencies. Specifically, section 6002 amends section 309 of the Act (47 U.S.C. 309) by adding a new subsection (j) that would permit such competitive bidding, and limits the circumstances under which existing authority to license frequencies utilizing a system of random selection could be used.

House bill

Section 5202 of H.R. 2264 contained four findings.

Senate amendment

Section 4002 of the Senate Amendment contained thirteen findings.

Due to the circumstances governing the consideration of the Conference Report, the Conferees have omitted them from the statutory text. They are, however, incorporated herein by reference.

SECTION 309(j)(1) AND 309(j)(2)

House bill

Subsection 309(j) confers the authority for the FCC to utilize a system of competitive bidding to issue licenses, and establishes the general criteria that the FCC must meet in order to utilize such authority. The Commission is restricted to utilizing competitive bidding procedures only when mutually exclusive applications are filed for subscription-based services.

Senate amendment

Subsection 309(j) would require the Commission to utilize a system of competitive bidding, but exempts certain classes of licenses from the requirement. Specifically, paragraph (4) of subsection 309(j) prohibits the use of the competitive bidding authority for license renewals and modifications thereof; for issuing new licenses to state and local government entities; for issuing new licenses in the amateur radio service, for over-the-air terrestrial radio and television licenses; for public safety and radio astronomy services; for non-mutually exclusive applications (such as specialized mobile radio, maritime and aeronautical end-user licenses); and for the modification of any non-Federal license that is required in order to make spectrum available for new technologies.

Conference agreement

The Conference Agreement adopts the provisions of the House bill, with an amendment

to clarify the terms and conditions that must be met in order for the Commission to carry out its responsibilities under this Act.

Under the terms of the Conference Agreement, competitive bidding procedures would be utilized for a limited number of licenses. These procedures will only be utilized when the Commission accepts for filing mutually exclusive applications for a license, and the Commission has determined that the principal use of that license will be to offer service in return for compensation from subscribers.

The House Committee Report (H.R. Rept. 103–111) contains many examples of the types of licenses that would be covered by the competitive bidding procedures authorized in this Act, which are incorporated herein by reference.

The Conferees note that the principal use of licenses in the Instructional Television Fixed Service is the provision of educational television programming services to public school systems, parochial schools and other educational institutions. The fact that the Commission's rules permit licensees in this service to allow MMDS operators to utilize these frequencies when they are not needed for their principal use will not alter the manner by which these licenses will be issued as the result of the enactment of this legislation. Similarly, although such licensees are permitted to receive payments from such MMDS operators, such payments are not to be construed by the Commission to indicate that ITFS licensees are receiving compensation from "subscribers" as that term is used in section 309(j)(2).

SECTION 309(j)(3)

House bill

Paragraph (3) of the House bill requires the Commission to establish competitive bidding systems that meet the requirements of this section. In particular, the Commission is required to develop methodologies that promote the development and rapid deployment of new technologies; promote economic opportunity and competition and ensure that new and innovative technologies are available to the American people by avoiding excessive concentration and by disseminating licenses among a wide variety of applicants, including small business and businesses owned by members of minority groups and women; recover for the public a portion of the value of the public spectrum resource made available to the licensee and the avoidance of unjust enrichment; and promote the efficient and intensive use of the spectrum.

Senate amendment

Section 309(j)(2) requires the Commission seek to adopt rules to implement competitive bidding, and requires that such rules include safeguards to protect the public interest and ensure the opportunity for successful participation by small businesses and minority-owned businesses.

The original House provision requires the Commission to disseminate licenses to a wide variety of applicants, including small businesses and businesses owned by minority groups and women. The Amendment adds rural telephone companies to the list of examples of the term "wide variety of applicants."

Conference agreement

The Conference Agreement adopts the provisions of the House bill with an amendment. The amendment requires that the Commission disseminate licenses among a wide variety of applicants, including small business, rural telephone companies, and businesses owned by members of minority groups and women.

SECTION 309(j)(4)

House bill

Section 309(j)(4) contains requirements for the rules that the Commission must issue in order to implement this section. The Commission is required to consider alternative payment schedules and methods of calculation, including initial lump sums, installment or royalty payments, guaranteed annual minimum payments, or other schedules or methods (including combinations of methods) that promote the objectives of this Act.

In addition, the Commission is required to include performance requirements, such as appropriate deadlines and penalties for performance failures, to ensure prompt delivery of service to rural and other areas, and to prevent stockpiling of frequencies.

Consistent with the public interest, the purposes of this Act, and the characteristics of the proposed service, the Commission is also required to prescribe area designations and bandwidth assignments that promote an equitable distribution of licenses and services among geographic areas; economic opportunity for a wide variety of applicants, including small businesses and businesses owned by members of minority groups and women; and investment in and rapid deployment of new technologies and services.

Finally, the Commission must require such transfer disclosures and antitrafficking restrictions and payment schedules as may be necessary to prevent unjust enrichment as a result of the methods employed to issue licenses.

Senate amendment

Section 309(j)(2)(C) requires that the Commission's rules implementing the amendments to section 309(j) establish the method of bidding (including but not limited to sealed bids) and the basis for payment (such as installment of lump payments, royalties on future income, a combination thereof, or other reasonable forms of payment as specified by the Commission).

Section 309(j)(3) requires the Commission to establish at least one license per market as a "rural program license" for any service that will compete with telephone exchange service provided by a qualified common carrier. This section also stipulates the terms and conditions for any such license, including requirements to pay an amount equal to the value of comparable licenses issued utilizing competitive bids.

Conference agreement

The Conference Agreement adopts the House provisions, with several amendments.

First, the Conference Agreement modifies the requirements regarding the use of installment or royalty payments and guaranteed annual minimum payments. The modification clarifies that the Commission can utilize payment schedules that include lump sums or guaranteed installment payments, with or without royalty payments.

The reason for the modification is to ensure that the Commission is not placed in the position of evaluating bids that are submitted solely in the form of promises to pay a royalty on future income, and attempting to determine which bid is greater based on speculation about the amount of money that will be generated thereby. Such a situation would force the Commission to assume all of the risk that is properly borne by the licensee and its financial underwriters, and force the Commission to make determinations that surely would be litigated, further delaying the availability of service to the public.

The Conferees anticipate that under some circumstances, the Commission will require bidder to agree to pay a stipulated lump sum or annual minimum, and, in addition to those amounts, a percentage of future revenues that are derived from the use of the license. Such an approach will reduce the likelihood of protracted litigation that could delay the availability of service to the public, and hold the Commission harmless in the event that projections of future revenue fall short.

The Conferees also agreed to require that the Commission provide economic opportunities for rural telephone companies in addition to small business and businesses owned by members of minority groups and women.

The Conference Agreement also modifies the House provision to include a provision, based on but not identical to a Senate provision, that requires the Commission to ensure that small businesses, rural telephone companies, and businesses owned by minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences and other procedures.

SECTION 309(j)(5)

House bill

Section 309(j)(5) requires the Commission to adopt procedures that will assure that no license is accepted for filing that does not meet the Commission's requirements. It provides that no license shall be granted unless the Commission determines that the applicant is qualified pursuant to subsection (a) of section 309 and sections 308(b) and 310 of the Communications Act of 1934. Finally, it requires the Commission to adopt expedited procedures for the resolution of any substantial and material issues of fact concerning qualifications.

Senate bill

Section 309(j)(2)(B) instructs the Commission to prescribe rules that require potential bidders to file a first-stage application indicating an intent to participate in the competitive bidding process, and containing such other information as the Commission finds necessary. After conducting the bidding, the Commission must require the winner to submit such other information as it deems necessary in order to determine that the bidder is qualified.

This section also clarifies that participants in the competitive bidding process shall be subject to the schedule of charges contained in section 8 of the Communications Act.

Conference agreement

The Conference Agreement adopts the House provisions.

SECTION 309(j)(6)

House bill

Section 309(j)(6) contains rules of construction, and stipulates that nothing in the use of competitive bidding for the award of licenses shall limit or otherwise affect the requirements of the Communications Act that limit the rights of licensees, or require the Commission to adhere to other requirements. In particular, the adoption of competitive bidding procedures does not affect the requirements of sections 301, 304, 307, 309(h), 310, 706, or any other provision of the Act other than subsections (d)(2) and (e) of Section 309.

In addition, the House bill requires that nothing in this subsection, or in the use of competitive bidding, shall be construed to convey any rights, including any expectation of renewal of a license, that differ from the rights that apply to other licenses within the same service that were not issued pursuant

to this subsection, or construed to prohibit the Commission from issuing nationwide licenses or permits.

Senate amendment

Section 309(j)(5) states that nothing in the competitive bidding provisions of this Act shall be construed to alter spectrum allocation criteria and procedures established by the other provisions of the Communications Act; allow the Commission to consider potential revenues from competitive bidding when making decisions concerning spectrum allocation; diminish the authority of the Commission under the other provisions of the Communications Act to regulate or reclaim spectrum licenses; grant any right to a licensee different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding; or prevent the Commission from awarding licenses to those persons who make significant contributions to the development of a new telecommunications service or technology.

Conference agreement

The Conference Agreement adopts the House provisions with an amendment. The amendment includes three provisions from the Senate Amendment, including the provision of section 309(j)(5)(E) concerning the so-called "Pioneer's Preference."

In addition, the Conference Agreement includes a provision that requires the Commission to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.

The Conference Agreement also includes the provisions contained in the House Bill that retains for the Commission its ability to issue nationwide licenses or permit, but clarifies that the Commission retains its discretion to issue nationwide, regional, or local licenses or permits.

Finally, the Conference Agreement includes the provision of the Senate Amendment (309(j)(2)(B)(iii) that requires applicants to pay any fee imposed pursuant to section 8 of the Communications Act.

SECTION 309(j)(7)

House bill

Section 309(j)(7) limits the ability of the Commission to base allocation decisions, or its decisions concerning payment schedules, area designations and bandwidth assignments, solely or predominantly on expectations of Federal revenues.

Senate amendment

Section 309(j)(5)(B) prohibits the Commission from considering potential revenues from competitive bidding when making decisions concerning spectrum allocation.

Conference agreement

The Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity on the expectation of Federal revenues from competitive bidding when making allocation decisions pursuant to section 303(c) or paragraph 4(C) of subsection 309(j).

In prescribing regulations pursuant to paragraph (4)(A) of subsection 309(j), the Conference Agreement prohibits the Commission from basing a finding of public interest, convenience, and necessity solely or predominantly on the expectation of Federal revenues from the use of competitive bidding.

Finally, the Conference Agreement recognizes that the Commission historically has attempted to project demand for services as part of its determinations, and preserves that ability for the Commission in the future.

SECTION 309(j)(8)(A)

House bill

Section 309(j)(8) requires that all proceeds from the use of a competitive bidding system under this subsection shall be deposited in the Treasury in accordance with chapter 33 of title 31, U.S. Code.

This section also stipulates that a license or permit issued by the Commission shall not be treated as the property of the licensee for tax purposes by any State or local government entity.

Senate amendment

Section 309(j)(6) requires that moneys received from competitive bidding pursuant to this subsection shall be deposited in the general fund of the Treasury.

Section 4008(c) of the Senate Amendment to H.R. 2264 amends the Communications Act by creating a new section 714, which states that a license or permit issued by the Commission under the Act shall not be treated as the property of the licensee for property tax purposes, or other similar tax purposes, by any State or local government entity.

Conference agreement

The Conference Agreement adopts the language contained in the House Bill pertaining to the treatment of revenues derived from competitive bidding.

The Conferees agree to drop the language contained in both the House bill and the Senate Amendment relating to State and local government tax treatment of parties who have obtained licenses under the Communications Act. It is the intent of the Conferees to clarify that nothing in this Act alters or affects the authority or lack of authority of State and local governments to assess *ad valorem* property, or other taxes on the licensee. The Conferees do not intend for the deletion of the proposed House and Senate language to create any other inference regarding the subject matter of the proposed provisions.

SECTION 309(j)(8)(B)

House bill

No provision.

Senate amendment

Section 4008(a)(2) of the Senate Amendment to H.R. 2264 permits the Commission to retain as an offsetting collection such sums as may be necessary from the receipts received pursuant to section 309(j) for the costs of developing and implementing the competitive bidding procedures required by this Act.

Conference agreement

The Conference Agreement includes the Senate provision.

SECTION 309(j)(9)

House bill

No provision.

Senate amendment

No provisions.

Conference agreement

Section 309(j)(9) of the Conference Agreement requires that, within 5 years after the enactment of this section, the Commission issue licenses and permits, utilizing the provisions of section 309(j), that in the aggregate span not less than 10 megahertz, and that have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

SECTION 309(j)(10)

House bill

No provision.

Senate amendment

No provision.

Conference agreement

Section 309(j)(10) stipulates the conditions that must have been met in order for the Commission to commence issuing licenses pursuant to section 309(j), and in order that the Commission continue to have such authority over the course of the next five years.

The initial authority for the Commission to utilize competitive bidding procedures is conditioned on the Secretary of Commerce submitting to the Commission the report required by section 113(d)(1) of the National Telecommunications and Information Administration Organization Act; that such report recommends for immediate reallocation bands of frequencies that, in the aggregate, span not less than 50 megahertz; and that such bands of frequencies meet the criteria required by section 113(a) of such Act.

In addition, in order to utilize the competitive bidding procedures authorized by section 309(j), the Commission must have completed the rulemaking required by section 332(c)(1)(D) of H.R. 2264.

Subparagraph (B) of this subsection stipulates that the Commission's authority to utilize competitive bidding procedures on and after two years after the enactment of this Act shall cease to be effective if the Secretary of Commerce has failed to submit the report required by section 113(a) of the National Telecommunications and Information Administration Organization Act; if the President has failed to withdraw and limit assignments of frequencies as required by paragraphs (1) and (2) of such Act; or if the Commission has failed to issue the regulations required by section 115(a) of such Act.

In addition, the Commission's authority to utilize competitive bidding procedures shall cease to be effective if the Commission has failed to complete and submit to Congress, not later than 18 months after the date of enactment of this subsection, a study of current and future spectrum needs of state and local government public safety agencies through the year 2010, and a specific plan to ensure that adequate frequencies are made available to public safety licensees, or the Commission has failed, under section 332(c)(3), to grant or deny within the time required by such section any petition that a State has filed within 90 days after the enactment of this subsection. The authority to reinstate competitive bidding procedures is conditioned on the correction of the failure that required that such authority cease to be effective.

SECTION 309(j)(11)

House bill

Section 309(j)(9) of the House bill terminates the competitive bidding authority contained in section 309(j) on September 30, 1998.

Senate amendment

Section 4008(a) of the Senate Amendment to H.R. 2264 requires the Commission to utilize competitive bidding procedures under appropriate circumstances, but terminates that requirement when the Secretary of the Treasury determines that competitive bidding has resulted in or is reasonably expected to result in the receipt of $7,200,000,000 by the end of fiscal year 1998, or at the end of fiscal year 1998, whichever is earlier. The Senate Amendment contains no provision that terminates the Commission's discretionary authority to utilize competitive bidding procedures.

Conference agreement

The Conference Agreement includes the House provision.

SECTION 309(j)(12)

House bill

Section 309(j)(9) includes a provision that requires the Commission to conduct a public inquiry and submit to the congress a report concerning the implementation of section 309(j). The report must describe the methodologies established by the Commission; compare the relative advantages and disadvantages of such methodologies in terms of attaining the objectives stipulated in this Act; evaluates the extent to which such methodologies have secured prompt delivery of service to rural areas; and contain a statement of the revenues obtained, and a projection of the future revenues that are derived from the use of competitive bidding.

Senate amendment

Section 4008(a)(1)(C) of the Senate Amendment contained a similar reporting requirement.

Conference agreement

The Conference Agreement adopts the House provisions with an amendment, which contains several provisions required by the Senate Amendment. In addition to the reporting requirements required by the House Bill, the Conference Agreement requires that such report evaluate whether and to what extent competitive bidding significantly improved the efficiency and effectiveness of the licensing process; facilitated the introduction of new spectrum-based technologies and the entry of new companies into the telecommunications market; and enabled small business, rural telephone companies, and businesses owned by members of minority groups and women to participate successfully in the competitive bidding process. In addition, the Conference Agreement requires that the Commission include any recommendations for statutory changes that may be necessary to improve the competitive bidding process.

SECTION 6002(b)

House bill

Section 5204 of the House bill contains conforming amendments that limit the ability of the Commission to utilize the provisions of section 309(i) to award licenses by random selection. these amendments condition the use of the provisions of section 309(i) on a prior determination that the Commission cannot utilize the competitive bidding authority contained in section 309(j) because the use of the license is not one for which the Commission is authorized to use competitive bidding procedures.

In addition, the House bill contains a requirement that, within 180 days of the date of the enactment of this section, the Commission adopt regulations that include such transfer disclosures and antitrafficking restrictions and payment schedules as are necessary to prevent the unjust enrichment of recipients of licenses that are issued by a system of random selection.

Senate amendment

No provision.

Conference agreement

The Conference Agreement includes the provisions of the House Bill.

SECTION 332(c)(1)

House bill

Section 332(c)(1)(A) states that any person providing commercial mobile service shall be treated as a common carrier subject to the requirements of title II of the communications Act. The Commission is given authority to specify by rule which provisions of title II may not apply. In specifying sections or provisions of sections that shall not apply, the Commission may not specify sections 201, 202, or 208. In addition, the Commission may not specify a provision that is necessary to ensure charges are just and reasonable and not unjustly or unreasonably discriminatory, or otherwise in the public interest.

The House bill requires in section 332(c)(1)(B) that the Commission shall order a common carrier to establish interconnection with any person providing commercial mobile service, upon reasonable request. Nothing here shall be construed to expand or limit the Commission's authority under section 201, except as this paragraph provides.

Senate amendment

Section 332(c)(1)(A) of the Senate Amendment is the same as the House provision except:

the Senate amendment states expressly that the Commission may waive the requirements of sections 203, 204, 205, and 214, and the 30-day notice requirement of section 309(a):

the Senate amendment specifies that the Commission may not waive sections 201, 202, 206, 208, 209, 215(c), 216, 217, 220(d) or (e), 223, 225, 22(a), (b), (c), (d), (e), (f), (g), or (i), 227 or 228.

Section 332(c)(1)(B) of the Senate provision is identical to the House provision.

Section 332(c)(7) as added by the Senate bill states that the Commission, in any proceeding under this subsection, (i) shall consider the ability of new entrants to compete in the services to which such proceeding relates, and (ii) shall have the flexibility to amend, modify, or forbear from any regulation of new entrants under this subsection, or consistent with the public interest, take other appropriate action, to provide a full opportunity for new entrants to compete in such services.

Conference agreement

With regard to section 332(c)(1)(A), the Conference Agreement adopts the House approach with some modifications. The intent of this provision, as modified, is to establish a Federal regulatory framework to govern the offering of all commercial mobile services. The Conference Agreement adds two additional requirements that the Commission must meet before specifying any provision as inapplicable. In addition to requiring that the Commission determine that enforcement of the provision is not necessary in order to ensure that charges are reasonable, the Conference Agreement requires the FCC to determine that enforcement of the provision is not necessary for the protection of consumers and that specifying such provision is consistent with the public interest. The Conference Agreement adopts the House provision of section 332(C)(1)(B). Differential regulation of providers of commercial mobile services is permissible but is not required in order to fulfill the intent of this section.

By dropping the list of provisions in the Senate Amendment that the Commission may not specify by rule, the Conferees do not intend to diminish the importance of these provisions to consumers. The Conferees intend to give the Commission the flexibility to determine whether or not the enforcement of these provisions is necessary, in light of their significance to consumers.

The fact that all commercial mobile services will be treated as common carriers under this provision is not intended to affect the telephone-cable cross-ownership provision contained in Section 613(b) of the Communications Act.

Section 332(c)(1)(C) of the Conference Agreement directs the Commission to review and analyze competitive market conditions with respect to commercial mobile services in its annual report. This section also states that the Commission, as part of determining whether a provision is consistent with the public interest under subparagraph (A)(iii), shall consider whether the proposed regulation (or amendment thereof) will promote competitive market conditions. If the Commission determines that such regulation will promote competition among providers of commercial mobile services, such determination may be the basis for a Commission finding that such regulation is in the public interest.

The purpose of this provision is to recognize that market conditions may justify differences in the regulatory treatment of some providers of commercial mobile services. While this provision does not alter the treatment of all commercial mobile services as common carriers, this provision permits the Commission some degree of flexibility to determine which specific regulations should be applied to each carrier. For instance, the Commission may, under the authority of this provision, forbear from regulating some providers of commercial mobile services if it finds that such regulation is not necessary to promote competition or to protect consumers against unjust or unreasonable rates or unjustly or unreasonably discriminatory rates. At the same time, the Commission may determine that it should not specify some provisions as inapplicable to some commercial mobile services providers, or may choose to "unspecify" certain provisions for certain providers, if it determines, after analyzing the market conditions for commercial mobile services, that application of such provisions would promote competition and protect consumers.

Section 332(c)(1)(D) of the Conference Agreement provides that the Commission shall conduct a rulemaking to implement this paragraph with respect to the licensing of personal communications services within 180 days after the enactment of this Act. This provision is necessary because the Act elsewhere requires the Commission, in order to speed the licensing of personal communications services, to complete two other proceedings concerning the rules for personal communications services within 180 days. Completion of a rulemaking regarding the regulatory treatment of personal communications services prior to the issuance of licenses through competitive bidding for these services will provide regulatory certainty that will enhance the value of the licenses.

SECTION 332(c)(2)

House bill

Section 332(c)(2) as added by the House bill clarifies that a party engaged in private land mobile service shall not be treated as a common carrier. This section also clarifies that parties deemed common carriers by virtue of paragraph (1)(A) can continue to offer radio dispatch service. In addition, this section authorizes the FCC to decide whether all common carriers should be able to provide dispatch service in the future.

Senate amendment

The provision of the Senate bill is almost identical to the House provision.

Conference agreement

The Conference Agreement adopts the House language.

SECTION 332(c)(3)

House bill

Section 332(c)(3)(A) added by the House bill provides that state or local governments

cannot impose rate or entry regulation on private land mobile service or commercial mobile services; this paragraph further stipulates that nothing shall preclude a state from regulating the other terms and conditions of commercial mobile services. Section 332(c)(3)(B) permits states to petition the Commission for authority to regulate rates for any commercial mobile services where mobile services have become a substitute for telephone service, or where market conditions are such that consumers are not protected from unreasonable and unjust rates. The FCC is required to respond to any state's petition within 9 months of filing.

Senate amendment

Section 332(c)(3)(A) of the Senate Amendment is identical to the House provision except that it explicitly recognizes that nothing in this subparagraph exempts providers of commercial mobile services (where such services are a substitute for land line telephone exchange service for a substantial portion of the communications within such State) from requirements imposed by a State commission on all providers of telecommunications services necessary to ensure the continued availability of telephone exchange service at affordable rates.

Similarly, section 332(c)(3)(B) as added by the Senate Amendment permits the State to petition for the right to regulate, but under slightly different standards. Under the Senate Amendment, a state may obtain regulatory authority if the state demonstrates that the commercial mobile service is a substitute for land line telephone exchange service for a substantial portion of the communications within such State (rather than substantial portion of the public).

Section 332(c)(3)(C) of the Senate Amendment is a "grandfathering" provision that permits states that regulate the rates for any commercial mobile services as of June 1, 1993 to continue to exercise such authority until the Commission issues a final order in response to a petition filed by the State requesting that the State be authorized to continue exercising authority over such rates. The Commission must rule on such a petition within nine months and must grant the petition if the State satisfies the showing required under subparagraph (B)(i) or (B)(ii). Section 332(c)(3)(D) of the Senate Amendment permits any interested party to petition the Commission, after a reasonable period of time after the issuance of an order under subparagraph (B) or (C), for an order that the State authority to regulated rates is no longer necessary. After receiving public comment on the petition, the Commission must rule on such petition within 9 months.

Conference agreement

The Conference Agreement retains the Senate language concerning universal service, with slight modifications to clarify that universal service can be provided by any provider of telecommunications service. The Conference Agreement adopts the language "substantial portion of the telephone land line exchange service" rather than either "communications" or "public" to more accurately describe the situation in which state authority to regulate commercial mobile services should be granted. For instance, the Conferees intend that the Commission should permit States to regulate radio service provided for basic telephone service if subscribers have no alternative means of obtaining basic service if subscribers have no alternative means of obtaining basic telephone service. If, however, several companies offer radio service as a means of providing basic telephone service in competition with each other, such that consumers can choose among alternative providers of this service, it is not the intention of the conferees that States should be permitted to regulate these competitive services simply because they employ radio as a transmission means.

The Conference Agreement merges subparagraphs (C) and (D) of the Senate Amendment into subparagraph (B) to provide regulatory certainty to potential bidders for licenses to provide commercial mobile services. The Conference Agreement clarifies that State authority to regulate is "grandfathered" only to the extent that it regulates commercial mobile services "offered in such State on such date". The Conference Agreement also clarifies that the State authority continues in effect until the Commission completes all action on the petition (including reconsideration). The Commission must complete all action on any state petition (including action on petitions for reconsideration) within 12 months after the petition is filed. The Conference Agreement further clarifies that State authority to regulate is only "grandfathered" if the State files a petition seeking such authority within 1 year after the date of enactment; if the State fails to file a petition within this time, the State authority is preempted as all other States are preempted under subsection (c)(3)(A).

It is the intent of the Conferees that the Commission, in considering the scope, duration or limitation of any State regulation shall ensure that such regulation is consistent with the overall intent of this subsection as implemented by the Commission, so that, consistent with the public interest, similar services are accorded similar regulatory treatment.

SECTION 332(c)(4)

House bill

Section 332(c)(4) of the House Bill states that nothing in this provision affects the regulation of Comsat pursuant to title IV of the Communications Satellite Act of 1962.

Senate amendment

The Senate provision is identical to the House provision.

Conference agreement

The Conference Agreement accepts the House provision.

SECTION 332(c)(5)

House bill

No provision.

Senate amendment

Section 332(c)(5) as added by the Senate Amendment provides that the Commission shall continue to determine whether the provision of space segment capacity by satellite systems to providers of commercial mobile services shall be treated as common carriage.

Conference agreement

The Conference Agreement adopts the Senate provision with slight modification to clarify that the Commission may continue to use its existing procedures to determine whether the provision of space segment capacity to providers of commercial mobile services shall be treated as common carriage. Under section 332(c)(1)(A), however, the provision of space segment capacity directly to users of commercial mobile services shall be treated as common carriage.

SECTION 332(c)(6)

House bill

No provision.

Senate amendment

Section 332(c)(6) as added by the Senate Amendment states that the foreign ownership restrictions of Section 310(b) shall not apply to any lawful foreign ownership in a provider of commercial mobile services prior to May 24, 1993, if that provider was not regulated as a common carrier prior to the date of enactment of this Act and is deemed a common carrier as a result of this Act.

Conference agreement

The Conference Agreement adopts a modified version of the Senate provision. The purpose of this provision is to "grandfather" any foreign ownership in a provider of private land mobile services that existed prior to May 24, 1993 if that provider becomes a common carrier under this Act. Section 310(b) of the Communications Act limits the amount of private foreign ownership in a common carrier service but does not impose any such limits on the foreign ownership in private radio service. Currently, some foreign-owned companies provide private radio services. Some of these companies will become common carriers as a result of section 332(c)(1)(A). Without this "grandfathering" provision, these companies would be forced to divest themselves of any foreign ownership when this Act becomes effective.

In order to avoid this result, the Conference Agreement accepts the Senate provision with modifications to limit its application. First, Section 332(c)(6) as added by the Conference Report requires a person that may be affected by this provision to file a waiver request with the Commission within 6 months of enactment. The FCC may grant the waiver only on the following conditions:

(1) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(2) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b). In effect, this condition "grandfathers" only the particular person who holds the foreign ownership on May 25, 1993; the "grandfathering" does not transfer to any future foreign owners.

Section 310(b) addresses the permissible extent of foreign investment in certain radio licenses, including common carriers. One effect of the denomination of commercial mobile services as common carrier services is to broaden the range of services subject to limitations on foreign investment. In securing regulatory parity for commercial mobile services, the Conference Agreement does not restrict the FCC's discretion, pursuant to section 310(b)(4), to permit foreign investors to acquire interests in U.S.-licensed enterprises. These amendments in no way affect the Commission's authority under section 310(b).

SECTION 322(d)

House bill

Section 322(d) of the House bill defines the terms "commercial mobile service" and "private mobile service". "Commercial mobile service" is defined as a mobile service, as defined in section 3(n), that is interconnected with the Public switched telephone network offered for profit and held out to the public, or offered on an indiscriminate basis to classes of eligible users, or to such a broad class so as to equal the public. "Private mobile service" is defined as anything that does not fall under commercial mobile service. The provisions also direct the Commission to define "interconnected" and "public switched telephone network".

Senate amendment

Section 322(c)(8) as added by the Senate Amendment contains similar definitions of the terms "commercial mobile service" and "private land mobile service". The differences in the Senate definition of "commercial mobile service" are: 1) that "offered on an indiscriminate basis" is not one of the tests for determining a "commercial mobile service" in the Senate Amendment; 2) the Senate definition expressly recognizes the Commission's authority to define the terms used in defining "commercial mobile service"; and 3) the Senate definition requires that "interconnected service" must be made available to the public, as opposed to the House definition which simply requires the service offered to the public to be "interconnected". In other words, under the House definition, only one aspect of the service needs to be interconnected, whereas under the Senate language, the interconnected service must be broadly available. The Senate Amendment defines "interconnected service" as a service that is interconnected with the public switched network or service for which an interconnection request is pending. The definition of "private land mobile service" in the Senate amendment is virtually identical to the definition of "private mobile service" in the House bill.

Conference agreement

The Conference agreement adopts the Senate definitions with minor changes. The Conference Report deletes the word "broad" before "classes of users" in order to ensure that the definition of "commercial mobile services" encompasses all providers who offer their services to broad or narrow classes of users so as to be effectively available to a substantial portion of the public.

Further, the definition of "private mobile service" is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.

The Commission may determine, for instances, that a mobile service offered to the public and interconnected with the public switched network is not the functional equivalent of a commercial mobile service if it is provided over a system that, either individually or as part of a network of systems or licensees, does not employ frequency or channel reuse or its equivalent (or any other techniques for augmenting the number of channels of communication made available for such mobile service) and does not make service available throughout a standard metropolitan statistical area or other similar wide geographic area.

SECTION (B)

House bill

Subsection (B) of the House bill adds a conforming amendment to the definition in Section 3(n) of the Communications Act of "mobile service" to clarify that the term includes all items previously defined as "private land mobile service" and includes the licenses to be issued by the Commission pursuant to the proceedings for personal communications services.

Senate amendment

The Senate Amendment makes almost the identical changes to the definition of "mobile service" in Section 3(n) of the Communications Act except that the Senate Amendment clarifies that the term does not include rural radio service or the provision by a local exchange carrier of telephone exchange service by radio instead of by wire.

Conference agreement

The Conference Agreement adopts the House definition.

SUBSECTION (b)(2)

House bill

Section (b)(2) of the House bill makes additional conforming amendments to clarify headings and spacing.

Senate amendment

The Senate Amendment does not contain the provisions contained in the House bill. The Senate Amendment contains a technical amendment to Section 2(b) of the Communications Act to clarify that the Commission has the authority to regulate commercial mobile services.

Conference agreement

The Conference Agreement adopts the Senate position.

SUBSECTION (c)

House bill

Section 5206 of the House bill established effective dates and deadlines for Commission action. Under the House bill, the amendments made by the above chapter are effective upon the date of enactment, except that the amendments made by section 5205 on regulatory parity take effect one year after enactment, and that persons that provide private land mobile services shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The House bill directs the FCC to prescribe rules to implement competitive bidding within 210 days of enactment. The House bill directs the Commission to, within 180 days after enactment, issue a final report and order in two proceedings regarding personal communications services and begin issuing licenses within 270 days after enactment. Finally, the House bill directs the Commission, within 1 year after enactment, to alter its rules regarding private land mobile services to provide for an orderly transition of these services to regulation as common carrier services.

Senate amendment

Under the Senate Amendment, all provisions regarding regulatory parity take effect one year after enactment, except: 1) the provisions in 332(c)(1)(A) regarding the treatment of commercial mobile services as common carrier services take effect upon enactment; and 2) any person that provides private land mobile services before such date of enactment shall continue to be treated as a provider of private land mobile service until 3 years after enactment. The deadlines for Commission action with regard to personal communications services are identical to the House deadlines. The Senate Amendment also directs the Commission to alter its rules regarding private mobile services to provide for a transition to the treatment of these services as common carrier services.

Conference agreement

The Conference Agreement adopts the House provisions that generally establish the effective date as the date of enactment, except that the provisions of section 332(c)(3)(A) shall take effect one year after enactment. The Conference Agreement adds that any private land mobile service provided prior to enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services shall be treated as a private mobile service until 3 years after enactment, except for the foreign ownership provisions of section 332(c)(6).

The Conferees included the specific references to paging services in order to clarify that if a paging service that was not offered prior to the enactment of this section is offered in a state that restricts entry for common carriers, and the Commission's regulations preempting such state entry regulation has not yet taken effect, the paging service is not to be treated as a common carrier and subjected to such entry regulation.

The Conference Agreement adopts the House language concerning the transitional rulemaking for mobile services with slight modifications to clarify that the rules are intended to ensure that services that were formerly private land mobile services and become common carrier services as a result of this Act are subjected to technical requirements that are comparable to the technical requirements that apply to similar common carrier services.

SECTION (C)—SPECIAL RULE

House bill

The House bill provides that the Commission may not issue any license or permit by lottery after the date of enactment unless the Commission has made the determination required by paragraph (1)(B) that the use is not of a type described in subsection (2)(A).

Senate amendment

The Senate Amendment accomplishes the same purpose by requiring competitive bidding to be used for all except exempted communications licenses.

Conference agreement

The Conference Agreement adopts the House approach and adds additional language which permits the Commission to use lotteries for applications that were accepted for filing before July 26, 1993. This provision will permit the Commission to conduct lotteries for the nine Interactive Video Data Service markets for which applications have already been accepted, and several other licenses. This provision does not permit the FCC to conduct lotteries of applications that were not filed prior to July 26, 1993.

House bill

Section 5241 of the House Bill contained a series of technical amendments to the Communications Act to make clerical corrections, transfer provisions of law, and eliminate expired or outdated provisions.

Senate amendment

No provision.

Conference agreement

The Conference Agreement does not contain this package of technical amendments.

SECTION 6003—ADDITIONAL COMMUNICATIONS FEES

House bill

No provision.

Senate amendment

No provision.

Conference agreement

The Conference agreement contains a new section 9 of the Communications Act, which has a table of regulatory fees to be collected by the Commission from its licensees in order to recover for the Commission the costs of enforcement, policy and rulemaking, international coordination, and user information services with respect to those licensees. The Commission is given authority to review these fees after one year and make any recommendations for their adjustment. In addition, the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rulemaking, to make changes to the fee schedule, including adding, deleting, or reclassifying services when

the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.

The Conference Agreement also authorizes late payment penalties, dismissal of application, and revocation. The Conference Agreement also authorizes the Commission to waive, reduce, or defer payment of a fee for good cause.

With the exception of the level of the fees themselves, the fee provisions contained in this section are virtually identical to those contained in H.R. 1674, which passed the House in 1991. To the extent applicable, the appropriate provisions of the House Report (H.R. Rept. 102-207 are incorporated herein by reference.

TITLE VII—NRC USER FEES AND ANNUAL CHARGES

Present law

Section 6101 of the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) requires the Nuclear Regulatory Commission (NRC) to collect 100% of its budget authority (less amounts appropriated to the NRC from the Nuclear Waste Fund established by 42 U.S.C. 10222(c) and fees collected under the Independent Offices Appropriations Act of 1952) from annual charges on NRC licensees. This authority expires at the end of fiscal year 1995. After fiscal year 1995, the NRC is authorized to collect 33% of its costs from annual fees and charges, pursuant to Section 7601 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272).

House bill

The House bill extends present law for three years, through fiscal year 1998.

Senate amendment

The language in the Senate amendment is identical to the language in the House bill.

Conference agreement

The Conference Agreement adopts the same language as in the House bill and the Senate amendment.

TITLE VIII—PATENT AND TRADEMARK OFFICE PROVISIONS

PATENT AND TRADEMARK FEES

The House bill contains language raising Patent Office Fees by $345 million through fiscal year 1998.

The Senate amendment contains identical language.

The conferees agreed to retain the language in the conference report.

TITLE IX—MERCHANT MARINE PROVISIONS

TONNAGE DUTIES

Current law

The United States imposes a tonnage duty on a vessel which enters the U.S. from any foreign port or place; the duty is also imposed on a vessel which departs from and returns to a U.S. port or place on a "voyage to nowhere".

The tonnage duty is imposed on the cargo-carrying capacity of the vessel and is assessed regardless of whether the vessel is empty or is carrying cargo.

A vessel arriving from a foreign port in the northern Western Hemisphere (Canada, Mexico, Central America, West Indies, Bahamas, Bermuda, and northern South America) and a vessel returning from a "voyage to nowhere" must pay a tonnage duty of nine cents per ton. However, the maximum payment for any vessel in a single year is 45 cents per ton.

A vessel arriving from a foreign port anywhere else in the world must pay a tonnage duty of 27 cents per ton, not to exceed $1.35 per ton in a single year.

Under current law, in Fiscal Year 1996, the tonnage duties will revert to earlier, lesser amounts (two cents per ton, not to exceed ten cents per ton in a single year for vessels entering from the northern Western Hemisphere and from "voyages to nowhere;" six cents per ton, not to exceed 30 cents per ton for other vessels subject to the duty).

House bill

Section 8001 amends section 36 of the Act of August 5, 1909, and the Act of March 8, 1910, to maintain the tonnage duties at current levels through Fiscal Year 1998. Section 8001 also makes related technical corrections in relevant statutes.

Senate amendment

Section 4051 is substantively identical to the House provision.

Conference agreement

Section 9001 contains this provision.

SENSE OF CONGRESS ON INCREASES IN INLAND WATERWAYS FUEL TAXES

House bill

Section 8002 of the House Bill contains a Sense of the Congress Resolution which expresses the Congress' intention that the inland waterways fuel tax should not be further increased beyond those increases already mandated by law.

The inland waterways fuel tax is a tax paid by commercial cargo vessel operators on the inland waterway system and the intra-coastal waterway. Receipts from this tax are transferred to the Inland Waterways Trust Fund. Barge operators on these inland waterways currently pay a tax of 17 cents per gallon. Under current law, this amount will increase to 19 cents per gallon in 1994 and to 20 cents in 1995 and thereafter. In addition, these barge operators pay a one-cent-per-gallon tax on the same fuel for the Leaking Underground Storage Tank Trust Fund.

Senate bill

The Senate had no comparable provision.

Conference agreement

The Conference Agreement does not include the House provision.

TITLE X—NATURAL RESOURCES PROVISIONS

RECREATIONAL USER FEES

ENTRANCE FEES

House bill

The House bill made no changes in current law.

Senate amendment

The Senate amendment would authorize entrance fees at National Recreation Areas, National Monuments, National Volcanic Monuments, National Scenic Areas, BLM National Conservation Areas and areas of concentrated public use.

Conference agreement

The Conference agreement authorizes entrance fees at Congressionally designated Forest Service and BLM areas and at up to 21 areas of concentrated public use administered by the Secretary of Agriculture.

GOLDEN AGE PASSPORT

House bill

The House bill would impose a one-time processing fee of $10.

Senate amendment

The Senate amendment did not contain a similar provision.

Conference agreement

The Conference agreement adopts the House provision.

USER FEES

House bill

The House bill would authorize user fees at day use recreation sites including swimming areas, boat ramps and managed parking lots on Department of the Interior, Department of Agriculture and Army Corps of Engineers outdoor recreation sites. The bill would retain the current prohibition on fees for drinking water, wayside exhibits, roads and overlooks, visitor centers, scenic drives and picnic tables. In addition, the bill would authorize overnight camping fees if 5 of 8 criteria (tent or trailer space, drinking water, access roads, refuse containers, toilet facilities, fee collection, visitor protection, campfire facilities) are met.

Senate amendment

The Senate version contained a similar provision, except the prohibition on picnic tables and visitor centers was not retained and camping fees would be charged if 5 of 9 criteria were met.

Conference agreement

The Conference agreement includes the Senate provision, but retains the prohibitions on visitor centers and prohibits charging fees solely for the use of picnic tables.

COSTS OF COLLECTION

House bill

The House bill would authorize the Secretary of the Interior and the Secretary of Agriculture to retain costs of fee collection from additional fee revenues.

Senate amendment

The Senate amendment contained an identical provision.

Conference agreement

The Conference agreement authorizes the Secretaries to retain all direct costs of collection associated with existing and additional fee revenues, but caps the amount that may be retained at 15% of the fee revenues collected for that year.

COMMERCIAL TOUR FEES

House bill

The House bill would authorize commercial tour use fees for vehicles and aircraft entering National Park System units for the sole purpose of providing commercial tour services.

Senate amendment

The Senate amendment would authorize commercial tour use fees for vehicles only.

Conference agreement

The Conference agreement authorizes commercial tour use fees for vehicles and aircraft at certain park system units with high levels of overflight activity.

NON-FEDERAL GOLDEN EAGLE PASSPORT SALES

House bill

The House bill contained no provision.

Senate amendment

The Senate amendment would authorize the sale of Golden Eagle Passports by non-federal entities, with such entities retaining 7% of gross receipts as reimbursements for actual expenses.

Conference agreement

The Conference agreement includes the Senate provision, except that non-federal entities would retain 8% of gross receipts, with proceeds to be divided among agencies based on a share of entrance fee revenues. The

Managers intend that all fee revenues derived from the non-federal sale of the Golden Eagle Passport will be solely for resource protection, rehabilitation and conservation projects carried out by conservation corps pursuant to Public Law 91–378, or other related programs or authorities, on lands administered by the Secretary of the Interior and the Secretary of Agriculture.

CORPS FREE CAMPGROUND

House bill

The House bill would repeal the existing statutory requirement that all Army Corps of Engineers lakes and reservoirs have one free campground.

Senate amendment

The Senate amendment contained no similar provision.

Conference agreement

The Conference agreement adopts the House provision.

RIGHT-OF-WAY

House bill

The House bill would require the National Park Service to charge fair market rental fees for rights-of-way in units of the National Park System.

Senate amendment

The Senate amendment did not contain a similar provision.

Conference agreement

The Conference agreement deletes this provision.

COMMUNICATION SITE FEES

House bill

The House bill would provide for the payment of fair market value, as determined by the Secretary of the Interior or Secretary of Agriculture, for the use of BLM-managed public lands and National Forest lands for commercial telephone transmission facilities.

Senate amendment

The Senate amendment contains a fee schedule for commercial radio and television facilities and establishes an advisory committee for certain other site users.

Conference agreement

The Conference agreement provides that the fees assessed and collected in FY 1994 by the Secretaries of the Interior and Agriculture for the utilization of radio, television, and commercial telephone transmission communications sites located on Forest Service and BLM lands shall be 10% above the fee assessed and collected during FY 1993.

HARDROCK MINING CLAIMS MAINTENANCE FEE

House bill

The House provision would permanently extend the $100 per claim maintenance fee in lieu of annual assessment work. In addition, the House bill would allow the Secretary of the Interior to waive or reduce the fee for claimants holding 50 or fewer claims. Finally, the House bill would impose a $25 location fee for all new claims.

Senate amendment

The Senate amendment would extend the $100 fee for fiscal years 1994–1998 and require the Secretary to waive the maintenance fee for claimants holding 10 or fewer claims. The Senate amendment would also impose the $25 location fee.

Conference agreement

The Conferees agreed to extend the $100 claim maintenance fee for fiscal years 1994–1998 and provided the Secretary with discretion to waive the fee for claimants holding 10 of fewer claims. The Conference agreement also imposes the $25 location fee for new claims. The Conference notes that the discretionary fee waiver for 10 claims in the House language and the mandatory fee waiver for 10 claims in the Senate amendment were scored as receiving the same level of savings.

MINERAL RECEIPTS

House bill

The House provision would amend the Mineral Leasing Act of 1920, as amended, (MLA) to direct the Secretary of the Interior to deduct 50 percent of the costs to the federal government of administering the onshore mineral leasing programs from the gross receipts of such programs prior to statutory disbursement to the states and federal treasury. The deduction would be made on a pro rata sharing of revenues.

Senate amendment

The Senate amendment would also amend the MLA to direct the Secretary to deduct 50 percent of the administrative costs from the gross receipts. However, the Senate amendment also provides that in the event the pro rata deduction for a state exceeds 50 percent of the annual amount attributable to onshore leasing in a state, that state's deduction would be based on actual costs associated with federal administrative costs in that state.

Conference agreement

The Conference agreement adopts the Senate amendment.

FEDERAL RECLAMATION PROJECT OPERATION AND MAINTENANCE CHARGES

House bill

The House Bill would require that entities receiving water from reclamation or certain Corps projects, exempting the Central Valley Project in California, pay an annual operation and maintenance fee. These funds would be deposited into the Natural Resources Restoration Fund and would be used for the restoration of fish and wildlife resources and related habitat adversely affected by the construction and operation of reclamation projects.

Senate amendment

The Senate had no similar provision.

Conference agreement

The Conferees agreement deletes the House provision.

UNFUNDED LIABILITIES OF THE FEDERAL GOVERNMENT

House bill

The House Bill would require the President to transmit with the budget estimates the unfunded future liabilities of the Federal government.

Senate amendment

The Senate amendment did not include a parallel provision.

Conference agreement

The Conference agreement deletes the House provision.

ANNUAL DIRECT GRANT ASSISTANCE TO INSULAR AREAS

House bill

The House bill would have repealed the annual federal entitlement of $27.72 million to the Commonwealth of the Northern Mariana Islands (CNMI) and require Congressional approval for future funding. The bill also would have authorized $3 million for the American Memorial Park in the CNMI and $19 million for capital improvement projects in other insular areas at the discretion of the Secretary. Finally, the House bill would have required federal agencies to report to the Congress on such matters as immigration, revenue burden and minimum wage.

Senate amendment

The Senate amendment would have reduced, but not repealed, federal annual assistance to the CNMI to between $6–12 million over the next three years. After 1996, the annual federal commitment of $27.72 million would have been restored.

Conference agreement

The Conference agreement deletes this provision.

TITLE XI—CIVIL SERVICE AND POST OFFICE PROVISIONS

SUBTITLE A—CIVIL SERVICE

RETIREMENT COLA DELAY

House bill

Section 10001 of the House bill delays by three months the cost-of-living adjustments (COLAs) that are scheduled to take effect under certain Federal employ retirement systems during fiscal years 1994, 1995, and 1996. Under existing laws, COLAs are effective December 1 of each year. Under this provision, COLAs would not take effect until March 1 in fiscal years 1994, 1995, and 1996. The COLA delay applies to all annuities payable under the Civil Service Retirement System, the Federal Employees' Retirement System, the Foreign Service retirement systems, and the CIA retirement systems. The provisions of section 10001 affect only the effective date of the COLAs, and nothing in section 10001 should be construed to affect the amount of an adjustment or any individual's eligibility for an annuity increase.

Senate amendment

Sections 9001, 10001, and 12103 of the Senate amendment contain substantially the same provisions as the house bill.

Conference agreement

The Conference agreement includes the substance of the House and Senate provisions.

LUMP-SUM RETIREMENT OPTION

House bill

Section 10002 of the House bill amends the alternative-form-of-annuity provisions under the Civil Service Retirement System, the Federal Employees' Retirement System, and the retirement systems applicable to employees of the Foreign Service and the Central Intelligence Agency. The lump-sum option would remain in effect for employees who have a life-threatening affliction or other critical medical condition, but would be terminated for all other employees, effective January 1, 1994.

Senate amendment

Sections 9002, 10002, and 12104 of the Senate amendment contain substantially the same provisions as the house bill except, with respect to civil service and CIA employees, the lump-sum option would be terminated effective October 1, 1995. With respect to Foreign Service employees, the repeal would be effective January 1, 1994.

Conference agreement

The Conference agreement includes the substance of the House and Senate provisions. Under the conference agreement the lump-sum option is repealed effective October 1, 1994.

PAY LIMITATIONS

House bill

Section 10003 of the House bill eliminates the 2.2 percent annual pay adjustment for

Federal civilian employees, including Members of Congress and Federal judges, that is scheduled to take effect in 1994. In addition, the section reduces by one percent the annual pay adjustments, based on the Employment Cost Index, scheduled to take effect in 1995, 1996, and 1997. In those years the pay adjustments would be based on the ECI minus 1.5 percent.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The House recedes to the Senate.

LOCALITY PAY LIMITS AND OTHER REDUCTIONS

House bill

Section 10004 of the House bill delays locality pay adjustments under section 5304 of title 5, United States Code, until July 1 of each year; limits the total amount payable for locality pay during the period 1994–1998; changes the effective date of the annual pay adjustments (based on the ECI) from January 1 to July 1 of each year during the period 1995 through 2003; limits the amount of annual leave that senior executives (SES) may accumulate; prohibits the payment of performance awards and other cash awards to Federal employees during fiscal years 1994–1998; and establishes limitations on the average total of civilian employees in the executive branch in fiscal years 1994–1998.

Senate amendment

The Senate amendment has no comparable provisions.

Conference agreement

The House recedes to the Senate.

MEDICARE PART B FEE LIMITS

House bill

Section 10005 of the House bill applies the Medicare Part B limiting charges for physicians' services to retirees enrolled in the Federal Employees Health Benefits Program (FEHBP) who are 65 years of age and older and do not participate in Medicare Part B. The Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, Sec. 7002(f)(1), November 5, 1990) amended the FEHBP law effective January 1, 1992, to require FEHBP plans which pay for covered health care services on a fee-for-service basis, to apply the Medicare Part A limitations on payments for hospital charges when FEHB benefits for the same services are provided to retired FEHB enrollees who are age 65 or older and are ineligible for Medicare (5 U.S.C. 8904(b)). Section 10005 would now apply the Part B fee schedule limits for physician services in the same manner.

Subsection 10005(a)(1) would redesignate current provisions for FEHB/Medicare Part A coordination of 5 U.S.C. 8904(b)(1) as 8904(b)(1)(A) and would add subparagraph (b)(1)(B) providing for FEHB/Medicare Part B coordination to parallel current provisions with respect to Medicare Part A. It would also add subparagraph (b)(1)(C) mandating exclusion of providers from the FEHB Program for violations of Section 8904(b) which have resulted in exclusion from Medicare participation. Under subparagraph (b)(1)(B), the Office of Personnel Management (OPM) would be required to notify any physician who is in violation of the law of the potential consequences and, as in the case of Medicare part A, to refer those guilty of repeated violations to the Department of Health and Human Services (DHHS) for possible sanction under the Medicare law.

Subsection 10005(a)(2) would amend current FEHB law at 5 U.S.C. 8904(b)(3)(B) to expand authority for DHHS and OPM to exchange necessary information for administration of that section to include Medicare fee schedule amounts and limiting charge information applicable to physicians and the identity of Medicare participating physicians.

Subsection 10005(a)(3) would amend current FEHB law at 5 U.S.C. 8904(b) to add new paragraph (4) that requires OPM to certify by July 31 preceding the beginning of calendar year 1995 and every year thereafter, that an adequate arrangement with DHHS is in effect to ensure that, before the beginning of the contract year, necessary information for purposes of subsection 8904(b)(1)(B), including Medicare Program Information under section 8904(b)(3)(B), will be available to FEHB insurers and affected Medicare providers and that enforcement procedures, including protection against overcharging beneficiaries, will be in place.

Subsection 10005(b) provides that the amendments shall apply with respect to contract years beginning on or after January 1, 1995.

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement includes the House provision with an amendment. The conference agreement retains the requirement that the OPM Director enter into an arrangement with DHHS as set forth in section 10005(a)(3) of the House bill, but eliminates the certification requirement.

EXTENSION OF PROXY PREMIUM LAW

House bill

Section 10006 of the House bill extends through contract year 1998 the method for determining the Government contributions under the Federal Employees Health Benefits Program in the absence of a Government-wide indemnity benefit plan (formerly Aetna).

Senate amendment

The Senate amendment has no comparable provision.

Conference agreement

The conference agreement includes the House provision with an amendment. For each of contract years 1997 and 1998, the amount of the subscription charge deemed to be representing the premium of the government-wide indemnity benefit plan (i.e., the Aetna proxy premium) is reduced by 1 percent.

D.C. GOVERNMENT PAYMENTS FOR HEALTH BENEFITS

Senate amendment

Section 10003 of the Senate amendment requires the District of Columbia Government to pay the employer share of Federal Employee Health Benefits Program premiums, beginning on October 1, 1993, for certain retirees of the D.C. Government.

House bill

The House bill has no comparable provision.

Conference agreement

The Senate recedes to the House.

POST-RETIREMENT SURVIVOR ANNUITY ELECTIONS

Senate amendment

Section 10201 of the Senate amendment amends the Federal employees retirement provisions to provide for a permanent actuarial reduction in a retiree's annuity in the case of retirees who marry after retirement and elect survivor benefits. Under existing law, retirees who marry after retirement and choose to elect survivor benefits must make a deposit into the retirement fund to cover the amount that their annuities would have been reduced if the survivor coverage had been in effect since the date of retirement. The amendments take effect on the first day of the first month beginning 30 days after the date of enactment.

House bill

The House bill has no comparable provision.

Conference agreement

The House recedes to the Senate.

SUBTITLE B—POSTAL SERVICE

POSTAL SERVICE PAYMENTS

House bill

Section 10101 of the House bill requires the Postal Service to make certain payments for past retiree COLAs and health benefits. Subsection (a) requires a payment, over and above any other payments required by law, of $693 million to the Civil Service Retirement and Disability Fund. This payment would be made in three equal annual installments beginning in fiscal year 1995. Subsection (b) requires a payment, over and above any other payments required by law, of $348 million to the Employees Health Benefits Fund. This payment also would be made in three equal annual installments beginning in fiscal year 1995.

Senate amendment

Section 10101 of the Senate amendment requires the same Postal Service payments as the House bill except the installments are to be paid in fiscal years 1996, 1997, and 1998.

Conference agreement

The House recedes to the Senate.

The Senate and House conferees believed in 1990 that the 1990 Omnibus Budget Reconciliation Act represented the final chapter in Postal Service payments for past retiree COLAs and health benefits. With these additional payments the conferees believe that the Postal Service will have paid its debt *completely* for past retiree COLAs and health benefits.

REVENUE FORGONE REFORM

House bill

Sections 10201 through 10208 of the House bill repeal the authorization for revenue forgone appropriations for all mail except free-for-the-blind and overseas voting rights mail. These provisions create a new mechanism for rate setting which increases rates for nonprofit, in-county and library rate mail but also maintains reduced postage rates for that mail without an appropriation subsidy. The resultant rate increases would be phased-in over 6 years. The reform includes restrictions on commercial uses of nonprofit second- and third-class mail and library rate mail. Finally, the reform authorizes a $29 million per year appropriation until 2035 to reimburse the Postal Service for losses incurred by the phase-in of the nonprofit rate increase and past revenue forgone appropriation shortfalls.

Senate amendment

The Senate amendment has no comparable provisions.

Conference agreement

The House recedes to the Senate.

TITLE XII—VETERANS' AFFAIRS PROVISIONS

EXTENSION OF AUTHORITY TO REQUIRE THAT CERTAIN VETERANS AGREE TO MAKE COPAYMENTS IN EXCHANGE FOR RECEIVING HEALTH-CARE BENEFITS

Current law

Sections 1710 and 1712 of title 38, United States Code, as amended by section 8013 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), establish categories for access to VA care and require certain veterans to pay a copayment in connection with their care. The OBRA 90 amendments are to expire on September 30, 1997.

Section 1722A of title 38 (a) requires a veteran (other than a veteran who has a service-connected disability rated 50 percent or more or whose income is at or below the maximum annual rate of VA pension) to pay $2 for each 30-day supply of a medication furnished on an outpatient basis, (b) prohibits reduction in the amount of the copayment if the initial amount of medication is less than a 30-day supply, and (c) requires that amounts collected under this authority be credited to VA's Medical Care Cost Recovery Fund. This requirement is to expire on September 30, 1997.

House bill

Section 12002 would extend for one year, through September 30, 1998, the OBRA 90 eligibility categories and copayment requirements and VA's authority to collect copayments for medication from certain veterans.

Senate amendment

Section 13007 would make the eligibility categories and copayments requirements permanent.

Compromise agreement

Section 12002 follows the House bill.

EXTENSION OF AUTHORITY FOR MEDICAL CARE COST RECOVERY

Current law

Section 1729(a) of title 38 authorizes VA, through August 1, 1994, to collect from a health care payment plan the reasonable cost of medical care furnished for a non-service-connected disability of a veteran who has a service-connected disability and who is entitled to care (or payment of the costs associated with receiving care) under the health care payment plan.

House bill

Section 12003 would (a) extend for four years and two months, through September 30, 1998, VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability, and (b) authorize VA, through September 30, 1998, to collect from a health care payment plan the reasonable cost of medical care furnished to such a veteran for treatment of a service-connected disability.

Senate amendment

Section 13006 would make permanent VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability.

Compromise agreement

Section 12003 would extend for four years and two months, through September 30, 1998, VA's authority to collect from a health care payment plan the reasonable cost of medical care furnished to a veteran who has a service-connected disability for treatment of a non-service-connected disability.

EXTENSION OF CERTAIN INCOME VERIFICATION AUTHORITY

Current law

Section 5317 of title 38 authorizes the Secretary of Veterans Affairs to verify the eligibility of recipients of, or applicants for, VA need-based benefits using income data from the Internal Revenue Service and Social Security Administration. Section 6103(1)(7) of the Internal Revenue Code of 1986 provides the Secretary with access to that information.

These provisions expire on September 30, 1997.

House bill

Section 12004 would extend these provisions to September 30, 1998.

Senate amendment

Section 13008 would make these provisions permanent.

Compromise agreement

Section 12004 follows the House bill with regard to the portion of the provision amending title 38 and the expiration date of that amendment. Title XIII of the conference report contains a provision substantively identical to the House and Senate provisions amending the Internal Revenue Code and includes the House bill expiration date.

EXTENSION OF LIMITATION ON PENSION FOR CERTAIN RECIPIENTS OF MEDICAID-COVERED NURSING HOME CARE

Current law

Section 5503(f) of title 38 limits to $90 a month the maximum amount of VA need-based pension that may be paid to Medicaid-eligible veterans and surviving spouses who have no dependents and who are in nursing homes that participate in Medicaid.

This provision expires on September 30, 1997.

House bill

Section 12005 would extend this limitation to September 30, 1998.

Senate amendment

Section 13001 would make the limitation permanent.

Compromise agreement

Section 12005 follows the House bill.

EXTENSION OF PROCEDURES APPLICABLE TO LIQUIDATION SALES ON DEFAULTED HOME LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS

Current law

Section 3722(c)(1)(C) of title 38 defines the term "net value" for purposes of the "no-bid" formula, which the Secretary uses to determine whether it is less expensive to the government to purchase and resell a property securing a VA-guaranteed home loan in default, or simply pay off the VA guaranty. The subsection containing the no-bid formula would have expired on December 31, 1992, according to section 3732(c)(11).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Public Law 102-389) effectively extended the no-bid formula by applying it to loans closed before October 1, 1993, and modifying the formula to require VA to consider its "losses sustained on the resale of the property."

House bill

Section 13004 would codify the modification of the no-bid formula that was enacted in Public Law 102-389 and extend the expiration date of section 3732(c) to September 30, 1998.

Senate amendment

Section 13004 is substantively identical to the House bill, except that it would make permanent the modified no-bid formula.

Compromise agreement

Section 12006 contains the House provision.

LOAN FEES

Current law

Section 3729 of title 38 provides for VA to collect a fee from each veteran who does not have a service-connected disability obtaining a housing loan guaranteed, insured, or made under chapter 37 of title 38. The basic fee is 1.25 percent of the loan amount for a veteran and 2 percent for a reservist eligible for loans under section 3701(b)(5); 0.75 percent for a veteran and 1.5 percent for a reservist who makes a downpayment of at least 5 percent, but less than 10 percent, of the price or cost of the property; and 0.50 percent for a veteran and 1.25 percent for a reservist making a downpayment of at least 10 percent.

Different fees apply to assumptions of VA-guaranteed loans, vendee and other direct loans, interest-rate-reduction refinancing loans, and loans for the purchase of manufactured housing.

Section 3702(b) sets forth the requirements for a veteran to regain entitlement to a VA guaranty. Generally, the veteran must sell the property securing the VA-guaranteed loan and pay off the loan in full. Veterans also may obtain reinstatement of their entitlement when another person assumes the loan in accordance with the requirements of chapter 37 or to refinance an existing VA-guaranteed home loan.

House bill

Section 12008 would increase the fees borrowers pay to VA for a VA-guaranteed home loan by 0.75 percent of the loan amount. The fee increase would not apply to vendee, direct, manufactured-home, or interest-rate-reduction-refinancing loans, or to assumptions of a VA-guaranteed loan. The increased fee would apply to loans closed between October 1, 1993, and September 30, 1998.

Senate amendment

Section 13004 is substantively identical to the House bill, except it would make the increased fees permanent.

Compromise agreement

Section 12007(a) follows the House bill.

Section 12007(b) establishes a fee of 3 percent of the amount of the loan for a veteran who previously obtained VA-guaranteed home loan under section 3710 of title 38. The increased fee would not apply to loans obtained by a veteran who makes a downpayment of at least 5 percent of the price or cost of the property. The increased fee would apply in the case of second and subsequent loans closed between October 1, 1993, and September 30, 1998.

POLICY REGARDING COST-OF-LIVING ADJUSTMENT IN COMPENSATION RATES

Current law

Under chapter 11 of title 38, VA pays monthly cash benefits to veterans who have service-connected disabilities. The basic amounts of compensation paid are based on percentage-of-disability ratings—which are in multiples of 10 percentage points—assigned to the veteran. Special monthly rates are payable to totally disabled veterans with certain specific, severe disabilities and combinations of disabilities. A veteran whose disability is rated 30 percent or more disabling also receives additional compensation for a spouse, children, and dependent parents.

Under chapter 13 of title 38, VA pays dependency and indemnity compensation (DIC) to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. DIC also is paid when the veteran's death was not service connected, if the veteran, immediately prior to death, had been receiving (or had been entitled to receive) compensation at the 100-percent rate continuously for 10 or more years or for at least 5 years from the date of discharge or release from active duty.

For deaths prior to January 1, 1993, surviving spouses may receive DIC at rates determined by the pay grade (service rank) of the deceased veteran. For deaths on or after January 1, 1993, surviving spouses receive $750 per month and, if the deceased veteran was totally disabled for a continuous period of at least eight years immediately prior to death, an additional $165 per month. Under section 1311(a)(3), surviving spouses of veterans who died prior to January 1, 1993, receive benefits under the prior DIC program if it would provide a higher monthly benefit.

Under both programs, VA pays the surviving spouse additional amounts (1) if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance; and (2) on behalf of the veteran's surviving dependent children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

No provision.

Senate amendment

Section 13002 states that (1) each increased rate resulting from enactment of an FY 1994 COLA for veterans disability compensation and DIC would be rounded down to the next lower whole dollar; and (2) the effective date of the COLA would not be earlier than December 4, 1993.

Conference agreement

Section 12008(a) follows the Senate amendment, except that it contains no limitation on the effective date of the COLAs.

LIMITATION ON FISCAL YEAR 1994 COST-OF-LIVING ADJUSTMENT FOR CERTAIN DIC RECIPIENTS

Current law

Under chapter 13 of title 38, VA pays dependency and indemnity compensation (DIC) to the survivors of servicemembers or veterans who died from a disease or injury incurred or aggravated during military service. DIC is also paid when the veteran's death was not service connected, if the veteran, immediately prior to death, had been receiving (or had been entitled to receive) compensation at the 100-percent rate continuously for 10 or more years or for at least 5 years from the date of discharge or release from active duty.

For deaths prior to January 1, 1993, surviving spouses may receive DIC at rates determined by the pay grade (service rank) of the deceased veteran. For deaths on or after January 1, 1993, surviving spouses receive $750 per month and, if the deceased veteran was totally disabled for a continuous period of at least eight years immediately prior to death, an additional $165 per month. Under section 1311(a)(3), surviving spouses who had been receiving benefits under the prior DIC program are paid under whichever program will pay the higher benefit.

Under both programs, VA pays the surviving spouse additional amounts (1) if the surviving spouse is so disabled as to be housebound or in need of regular aid and attendance; and (2) on behalf of the veteran's surviving dependent children. When there is no surviving spouse, DIC is paid to surviving children.

House bill

Section 12006 would prohibit a cost-of-living adjustment for FY 1994 in the rates of DIC paid to survivors under section 1311(a)(3).

Senate amendment

No provision.

Conference agreement

Section 12008(b) would limit the FY 1994 COLA for DIC paid under section 1311(a)(3) to one-half of the COLA provided for DIC paid under section 1311(a)(1).

LIMITATION REGARDING COST-OF-LIVING ADJUSTMENTS FOR MONTGOMERY GI BILL BENEFITS

Current law

Section 3015(g)(1) of title 38 and section 2131(b)(2)(A) of title 10, United States Code, require the Secretary of Veterans Affairs, with respect to the fiscal year beginning on October 1, 1993, to provide a percentage increase in the monthly rates payable under the Montgomery GI Bill to participants in the active-duty and Selected Reserve programs, respectively, equal to the percentage by which the Consumer Price Index (CPI) for the 12-month period ending June 30, 1993, exceeds the Consumer Price Index for the 12-month period ending June 30, 1992. CBO currently estimates that the COLA will be 3 percent.

For fiscal years beginning on or after October 1, 1994, the Secretary is required to provide a percentage increase in such monthly rates equal to the percentage by which the CPI for the 12-month period ending on the June 30 preceding the fiscal year for which the increase is made, exceeds the CPI for the prior 12-month period.

House bill

Section 12009 would reduce the fiscal year 1994 cost-of-living adjustment for Montgomery GI Bill benefits for both active-duty and Selected Reserve participants by one percentage point. This would have the effect of reducing the expected COLA to 2 percent, according to CBO.

Senate amendment

No provision.

Compromise agreement

Section 12009 would eliminate the COLA to be paid under section 3015(g)(1) for Montgomery GI Bill benefits for fiscal year 1994 and limit the FY 1995 COLA to one-half the amount otherwise authorized by such section.

TITLE XIII—REVENUE, HEALTH CARE, HUMAN RESOURCES, CUSTOMS AND TRADE PROVISIONS, FOOD STAMP PROGRAM, AND TIMBER SALES PROVISIONS

CHAPTER 1—REVENUE PROVISIONS

I. TRAINING AND INVESTMENT PROVISIONS

A. Education and Training Provisions

1. Extension of employer-provided educational assistance (sec. 14101 of the House bill, sec. 8101 of the Senate amendment, sec. 13101 of the conference agreement, and sec. 127 of the Code)

Present Law

Prior to July 1, 1992, an employee's gross income and wages for income and employment tax purposes did not include amounts paid or incurred by the employer for educational assistance provided to the employee if such amounts were paid or incurred pursuant to an educational assistance program that met certain requirements (sec. 127). This exclusion, which expired with respect to amounts paid after June 30, 1992, was limited to $5,250 of educational assistance with respect to an individual during a calendar year. Education that did not qualify for the exclusion (e.g., because it exceeded the $5,250 limit) was excludable from income if and only if it qualified as a working condition fringe benefit (sec. 132). To be excluded as a working condition fringe, the cost of the education must have been a job-related deductible expense.

In the absence of the exclusion, for purposes of income and employment taxes, an employee generally is required to include in income and wages the value of educational assistance provided by the employer unless the cost of such assistance qualifies as a deductible job-related expense of the employee.

House Bill

The House bill retroactively and permanently extends the exclusion for employer-provided educational assistance.

The House bill includes a number of transition rules to deal with cases in which employers provided educational assistance to employees between July 1, 1992, and December 31, 1992. First, no interest, penalty, or addition to tax is imposed on employers or employees who continued to exclude from income educational assistance payments made after June 30, 1992. Second, if an employer included educational assistance payments made after June 30, 1992, in its employees' income and wages (for purposes of income or employment taxes) the amount included is deducted from income and wages paid in 1993 rather than requiring the taxpayers to file a request for refund for 1992.

The House bill also clarifies the rule under which educational assistance that does not satisfy section 127 may be excluded from income if and only if it meets the requirements of a working condition fringe benefit.

Effective date.—The extension of the exclusion is effective for taxable years ending after June 30, 1992. The clarification to the working condition fringe benefit rule is effective for taxable years beginning after December 31, 1988.

Senate Amendment

The Senate amendment is the same as the House bill except that the exclusion is extended retroactively and through June 30, 1994, and the Senate amendment does not contain special rules for educational assistance provided between July 1, 1992, and December 31, 1992.

Effective date.—The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that the exclusion for employer-provided educational assistance is extended retroactively and through December 31, 1994.

The conferees intend that the Secretary will use his existing authority to the fullest extent possible to alleviate any administrative problems that may result from the expiration and retroactive extension of the exclusion and to facilitate in the simplest way possible the recoupment of excess taxes paid with respect to educational assistance provided in the last half of 1992.

Effective date.—The conference agreement follows the Senate amendment.

2. Extension of targeted jobs tax credit (sec. 14102 of the House bill, sec. 8102 of the Senate amendment, sec. 13102 of the conference agreement, and sec. 51 of the Code)

Present Law

Tax credit

Prior to July 1, 1992, the targeted jobs tax credit was available to employers on an elective basis for hiring individuals from several targeted groups. The targeted groups consist of individuals who are either recipients of payments under means-tested transfer programs, economically disadvantaged, or disabled.

The credit generally is equal to 40 percent of up to $6,000 of qualified first-year wages paid to a member of a targeted group. Thus, the maximum credit generally is $2,400 per individual. With respect to economically disadvantaged summer youth employees, however, the credit is equal to 40 percent of up to $3,000 of wages, for a maximum credit of $1,200.

The credit expired for individuals who began work for an employer after June 30, 1992.

Certification of members of targeted groups

Generally, an individual is not treated as a member of a targeted group unless certain certification conditions are satisfied. On or before the day on which the individual begins work for the employer, the employer has to have received or have requested in writing from the designated local agency certification that the individual is a member of a targeted group. In the case of a certification of an economically disadvantaged youth participating in a cooperative education program, this requirement is satisfied if necessary certification is requested or received from the participating school on or before the day on which the individual begins work for the employer.

The deadline for requesting certification of targeted group membership is extended until five days after the day the individual begins work for the employer, provided that, on or before the day the individual begins work, the individual has received a written preliminary determination of targeted group eligibility (a "voucher") from the designated local agency (or other agency or organization designated pursuant to a written agreement with the designated local agency). The "designated local agency" is the State employment security agency.

Authorization of appropriations

Appropriations for administrative and publicity expenses relating to the targeted jobs credit was authorized through June 30, 1992. These monies were to be used by the Internal Revenue Service and the Department of Labor to inform employers of the credit program.

House Bill

Extension of credit

The House bill permanently and retroactively extends the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992. The House bill also extends the authorization of appropriations for administrative and publicity expenses relating to the credit.

Approved school-to-work program

In addition, the targeted jobs tax credit is expanded to include qualified participants in an approved school-to-work program, for participation beginning after December 31, 1993.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992. The approved school-to-work program is effective for individuals beginning work for an employer after December 31, 1993.

Senate Amendment

Extension of credit

The Senate amendment extends for 24 months the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992 and before July 1, 1994. Under the Senate amendment, the targeted jobs tax credit does not apply with respect to individuals who begin work for the employer after June 30, 1994. The Senate amendment also extends the authorization of appropriations for administrative and publicity expenses relating to the credit.

Approved school-to-work program

No provision.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992 and before July 1, 1994.

Conference Agreement

Extension of credit

The conference agreement extends for 30 months the targeted jobs tax credit for individuals who begin work for the employer after June 30, 1992 and on or before December 31, 1994.

Approved school-to-work program

The conference agreement does not include the House bill provision.

Effective date

The extension of the targeted jobs tax credit is effective for individuals who begin work for the employer after June 30, 1992 and before December 31, 1994.

B. Investment Incentives

1. Extension of research tax credit; Modification of fixed base percentage for startup companies (secs. 14111 and 14112 of the House bill, secs. 8111 and 8112 of the Senate amendment, secs. 13111 (a) and (c) and 13112 of the conference agreement, and sec. 41 of the Code)

Present Law

The research and experimentation tax credit ("research tax credit") provides a credit equal to 20 percent of the amount by which a taxpayer's qualified research expenditures for a taxable year exceed its base amount for that year. The credit expired after June 30, 1992.

The base amount for the current year generally is computed by multiplying the taxpayer's "fixed-base percentage" by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer both incurred qualified research expenditures and had gross receipts during each of at least three years from 1984 through 1988, then its "fixed-base percentage" is the ratio that its total qualified research expenditures for the 1984–1988 period bears to its total gross receipts for that period (subject to a maximum ratio of .16). All other taxpayers (such as "start-up" firms) are assigned a fixed-base percentage of .03.

In computing the credit, a taxpayer's base amount may not be less than 50 percent of its current-year qualified research expenditures.

Qualified research expenditures eligible for the credit consist of: (1) "in-house" expenses of the taxpayer for research wages and supplies used in research; (2) certain time-sharing costs for computer use in research; and (3) 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf. The credit is not available for expenditures attributable to research that is conducted outside the United States. In addition, the credit is not available for research in the social sciences, arts, or humanities, nor is it available for research to the extent funded by any grant, contract, or otherwise by another person (or governmental entity).

The 20-percent research tax credit also applies to the *excess* of (1) 100 percent of corporate cash expenditures (including grants or contributions) paid for basic research conducted by universities (and certain scientific research organizations) *over* (2) the sum of (a) the greater of two fixed research floors plus (b) an amount reflecting any decrease in nonresearch giving to universities by the corporation as compared to such giving during a fixed-base period, as adjusted for inflation.

Deductions for expenditures allowed to a taxpayer under section 174 (or any other section) are reduced by an amount equal to 100 percent of the taxpayer's research tax credit determined for the taxable year.[1]

House Bill

The research tax credit (including the university basic research credit) is permanently extended.

The House bill also adds a new rule regarding the determination of the fixed-base percentage of start-up firms. Under the provision, a taxpayer that did not have gross receipts in at least three years during the 1984-1988 period will be assigned a fixed base percentage of .03 for each of its first five taxable years after 1993 in which it incurs qualified research expenditures. The taxpayer's fixed-base percentage for its sixth through tenth taxable years after 1993 in which it incurred qualified research expenditures will be as follows: (1) for the taxpayer's sixth year, its fixed-base percentage will be one-sixth of its ratio of qualified research expenditures to gross receipts for its fourth and fifth years; (2) for its seventh year, its fixed-base percentage will be one-third of its ratio for its fifth and sixth years; (3) for its eighth year, its fixed-base percentage will be one-half of its ratio for its fifth through seventh years; (4) for its ninth year, its fixed-base percentage will be two-thirds of its ratio for its fifth through eighth years; and (5) for its tenth year, its fixed-base percentage will be five-sixths of its ratio for its fifth through ninth years. For subsequent taxable years, the taxpayer's fixed-base percentage will be its actual ratio of qualified research expenditures to gross receipts for five years selected by the taxpayer from its fifth through tenth taxable years.

The committee report to the House bill states that, in extending the research tax credit, the committee wishes to reaffirm Congressional intent that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

Effective date.—The provision applies to expenditures paid or incurred after June 30, 1992.

[1] Taxpayers may alternatively elect to claim a reduced research credit amount in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

Senate Amendment

The research tax credit (including the university basic research credit) is extended for 12 months (i.e., for expenditures paid or incurred during the period July 1, 1993, through June 30, 1994).

The Senate amendment also adds the same rule contained in the House bill regarding the determination of the fixed-base percentage of start-up firms in taxable years after the firm's start-up period. In addition, the committee report to the Senate amendment contains the same language as included in the House bill committee report regarding the effect on section 174 of the enactment of the research credit in 1981 and the targeting modifications to the credit in 1986.

Effective date.—The Senate amendment applies to expenditures paid or incurred during the period July 1, 1993, through June 30, 1994.

Conference Agreement

Under the conference agreement, the research tax credit (including the university basic research credit) is extended for three years (i.e., for expenditures paid or incurred during the period July 1, 1992, through June 30, 1995.)

The conference agreement also adds the rule contained in the House bill and the Senate amendment regarding the determination of the fixed-base of start-up firms in taxable years after the firm's start-up period. In addition, the conferees reiterate the intent expressed in the House bill committee report and the Senate amendment committee report that neither the enactment of the credit in 1981 nor the "targeting" modifications to the credit in 1986 affect the definition of "research or experimental expenditures" for purposes of section 174. Thus, the various new credit limitations enacted in the Tax Reform Act of 1986 apply in determining eligibility for the credit (in taxable years beginning after December 31, 1985), and do not determine eligibility of product development costs under section 174.

Effective date.—The conference agreement applies to expenditures paid or incurred during the period July 1, 1992, through June 30, 1995.

2. Capital gains exclusion for certain small business stock (sec. 14113 of the House bill, sec. 13113 of the conference agreement, and new sec. 1202 of the Code)

Present Law

Gain from the sale or exchange of stock held for more than one year generally is treated as long-term capital gain.

Net capital gain (i.e., long-term capital gain less short-term capital loss) of an individual is taxed at the same rates that apply to ordinary income, subject to a maximum rate of 28 percent.

House Bill

In general

The House bill generally permits a noncorporate taxpayer who holds qualified small business stock for more than 5 years to exclude 50 percent of any gain on the sale or exchange of the stock. The amount of gain eligible for the 50 percent exclusion is limited to the greater of (1) 10 times the taxpayer's basis in the stock or (2) $10 million gain from stock in that corporation.

Qualified small business stock

In order for stock held by a taxpayer to qualify as small business stock, the following requirements must be met.

Eligible stock and redemptions

The stock must be acquired by the taxpayer at the original issuance (directly or through an underwriter) in exchange for money, other property (not including stock) or as compensation for services provided to the issuing corporation (other than services performed as an underwriter of the stock).

In order to prevent evasion of the requirement that the stock be newly issued, the exclusion does not apply if the issuing corporation (1) purchases any stock from the stockholder (or a related person) within 2 years of the issuance of the stock or (2) redeems more than 5 percent (by value) of its own stock within 1 year of the issuance. For purposes of this anti-evasion rule, purchases by persons related to the issuing corporation are treated as purchases by the issuing corporation.

Qualified corporation

The issuing corporation must be a qualified small business as of the date of issuance and during substantially all of the period that the taxpayer holds the stock.

A qualified small business is a subchapter C corporation other than: a DISC or former DISC, a corporation with respect to which an election under section 936 is in effect, a regulated investment company, a real estate investment trust, a real estate mortgage investment conduit, or a cooperative. The corporation also generally cannot own (i) real property the value of which exceeds 10 percent of its total assets or (ii) portfolio stock or securities the value of which exceeds 10 percent of its total assets in excess of liabilities.

Active business

During substantially all of the taxpayer's holding period for the stock, at least 80 percent (by value) of the corporation's gross assets (including intangible assets) must be used by the corporation in the active conduct of a qualified trade or business. If in connection with any future qualified trade or business, a corporation uses assets in certain start-up activities, research and experimental activities or in-house research activities, the corporation is treated as using such assets in the active conduct of a qualified trade or business.

Assets that are held to meet reasonable working capital needs of the corporation, or are held for investment and are reasonably expected to be used within 2 years to finance future research and experimentation, are treated as used in the active conduct of a trade or business. In addition, certain rights to computer software are treated as assets used in the active conduct of a trade or business.

A qualified trade or business is any trade or business other than one involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of 1 or more of its employees. The term also excludes any banking, insurance, leasing, financing, investing, or similar business, any farming business (including the business of raising or harvesting trees), any business involving the production or extraction of products of a character for which percentage depletion is allowable, or any business of operating a hotel, motel, restaurant or similar business.

A corporation that is a specialized small business investment company ("SSBIC") is treated as meeting the active business test. An SSBIC is defined as any corporation (other than certain non-qualified corporations) that is licensed by the Small Business Administration under section 301(d) of the Small Business Act of 1958, as in effect on May 13, 1993.

Gross assets

As of the date of issuance of the stock, the excess of (1) the amount of cash and the aggregate adjusted bases of other property held by the corporation, over (2) the aggregate amount of indebtedness of the corporation that does not have an original maturity of more than one year (such as short-term payables), cannot exceed $50 million. For this purpose, amounts received in the issuance are taken into account.

If a corporation satisfies the gross assets test as of the date of issuance but subsequently exceeds the $50 million threshold, stock that otherwise constitutes qualified small business stock would not lose that characterization solely as a result of that subsequent event. If a corporation (or a predecessor corporation) exceeds the $50 million threshold at any time after December 31, 1992, the corporation cannot issue stock that would qualify for the exclusion.

Subsidiaries of issuing corporation

In the case of a corporation that owns at least 50 percent of the vote or value of a subsidiary, the parent corporation is deemed to own its ratable share of the subsidiary's assets for purposes of the "qualified corporation," "active business," and "gross assets" tests described above.

Pass-through entities

Gain from the disposition of qualified small business stock by a partnership, S corporation, regulated investment company or common trust fund that is taken into account by a partner, shareholder or participant (other than a C corporation) is eligible for the exclusion, provided that (1) all eligibility requirements with respect to qualified small business stock are met, (2) the stock was held by the entity for more than 5 years, and (3) the partner, shareholder or participant held its interest in the entity on the date the entity acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner, shareholder, or participant cannot exclude gain received from an entity to the extent that the partner's, shareholder's, or participant's share in the entity's gain exceeded the partner's, shareholder's or participant's interest in the entity at the time the entity acquired the stock.

Certain tax-free and other transfers

If qualified small business stock is transferred by gift or at death, the transferee is treated as having acquired the stock in the same manner as the transferor, and as having held the stock during any continuous period immediately preceding the transfer during which it was held by the transferor. A partner can treat stock distributed by a partnership as qualified small business stock as long as (1) all eligibility requirements with respect to qualified small business stock are met by the partnership with respect to its investment in the stock, and (2) the partner held its interest in the partnership on the date the partnership acquired the stock and at all times thereafter and before the disposition of the stock. In addition, a partner cannot treat stock distributed by a partnership as qualified small business stock to the extent that the partner's share of the stock distributed by the partnership exceeded the partner's interest in the partnership at the time the partnership acquired the stock.

Transferees in other cases are not eligible for the exclusion. Thus, for example, if qualified small business stock is transferred to a

partnership and the partnership disposes of the stock, any gain from the disposition will not be eligible for the exclusion.

In the case of certain incorporations and reorganizations where qualified small business stock is transferred for other stock, the transferor treats the stock received as qualified small business stock. The holding period of the original stock is added to that of the stock received. However, the amount of gain eligible for the exclusion is limited to the gain accrued as of the date of the incorporation or reorganization.

Special basis rules

If property (other than money or stock) is transferred to a corporation in exchange for its stock, the basis of the stock received is treated as not less than the fair market value of the property exchanged. Thus, only gains that accrue after the transfer are eligible for the exclusion.

Options, nonvested stock, and convertible instruments

Stock acquired by the taxpayer through the exercise of options or warrants, or through the conversion of convertible debt, is treated as acquired at original issue. The determination whether the gross assets test is met is made at the time of exercise or conversion, and the holding period of such stock is treated as beginning at that time.

In the case of convertible preferred stock, the gross assets determination is made at the time the convertible stock is issued, and the holding period of the convertible stock is added to that of the common stock acquired upon conversion.

Stock received in connection with the performance of services is treated as issued by the corporation and acquired by the taxpayer when included in the taxpayer's gross income in accordance with the rules of section 83.

Offsetting short positions

A taxpayer cannot exclude gain from the sale of qualified small business stock if the taxpayer (or a related person) held an offsetting short position with respect to that stock anytime before the 5-year holding period is satisfied. If the taxpayer (or a related person) acquires an offsetting short position with respect to qualified small business stock after the 5-year holding period is satisfied, the taxpayer must elect to treat the acquisition of the offsetting short position as a sale of the qualified small business stock in order to exclude any gain from that stock.

An offsetting short position is defined to be (1) a short sale of property substantially identical to the qualified small business stock (including writing a call option that the holder is more likely than not to exercise or selling the stock for future delivery) or (2) an option to sell substantially identical property at a fixed price.

Capital gains and investment interest

Any gain that is excluded from gross income under the bill is not taken into account in computing long-term capital gain or in applying the capital loss rules of sections 1211 and 1212. In addition, the taxable portion of the gain is taxed under section 1(h), which provides for a maximum rate of 28 percent.

The amount treated as investment income for purposes of the investment interest limitation does not include any gain that is excluded from gross income under the bill.

Minimum tax

One-half of any excluded gain is treated as a preference for purposes of the alternative minimum tax.

Effective date

The provision applies to stock issued after December 31, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with the following modifications:

In general

The agreement clarifies that the $10 million limitation on eligible gain is applied on a shareholder-by-shareholder basis. The conferees also wish to clarify that for purposes of the 10-times-basis limitation, basis is determined by valuing any contributed property at fair market value (at the date of contribution).

Qualified small business stock

Redemptions.—The agreement eliminates the rule in the House bill that treats purchases by persons related to an issuing corporation as purchases by the corporation for purposes of determining whether there has been a redemption. In lieu of this rule, a corporation is treated as purchasing an amount of its stock equal to the amount of its stock treated as redeemed under section 304(a).

Qualified corporation.—The agreement excludes from the definition of eligible corporation any corporation that has a direct or indirect subsidiary with respect to which an election under section 936 is in effect.

Active business.—The agreement clarifies that the active business requirement is met by a corporation with 80 percent of its assets used in the active conduct of one or more qualified trades or businesses.

Gross assets.—The conference agreement provides that the $50 million size limitation is based on the issuer's gross assets (i.e., the sum of the cash and the adjusted bases of other property held by the corporation) without subtracting the short-term indebtedness of the corporation. For purposes of this rule, the adjusted basis of property contributed to the corporation is determined as if the basis of the property immediately after the contribution were equal to its fair market value.

Subsidiaries of issuing corporation

The agreement provides that corporations that are part of a parent-subsidiary controlled group (using a more than 50% ownership test) are treated as a single corporation for purposes of the gross assets test. The conferees also wish to clarify that, for purposes of the active business requirement, a parent's ratable share of a subsidiary's assets (and activities) is based on the percentage of outstanding stock owned (by value).

Certain tax-free and other transfers

The conference agreement follows the House bill by limiting the gain that is eligible for exclusion on the sale of stock that was acquired through incorporation or reorganization where the stock acquired would not have been stock of a qualified small business (at the time acquired). The agreement, however, also provides that the limit will not apply to gain from stock that was acquired through incorporation or reorganization that would have been stock of a qualified small business.

Alternative minimum tax study

The conferees understand that the individual alternative minimum tax (AMT) may operate to disallow deductions that may be associated with the production of income, including section 212 expenses associated with income derived through partnerships. A provision was included in H.R. 11 last year to allow a certain amount of the distributive share of section 212 expenses of a partner in a partnership to be deductible for AMT purposes. Concern has been expressed that the present-law AMT treatment of section 212 expenses might create a disincentive for the long-term investments that Congress has intended to foster through the capital gains exclusion. Accordingly, the conferees urge that the Treasury Department study the question whether the present-law AMT treatment of section 212 expenses creates such a disincentive, and provide the House Committee on Ways and Means and the Senate Finance Committee with a report of such study by March 1, 1994. The study should include the Treasury Department's views and recommendations as to whether a statutory amendment is appropriate insofar as the AMT treatment of section 212 expenses is concerned, along with a discussion of the merits and consequences of any such amendment.

Effective date

The conference agreement applies to stock issued after the date of enactment.

3. Rollover of gain from sale of publicly-traded securities into specialized small business investment companies (sec. 14114 of the House bill, sec. 13114 of the conference agreement and new sec. 1044 of the Code)

Present Law

In general, gain or loss is recognized on any sale, exchange or other disposition of property. The Internal Revenue Code contains provisions under which taxpayers may elect not to recognize gain realized on certain "like-kind" exchanges (sec. 1031), or for certain involuntary conversions (sec. 1033).

House Bill

The House bill permits any corporation or individual to elect to roll over without payment of tax any capital gain realized upon the sale of publicly-traded securities where the corporation or individual uses the proceeds from the sale to purchase common stock or a partnership interest in a specialized small business investment company ("SSBIC") within 60 days of the sale of the securities. To the extent the proceeds from the sale of the publicly-traded securities exceed the cost of the SSBIC common stock or partnership interest, gain will be recognized currently. The taxpayer's basis in the SSBIC common stock or partnership interest is reduced by the amount of any gain not recognized on the sale of the securities.[2]

Estates, trusts, S-corporations, and partnerships are not eligible to make this election to roll over gains. In addition, "publicly-traded securities" are defined as stock or debt traded on an established securities market. An SSBIC is defined as any partnership or corporation that is licensed by the Small Business Administration under section 301(d) of the Small Business Investment Act of 1958, as in effect on May 13, 1993.

The amount of gain that an individual may elect to roll over under this provision for a taxable year is limited to the lesser of (1) $50,000 or (2) $500,000 reduced by the gain previously excluded under this provision. For corporations, these limits are $250,000 and $1,000,000.

Effective date.—The provision is effective for sales of publicly-traded securities on or after the date of enactment.

Senate Amendment

No provision.

[2]Basis in common stock of a corporate SSBIC is not reduced for purposes of calculating the gain eligible for the 50 percent exclusion for qualified small business stock under new section 1202 as provided in the House bill.

Conference Agreement

The conference agreement follows the House bill.

4. Modification to minimum tax depreciation rules (sec. 14115 of the House bill, sec. 8115 of the Senate amendment, sec. 13115 of the conference agreement, and sec. 56 of the Code)

Present Law

A taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular income tax liability. A taxpayer's tentative minimum tax generally equals 20 percent (24 percent in the case of an individual) of the taxpayer's alternative minimum taxable income in excess of an exemption amount. Alternative minimum taxable income (AMTI) is the taxpayer's taxable income increased by certain tax preferences and adjusted by determining the tax treatment of certain items in a manner which negates the deferral of income resulting from the regular tax treatment of those items.

One of the adjustments which is made to taxable income to arrive at AMTI relates to depreciation. For AMT purposes, depreciation on most personal property to which the modified Accelerated Cost Recovery System (MACRS) adopted in 1986 applies is calculated using the 150-percent declining balance method (switching to straight line in the year necessary to maximize the deduction) over the property's class life. The class lives of MACRS property generally are longer than the recovery periods allowed for regular tax purposes.

For taxable years beginning after 1989, the AMTI of a corporation is increased by an amount equal to 75 percent of the amount by which adjusted current earnings (ACE) of the corporation exceed AMTI (as determined before this adjustment). In general, ACE means AMTI with additional adjustments that generally follow the rules presently applicable to corporations in computing their earnings and profits. For purposes of ACE, depreciation is computed using the straight-line method over the class life of the property. Thus, a corporation generally must make two depreciation calculations for purposes of the AMT—once using the 150-percent declining balance method over the class life and again using the straight-line method over the class life. Taxpayers may elect to use either method for regular tax purposes. If a taxpayer uses the straight-line method for regular tax purposes, it must also use the straight-line method for AMT purposes.

House Bill

The House bill eliminates the depreciation component of the ACE adjustment. In addition, taxpayers, including individuals, will compute AMT depreciation by using the 120-percent declining balance method over the recovery periods applicable for regular tax purposes. The provision does not apply to property eligible only for the straight-line method for regular tax purposes (e.g., residential and nonresidential real property).

Effective date.—The provision is effective for property placed in service after December 31, 1993.

Senate Amendment

The Senate amendment eliminates the depreciation component of the ACE adjustment. Thus, corporations will compute AMT depreciation by using the rules generally applicable to individuals (i.e., the 150-percent declining balance method over the class life of the property for tangible personal property.)

Effective date.—The provision is effective for property placed in service after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

5. Increase expensing deduction for small business (sec. 14116 of the House bill, sec. 8119 of the Senate amendment, sec. 13116 of the conference agreement, and sec. 179 of the Code)

Present Law

In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $10,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. The $10,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. In addition, the amount eligible to be expensed for a taxable year may not exceed the taxable income of the taxpayer for the year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations).

House Bill

The House bill increases the $10,000 amount allowed to be expensed under section 179 to $25,000.

Effective date.—The provision is effective for property placed in service in taxable years beginning after December 31, 1992.

Senate Amendment

The Senate amendment increases the $10,000 amount allowed to be expensed under section 179 to $20,500.

Effective date.—The provision is effective for property placed in service in taxable years beginning after December 31, 1992.

Conference Agreement

The conference agreement increases the $10,000 amount allowed to be expensed under section 179 to $17,500 for property placed in service in taxable years beginning after December 31, 1992.

6. Bonds for high-speed intercity rail facilities (sec. 14121 of the House bill, sec. 13121 of the conference agreement, and sec. 146 of the Code)

Present Law

High-speed intercity rail facilities qualify for tax-exempt bond financing if trains operating on the facility are reasonably expected to carry passengers and their baggage at average speeds in excess of 150 miles per hour between stations. Such facilities need not be governmentally-owned, but the owner must irrevocably elect not to claim depreciation or any tax credit with respect to bond-financed property.

Twenty-five percent of each bond issue for high-speed intercity rail facilities must receive an allocation from a State private activity bond volume limitation. If facilities are located in two or more States, this requirement must be met on a State-by-State basis for the financing of facilities located in each State.

House Bill

The House bill repeals the requirement that 25 percent of each high-speed rail facility bond issue receive an allocation from a State private activity bond volume limitation.

Effective date.—The provision is effective for bonds issued after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification. Under the agreement, the requirement that 25 percent of each high-speed rail facility bond issue receive an allocation from a State private activity bond volume limitation would be repealed only if all the bond-financed property were governmentally owned. (Bonds issued for privately-owned property would remain subject to the current-law rules with respect to the 25-percent volume cap allocation requirement.)

Effective date.—The provision is effective for bonds issued after December 31, 1993.

7. Extension of qualified small-issue bonds (sec. 14122 of the House bill, sec. 8121 of the Senate amendment, sec. 13122 of the conference agreement, and sec. 144 of the Code)

Present Law

Interest on certain small issues of private activity bonds is excluded from income if at least 95 percent of the bond proceeds is used to finance: (1) manufacturing facilities or (2) agricultural land or property for first-time farmers ("qualified small-issue bonds"). Qualified small-issue bonds are those for which (i) the aggregate authorized face amount of the issue is $1 million or less, or (ii) the aggregate face amount of the issue, together with the aggregate amount of certain related capital expenditures during the six-year period beginning three years before the date of the issue and ending three years after that date, does not exceed $10 million. Special limits apply to these bonds for first-time farmers. As private activity bonds, qualified small-issue are subject to the volume cap. Treasury Department regulation sec. 1.103-8(a)(5) generally requires that qualified small-issue bonds be issued within one year after the property being financed is placed in service.

Authority to issue qualified small-issue bonds expired after June 30, 1992.

House Bill

The House bill permanently extends the authority to issue qualified small-issue bonds.

Effective date.—The provision is effective for bonds issued after June 30, 1992.

Senate Amendment

The Senate amendment extends the authority to issue qualified small-issue bonds for 24 months (through June 30, 1994).

Effective date.—The provision is effective for bonds issued after June 30, 1992 and before July 1, 1994.

Conference Agreement

The conference agreement follows the House bill with a modification with respect to qualified small-issue bonds that could not be issued within the regulatory one-year placed-in-service period due to the lapse of the program. Specifically, the conference agreement provides that the one-year placed-in-service period does not expire before January 1, 1994 for property with respect to which this one year period, under Treasury Regulation sec. 1.103-8(a)(5) or any successor regulation otherwise would expire after June 30, 1992, and before January 1, 1994. Because these bonds must be issued no

later than December 31, 1993 and because carryforwards of qualified small-issue bonds are not allowed under the State private activity bond volume limitation rules, the applicable State volume limitation from which an allocation is required is that for calendar year 1993.

Effective date.—The extension is effective for bonds issued after June 30, 1992. The provision relating to Treasury regulation 1.103-8(a)(5) is effective on the date of enactment.

8. Extension of tax credit for orphan drug clinical testing expenses (sec. 13111(b) of the conference agreement and sec. 28 of the Code)

Present Law

The orphan drug tax credit (sec. 28) provides a 50-percent nonrefundable tax credit for a taxpayer's qualified clinical testing expenses paid or incurred in the testing of certain drugs for rare diseases, generally referred to as "orphan drugs." Qualified testing expenses are costs incurred to test an orphan drug after the drug has been approved for human testing by the Food and Drug Administration (FDA) but before the drug has been approved for sale by the FDA. Present law defines a rare disease or condition as one that (1) affects less than 200,000 persons in the United States or (2) affects more than 200,000 persons, but there is no reasonable expectation that businesses could recoup the costs of developing a drug for such disease or condition from U.S. sales of the drug. These rare diseases and conditions include Huntington's disease, myoclonus, ALS (Lou Gehrig's disease), Tourette's syndrome, and Duchenne's dystrophy (a form of muscular dystrophy).[3]

The orphan drug tax credit expired after June 30, 1992.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement extends the orphan drug tax credit for 30 months (i.e., for qualified clinical testing expenses incurred during the period July 1, 1992, through December 31, 1994).

Effective date.—The provision is effective for qualified clinical testing expenses incurred during the period July 1, 1992, through December 31, 1994.

C. Expansion and Simplification of Earned Income Tax Credit (sec. 14131 of the House bill, sec. 8131 of the Senate amendment, sec. 13131 of the conference agreement, and secs. 32, 162, 213, and 3507 of the Code)

Present Law

Eligible low-income workers can claim a refundable earned income tax credit (EITC) of up to 18.5 percent of the first $7,750 of earned income for 1993 (19.5 percent for taxpayers with more than one qualifying child). The maximum amount of credit for 1993 is $1,434 ($1,511 for taxpayers with more than one qualifying child).

This maximum credit is reduced by 13.21 percent of earned income (or adjusted gross income, if greater) in excess of $12,200 (13.93 percent for taxpayers with more than one qualifying child). In 1993, the EITC is totally phased out for workers with earned income (or adjusted gross income, if greater) over $23,050. The maximum amount of earned income on which the EITC may be claimed, and the income threshold for the phaseout of the EITC, are indexed for inflation. Earned income consists of wages, salaries, other employee compensation, and net self-employment income.

Present law provides that the credit rates for the EITC increase in 1994, as shown in the following table.

Year	One qualifying child—		Two or more qualifying children—	
	Credit rate	Phase-out rate	Credit rate	Phase-out rate
1993	18.5	13.21	19.5	13.93
1994 and after	23.0	16.43	25.0	17.86

A worker may elect to receive the EITC on an advance basis by furnishing a certificate of eligibility to his or her employer. For such a worker, the employer makes an advance payment of the credit at the time wages are paid.

A supplemental young child credit is available to taxpayers with qualifying children under the age of one year. This young child credit rate is 5 percent and the phase-out rate is 3.57 percent. It is computed on the same income base as the ordinary EITC. The maximum supplemental young child credit for 1993 is $388.

A supplemental health insurance credit is available to taxpayers who provide health insurance coverage for their qualifying children. This health insurance credit rate is 6 percent and the phase-out rate is 4.285 percent. It is computed on the same income base as the ordinary EITC, but the credit claimed cannot exceed the out-of-pocket cost of the health insurance coverage. In addition, the taxpayer is denied an itemized deduction for medical expenses of qualifying insurance coverage up to the amount of credit claimed. The maximum supplemental health insurance credit for 1993 is $465.

House Bill

For taxpayers with one qualifying child, the EITC is increased to 26.60 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,062 which is reduced by 16.16 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $23,760. For 1995 and thereafter, the credit rate is increased to 34.37 percent. The maximum amount of earned income on which the credit could be claimed is reduced to (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation). Thus, the maximum credit in 1995 is projected to be $2,120 (which equals the maximum credit available in 1994, adjusted for projected inflation). The phase-out rate remains the same as in 1994.

For taxpayers with two or more qualifying children, the EITC is increased to 31.59 percent of the first $8,500 of earned income in 1994. The maximum credit is $2,685 which is reduced by 15.79 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. Thus, in 1994, the credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $28,000. For 1995 and thereafter, the credit rate increases to 39.66 percent. The maximum amount of earned income on which the credit could be claimed is projected to be $8,730 in 1995 (which equals the 1994 level, adjusted for projected inflation). Thus, the maximum credit in 1995 is projected to be $3,460. The phase-out rate for 1995 and thereafter is 19.83 percent.

Under the House bill, the EITC is extended to low-income workers who (1) do not have any qualifying children (including workers with children who are not qualifying children with respect to that worker); (2) are age 22 or older; and (3) who may not be claimed as a dependent on another taxpayer's return. For these taxpayers, the EITC is 7.65 percent of the first $4,000 of earned income (for a maximum credit of $306 in 1994). The maximum credit is reduced by 7.65 percent of earned income (or adjusted gross income, if greater) above $5,000. In 1994 the credit is completely phased out for taxpayers with earned income (or adjusted gross income, if greater) over $9,000. This credit is not available on an advance payment basis.

As under present law, all dollar thresholds for years after 1994 are indexed for inflation.

The supplemental young child credit and the supplemental health insurance credit are repealed.

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment generally follows the House bill, with the following exceptions:

For taxpayers with one qualifying child, the EITC is 26.0 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,015 and is reduced by 16.16 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. For 1995 and thereafter, the credit rate increases to 34.0 percent. The maximum amount of earned income on which the credit could be claimed is (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation).

For taxpayers with two or more qualifying children, the EITC is 30.0 percent of the first $8,500 of earned income in 1994. The maximum credit for 1994 is $2,550 and is reduced by 15.94 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit rate increases over time and equals 34.0 percent for 1995 and 39.0 percent for 1996 and thereafter. The phase-out rate is 18.06 percent for 1995 and 20.72 percent for 1996 and thereafter.

There is no credit available for workers without qualifying children.

Effective date.—The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement generally follows the House bill and the Senate amendment, with the following modifications.

For taxpayers with one qualifying child, the EITC is 26.3 percent of the first $7,750 of earned income in 1994. The maximum credit in 1994 is $2,038 and is reduced by 15.98 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. For 1995 and thereafter, the credit rate increases to 34.0 percent. The maximum amount of earned income on which the credit could be claimed is (an estimated) $6,170 (this is a $6,000 base in 1994, adjusted for projected inflation). The phaseout rate for 1995 and thereafter is 15.98 percent.

For taxpayers with two or more qualifying children, the EITC is 30.0 percent of the first $8,425 of earned income in 1994. The maximum credit for 1994 is $2,527 and is reduced by 17.68 percent of earned income (or adjusted gross income, if greater) in excess of $11,000. The credit rate increases over time and equals 36.0 percent for 1995 and 40.0 percent for 1996 and thereafter. The phase-out rate is 20.22 percent for 1995 and 21.06 percent for 1996 and thereafter.

[3] A taxpayer's otherwise allowable deduction for clinical testing expenses is reduced by the amount of any orphan drug tax credit allowed for the taxable year (sec. 280C(b)).

The EITC is extended to taxpayers with no qualifying children, as in the House bill, with a modification to the age requirement. Under the conference agreement, this credit for taxpayers with no qualifying children would only be available to taxpayers over age 25 and below age 65.

The Internal Revenue Service (IRS) is required to provide notice to taxpayers with qualifying children who receive a refund on account of the EITC that the credit may be available on an advance payment basis. To prevent taxpayers from incurring an unexpectedly large tax liability due to receipt of the EITC on an advance payment basis, the amount of advance payment allowable in a taxable year is limited to 60 percent of the maximum credit available to a taxpayer with one qualifying child. After providing these notices to taxpayers for two taxable years, the Secretary of the Treasury is directed to study the effect of the notice program on utilization of the advance payment mechanism. Based on the results of this study, the Secretary may recommend modifications to the notice program to the Committee on Ways and Means and the Committee on Finance.

Finally, the conferees are concerned that working homeless individuals may not claim the full amount of EITC to which they are entitled. The conferees urge the IRS to explore the use of outreach programs that target homeless individuals and that aim to educate these individuals of the availability of the EITC.

D. Real Estate Investment Provisions

1. Extension of qualified mortgage bonds and mortgage credit certificates (sec. 14141 of the House bill, sec. 8141 and 8141A of the Senate amendment, sec. 13141 of the conference agreement, and secs. 25 and 143 of the Code)

Present Law

Qualified mortgage bonds

Qualified mortgage bonds ("QMBs") are bonds the proceeds of which are used to finance the purchase, or qualifying rehabilitation or improvement, of single-family, owner-occupied residences located within the jurisdiction of the issuer of the bonds (sec. 143). Persons receiving QMB loans must satisfy a home purchase price, borrower income, first-time homebuyer, and other requirements. Part or all of the interest subsidy provided by QMBs is recaptured if the borrower experiences substantial increases in income and disposes of the subsidized residence within nine years after purchase.

Mortgage credit certificates

Qualified governmental units may elect to exchange QMB authority for authority to issue mortgage credit certificates ("MCCs") (sec. 25). MCCs entitle homebuyers to nonrefundable income tax credits for a specified percentage of interest paid on mortgage loans on their principal residences. Once issued, an MCC remains in effect as long as the loan remains outstanding and the residence being financed continues to be the certificate-recipient's principal residence. MCCs are subject to the same targeting requirements as QMBs.

Expiration

Authority to issue QMBs and to elect to trade in bond volume authority to issue MCCs expired after June 30, 1992.

House Bill

The House bill permanently extends the authority to issue QMBs and to elect to trade in QMB authority for authority to issue MCCs.

Effective date.—The extension of the QMB and MCC programs is effective after June 30, 1992.

Senate Amendment

The Senate amendment extends the authority to issue QMBs and to elect to trade in QMB authority for authority to issue MCCs for 24 months (through June 30, 1994).

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill with three modifications.

Treatment of certain housing affordability programs

The conference agreement provides that, in high housing cost areas, the fact that an issuer of QMBs or MCCs also provides certain mortgage loans or grants other than first mortgage loans or grants to homebuyers in conjunction with QMB or MCC financing will not preclude availability of the QMB- or MCC-assistance on the purchase of a residence. Qualifying subordinate mortgage loans or grants may not be financed directly or indirectly with tax-exempt private activity bonds. Also qualifying subordinate mortgage loans or grants either must be accompanied by a "resale price control restriction", (or in the case of loans must be, "shared appreciation loans"). Finally, the local government must retain its interest in the home's appreciation for a period at least as long as the Federal QMB and MCC recapture period.

A resale price control restriction is defined as a deed restriction, right of repurchase, or similar mechanism which (1) requires the owner to sell the unit to a purchaser qualifying for QMB or MCC financing and (2) limits the resale price to an amount not exceeding the initial purchase price plus an indexed amount that is less than the full appreciation on the residence. A shared appreciation loan is defined as a below-market rate or deferred interest loan which entitles the governmental lender to a share of any appreciation in value (attributable to the portion of the residence financed with the shared appreciation loan) realized upon disposition of the residence as repayment for the subsidy provided by the loan.

Any interest of a governmental unit in a QMB- or MCC-financed residence attributable to a qualifying subordinated mortgage loan will be disregarded for purposes of (1) the first-time homebuyer and owner-occupied residence requirements of the QMB and MCC programs; (2) the maximum purchase price limit for QMB-and MCC-financed residences; (3) the rules for determining who is the owner of a QMB- or MCC-financed residence; and (4) the rules for determining the effective rate of interest on QMB-financed loans. The terms of the subordinated mortgage loan or grant will be taken into account, however, for measuring the amount of the homeowner's gain, if any, under the QMB- and MCC-recapture restrictions. The conferees intend that the special rules for these housing affordability programs will not apply to any subordination loans or grant if the governmental unit's interest under the loan or grant is structured so as to realize an amount in excess of the pro rata portion of the appreciation on the residence financed with the subordinated mortgage loan or grant (e.g., by allocating to the governmental unit an amount of gain on disposition greater than the proportionate amount of the total subsidy to the homebuyer that is provided by the subordinated mortgage loan).

Treatment of certain contracts for deeds

The conference agreement also provides that, in the case of certain homebuyers whose family incomes do not exceed fifty percent of applicable median family income, ownership of land subject to certain contracts for deed does not violate the requirement that QMB- and MCC-financed homebuyers be first-time homebuyers and that the financing provided be for new mortgages. Thus, QMB-financed loans may be made (and MCCs to be granted) to individuals who own and maintain their principal residence on land subject to these contracts for deed provided that the homebuyers satisfy (a) all otherwise applicable requirements of the QMB and MCC programs but for the contract for deed and (b) the special income limit. These loans may be used to repay the contract for deed and to finance a new residence on the land. Also, as under present law, these homebuyers will remain eligible for qualified home improvement loans to rehabilitate existing principal residences on the land held subject to the contracts for deed.

Treatment of certain two-family housing

The conference agreement expands a present-law exception to the requirement that all residences receiving qualified mortgage bond financing or MCCs be single family, owner-occupied housing to allow certain newly constructed two-family housing to qualify. Under the expanded exception, newly constructed two-family housing will be eligible for these subsidies if (a) the housing is located in a targeted area of economic distress (sec. 143(j)), (b) at least one of the two units is occupied as the principal residence of the mortgager, and (c) the family income of the mortgagor is 140 percent or less of the applicable area median family income.[4]

Effective date

The extension of the QMB and MCC programs is effective after June 30, 1992. The three modifications are effective for QMB and MCC-financing provided after the date of enactment.

2. Extension and modification of the tax credit for low-income rental housing (sec. 14142 of the House bill, sec. 8142 of the Senate amendment, sec. 13142 of the conference agreement, and sec. 42 of the Code)

Present Law

In general

A tax credit is allowed in annual installments over 10 years for qualifying newly constructed or substantially rehabilitated low-income residential rental housing. For most qualifying housing, the credit has a present value of 70 percent of the qualified basis of the low-income housing units. For housing also receiving other Federal subsidies (e.g., tax-exempt bond financing) and for the acquisition cost (e.g., costs other than rehabilitation expenditures) of existing housing that is substantially rehabilitated, the credit has a present value of 30 percent of qualified costs.

HOME funds

Housing which receives assistance under the National Affordable Housing Act of 1990 generally is treated as Federally subsidized and therefore not eligible for the 70 percent present value credit.

[4]The conferees intend, however, that the interest of a governmental unit will be disregarded under the recapture restriction if the governmental unit's interest is structured so as to capture any amount otherwise subject to Federal recapture e.g. by allocating to the governmental unit an amount of gain on disposition greater than the proportionate amount of the total subsidy to the homebuyer that is provided by the subordinated mortgage loan.

Full-time students

A housing unit generally is not eligible for the low-income housing tax credit if the tenants are full-time students who are not married individuals filing joint returns. Exceptions to this rule allow the credit to be claimed on housing units occupied by persons who are enrolled in certain job training programs or by students who are receiving Aid to Families with Dependent Children (AFDC) payments.

Deep-rent skewing

Generally, the credit amount is based on the qualified basis of the housing units serving low-income tenants. A residential rental project will qualify for the credit only if (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 50 percent of area median income, or (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 60 percent of area median income. A different income targeting rule applies to entities described in sec. 142(d)(6) of the Code. These income figures are adjusted for family size. The low income set-aside is elected when the project is placed in service.

To qualify under the deep rent skewing exception from the general targeting requirements, at least 15 percent of the low-income units must be occupied by tenants whose incomes do not exceed 40 percent of area median income, the rents on such units must be restricted to 30 percent of the qualifying income limitation, and rents on the market rate units must be at least 200 percent of rents charged on comparable rent restricted units. For projects receiving allocations prior to 1990, rents on market rate units must be at least 300 percent of rents charged on comparable rent restricted units.

Maximum rent

The maximum rent that may be charged a family in a low-income housing tax credit unit depends on the number of bedrooms in that unit. Prior to 1990, maximum allowable rent was determined on the basis of the actual family size of the occupants.

Tenant occupancy

Under the general low-income tenant occupancy requirement, a residential rental project qualifies for the low-income housing tax credit only if at least: (1) 20 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 50 percent of area median income or, (2) 40 percent or more of the aggregate residential rental units in the project are occupied by individuals whose incomes do not exceed 60 percent of area median income.

Income recertification

Generally, the owner of a low-income housing project must annually recertify tenant incomes to meet the low-income tenant occupancy requirements, regardless of whether the building is entirely occupied by low-income tenants.

Tenant protection

The low-income housing tax credit provisions in the Code do not include any specific provisions concerning the grounds for denial of admission to low-income housing projects, for termination of a tenancy, or for refusal to renew the lease of a tenant.

Developmental and operational costs

In general, housing credit agencies cannot allocate more low-income housing tax credits to a project than are necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the 10-year credit period. In making this determination, a housing credit agency must consider (1) the sources and uses of funds and the total financing of the project, (2) any proceeds expected to be generated by reason of tax benefits and (3) the percentage of the housing credit dollar amount to be used for project costs other than the costs of intermediaries.

Allocation between buyer and seller in month of disposition

The Code requires that the low-income housing tax credit be divided between a buyer and seller of a low-income housing tax credit project based upon the number of days during the year of disposition that the project was held by each. The Internal Revenue Service has issued guidance that requires a mid-month averaging convention.

Expiration

The low-income housing tax credit expired after June 30, 1992.

House Bill

Extension

The House bill permanently extends the low-income housing tax credit.

HOME funds

The House bill provides that a building shall not be treated as Federally subsidized solely by reason of assistance with respect to that building received under the National Affordable Housing Act of 1990 (as in effect on the date of enactment of this provision) if 40 percent or more of the aggregate residential rental units in the residential rental project receiving the assistance are occupied by individuals with 50 percent or less of area median income. These projects are eligible for the 70 percent and 30 percent credits but not for the 91 percent or 39 percent credits otherwise available in qualified census tracts and difficult development areas.

Full-time students

No provision.

Deep-rent skewing

No provision.

Maximum rent

No provision.

Tenant occupancy

No provision.

Income recertification

No provision.

Tenant protection

No provision.

Developmental and operational costs

No provision.

Allocation between buyer and seller in month of disposition

No provision.

Effective date

The House bill generally is effective after June 30, 1992. The provision relating to Federal subsidies under the National Affordable Housing Act of 1990 is effective on the date of enactment.

Senate Amendment

Extension

The Senate amendment is the same as the House bill.

HOME funds

No provision.

Full-time students

The Senate amendment provides that a housing unit occupied entirely by full-time students may qualify for the credit if the full-time students are a single parent and his or her minor children and none of the tenants is a dependent of a third party. The Senate amendment also codifies the present-law exception regarding married students filing joint returns (which continues to apply to all buildings placed in service since original enactment of the low-income housing tax credit by the Tax Reform Act of 1986).

Deep-rent skewing

The Senate amendment allows an irrevocable election by the owner of a low-income building receiving a credit allocation before 1990 to satisfy the 200-percent rent restriction rather than the 300-percent rent restriction. The election is available only to taxpayers who enter into a compliance monitoring agreement with a housing credit agency. Further, the election applies only with respect to tenants first occupying any unit in the building after the date of the election, and must be made within 180 days after the date of enactment.

Maximum rent

The Senate amendment allows an irrevocable election by the owner of a low-income building placed in-service before 1990 to use either apartment size or family size in determining maximum allowable rent. The election is available only to taxpayers who enter into a compliance monitoring agreement with a housing credit agency. Further, the election applies only with respect to tenants first occupying any unit in the building after the date of the election, and must be made within 180 days after the date of enactment.

Tenant occupancy

The Senate amendment authorizes the Treasury Department to provide a waiver of penalties for de minimis errors in the application of the low-income tenant occupancy requirement.

Income recertification

The Senate amendment authorizes the Treasury Department to grant a waiver from the annual recertification of tenant income for tenants in buildings that are occupied entirely by low-income tenants.

Tenant protection

The Senate amendment provides that an applicant may not be denied admission to a low-income housing tax credit project because the applicant holds a voucher or certificate of eligibility under Section 8 of the Housing Act of 1937.

Developmental and operational costs

The Senate amendment requires a housing credit agency to consider the reasonableness of the developmental and operational costs of a project as an additional factor in making its determination as to the proper amount of low-income housing tax credits to allocate to a project.

Allocation between buyer and seller in month of disposition

The bill provides that the buyer and seller may agree to use either the exact number of days or the mid-month convention to determine the division of the credit in the month of disposition.

Effective date

The extension of the low-income housing tax credit and the provisions relating to: (1) full-time students, and (2) developmental and operational costs are effective after June 30, 1992. The provisions relating to: (1) tenant occupancy, (2) income certification, (3) tenant protection, and (4) allocations between the buyer and seller are effective on

the date of enactment. The elections relating to deep-rent skewing and maximum rent must be made within 180 days after the date of enactment.

Conference Agreement

Extension

The conference agreement follows the House bill and the Senate amendment.

HOME funds

The conference agreement follows the House bill with a modification to the House bill requirement that 40 percent or more of the aggregate residential rental units in the residential rental project receiving the assistance are occupied by individuals with 50 percent or less of area median income. Specifically 40 percent would be reduced to 25 percent for entities described in Code section 142(d)(6), consistent with the income targeting rules currently applicable to such entities. The House bill requirement limiting this provision to the 70 percent and 30 percent credits but not for the 91 percent or 39 percent credits otherwise available in qualified census tracts and difficult development areas is retained.

Full-time students

The conference agreement follows the Senate amendment.

Deep-rent skewing

The conference agreement follows the Senate amendment with a modification. The modification provides that the irrevocable election would apply to both current and future tenants but would not allow rent increases on existing low-income tenants.

Maximum rent

The conference agreement follows the Senate amendment.

Tenant occupancy

The conference agreement follows the Senate amendment.

Income recertification

The conference agreement follows the Senate amendment with a modification. The conference agreement provides that third-party verification of a tenant's or prospect tenant's income from his combined assets is not necessary if (1) the combined assets do not exceed $5,000 and (2) the tenant or prospective tenant provides a signed, sworn statement to this effect to the building owner. Further the conferees do not intend to modify the treatment of individuals receiving section 8 assistance.

Tenant protection

The conference agreement follows the Senate amendment.

Development and operational costs

The conference agreement follows the Senate amendment with a clarification that the provision is not intended to create a national standard of reasonableness. The conferees intend for allocating agencies to set standards of reasonableness reflecting the applicable facts and circumstances including the location of the projects and the uses for which the projects are built.

Allocation between buyer and seller in month of disposition

The conference agreement follows the Senate amendment.

Effective date

The extension of the low-income housing tax credit and the provision relating to: (1) full-time students, and (2) developmental and operational cost are effective after June 30, 1992. The provisions relating to: (1) tenant occupancy, (2) income recertification, (3) tenant protection, (4) allocations between the buyer and seller, and (5) HOME funds are effective on the date of enactment. The elections relating to maximum rent and deep-rent skewing must be made within 180 days after the date of enactment.

3. Modification of passive loss rules for certain real estate persons (sec. 14143 of the House bill, sec. 8143 of the Senate amendment, sec. 13143 of the conference agreement, and sec. 469 of the Code)

Present Law

The passive loss rules limit deductions and credits from passive trade or business activities. Deductions attributable to passive activities, to the extent they exceed income from passive activities, generally may not be deducted against other income, such as wages, portfolio income, or business income that is not derived from a passive activity. A similar rule applies to credits. Deductions and credits that are suspended under these rules are carried forward and treated as deductions and credits from passive activities in the next year. The suspended losses from a passive activity are allowed in full when a taxpayer disposes of his entire interest in the passive activity to an unrelated person.

The passive loss rules apply to individuals, estates and trusts, closely held C corporations, and personal service corporations. A special rule permits closely held C corporations to apply passive activity losses and credits against active business income (or tax liability allocable thereto) but not against portfolio income.

Passive activities are defined to include trade or business activities in which the taxpayer does not materially participate. Rental activities (including rental real estate activities) are also treated as passive activities, regardless of the level of taxpayer's participation. A special rule permits the deduction of up to $25,000 of losses from rental real estate activities (even though they are considered passive), if the taxpayer actively participates in them. This $25,000 amount is allowed for taxpayers with adjusted gross incomes of $100,000 or less, and is phased out for taxpayers with adjusted gross incomes between $100,000 and $150,000.

House Bill

The House bill treats a taxpayer's rental real estate activities in which he materially participates as not subject to limitation under the passive loss rules if the taxpayer meets eligibility requirements relating to real property trades or businesses in which the taxpayer performs services.

Real property trade or business means any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing, or brokerage trade or business.

An individual taxpayer meets the eligibility requirements if more than half of the personal services the taxpayer performs in trades or businesses during the taxable year are in real property trades or businesses in which he materially participates. Personal services performed as an employee are not treated as performed in a real property trade or business unless the person performing services has more than a 5 percent ownership interest in the employer.

In the case of a joint return, each spouse's personal services are taken into account separately. In determining material participation, however, the provision does not change the present-law rule that the participation of the spouse of the taxpayer is taken into account. Thus, for example, a husband and wife filing a joint return meet the eligibility requirements of the provision if during the taxable year one spouse performs at least half of his or her business services in a real property trade or business in which either spouse materially participates.

A closely held C corporation meets the eligibility requirements if more than 50 percent of its gross receipts for the taxable year are derived from real property trades or businesses in which the corporation materially participates.

Effective date.—The provision is effective with respect to taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that an eligible taxpayer's net loss from rental real estate activities in which the taxpayer materially participates generally is allowed to offset income from real property trade or business activities. The loss allowed under the provision may not exceed the least of (1) the taxpayer's net loss for the taxable year from rental real estate activities in which the taxpayer materially participates, (2) the taxpayer's net loss for the taxable year from all rental real estate activities, (3) the taxpayer's net income for the taxable year from real property trade or business activities which are not passive activities, or (4) the taxpayer's taxable income for the taxable year (determined without regard to this provision). A similar rule applies with respect passive activity credits. The Senate amendment does not apply to closely held C corporations.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, with a modification. Under the conference agreement, an individual taxpayer meets the eligibility requirements if (1) more than half of the personal services the taxpayer performs in trades or businesses during the taxable year are performed in real property trades or businesses in which the taxpayer materially participates, and (2) such taxpayer performs more than 750 hours of services during the taxable year in real property trades or businesses in which the taxpayer materially participates. In the case of a joint return, the eligibility requirements are met only if either spouse separately satisfies the requirements. Thus, one of the spouses separately must satisfy the requirement with respect to half of such spouse's personal services and the requirement with respect to 750 hours of services, without regard to services performed by the other spouse. In determining material participation, however, the conference agreement does not change the present-law rule that the participation of the spouse of the taxpayer is taken into account.

4. Changes relating to real estate investments by pension funds and others (secs. 14144–14149 of the House bill, secs. 8144–8149 of the Senate amendment, and secs. 13144–13149 of the conference agreement)

a. Modification of the rules related to debt-financed income (sec. 14144 of the House bill and sec. 8144 of the Senate amendment, sec. 13144 of the conference agreement, and sec. 514 of the Code)

Present Law

In general, a qualified pension trust or an organization that is otherwise exempt from Federal income tax is taxed on income from a trade or business that is unrelated to the organization's exempt purposes (Unrelated Business Taxable Income or "UBTI") (sec. 511). Certain types of income, including rents, royalties, dividends, and interest are

excluded from UBTI, except when such income is derived from "debt-financed property." Income from debt-financed property generally is treated as UBTI in proportion to the amount of debt financing (sec. 514(a)).

An exception to the rule treating income from debt-financed property as UBTI is available to pension trusts, educational institutions, and certain other exempt organizations (collectively referred to as "qualified organizations") that make debt-financed investments in real property (sec. 514(c)(9)(A)). Under this exception, income from investments in real property is not treated as income from debt-financed property. Mortgages are not considered real property for purposes of the exception.

The real property exception to the debt-financed property rules is available for investments in debt-financed property, only if the following six restrictions are satisfied: (1) the purchase price of the real property is a fixed amount determined as of the date of the acquisition (the "fixed price restriction"); (2) the amount of the indebtedness or any amount payable with respect to the indebtedness, or the time for making any payment of any such amount, is not dependent (in whole or in part) upon revenues, income, or profits derived from the property (the "participating loan restriction"); (3) the property is not leased by the qualified organization to the seller or to a person related to the seller (the "leaseback restriction"); (4) in the case of a pension trust, the seller or lessee of the property is not a disqualified person (the "disqualified person restriction"); (5) the seller or a person related to the seller (or a person related to the plan with respect to which a pension trust was formed) is not providing financing in connection with the acquisition of the property (the "seller-financing restriction"); and (6) if the investment in the property is held through a partnership, certain additional requirements are satisfied by the partnership (the "partnership restrictions") (sec. 514(c)(9)(B)(i) through (vi)).

House Bill

Relaxation of the leaseback and disqualified person restrictions

The House bill relaxes the leaseback and disqualified person restrictions to permit a limited leaseback of debt-financed real property to the seller (or a person related to the seller) or to a disqualified person.[5] The exception applies only where (1) no more than 25 percent of the leasable floor space in a building (or complex of buildings) is leased back to the seller (or related party) or to the disqualified person, and (2) the lease is on commercially reasonable terms, independent of the sale and other transactions.

Relaxation of the seller-financing restriction

The House bill relaxes the seller-financing restriction to permit seller financing on terms that are commercially reasonable independent of the sale and other transactions. The House bill grants authority to the Treasury Department to issue regulations for the purpose of determining commercially reasonable financing terms.

The House bill does not modify the present-law fixed price and participating loan restrictions. Thus, for example, income from real property acquired with seller-financing where the timing or amount of payment is based on revenue, income, or profits from the property generally will continue to be treated as income from debt-financed property, unless some other exception applies.

Relaxation of the fixed price and participating loan restriction for property acquired from financial institutions

The House bill relaxes the fixed price and participating loan restrictions for certain sales of real property foreclosed upon by financial institutions.[6] The relaxation of these rules is limited to cases where: (1) a qualified organization acquires the property from a financial institution that acquired the real property by foreclosure (or after an actual or imminent default), or was held by the selling financial institution at the time that it entered into conservatorship or receivership; (2) any gain recognized by the financial institution with respect to the property is ordinary income; (3) the stated principal amount of the seller financing does not exceed the financial institution's outstanding indebtedness (including accrued but unpaid interest) with respect to the property at the time of foreclosure or default; and (4) the present value of the maximum amount payable pursuant to any participation feature cannot exceed 30 percent of the total purchase price of the property (including contingent payments).

Effective date

The House bill is effective for acquisitions (and also for leases entered into) on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

b. Repeal of the automatic UBTI rule for publicly-traded partnerships (sec. 14145 of the House bill, sec. 8145 of the Senate amendment, sec. 13145 of the conference agreement, and sec. 512 of the Code)

Present Law

In general, the character of a partner's distributive share of partnership income is the same as if the income had been directly realized by the partner. Thus, whether a tax-exempt organization's share of income from a partnership (other than from a publicly-traded partnership) is treated as unrelated business income depends on the underlying character of the income (sec. 512(c)(1)).

By contrast, a tax-exempt organization's distributive share of gross income from a publicly-traded partnership (that is not otherwise treated as a corporation) automatically is treated as gross income derived from an unrelated trade or business (sec. 512(c)(2)(A)). The organization's share of the partnership deductions is allowed in computing the organization's UBTI (sec. 512(c)(2)(B)).

House Bill

The House bill repeals the rule that automatically treats income from publicly-traded partnerships as UBTI. Thus, under the House bill, investments in publicly-traded partnerships are treated the same as investments in other partnerships for purposes of the UBTI rules.

Effective date.—The provision is effective for partnership years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

c. Permit title-holding companies to receive small amounts of UBTI (sec. 14146 of the House bill, sec. 8146 of the Senate amendment, sec. 13146 of the conference agreement, and secs. 501(c)(2) and (c)(25) of the Code)

Present Law

Section 501(c)(2) provides tax-exempt status to certain corporations organized for the exclusive purpose of holding title to property and remitting any income from the property to one or more related tax-exempt organizations. Section 501(c)(25) provides tax-exempt status to certain corporations and trusts that are organized for the exclusive purposes of acquiring and holding title to real property, collecting income from such property, and remitting the income to no more than 35 shareholders or beneficiaries that are: (1) qualified pension, profit-sharing, or stock bonus plans (sec. 401(a)); (2) governmental pension plans (sec. 414(d)); (3) the United States, a State or political subdivision, or governmental agencies or instrumentalities; or (4) tax-exempt charitable, educational, religious, or other organizations described in section 501(c)(3). However, the IRS has taken the position that a title-holding company described in section 501(c)(2) or 501(c)(25) will lose its tax-exempt status if it generates any amount of certain types of UBTI.[7]

House Bill

The House bill permits a title-holding company that is exempt from tax under sections 501(c)(2) or 501(c)(25) to receive UBTI (that would otherwise disqualify the company) up to 10 percent of its gross income for the taxable year, provided that the UBTI is incidentally derived from the holding of real property. For example, income generated from parking or operating vending machines located on real property owned by a title-holding company generally would qualify for the 10-percent de minimis rule, while income derived from an activity that is not incidental to the holding of real property (e.g., manufacturing) would not qualify. In cases where unrelated income is incidentally derived from the holding of real property, receipt by a title-holding company of such income (up to the 10-percent limit) will not jeopardize the title-holding company's tax-exempt status, but nonetheless, will be subject to tax as UBTI.

In addition, the House bill provides that a section 501(c)(2) or 501(c)(25) title-holding company will not lose its tax-exempt status if UBTI that is incidentally derived from the holding of real property exceeds the 10-percent limitation, provided that the title-holding company establishes to the satisfaction of the Secretary of the Treasury that the receipt of UBTI in excess of the 10-percent limitation was inadvertent and reasonable steps are being taken to correct the circumstances giving rise to such excess UBTI.

Effective date.—The provision is effective for taxable years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

[5] As under present law, a leaseback to a disqualified person is subject to the prohibited transaction rules set forth in section 4975.

[6] For this purpose, financial institutions include financial institutions in conservatorship or receivership, certain affiliates of financial institutions, and government corporations that succeed to the rights and interests of a receiver or conservator.

[7] IRS Notice 88-121, 1988-2 C.B. 457. See also Treas. Reg. sec. 1.501(c)(2)-1(a).

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Exclusion from UBTI of gains from the disposition of real property acquired from financial institutions in conservatorship or receivership (sec. 14147 of the House bill, sec. 8147 of the Senate amendment, sec. 13147 of the conference agreement, and sec. 512(b) of the Code)

Present Law

In general, gains or losses from the sale, exchange or other disposition of property are excluded from UBTI (sec. 512(b)(5)). However, gains or losses from the sale, exchange or other disposition of property held primarily for sale to customers in the ordinary course of a trade or business are not excluded from UBTI (the "dealer UBTI rule") (sec. 512(b)(5)(B)).

House Bill

The House bill provides an exception to the dealer UBTI rule by excluding gains and losses from the sale, exchange or other disposition of certain real property and mortgages acquired from financial institutions that are in conservatorship or receivership. Only real property and mortgages owned by a financial institution (or that was security for a loan held by the financial institution) at the time that the institution entered conservatorship or receivership are eligible for the exception.

The exclusion is limited to properties designated as disposal property within nine months of acquisition, and disposed of within two-and-a-half years of acquisition. The two-and-a-half year disposition period may be extended by the Secretary if an extension is necessary for the orderly liquidation of the property. No more than one-half by value of properties acquired in a single transaction may be designated as disposal property.

The exclusion is not available for properties that are improved or developed to the extent that the aggregate expenditures on development do not exceed 20 percent of the net selling price of the property.

Effective date.—The provision is effective for property acquired on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Exclusion of certain option premiums and loan commitment fees from UBTI (sec. 14148 of the House bill, sec. 8148 of the Senate amendment, sec. 13148 of the conference agreement, and sec. 512(b) of the Code)

Present Law

Income from a trade or business that is unrelated to an exempt organization's purpose generally is UBTI. Passive income such as dividends, interest, royalties, and gains or losses from the sale, exchange or other disposition of property generally is excluded from UBTI (sec. 512(b)). In addition, gains on the lapse or termination of options on securities are explicitly exempted from UBTI (sec. 512(b)(5)).

Present law is unclear on whether premiums from unexercised options on real estate and loan commitment fees are UBTI.

House Bill

The House bill expands the current exception for gains on the lapse or termination of options on securities to gains or losses from such options (without regard to whether they are written by the organization), from options on real property, and from the forfeiture of good-faith deposits (that are consistent with established business practice) for the purchase, sale or lease of real property.

In addition, the House bill excludes loan commitment fees from UBTI. For purposes of this provision, loan commitment fees are non-refundable charges made by a lender to reserve a sum of money with fixed terms for a specified period of time. These charges are to compensate the lender for the risk inherent in committing to make the loan (e.g., for the lender's exposure to interest rate changes and for potential lost opportunities).

Effective date.—The provision is effective for premiums or loan commitment fees that are received on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

f. Relaxation of limitations on investments in real estate investment trusts by pension funds (sec. 14149 of the House bill, sec. 8149 of the Senate amendment, sec. 13149 of the conference agreement, and sec. 856(h) of the Code)

Present Law

A real estate investment trust ("REIT") is not taxed on income distributed to shareholders. A corporation does not qualify as a REIT if at any time during the last half of its taxable year more than 50 percent in value of its outstanding stock is owned, directly or indirectly, by five or fewer individuals ("the five or fewer rule"). A domestic pension trust is treated as a single individual for purposes of this rule.

Dividends paid by a REIT are not UBTI,[8] unless the stock in the REIT is debt-financed. Depending on its character, income earned by a partnership may be UBTI (sec. 512(c)). Special rules treat debt-financed income earned by a partnership as UBTI (sec. 514(c)(9)(B)(vi)).

House Bill

Qualification as a REIT

The House bill provides that a pension trust generally is not treated as a single individual for purposes of the five-or-fewer rule. Rather, the bill treats beneficiaries of the pension trust as holding stock in the REIT in proportion to their actuarial interests in the trust. This rule does not apply if disqualified persons, within the meaning of section 4975(e)(2) (other than by reason of subparagraphs (B) and (I)), together own five percent or more of the value of the REIT stock and the REIT has earnings and profits attributable to a period during which it did not qualify as a REIT.[9]

In addition, the bill provides that a REIT cannot be a personal holding company and, therefore, is not subject to the personal holding company tax on its undistributed income.

Unrelated business taxable income

Under the bill, certain pension trusts owning more than 10 percent of a REIT must treat a percentage of dividends from the REIT as UBTI. This percentage is the gross income derived from an unrelated trade or business (determined as if the REIT were a pension trust) divided by the gross income of the REIT for the year in which the dividends are paid. Dividends are not treated as UBTI, however, unless this percentage is at least five percent.

The UBTI rule applies only if the REIT qualifies as a REIT by reason of the above modification of the five or fewer rule. Moreover, the UBTI rule applies only if (1) one pension trust owns more than 25 percent of the value of the REIT, or (2) a group of pension trusts individually holding more than 10 percent of the value of the REIT collectively own more than 50 percent of the value of the REIT.

Effective date

The provision applies to taxable years beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Treatment of certain real property business debt of individuals (sec. 14150 of the House bill, sec. 13150 of the conference agreement, and secs. 108 and 1017 of the Code)

Present Law

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness. The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer.

House Bill

The House bill provides an election to taxpayers other than C corporations to exclude from gross income certain income from discharge of qualified real property business indebtedness. The amount so excluded cannot exceed the basis of certain depreciable real property of the taxpayer and is treated as a reduction in the basis of that property.

Qualified real property business indebtedness is indebtedness that (1) is incurred or assumed in connection with real property used in a trade or business, (2) is secured by that real property, and (3) with respect to which the taxpayer has made an election under this provision. Indebtedness incurred or assumed on or after January 1, 1993 is not qualified real property business indebtedness unless it is either (1) debt incurred to refinance qualified real property business debt incurred or assumed before that date (but only to the extent the amount of such debt does not exceed the amount of debt being refinanced) or (2) qualified acquisition indebtedness. Qualified real property business indebtedness does not include qualified farm indebtedness.

Qualified acquisition indebtedness is debt incurred to acquire, construct or substantially improve real property that is secured by such debt, and debt resulting from the refinancing of qualified acquisition debt, to the extent the amount of such debt does not exceed the amount of debt being refinanced.

The amount excluded under the provision with respect to the discharge of any qualified

[8] See Rev. Rul. 66-151, 1966-1 C.B. 151.

[9] Moreover, as under present law, any investment by a pension trust must be in accordance with the fiduciary rules of the Employee Retirement Security Act ("ERISA") and the prohibited transaction rules of the Code and ERISA.

real property business indebtedness may not exceed the excess of (1) the outstanding principal amount of such debt (immediately before the discharge), over (2) the fair market value (immediately before the discharge) of the business real property which is security for the debt. For this purpose, the fair market value of the property is reduced by the outstanding principal amount of any other qualified real property indebtedness secured by the property immediately before the discharge.

The amount excluded under the provision also may not exceed the aggregate adjusted bases (determined as of the first day of the next taxable year or, if earlier, the date of disposition) of depreciable real property held by the taxpayer immediately before the discharge, determined after any reductions under subsections (b) and (g) of section 108. The amount of debt discharge excluded under the provision is applied, using the rules of section 1017 (as modified by the provision), to reduce the basis of business real property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs.

The amount that is recaptured as ordinary income (under applicable recapture rules) is reduced over the time the taxpayer continues to hold the property, as the taxpayer forgoes depreciation deductions due to the basis reduction.

Effective date.—The provision is effective with respect to discharges after December 31, 1992 in taxable years ending after that date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

6. Increase recovery period for depreciation of nonresidential real property (sec. 14151 of the House bill, sec. 8151 of the Senate amendment, sec. 13151 of the conference agreement, and sec. 168 of the Code)

Present Law

A taxpayer is allowed to recover, through annual depreciation allowances, the cost or other basis of nonresidential real property (other than land) that is used in a trade or business or that is held for the production of rental income. For regular tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year generally is determined by using the straight-line method and a recovery period of 31.5 years. For alternative minimum tax purposes, the amount of the depreciation deduction allowed with respect to nonresidential real property for any taxable year is determined by using the straight-line method and a recovery period of 40 years.

House Bill

The House bill requires the depreciation deduction allowed with respect to nonresidential real property for regular tax purposes to be determined by using a recovery period of 39 years. The bill does not change the depreciation deduction allowed with respect to nonresidential real property for alternative minimum tax purposes.

Effective date.—The provision generally applies to property placed in service on or after February 25, 1993. The provision does not apply to property that a taxpayer places in service before January 1, 1994, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before February 25, 1993, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before February 25, 1993. A qualified person for this purpose is any person who transfers rights in such a contract or such property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

Senate Amendment

The Senate amendment is the same as the House bill, except that the recovery period is 38 years.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement follows the House bill, with a modification to the effective date.

Effective date.—Under the conference agreement, the provision generally applies to property placed in service on or after May 13, 1993. The provision does not apply to property that a taxpayer places in service before January 1, 1994, if (1) the taxpayer or a qualified person entered into a binding written contract to purchase or construct the property before May 13, 1993, or (2) construction of the property was commenced by or for the taxpayer or a qualified person before May 13, 1993. A qualified person for this purpose is any person who transfers rights in such a contract or such property to the taxpayer, but only if the property is not placed in service by such person before such rights are transferred to the taxpayer.

The conferees wish to clarify that the provision does not change the recovery period of any property to which the ACRS amendments made by section 201 of the Tax Reform Act of 1986 do not apply.

E. Luxury Excise Tax; Diesel Fuel Tax for Motorboats

1. Repeal of luxury excise tax on boats, aircraft, jewelry, and furs; Index and modify luxury excise tax on automobiles (secs. 14161 and 14162 of the House bill, secs. 8161 and 8162 of the Senate amendment, secs. 13161 and 13162 of the conference agreement, and secs. 4001–4012 of the Code)

Present Law

Present law imposes a 10-percent excise tax on the portion of the retail price of the following items that exceeds the thresholds specified: automobiles above $30,000; boats above $100,000; aircraft above $250,000; jewelry above $10,000; and furs above $10,000. The tax also applies to subsequent purchases of component parts and accessories occurring within six months of the date the automobile, boat, or aircraft is placed in service.

The tax applies to sales before January 1, 2000.

House Bill

Repeal of luxury tax on boats, aircraft, jewelry, and furs

The House bill repeals the luxury excise tax imposed on boats, aircraft, jewelry, and furs.

Indexing of tax on automobiles

The House bill modifies the luxury excise tax on automobiles to provide that the $30,000 threshold is indexed annually for inflation occurring after 1990.

Exemption for certain equipment installed on passenger vehicles for use by disabled individuals

The House bill provides that the luxury excise tax does not apply to a part or accessory installed on a passenger vehicle to enable or assist an individual with a disability to operate the vehicle, or to enter or exit the vehicle, in order to compensate for the effect of the disability.

Exemption for demonstrator vehicles

The House bill exempts passenger vehicle dealers from paying the luxury tax on vehicles used as demonstrators for potential customers. Under the provision, the tax, if any, is to be assessed and paid on the sales price of the vehicle when the vehicle is sold.

Effective date

The repeal of the luxury excise taxes on boats, aircraft, jewelry, and furs is effective for sales on or after January 1, 1993. The indexation of the threshold applicable to passenger vehicles is effective for sales on or after January 1, 1993. The provision relating to the purchase of accessories or modifications by disabled persons is effective for purchases after December 31, 1990. The provision relating to the use before sale of demonstrator vehicles is effective for vehicles used after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment except for the indexation of the threshold applicable to passenger vehicles. The conference agreement provides that indexation will occur in increments of $2,000. The threshold for any year will be computed by increasing $30,000 by the cumulative inflation since 1990 with the result rounded down to the nearest increment of $2,000. In addition, the conference agreement modifies the effective date to provide that indexation of the threshold applicable to passenger vehicles is effective for sales on or after the date of enactment. The applicable threshold for purchases in 1993, on or after the date of enactment, will be $30,000 increased by the 1991 and 1992 inflation rates (8.49 percent), or $32,547, which when rounded down to the nearest $2,000 is a threshold of $32,000.

2. Impose excise tax on diesel fuel used in noncommercial motorboats (sec. 14163 of the House bill, sec. 8163 of the Senate amendment, sec. 13163 of the conference agreement, and secs. 4092, 4041, 6421, 9503, and 9508 of the Code).

Present Law

Federal excise taxes generally are imposed on gasoline and special motor fuels used in highway transportation and by certain off-highway recreational trail vehicles and by motorboats (14 cents per gallon). A Federal excise tax also is imposed on diesel fuel (20 cents per gallon) used in highway transportation. Diesel fuel used in trains is taxed at 2.5 cents per gallon.

The revenues from these taxes, minus the 2.5-cents-per-gallon General Fund rate are deposited in various trust funds. Revenues from the remaining 2.5 cents per gallon are retained in the General Fund through September 30, 1995, after which time the 2.5-cents-per-gallon portion of the taxes (including the tax on diesel fuel used in trains) is scheduled to expire.[10]

An additional 0.1-cent-per-gallon tax applies to these fuels to finance the Leaking Underground Storage Trust Fund, generally through December 31, 1995.

Diesel fuel used in motorboats is not currently taxed.

[10] A separate provision of the conference agreement extends the 2.5-cents-per-gallon rate through September 30, 1999, and transfers applicable highway-related revenues to the Highway Trust Fund for the extended period. (See section 13244 of the conference agreement, Item II.D.4., below.)

House Bill

The House bill extends the current 20.1-cents-per-gallon diesel fuel excise taxes to diesel fuel used by noncommercial motorboats. Fuel used by boats for commercial fishing, transportation for compensation or hire, or for business use other than predominantly for entertainment, amusement, or recreation, remains exempt.

A separate provision of the House bill imposes a Btu tax beginning July 1, 1994. Diesel fuel used by noncommercial motorboats also is subject to the Btu tax beginning at that time.[11]

The tax is collected at the same point in the distribution chain as the highway diesel fuel tax. A separate provision modifies the point of collection for highway diesel fuel.[12]

The revenues from the 20.1-cents-per-gallon tax on diesel fuel used by motorboats are to be retained in the General Fund.

Effective date.—The provision is effective after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill with two modifications. First, revenues from 17.5 cents per gallon of the tax are to be transferred to the Aquatic Resources Trust Fund. Second, the Senate amendment provides that the provision is effective after December 31, 1993, and before January 1, 2000.

In addition, a separate provision of the Senate amendment imposes a 4.3-cents-per-gallon transportation fuels tax effective October 1, 1993. Diesel fuel used by noncommercial motorboats also is to be subject to the transportation fuels tax beginning at that time.[13]

Also, a separate provision of the Senate amendment modifies the point of collection for the highway diesel fuel tax.[14]

Conference Agreement

The conference agreement follows the Senate amendment with the modification that the revenues from the 20.1-cents-per-gallon tax will be retained in the General Fund. In addition, separate provisions of the conference agreement establish a transportation fuels tax and modify the point of collection for diesel fuel tax.[15] Diesel fuel used by noncommercial motorboats also is subject to the 4.3-cents-per gallon transportation fuels tax, also beginning on January 1, 1994. The tax on diesel fuel used by noncommercial motorboats will be collected at the same point as the tax on highway diesel fuels.

F. Other Provisions

1. Alternative minimum tax treatment for contributions of appreciated property (sec. 14171 of the House bill, sec. 8171 of the Senate amendment, sec. 13171 of the conference agreement, and secs. 56 and 57 of the Code)

Present Law

Donations of appreciated property

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the fair market value of property contributed to a charitable organization.[16] However, in the case of a charitable contribution of inventory or other ordinary-income property, short-term capital gain property, or certain gifts to private foundations, the amount of the deduction is limited to the taxpayer's basis in the property.[17] In the case of a charitable contribution of tangible personal property, a taxpayer's deduction is limited to the adjusted basis in such property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose (sec. 170(e)(1)(B)(i)).

For purposes of computing alternative minimum taxable income (AMTI), the deduction for charitable contributions of capital gain property (real, personal, or intangible) is disallowed to the extent that the fair market value of the property exceeds its adjusted basis (sec. 57(a)(6)). However, in the case of a contribution made in a taxable year beginning in 1991 or made before July 1, 1992, in a taxable year beginning in 1992, this rule does not apply to contributions of tangible personal property.

For taxable years beginning after 1989, the AMTI of a corporation is increased by 75 percent of the amount by which adjusted current earnings (ACE) exceeds AMTI (calculated before this adjustment). ACE generally is computed pursuant to the rules that a corporation uses to determine its earnings and profits (sec. 56(g)).

Valuation procedures

Present law and current IRS practice do not provide for a procedure by which a taxpayer may seek determination of the IRS' position with respect to the value of property before the taxpayer donates the property to a charitable organization. However, if a taxpayer claims a charitable contribution deduction for a noncash gift in excess of $5,000 per item or group of similar items (other than certain publicly traded securities), the taxpayer must attach to his of her income tax return a separate form (Form 8283), which provides specific information about the donated property and which is signed by a qualified appraiser.[18]

House Bill

Permanent AMT relief for donated appreciated property

The House bill eliminates the treatment of contributions of appreciated property (real, personal, and intangible) as a tax preference for AMT purposes. In addition, the House bill provides that no adjustment related to the earnings and profits effects of any charitable contribution shall be made in computing the ACE component of the corporate AMT.

Thus, the difference between the fair market value of donated appreciated property and the adjusted basis of such property is not treated as a tax preference item for alternative minimum tax (AMT) purposes. If a taxpayer makes a gift to charity of property (other than inventory or other ordinary income property, short-term capital gain property, or certain gifts to private foundations) that is real property, intangible property, or tangible personal property the use of which is related to the donee's tax-exempt purpose, the taxpayer is allowed to claim a deduction for both regular tax and AMT purposes in the amount of the property's fair market value (subject to present-law percentage limitations).[19]

Treasury report on advance valuation procedure

Under the House bill, not later than one year after the date of enactment of the bill, the Secretary of the Treasury is required to submit a report to the House Committee on Ways and Means and the Senate Committee on Finance, reporting on the development of an advance valuation procedure under which a taxpayer could elect to enter into an agreement with the Secretary regarding the value of tangible personal property prior to the donation of such property to a qualifying charitable organization (provided that time limits for donation and any other conditions contained in the agreement are satisfied). The report should address the advisability of establishing threshold amounts for claimed value and imposing user fees as prerequisites for seeking an agreement under the procedure, possible limitations on applying the procedure only to items with significant artistic or cultural value, and recommendations for legislative action needed to implement the procedure.

Effective date

The House bill provision governing the AMT treatment of gifts of appreciated property is effective for contributions of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.

The Treasury Department must report to Congress not later than one year after the date of enactment on the development of an advance valuation procedure.

Senate Amendment

Permanent AMT relief for donated appreciated property

The Senate amendment is the same as the House bill.

Treasury report on advance valuation procedure

No provision.

Conference Agreement

Permanent AMT relief for donated appreciated property

The conference agreement follows the House bill and the Senate amendment.[20]

Treasury report on advance valuation procedure

The conference agreement follows the Senate amendment, but the conferees intend that the Secretary of the Treasury will report to Congress on the development of an advance valuation procedure as contemplated under the House bill statutory provision.

2. Substantiation and disclosure requirements for charitable contributions (secs. 14271 and 14272 of the House bill, secs. 8172 and 8173 of the Senate amendment, secs. 13172 and 13173 of the conference agreement, and sec. 170 and new secs. 6115 and 6714 of the Code)

Present Law

An individual taxpayer who itemizes deductions must separately state (on Schedule

---

[11] See section 14241 of the House bill, Item II.D.1., below.

[12] See sections 14242-14243 of the House bill, Item II.D.3., below.

[13] See section 8241 of the Senate amendment, Item II.D.2., below.

[14] See section 8242 of the Senate amendment, Item II.D.3., below.

[15] See section 13241 and sections 13242 and 13243 of the conference agreement, Items II.D.2. and II.D.3. below.

[16] The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer (secs. 170(b) and 170(e)).

[17] Section 170(e)(3) provides an augmented deduction for certain corporate contributions of inventory property for the care of the ill, the needy, or infants.

[18] Form 8283 must be attached to an income tax return (Form 1040) in all cases where total noncash contributions exceed $500, but the Form 8283 need not be signed by a qualified appraiser unless the $5,000 threshold per item or group of similar items is exceeded. In the case of donated art for which a deduction of $20,000 or more is claimed, a complete copy of the signed appraisal must be attached to the Form 8283.

[19] Contributions of inventory or other ordinary income property, short-term capital gain property, and certain gifts to private foundations continue to be governed by present-law rules.

[20] The provision is effective for contributions of tangible personal property made after June 30, 1992, and of other property made after December 31, 1992. Thus, the conferees wish to clarify that the relief provided by the provision does not apply to any carryover from a contribution made prior to the applicable effective date (see Rev. Rul. 90-111, 1990-2 C.B. 30).

A to the Form 1040) the aggregate amount of charitable contributions made by cash or check and the aggregate amount of donated property other than cash or check.

A taxpayer is not required to provide specific information on his or her return regarding a claimed charitable contribution made by cash or check; nor in such a case is a donee organization required to file an information return with the IRS, regardless of the amount of cash or check involved. However, taxpayers must provide certain information (on Form 8283) if the amount of the claimed deduction for all noncash contributions exceeds $500.[21]

A payment to a charity (regardless of whether it is termed a "contribution") in exchange for which the payor receives an economic benefit is not deductible under section 170, except to the extent that the taxpayer can demonstrate that the payment exceeds the fair market value of the benefit received from the charity.[22]

The Code does not require a tax-exempt organization that is eligible to receive tax-deductible contributions to state explicitly, in its solicitations for support from members or the general public, whether an amount paid to the organization is deductible as a charitable contribution or whether all or part of the payment constitutes consideration for goods or services furnished to the payor.[23] In contrast, tax-exempt organizations that are *not* eligible to receive tax-deductible contributions are required to state expressly in certain fund-raising solicitations that contributions or gifts to the organization are not deductible as charitable contributions for Federal income tax purposes (sec. 6113).[24]

A penalty is imposed on such organizations for failure to comply with the section 6113 disclosure requirement, unless reasonable cause is shown (sec. 6710).

Tax-exempt organizations generally are required to file an annual information return (Form 990) with the IRS. However, churches (and their affiliated organizations), as well as tax-exempt organizations (other than private foundations) that normally have gross receipts in each taxable year of not more than $25,000, are not required to file the Form 990.[25] If a charity is required to file a Form 990, then it must report, among other items, the names and addresses of all persons who contributed, bequeathed, or devised $5,000 or more (in cash or other property) during the taxable year.[26]

House Bill

The House bill contains the following two provisions that require substantiation and disclosure relating to charitable contributions:

Substantiation requirement

Section 170 is amended to provide that no deduction is allowed under that section for a separate contribution of $750 or more[27] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a separate contribution of $750 or more to request (and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange). Taxpayers may not rely solely on a canceled check as substantiation for a donation of $750 or more.

Under the provision, a taxpayer must obtain substantiation prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for filing such return). Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.[28]

Information disclosure for quid pro quo contributions

A charitable organization that receives a *quid pro quo* contribution (meaning "a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization") will be required, in connection with the solicitation or receipt of such a contribution, to (1) inform the donor that the amount of the contribution deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provide the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.

The disclosure requirement applies to all *quid pro quo* contributions regardless of the dollar amount of the contribution involved (e.g., even in cases with payments of less than $750), and the disclosure must be made by the charity in connection with either the solicitation or receipt of the contribution. Thus, for example, if a charity receives a $75 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor that only $35 is deductible as a charitable contribution. However, the provision will not apply if only *de minimis*, token goods or services are given to a donor (see Rev. Procs. 90-12 and 92-49, discussed above). Also, the provision will not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a *quid pro quo* contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

Effective date

The provision is effective for contributions made after December 31, 1993.

Senate Amendment

The Senate amendment contains the following two provisions that require substantiation and disclosure relating to certain charitable contributions:

Substantiation requirement

Section 170 is amended to provide that no deduction is allowed under that section for a separate contribution of $250 or more[29] unless the taxpayer has written substantiation from the donee organization of the contribution (including a good faith estimate of the value of any good or service that has been provided to the donor in exchange for making the gift to the donee).[30]

This provision does not impose an information reporting requirement upon charities; rather, it places the responsibility upon taxpayers who claim an itemized deduction for a contribution of $250 or more to request

---

[21] If the claimed deduction for a noncash gift exceeds $5,000 per item or group of similar items (other than certain publicly traded securities), a qualified appraiser must sign the Form 8283. In addition, an authorized representative of the donee charity must sign the Form 8283, acknowledging receipt of the gift and providing certain other information. In certain situations, information reporting by the donee charity is required if it subsequently disposes of donated property (sec. 6050L).

[22] See, e.g., Rev. Rul. 67-246, 1967-2 C.B. 104.

Under current IRS practice, certain small items and token benefits (e.g., key chains and bumper stickers) that have insubstantial value are disregarded, such that the full amount of the contribution is deductible. Rev. Proc. 90-12, 1990-1 C.B. 471, provides that tokens or benefits given to the donor in connection with a contribution will be considered to have insubstantial value if (1) the payment occurs in the context of a fundraising campaign in which the charity informs patrons how much of their payment is a deductible contribution, *and* (2) *either* (a) the fair market value of all the benefits received in connection with the payment is not more than two percent of the payment, or $50, *whichever is less, or* (b) the payment made by the patron is $25 or more (adjusted for inflation) and the only benefits received in connection with the payment are token items (e.g., key chains or mugs) that bear the organization's name or logo and that (in the aggregate) are within the limits for "low-cost items" under section 513(h)(2). See also Rev. Proc. 92-49, 1992-26 I.R.B. 18 (amplifying Rev. Proc. 90-12, by allowing charities to distribute certain low-cost items to contributors without affecting the deductibility of the contribution).

[23] However, Schedule A to the Form 1040 and the accompanying instructions inform taxpayers that if they made a contribution to a charity and received a benefit in return, the value of the benefit must be subtracted in calculating the charitable contribution deduction.

[24] However, the disclosure requirement of section 6113 does not apply to an organization the gross receipts of which in each taxable year are normally not more than $100,000, nor does the disclosure requirement apply to any solicitation made by letter or telephone call if such letter or call is not part of a coordinated fundraising campaign soliciting more than 10 persons during the calendar year (sec. 6113(b)(2)(A) and (c)(2)).

[25] See section 6033(a)(2) and Rev. Proc. 83-23, 1983-1 C.B. 687.

[26] See section 6033(b)(5) and Treas. Reg. sec. 1.6033-2(a)(2)(ii)(f). The names and addresses of substantial contributors to a public charity must be reported to the IRS but are not subject to public inspection (sec. 6104(e)(1)(C)).

[27] Separate payments generally will be treated as separate contributions and will not be aggregated for the purposes of applying the $750 threshold. In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as separate payments.

[28] In addition, the House bill provides that the Secretary of the Treasury shall issue regulations as may be necessary to carry out the purposes of the substantiation provision, including regulations that may provide that some or all of the requirements of the provision do not apply in appropriate cases.

[29] Separate payments generally will be treated as separate contributions and will not be aggregated for the purposes of applying the $250 threshold. In cases of contributions paid by withholding from wages, the deduction from each paycheck will be treated as a separate payment. However, the Senate committee explanation states that it is expected that the Secretary of the Treasury will issue anti-abuse rules to prevent avoidance of the substantiation requirement by writing multiple checks on the same date.

[30] If the donee organization provided no goods or services to the taxpayer in consideration of the taxpayer's contribution, the written substantiation is required to include a statement to that effect. The substantiation need *not* contain the taxpayer's social security number or taxpayer identification number (TIN).

(and maintain in their records) substantiation from the charity of their contribution (and any good or service received in exchange).[31] Taxpayers may not rely solely on a canceled check as substantiation for a donation of $250 or more.

Under the provision, a taxpayer must obtain substantiation prior to filing his or her return for the taxable year in which the contribution was made (or if earlier, the due date, including extensions, for filing such return).[32] Substantiation is not required if the donee organization files a return with the IRS (in accordance with Treasury regulations) reporting information sufficient to substantiate the amount of the deductible contribution.[33]

The provision explicitly provides that, if in return for making a contribution of $250 or more to a religious organization, a donor receives in return solely an intangible religious benefit that generally is not sold in commercial transactions outside the donative context (e.g., admission to a religious ceremony[34]), then such a religious benefit may be disregarded for purposes of the substantiation requirement.

Information disclosure for quid pro quo contributions

A charitable organization that receives a *quid pro quo* contribution in excess of $75 (meaning a payment exceeding $75 "made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization") is required, in connection with the solicitation or receipt of such a contribution, to provide a written statement to the donor that (1) informs the donor that the amount of the contribution that is deductible for Federal income tax purposes is limited to the excess of the amount of any money (and the value of any property other than money) contributed by the donor over the value of the goods or services provided by the organization, and (2) provides the donor with a good faith estimate of the value of goods or services furnished to the donor by the organization.[35]

The disclosure requirement applies to all *quid pro quo* contributions where the donor makes a payment of more than $75.[36] Thus, for example, if a charity receives a $100 contribution from a donor, in exchange for which the donor receives a dinner valued at $40, then the charity must inform the donor in writing that only $60 is deductible as a charitable contribution. However, the provision does not apply if only *de minimis*, token goods or services are given to a donor (see Rev. Procs. 90-12 and 92-49, discussed above). In addition, as with the substantiation provision (described above), the provision does not apply to a contribution in return for which the contributor receives solely an intangible religious benefit that generally is not sold in a commercial transaction outside the donative context.[37] Furthermore, the provision does not apply to transactions that have no donative element (e.g., sales of goods by a museum gift shop that are not, in part, donations).

The provision also provides that penalties ($10 per contribution, but capped at $5,000 per particular fundraising event or mailing) may be imposed upon charities that fail to make the required disclosure, unless the failure was due to reasonable cause. The penalties will apply if an organization either fails to make any disclosure in connection with a *quid pro quo* contribution or makes a disclosure that is incomplete or inaccurate (e.g., an estimate not determined in good faith of the value of goods or services furnished to the donor).

Effective date

The provisions are effective for contributions made after December 31, 1993.[38]

Conference Agreement

The conference agreement follows the Senate amendment.

However, with respect to the substantiation provision, the conference agreement clarifies that in cases where, in consideration (in whole or in part) for a contribution of $250 or more, a religious organization furnishes to the contributor solely an intangible religious benefit generally not sold in a commercial transaction outside the donative context, the written substantiation must contain a statement to the effect that an intangible religious benefit was so furnished, but the substantiation need not further describe, nor provide a valuation for, such benefit.[39]

In addition, the conferees intend that the authority granted to the Secretary of the Treasury to issue regulations providing that some or all of the requirements of the substantiation provision do not apply in appropriate cases shall be exercised to clarify the treatment of contributions made through payroll deductions.

3. Extension of General Fund transfer to Railroad Retirement Tier 2 Fund (sec. 14172 of the House bill and sec. 8174 of the Senate amendment)

Present Law

A portion of the railroad retirement tier 2 benefits are included in gross income of recipients (similar to the treatment accorded recipients of private pensions) for Federal income tax purposes. The proceeds from the income taxation of railroad retirement tier 2 benefits received prior to October 1, 1992, have been transferred from the General Fund of the Treasury to the railroad retirement account. Proceeds from the income taxation of benefits received after September 30, 1992, remain in the General Fund.

House Bill

Under the House bill, the transfer of proceeds from the income taxation of railroad retirement tier 2 benefits from the General Fund of the Treasury to the railroad retirement account is made permanent.

Effective date.—The House bill is effective for income taxes on benefits received after September 30, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Effective date.—Same as the House bill.

Conference Agreement

The conference agreement does not include the provision in the House bill or the Senate amendment.

4. Extension of health insurance deduction for self-employed individuals (sec. 14173 of the House bill, sec. 8175 of the Senate amendment, sec. 13174 of the conference agreement, and sec. 162(l) of the Code)

Present Law

Under present law, an incorporated business can generally deduct, as an employee compensation expense, the full cost of any health insurance coverage provided for its employees (including owners serving as employees) and its employees' spouses and dependents. Self-employed individuals can fully deduct the cost of health insurance for employees as employee compensation, but can only deduct the cost of health insurance coverage for the individual and his or her dependents to the extent that the cost of the coverage, together with other allowable medical expenses, exceeds 7.5 percent of adjusted gross income. Other individuals (e.g., employees who are not covered by an employer-sponsored plan) who purchase health insurance can deduct the cost of the insurance only to the extent that it, together with their other medical expenses, exceeds 7.5 percent of adjusted gross income.

For coverage prior to July 1, 1992, a self-employed individual was allowed to deduct as a business expense up to 25 percent of the amount paid for health insurance coverage for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents. Only amounts paid prior to July 1, 1992, for coverage before that date were eligible for the deduction. The deduction was not allowed if the self-employed individual or his or her spouse were eligible for employer-paid health benefits.

---

[31] In the case where a taxpayer makes a noncash contribution claimed by the taxpayer to be worth $250 or more, the taxpayer is required to obtain from the charity a receipt that describes the donated property (and indicates whether any good or service was given to the taxpayer in exchange), but the provision specifically provides that the charity is not required to value the property it receives from the taxpayer.

[32] The provision requires that the written acknowledgment provide information sufficient to substantiate the amount of the deductible contribution, but the acknowledgment need not take any particular form. Thus, for example, acknowledgments may be made by letter, postcard, or computer-generated forms. Further, a donee organization may prepare a separate acknowledgment for each contribution, or may provide donors with periodic (e.g., annual) acknowledgments that set forth the required information for each contribution of $250 or more made by the donor during the period. The Senate committee explanation states that is intended that a charitable organization that knowingly provides a false written substantiation to a donor may be subject to the penalties provided for by section 6701 for aiding and abetting an understatement of tax liability.

[33] In addition, the Senate amendment provides that the Secretary of the Treasury shall issue regulations as may be necessary to carry out the purposes of the substantiation provision, including regulations that may provide that some or all of the requirements of the provision do not apply in appropriate cases.

[34] This exception does not apply, for example, to tuition for education leading to a recognized degree, travel services, or consumer goods. However, the Senate committee explanation states that it is intended that *de minimis* tangible benefits furnished to contributors that are incidental to a religious ceremony (such as wine) generally may be disregarded.

[35] The Senate committee explanation states that it is intended that the disclosure be made in a manner that is reasonably likely to come to the attention of the donor. For example, a disclosure of the required information in small print set forth within a larger document might not meet the requirement.

[36] For purposes of the $75 threshold, separate payments made at different times of the year with respect to separate fundraising events generally will not be aggregated. However, the conferees intend that the Secretary will issue anti-abuse rules to prevent avoidance of the *quid pro quo* disclosure requirement by writing multiple checks for the same transaction.

[37] The Senate committee explanation states that no inference is intended, however, regarding the full or partial deductibility of any payment outside the scope of the *quid pro quo* disclosure provision or substantiation provision under the present-law requirements of section 170.

[38] The Senate committee explanation states that it is intended that, following enactment of the bill, the Secretary of the Treasury will expeditiously issue a notice or other announcement providing guidance with respect to the substantiation and disclosure provisions. In this regard, it is expected that such Treasury guidance will urge charities to assist taxpayers in meeting the substantiation requirement.

[39] As under the Senate amendment, charities are not required to make any disclosure under the *quid pro quo* disclosure provision when no benefit *other than* an intangible religious benefit is furnished to the donor.

House Bill

Under the House bill, the 25-percent deduction is extended retroactively from July 1, 1992, through December 31, 1993. In addition, the bill provides that the determination of whether a self-employed individual or his or her spouse are eligible for employer-paid health benefits is made on a monthly basis.

Effective date.—The House bill is effective for taxable years ending after June 30, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

II. REVENUE-RAISING PROVISIONS

A. Individual Income and Estate and Gift Tax Provisions

1. Increased tax rates for higher-income individuals (secs. 14201-14205 of the House bill, secs. 8201-8205 of the Senate amendment, secs. 13201-13205 of the conference agreement, and secs. 1, 55, 68, and 151 of the Code)

PRESENT LAW

Regular tax rates

For 1993, the individual income tax rates are as follows—

If taxable income is:	Then income tax equals:
SINGLE INDIVIDUALS	
$0-$22,100	15 percent of taxable income.
$22,100-$53,500	$3,315.00 plus 28% of the amount over $22,100.
Over $53,500	$12,107.00 plus 31% of the amount over $53,500.
HEADS OF HOUSEHOLD	
$0-$29,600	15 percent of taxable income.
$29,600-$76,400	$4,440.00 plus 28% of the amount over $29,600.
Over $76,400	$17,544.00 plus 31% of the amount over $76,400.
MARRIED INDIVIDUALS FILING JOINT RETURNS	
$0-$36,900	15 percent of taxable income.
$36,900-$89,150	$5,535 plus 28% of the amount over $36,900.
Over $89,150	$20,165 plus 31% of the amount over $89,150.
MARRIED INDIVIDUALS FILING SEPARATE RETURNS	
$0-$18,450	15 percent of taxable income.
$18,450-$44,575	$2,767.50 plus 28% of the amount over $18,450.
Over $44,575	$10,082.50 plus 31% of the amount over $44,575.
ESTATES AND TRUSTS	
$0-$3,750	15 percent of taxable income.
$3,750-$11,250	$562.50 plus 28% of the amount over $3,750.
Over $11,250	$2,662.50 plus 31% of the amount over $11,250.

Net capital gains income is subject to a maximum tax rate of 28 percent.

The individual income tax brackets are indexed each year for inflation.

Alternative minimum tax

An individual taxpayer is subject to an alternative minimum tax (AMT) to the extent that the taxpayer's tentative minimum tax exceeds the taxpayer's regular tax liability. A taxpayer's tentative minimum tax generally equals 24 percent of alternative minimum taxable income (AMTI) in excess of an exemption amount. The exemption amount is $40,000 for married taxpayers filing joint returns, $30,000 for unmarried taxpayers filing as single or head of household, and $20,000 for married taxpayers filing separate returns, estates, and trusts. The exemption amount is phased out for taxpayers with AMTI above specified thresholds. These thresholds are: $150,000 for married taxpayers filing joint returns, $112,500 for unmarried taxpayers filing as single or head of household, and $75,000 for married taxpayers filing separate returns, estates, and trusts. The exemption is completely phased out for individuals with AMTI above $310,000 (married taxpayers filing joint returns) or $232,500 (unmarried taxpayers filing as single or head of household). The exemption amount and the thresholds are not indexed for inflation.

Surtax on higher-income taxpayers

Under present law, there is no surtax imposed on higher-income individuals.

Itemized deduction limitation

Under present law, individuals who do not elect the standard deduction may claim itemized deductions (subject to certain limitations) for certain expenses incurred during the taxable year. Among these deductible expenses are unreimbursed medical expenses, unreimbursed casualty and theft losses, charitable contributions, qualified residence interest, State and local income and property taxes, unreimbursed employee business expenses, and certain other miscellaneous expenses.

Certain itemized deductions are allowed only to the extent that the amount exceeds a specified percentage of the taxpayer's adjusted gross income (AGI). Unreimbursed medical expenses for care of the taxpayer and the taxpayer's spouse and dependents are deductible only to the extent that the total of these expenses exceeds 7.5 percent of the taxpayer's AGI. Nonbusiness, unreimbursed casualty or theft losses are deductible only to the extent that the amount of loss arising from each casualty or theft exceeds $100 and only to the extent that the net amount of casualty and theft losses exceeds 10 percent of the taxpayer's AGI. Unreimbursed employee business expenses and certain other miscellaneous expenses are deductible only to the extent that the total of these expenses exceeds 2 percent of the taxpayer's AGI.

The total amount of otherwise allowable itemized deductions (other than medical expenses, casualty and theft losses, and investment interest) is reduced by 3 percent of the amount of the taxpayer's AGI in excess of $108,450 in 1993 (indexed for inflation). Under this provision, otherwise allowable itemized deductions may not be reduced by more than 80 percent. In computing the reduction of total itemized deductions, all present-law limitations applicable to such deductions are first applied and then the otherwise allowable total amount of deductions is reduced in accordance with this provision.

The reduction of otherwise allowable itemized deductions does not apply to taxable years beginning after December 31, 1995.

Personal exemption phaseout

Present law permits a personal exemption deduction from gross income for an individual, the individual's spouse, and each dependent. For 1993, the amount of this deduction is $2,350 for each exemption claimed. This exemption amount is adjusted for inflation. The deduction for personal exemptions is phased out for taxpayers with AGI above a threshold amount (indexed for inflation) which is based on filing status. For 1993, the threshold amounts are $162,700 for married taxpayers filing joint returns, $81,350 for married taxpayers filing separate returns, $135,600 for unmarried taxpayers filing as head of household, and $108,450 for unmarried taxpayers filing as single.

The total amount of exemptions that may be claimed by a taxpayer is reduced by 2 percent for each $2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. (The phaseout rate is 2 percent for each $1,250 for married taxpayers filing separate returns.) Thus, the personal exemptions claimed are phased out over a $122,500 range (which is not indexed for inflation), beginning at the applicable threshold.

This provision does not apply to taxable years beginning after December 31, 1996.

House Bill

New marginal tax rates

The House bill imposes a new 36-percent marginal tax rate on taxable income in excess of the following thresholds:

Filing status:	*Applicable threshold*
Married individuals filing joint returns	$140,000
Heads of households	127,500
Unmarried individuals	115,000
Married individuals filing separate returns	70,000
Estates and trusts	5,500

For estates and trusts, the 15-percent rate applies to income up to $1,500, the 28-percent rate applies to income between $1,500 and $3,500, and the 31-percent rate applies to income between $3,500 and $5,500. Under this modified tax rate schedule for estates and trusts, the benefits of the rates below the 39.6-percent surtax-included rate (described below) for 1993 approximate the benefits of the 15- and 28-percent rates for 1993 under present law.

As under present law, the tax rate bracket thresholds are indexed for inflation. However, indexing of thresholds for the 36-percent rate applies to taxable years beginning after December 31, 1994.

Alternative minimum tax

The House bill provides a two-tiered graduated rate schedule for the AMT for taxpayers other than corporations. A 26-percent rate applies to the first $175,000 of a taxpayer's AMTI in excess of the exemption amount, and a 28-percent rate applies to AMTI more than $175,000 above the exemption amount. For married individuals filing separate returns, the 28-percent rate applies to AMTI more than $87,500 above the exemption amount. The bill increases the exemption amount to $45,000 for married individuals filing joint returns, to $33,750 for unmarried individuals, and to $22,500 for married individuals filing separate returns, estates, and trusts.

Surtax on higher-income taxpayers

The House bill provides a 10-percent surtax on individuals with taxable income in excess of $250,000 and on estates and trusts with taxable income in excess of $7,500. For married taxpayers filing separate returns, the threshold amount for the surtax is $125,000. The surtax is computed by applying a 39.6-percent rate to taxable income in excess of the applicable threshold. Under this method of computation, unlike a simple 10-percent increase in tax liability, net capital gain income is not subject to tax at a rate in excess of the current 28-percent maximum rate. The thresholds for the surtax are indexed for inflation in the same manner as other individual income tax rate thresholds for taxable years beginning after December 31, 1994.

Itemized deduction limitation and phaseout of personal exemptions

The House bill makes permanent the provisions that limit itemized deductions and phase out personal exemptions.

Effective date

The provision is effective for taxable years beginning after December 31, 1992. Withholding tables for 1993 will not be revised to reflect the changes in tax rates. Penalties for the underpayment of estimated taxes will be waived for underpayments of 1993 taxes attributable to these changes in tax rates.

Senate Amendment

New marginal tax rates

The Senate amendment generally follows the House bill with respect to the new 36-percent marginal tax rate. However, for taxable years beginning in 1993, a blended rate (described below) is used.

Alternative minimum tax

The Senate amendment generally follows the House bill. However, for taxable years beginning in 1993, a blended rate (described below) is used.

Surtax on higher-income taxpayers; surtax on net capital gain

The Senate amendment generally follows the House bill and imposes a 10-percent surtax on individuals with taxable income in excess of $250,000 and on estates and trusts with taxable income in excess of $7,500. For married taxpayers filing separate returns, the threshold amount for the surtax is $125,000. The surtax is computed by applying a 39.6-percent rate to taxable income in excess of the applicable threshold. However, the Senate amendment also imposes the surtax on net capital gain income. An individual's net capital gain is subject to the surtax by applying a maximum rate of 30.8 percent (instead of the present-law maximum rate of 28 percent) to capital gain income to the extent an individual's taxable income exceeds $250,000. For taxable years beginning in 1993, a blended rate (described below) is used.

Itemized deduction limitation and phaseout of personal exemptions

The Senate amendment is the same as the House bill.

Effective date

The Senate amendment generally follows the House bill. However, for taxable years beginning in 1993, blended tax rates are used: the 36-percent tax rate is reduced to 33.5 percent and the 39.6-percent rate is reduced to 35.3 percent. In addition, the 30.8-percent maximum rate on capital gains income is reduced to 29.4 percent for taxable years beginning in 1993. Similarly, for taxable years beginning in 1993, the 26- percent and 28-percent alternative minimum tax rates is reduced to 25 percent and 26 percent, respectively. The permanent rate levels are used for 1994 and later years.

Conference Agreement

The conference agreement follows the House bill.

In addition, the conference agreement contains a provision permitting individual taxpayers to elect to pay their additional 1993 taxes that are attributable to the rate increases contained in the conference agreement in three annual installments. The first installment must be paid on or before the due date for the individual's taxable year that begins in calendar year 1993; the second installment must be paid on or before the date one year after that date; and the third installment must be paid on or before the date two years after that date. The election must be made on the tax return for the individual's taxable year that begins in 1993 (which, in general, is due on April 15, 1994).

The amount eligible for this installment payment election is the excess of the individual's net liability under chapter 1 of the Code as shown on the individual's tax return over the amount that would have been the individual's net liability but for the amendments made by the conference report that alter the individual tax rates (i.e., the 36 percent and 39.6 percent marginal tax rates). These amounts are computed after the application of any credit (except the credit for wage withholding and the credit for special fuel uses) and before crediting any payment of estimated tax. Amounts required to be shown on the return but not actually shown on the return are ineligible for this installment payment election.

The Secretary shall immediately terminate this installment payment election, and the whole amount of the unpaid tax shall be paid immediately upon notice and demand from the Secretary, if either (1) the taxpayer does not pay any installment on or before the required date, or (2) the Secretary believes that the collection of any amount under this installment payment election is in jeopardy.

Because this installment payment election applies only to amounts actually shown on the individual's tax return, those amounts are considered to be assessed. Consequently, the 10-year statute of limitations applicable to collection after assessment (sec. 6502) is applicable to these installment payments.

2. Provisions to prevent conversion of ordinary income to capital gain (sec. 14206 of the House bill, sec. 8206 of the Senate amendment, and sec. 13206 of the conference agreement)

a. Recharacterization of capital gain as ordinary income for certain financial transactions (sec. 13206(a) of the House bill, sec. 8206(a) of the Senate amendment, sec. 13206(a) of the conference agreement, and new sec. 1258 of the Code)

Present Law

Under present law, the maximum rate of individual income tax on ordinary income is 31 percent. Interest from a loan generally is treated as ordinary income.

Gain or loss from the sale or exchange of a capital asset generally is treated as capital gain or loss. Net capital gain (i.e., net long-term capital gain less net short-term capital loss) of an individual is subject to a maximum tax rate of 28 percent. Generally, capital losses are not deductible against ordinary income.

House Bill

Under the provision, capital gain from the disposition of property that was part of a "conversion transaction" would be recharacterized as ordinary income, with certain limitations discussed below. No inference is intended as to when income from a conversion transaction is properly treated as capital gain under present law.

A conversion transaction is a transaction, generally consisting of two or more positions taken with regard to the same or similar property, where substantially all of the taxpayer's return is attributable to the time value of the taxpayer's net investment in the transaction. In a conversion transaction, the taxpayer is in the economic position of a lender—he has an expectation of a return from the transaction which in substance is in the nature of interest and he undertakes no significant risks other than those typical of a lender. However, a transaction is not a conversion transaction subject to the provision unless it also satisfies one of the following four criteria: (1) the transaction consists of the acquisition of property by the taxpayer and a substantially contemporaneous agreement to sell the same or substantially identical property in the future; (2) the transaction is a straddle, within the meaning of section 1092;[40] (3) the transaction is one that was marketed or sold to the taxpayer on the basis that it would have the economic characteristics of a loan but the interest-like return would be taxed as capital gain; or (4) the transaction is described as a conversion transaction in regulations promulgated by the Secretary of the Treasury.

Under the provision, gain realized by a taxpayer from a conversion transaction that would otherwise be treated as capital gain will be treated as ordinary income (but not as interest) for all purposes of the Internal Revenue Code. The amount of gain so recharacterized will not exceed the amount of interest that would have accrued on the taxpayer's net investment for the relevant period at a yield equal to 120% of the "applicable rate". This limit is subject to appropriate reduction to reflect prior inclusion of ordinary income items from the conversion transaction or the capitalization of interest on acquisition indebtedness under section 263(g). The "applicable rate" is the applicable Federal rate under section 1274(d) at the time the taxpayer enters into the conversion transaction (if the conversion transaction has a definite term) or the Federal short term rate determined under section 6621(b) (if the conversion transaction has an indefinite term).

Effective date.—The provision is effective for conversion transactions entered into after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that the amendment clarifies that property or positions may be part of a conversion transaction, and that transactions of options dealers and commodities traders in the normal course of their trade or business of dealing in options or section 1256 contracts, respectively, generally will not be considered to be conversion transactions.

Conference Agreement

The conference agreement follows the Senate amendment, with a clarification of the determination of the "applicable rate," a clarification of the conferees' intent with respect to transactions entered into by options dealers and commodities traders, and a modification to the definition of commodities trader.

First, the conferees clarify that the Secretary has the authority (under sec. 1274(d)(1)(D)) to provide for the use of an applicable rate lower than the applicable Federal rate in appropriate cases. Second, the conferees clarify that transactions (including transactions involving positions other than options or section 1256 contracts) of options dealers and commodities traders in the normal course of their trade or business of dealing in options or trading section 1256 contracts, respectively, will not be considered conversion transactions, except as provided in the special rules noted below.

Third, under the agreement, the term "commodities trader" includes any person

[40] Except that stock also is treated as personal property in defining a straddle for purposes of the conversion transaction provision.

who is a member of a domestic board of trade (including a member having member trading privileges only with respect to a portion of the contracts available for trading on the board of trade) which is designated as a contract market by the Commodity Futures Trading Commission. "Commodities trader" also, except as otherwise provided by Treasury regulations, includes a person entitled to trade as a member, such as a lessee of a membership or an entity that is (or is affiliated with) a beneficial owner of a membership if such entity is eligible for any preferential rates available to members with respect to transaction fees or margins imposed by the board of trade or for the clearing of trades on the board of trade. Other persons eligible for such member rates also will be treated as "commodities traders" for purposes of the exception; however, the Secretary may promulgate regulations that prevent unwarranted expansion of the exception, by excluding from the definition of "commodities trader" a person who acquires some attributes of board of trade membership for the principal purpose of qualifying for the "commodities trader" exception or whose margins or fees are substantially more than the margins or fees associated with owned or leased memberships.

Special rules limit the availability of the options dealer and commodities trader exception for limited partners or limited entrepreneurs in an entity that is an options dealer or a commodities trader.

b. Repeal of certain exceptions to the market discount rules (sec. 14206(b) of the House bill and sec. 8206(b) of the Senate amendment, sec. 13206(b) of the conference agreement, and secs. 1276, 1277, 1278 of the Code)

Present Law

Generally, a market discount bond is a bond that is acquired for a price that is less than the principal amount of the bond.[41] Market discount generally arises when the value of a debt obligation declines after issuance (typically, because of an increase in prevailing interest rates or a decline in the credit-worthiness of the borrower).

Gain on the disposition of a market discount bond generally must be recognized as ordinary income to the extent of the market discount that has accrued. This ordinary income rule, however, does not apply to tax-exempt obligations or to market discount bonds issued on or before July 18, 1984. Under current law, income attributable to accrued market discount on tax-exempt bonds is not tax-exempt but is taxable as capital gain if the bond is held as a capital asset.

House Bill

The bill extends the ordinary income rule to tax-exempt obligations and to market discount bonds issued on or before July 18, 1984. Thus, gain on the disposition of a tax-exempt obligation or any other market discount bond that is acquired for a price that is less than the principal amount of the bond generally will be treated as ordinary income (instead of capital gain) to the extent of accrued market discount.

Effective date.—The provision is effective for bonds purchased after April 30, 1993. Thus, current owners of tax-exempt bonds and other market discount bonds issued on or before July 18, 1984, will not be required to treat accrued market discount as ordinary income, if they acquired their bonds before May 1, 1993.

[41] Or, in the case of a bond issued with original issue discount (OID), a price that is less than the amount of the issue price plus accrued OID.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment, with a technical amendment of the definition of revised issue price in Code section 1278(a)(4) to account for the accrual of tax-exempt original issue discount.

c. Accrual of income by holders of stripped preferred stock (sec. 14206(c) of the House bill, sec. 8206(c) of the Senate amendment, sec. 13206(c) of the conference agreement, and sec. 305 of the Code)

Present Law

In general, if a bond is issued at a price approximately equal to its redemption price at maturity, the expected return to the holder of the bond is in the form of periodic interest payments. In the case of original issue discount ("OID") bonds, however, the issue price is below the redemption price, and the holder receives part or all of his expected return in the form of price appreciation. The difference between the issue price and the redemption price is the OID, and a portion of the OID is required to be accrued and included in the income of the holder annually. Similarly, for certain preferred stock that is issued at a discount from its redemption price, a portion of the redemption premium must be included in income annually.

A stripped bond (i.e., a bond issued with interest coupons some of which are subsequently "stripped" so that the ownership of the bond is separated from the ownership of the interest coupons) generally is treated as a bond issued with OID equal to (1) the stated redemption price of the bond at maturity minus (2) the amount paid for the stripped bond.

If preferred stock is stripped of some of its dividend rights, however, the stripped stock is not subject to the rules that apply to stripped bonds or to the rules that apply to bonds and certain preferred stock issued at a discount.

House Bill

The bill treats the purchaser of stripped preferred stock (and a person who strips preferred stock and disposes of the stripped dividend rights) in generally the same way that the purchaser of a stripped bond would be treated under the OID rules. Thus, stripped stock is treated like a bond issued with OID equal to (1) the stated redemption price of the stock minus (2) the amount paid for the stock. The discount accrued under the provision is treated as ordinary income and not as interest or dividends.

Stripped preferred stock is defined as any preferred stock where the ownership of the stock has been separated from the right to receive any dividend that has not yet become payable. The provision applies to stock that is limited and preferred as to dividends, does not participate in corporate growth to any significant extent, and has a fixed redemption price.

No inference is intended as to as to the treatment of stripped preferred stock for tax purposes with respect to any issues not directly addressed by this legislation, including the availability of the dividends received deduction to a holder of dividends stripped from preferred stock, the allocation of basis by the creator of stripped preferred stock, or the proper characterization of a purported sale of stripped dividend rights.

Effective date.—The bill is effective for stripped stock that is purchased after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

d. Treatment of net capital gains as investment income (sec. 14206(d) of the House bill and sec. 8206(d) of the Senate amendment, sec. 13206(d) of the conference agreement, and sec. 163(d) of the Code)

Present Law

In the case of a taxpayer other than a corporation, deductions for interest on indebtedness that is allocable to property held for investment ("investment interest") are limited to the taxpayer's net investment income for the taxable year. Disallowed investment interest is carried forward to the next taxable year. Investment income includes gross income (other than gain on disposition) from property held for investment and any net gain attributable to the disposition of property held for investment.

Investment interest that is allowable is deductible against income taxable at ordinary income rates. The net capital gain (i.e., net long-term capital gain less net short-term capital loss) of a noncorporate taxpayer is taxed at a maximum rate of 28 percent.

Prior to 1986, when a significant rate differential existed between long-term capital gains and ordinary income, long-term capital gains were not included in investment income for purposes of computing the investment interest limitation.

House Bill

The House bill generally excludes net capital gain attributable to the disposition of property held for investment from investment income for purposes of computing the investment interest limitation. A taxpayer, however, can elect to include so much of his net capital gain in investment income as the taxpayer chooses if he also reduces the amount of net capital gain eligible for the 28-percent maximum capital gains rate by the same amount.

Effective date.—The provision is effective for taxable years beginning after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

e. Definition of "substantially appreciated" inventory (sec. 14206(e) of the House bill, sec. 8206(e) of the Senate amendment, sec. 13206(e) of the conference agreement, and sec. 751(d) of the Code)

Present Law

Under present law, amounts received by a partner in exchange for his interest in a partnership are treated as ordinary income to the extent they are attributable to substantially appreciated inventory of the partnership. In addition, distributions by a partnership in which a partner receives substantially appreciated inventory in exchange for his interest in certain other partnership property (or receives certain other property in exchange for substantially appreciated inventory) are treated as a taxable sale or exchange of property, rather than as a nontaxable distribution.

For these purposes, inventory is treated as substantially appreciated if the value of the partnership's inventory exceeds both 120 percent of its adjusted basis and 10 percent of

the value of all partnership property (other than money).

House Bill

The House bill eliminates the requirement that the partnership's inventory exceed 10 percent of the value of all partnership property in order to be substantially appreciated. Thus, if the partnership's inventory is worth more than 120 percent of its adjusted basis, the inventory is treated as substantially appreciated. In addition, any inventory property acquired with a principal purpose to reduce the appreciation to less than 120 percent in order to avoid ordinary income treatment will be disregarded in applying the 120-percent test.

Effective date.—The provision applies to sales, exchanges, and distributions after April 30, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Repeal health insurance wage base cap (sec. 14207 of the House bill, sec. 8207 of the Senate amendment, sec. 13207 of the conference agreement, and sec. 3121(x) of the Code)

Present Law

As part of the Federal Insurance Contributions Act (FICA), a tax is imposed on employees and employers up to a maximum amount of employee wages. The tax is comprised of two parts: old-age, survivor, and disability insurance (OASDI) and Medicare hospital insurance (HI). For wages paid in 1993 to covered employees, the HI tax rate is 1.45 percent on both the employer and the employee on the first $135,000 of wages and the OASDI tax rate is 6.2 percent on both the employer and the employee on the first $57,600 of wages.

Under the Self-Employment Contributions Act of 1954 (SECA), a tax is imposed on an individual's self-employment income. The self-employment tax rate is the same as the total rate for employers and employees (i.e., 2.9 percent for HI and 12.40 percent for OASDI). For 1993, the HI tax is applied to the first $135,000 of self-employment income and the OASDI tax is applied to the first $57,600 self-employment income. In general, the tax is reduced to the extent that the individual had wages for which employment taxes were withheld during the year.

The cap on wages and self-employment income subject to FICA and SECA taxes is indexed to changes in the average wages in the economy.

House Bill

The bill repeals the dollar limit on wages and self-employment income subject to HI taxes.

Effective date.—The provision is effective for wages and income received after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill. The legislative history to the Senate amendment expresses the concern of the Senate that HI taxes paid by high-income workers under the provision would bear little relation to Medicare benefits such workers could expect to receive, and that this may make the HI program look more like welfare than social insurance. It is suggested that it may be appropriate to revisit the issue in the context of health care reform or Medicare financing improvements.

Effective date.—The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

4. Reinstate top estate and gift tax rates (sec. 14208 of the House bill, sec. 8208 of the Senate amendment, sec. 13208 of the conference agreement, and sec. 2001 of the Code)

Present Law

A Federal gift tax is imposed on transfers by gift during life and a Federal estate tax is imposed on transfers at death. The Federal estate and gift taxes are unified, so that a single graduated rate schedule is applied to an individual's cumulative gifts and bequests. For decedents dying (or gifts made) after 1992, the estate and gift tax rates begin at 18 percent on the first $10,000 of taxable transfers and reach a maximum of 50 percent on taxable transfers over $2.5 million. Previously, for the nine-year period beginning after 1983 and ending before 1993, two additional brackets applied at the top of the rate schedule: a rate of 53 percent on taxable transfers exceeding $2.5 million and below $3 million, and a maximum marginal tax rate of 55 percent on taxable transfers exceeding $3 million. The generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate (sec. 2641).

In order to phase out the benefit of the graduated brackets and unified credit, the estate and gift tax is increased by five percent on cumulative taxable transfers between $10 million and $18,340,000, for decedents dying and gifts made after 1992.[42] (Prior to 1993, this phase out of the graduated rates and unified credit applied to cumulative taxable transfers between $10 million and $21,040,000.)

House Bill

The House bill provides that, for taxable transfers over $2.5 million but not over $3 million, the estate and gift tax rate is 53 percent. For taxable transfers over $3 million, the estate and gift tax rate is 55 percent. The phase out of the graduated rates and unified credit applies with respect to cumulative taxable transfers between $10 million and $21,040,000. Also, since the generation-skipping transfer tax is computed by reference to the maximum Federal estate tax rate, the rate of tax on generation-skipping transfers under the bill is 55 percent.

Effective date.—The House bill is effective for decedents dying, gifts made, and generation skipping transfers occurring after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

5. Reduce deductible portion of business meals and entertainment expenses (sec. 14209 of the House bill, secs. 8209 and 8209A of the Senate amendment, sec. 13209 of the conference agreement, and sec. 274(n) of the Code)

Present Law

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business and, in the case of an individual, for the production of income. No deduction generally is allowed for personal, living, or family expenses.

Meal and entertainment expenses incurred for business or investment reasons are deductible if certain legal and substantiation requirements are met. The amount of the deduction generally is limited to 80 percent of the expense that meets these requirements. No deduction is allowed, however, for meal or beverage expenses that are lavish or extravagant under the circumstances.

No deduction is allowed with respect to business meal and entertainment expenses (as well as other specified items) unless the taxpayer substantiates by adequate records or by sufficient evidence corroborating the taxpayer's own statement (1) the amount of the expense, (2) the time and place of the expense, (3) the business purpose of the expense, and (4) the business relationship to the taxpayer of the persons entertained. Under Treasury regulations, such documentary evidence is required for expenditures of $25 or more (Treas. Reg. sec. 1.274-5T(c)(2)(iii)(B)).

House Bill

The House bill reduces the deductible portion of otherwise allowable business meals and entertainment expenses from 80 percent to 50 percent.

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

Section 8209 of the Senate amendment is the same as the House bill, except that, in addition, the substantiation threshold for business meals is reduced from $25 to $20.

Section 8209A of the Senate amendment includes a sense of the Senate resolution that the conferees should reduce or eliminate the proposed reduction in the deductible portion of otherwise allowable business meals and entertainment expenses.

Conference Agreement

The conference agreement follows the House bill.

6. Deny deduction for club dues (sec. 14210 of the House bill, sec. 8210 of the Senate amendment, sec. 13210 of the conference agreement, and sec. 274(a) of the Code)

Present Law

No deduction is permitted for club dues unless the taxpayer establishes that his or her use of the club was primarily for the furtherance of the taxpayer's trade or business and the specific expense was directly related to the active conduct of that trade or business (Code sec. 274(a)). No deduction is permitted for an initiation or similar fee that is payable only upon joining a club if the useful life of the fee extends over more than one year. Such initial fees are nondeductible capital expenditures.[43]

House Bill

Under the House bill, no deduction is permitted for club dues. This rule applies to all types of clubs (other than those exempted below), including business, social, athletic, luncheon, and sporting clubs. Specific business expenses (e.g., meals) incurred at a club are deductible only to the extent they otherwise satisfy the standards for deductibility.

Dues for airline and hotel clubs are not subject to the deduction disallowance.

[42] The additional five percent rate applies to the taxable transfers of a nonresident noncitizen in excess of $10 million only to the extent necessary to phase out the graduated rates and unified credit actually allowed, either by statute or by treaty (where applicable).

[43] *Kenneth D. Smith*, 24 TCM 899 (1965).

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that dues for airline and hotel clubs are subject to the deduction disallowance.

Conference Agreement

The conference agreement follows the Senate amendment.

7. Deny deduction for executive pay over $1 million (sec. 14211 of the House bill, sec. 8211 of the Senate amendment, sec. 13211 of the conference agreement, and sec. 162 of the Code)

Present Law

An employer is allowed a deduction for reasonable salaries and other compensation. Whether compensation is reasonable is determined on a case-by-case basis. However, the reasonableness standard has been used primarily to limit payments by closely-held companies where nondeductible dividends may be disguised as deductible compensation.

House Bill

In general

Under the House bill, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year.

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain independent director and shareholder approval requirements are met; (3) payments to a tax-qualified retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)); and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and which was not modified thereafter in any material respect before such remuneration was paid.

Effective date

The House bill applies to compensation that is otherwise deductible by the corporation in a taxable year beginning on or after January 1, 1994.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment refers to "outside" directors rather than "independent" directors and there are some minor differences in the legislative history.

Effective date.—The Senate amendment is the same as the House bill.

Conference Agreement

In general

The conference agreement follows the Senate amendment, with certain modifications and clarifications.

Under the conference agreement, for purposes of the regular income tax and the alternative minimum tax, the otherwise allowable deduction for compensation paid or accrued with respect to a covered employee of a publicly held corporation is limited to no more than $1 million per year.[44]

Definition of publicly held corporation

For purposes of this provision, a corporation is treated as publicly held if the corporation has a class of common equity securities that is required to be registered under section 12 of the Securities Exchange Act of 1934. In general, the Securities Exchange Act requires a corporation to register its common equity securities under section 12 if (1) the securities are listed on a national securities exchange or (2) the corporation has $5 million or more of assets and 500 or more holders of such securities. A corporation is not considered publicly held under the provision if registration of its equity securities is voluntary. Such a voluntary registration might occur, for example, if a corporation that otherwise is not required to register its equity securities does so in order to take advantage of other procedures with regard to public offerings of debt securities.

Covered employees

Covered employees are defined by reference to the Securities and Exchange Commission (SEC) rules governing disclosure of executive compensation. Thus, with respect to a taxable year, a person is a covered employee if (1) the employee is the chief executive officer of the corporation (or an individual acting in such capacity) as of the close of the taxable year or (2) the employee's total compensation is required to be reported for the taxable year under the Securities Exchange Act of 1934 because the employee is one of the four highest compensated officers for the taxable year (other than the chief executive officer). If disclosure is required with respect to fewer than four executives (other than the chief executive officer) under the SEC rules, then only those for whom disclosure is required are covered employees.

Compensation subject to the deduction limitation

In general

Unless specifically excluded, the deduction limitation applies to all remuneration for services, including cash and the cash value of all remuneration (including benefits) paid in a medium other than cash. If an individual is a covered employee for a taxable year, the deduction limitation applies to all compensation not explicitly excluded from the deduction limitation, regardless of whether the compensation is for services as a covered employee and regardless of when the compensation was earned. The $1 million cap is reduced by excess parachute payments (as defined in sec. 280G) that are not deductible by the corporation.

The deduction limitation applies when the deduction would otherwise be taken. Thus, for example, in the case of a nonqualified stock option, the deduction is normally taken in the year the option is exercised, even though the option was granted with respect to services performed in a prior year.[45]

Certain types of compensation are not subject to the deduction limit and are not taken into account in determining whether other compensation exceeds $1 million. The following types of compensation are not taken into account: (1) remuneration payable on a commission basis; (2) remuneration payable solely on account of the attainment of one or more performance goals if certain outside director and shareholder approval requirements are met; (3) payments to a tax-qualified retirement plan (including salary reduction contributions); (4) amounts that are excludable from the executive's gross income (such as employer-provided health benefits and miscellaneous fringe benefits (sec. 132)); and (5) any remuneration payable under a written binding contract which was in effect on February 17, 1993, and all times thereafter before such remuneration was paid and which was not modified thereafter in any material respect before such remuneration was paid.

Commissions

In order to qualify for the exception for compensation paid in the form of commissions, the commission must be payable solely on account of income generated directly by the individual performance of the executive receiving such compensation. Thus, for example, compensation that equals a percentage of sales made by the executive qualifies for the exception. Remuneration does not fail to be attributable directly to the executive merely because the executive utilizes support services, such as secretarial or research services, in generating the income. However, if compensation is paid on account of broader performance standards, such as income produced by a business unit of the corporation, the compensation would not qualify for the exception because it is not paid with regard to income that is directly attributable to the individual executive.

Other performance-based compensation

In general.—Compensation qualifies for the exception for performance-based compensation only if (1) it is paid solely on account of the attainment of one or more performance goals, (2) the performance goals are established by a compensation committee consisting solely of two or more outside directors, (3) the material terms under which the compensation is to be paid, including the performance goals, are disclosed to and approved by the shareholders in a separate vote prior to payment, and (4) prior to payment, the compensation committee certifies that the performance goals and any other material terms were in fact satisfied.

Definition of performance-based compensation.—Compensation (other than stock options or other stock appreciation rights) is not treated as paid solely on account of the attainment of one or more performance goals unless the compensation is paid to the particular executive pursuant to a preestablished objective performance formula or standard that precludes discretion.[46] In general, this means that a third party with knowledge of the relevant performance results could calculate the amount to be paid to the executive. It is intended that what constitutes a performance goal be broadly defined, and include, for example, any objective performance standard that is applied to the individual executive, a business unit (e.g., a division or a line of business), or the corporation as a whole. Performance standards could include, for example, increases in stock price, market share, sales, or earnings per share.

Stock options or other stock appreciation rights generally are treated as meeting the

[44] The provision does not modify the present-law requirement that, in order to be deductible, compensation must be reasonable. Thus, as under present law, in certain circumstances compensation less than $1 million may not be deductible.

[45] Of course, if the executive is no longer a covered employee at the time the options are exercised, then the deduction limitation would not apply.

[46] Discretion does not exist merely because the outside directors have the authority to interpret a compensation plan, agreement, or contract in accordance with its terms.

exception for performance-based compensation, provided that the requirements for outside director and shareholder approval are met (without the need for certification that the performance standards have been met), because the amount of compensation attributable to the options or other rights received by the executive would be based solely on an increase in the corporation's stock price. In the case of stock options, it is intended that the directors may retain discretion as to the exact number of options that are granted to an executive, provided that the maximum number of options that the individual executive may receive during a specified period is predetermined.

Stock-based compensation is not treated as performance-based if it is dependent on factors other than corporate performance. For example, if a stock option is granted to an executive with an exercise price that is less than the current fair market value of the stock at the time of grant, then the executive would have the right to receive compensation on the exercise of the option even if the stock price decreases or stays the same. Thus, stock options that are granted with an exercise price that is less than the fair market value of the stock at the time of grant do not meet the requirements for performance-based compensation. Similarly, if the executive is otherwise protected from decreases in the value of the stock (such as through automatic repricing), the compensation is not performance-based.

In contrast to options or other stock appreciation rights, grants of restricted stock are not inherently performance-based because the executive may receive compensation even if the stock price decreases or stays the same. Thus, a grant of restricted stock is treated like cash compensation and does not satisfy the definition of performance-based compensation unless the grant or vesting of the restricted stock is based upon the attainment of a performance goal and otherwise satisfies the standards for performance-based compensation under the bill.

Compensation does not qualify for the performance-based exception if the executive has a right to receive the compensation notwithstanding the failure of (1) the compensation committee to certify attainment of the performance goal (or goals) or (2) the shareholders to approve the compensation.

Definition of outside directors.—For purposes of the exception for performance-based compensation, a director is considered an outside director if he or she is not a current employee of the corporation (or related entities), is not a former employee of the corporation (or related entities) who is receiving compensation for prior services (other than benefits under a tax-qualified pension plan), was not an officer of the corporation (or related entities) at any time, and is not currently receiving compensation for personal services in any capacity (e.g., for services as a consultant) other than as a director.

Shareholder approval and adequate disclosure.—In order to meet the shareholder approval requirement, the material terms under which the compensation is to be paid must be disclosed and, after disclosure of such terms, the compensation must be approved by a majority of shares voting in a separate vote.

In the case of performance-based compensation paid pursuant to a plan (other than a stock option plan), the shareholder approval requirement generally is satisfied if the shareholders approve the specific terms of the plan, including the class of executives to which it applies. In the case of a stock option plan, the shareholders generally must approve the specific terms of the plan, the class of executives to which it applies, the option price (or formula under which the price is determined), and the maximum number of shares subject to option that can be awarded under the plan to any executive. Further shareholder approval of payments under a plan or grants of options is not required after the plan has been approved. Of course, if there are material changes to the plan, shareholder approval would have to be obtained again in order for the exception to apply to payments under the modified plan.

It is intended that not all the details of a plan (or agreement) need be disclosed in all cases. In developing standards as to whether disclosure of the terms of a plan or agreement is adequate, the Secretary should take into account the SEC rules regarding disclosure. To the extent consistent with those rules, however, disclosure should be as specific as possible. It is expected that shareholders will, at a minimum, be made aware of the general performance goals on which the executive's compensation is based and the maximum amount that could be paid to the executive if such performance goals were met. For example, it would not be adequate if the shareholders were merely informed that an executive would be awarded $x "if the executive meets certain performance goals established by the compensation committee."

Under present law, in the case of a privately held company that becomes publicly held, the prospectus is subject to the rules similar to those applicable to publicly held companies. Thus, if there has been disclosure that would satisfy the rules described above, persons who buy stock in the publicly held company will be aware of existing compensation arrangements. No further shareholder approval is required of compensation arrangements existing prior to the time the company became public unless there is a material modification of such arrangements. It is intended that similar rules apply in the case of other business transactions.

Compensation payable under a written binding contract

Remuneration payable under a written binding contract which was in effect on February 17, 1993, and at all times thereafter before such remuneration was paid is not subject to the deduction limitation.

Compensation paid pursuant to a plan qualifies for this exception provided that the right to participate in the plan is part of a written binding contract with the covered employee in effect on February 17, 1993. For example, suppose a covered employee was hired by XYZ Corporation on January 17, 1993, and one of the terms of the written employment contract is that the executive is eligible to participate in the "XYZ Corporation Executive Deferred Compensation Plan" in accordance with the terms of the plan. Assume further that the terms of the plan provide for participation after 6 months of employment, amounts payable under the plan are not subject to discretion, and the corporation does not have the right to amend materially the plan or terminate the plan (except on a prospective basis before any services are performed with respect to the applicable period for which such compensation is to be paid). Provided that the other conditions of the binding contract exception are met (e.g., the plan itself is in writing), payments under the plan are grandfathered, even though the employee was not actually a participant in the plan on February 17, 1993.[47]

The fact that a plan was in existence on February 17, 1993, is not by itself sufficient to qualify the plan for the exception for binding written contracts.

The exception for remuneration paid pursuant to a binding written contract ceases to apply to amounts paid after there has been a material modification to the terms of the contract. The exception does not apply to new contracts entered into or renewed after February 17, 1993. For purposes of this rule, any contract that is entered into on or before February 17, 1993, and that is renewed after such date is treated as a new contract entered into on the day the renewal takes effect. A contract that is terminable or cancelable unconditionally at will by either party to the contract without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a contract is not treated as so terminable or cancelable if it can be terminated or cancelled only by terminating the employment relationship of the covered employee.

Effective date

The conference agreement follows the Senate amendment.

8. Reduce compensation taken into account for qualified retirement plan purposes (sec. 14212 of the House bill, sec. 8212 of the Senate amendment, sec. 13212 of the conference agreement, and sec. 401(a)(17) of the Code)

Present Law

Under present law, the amount of a participant's compensation that can be taken into account under a tax-qualified pension plan is limited (sec. 401(a)(17)). The limit applies for determining the amount of the employer's deduction for contributions to the plan as well as for determining the amount of the participant's benefits. The limit on includible compensation is $235,840 for 1993, and is adjusted annually for inflation. The limit in effect at the beginning of a plan year applies for the entire plan year.

House Bill

Under the House bill, the limit on compensation taken into account under a qualified plan (sec. 401(a)(17)) is reduced to $150,000. As under present law, this limit is indexed for inflation on an annual basis. Corresponding changes also are made to other provisions (secs. 404(l), 408(k)(3)(C), (6)(D)(ii), and (8), and 505(b)(7)) that take into account the section 401(a)(17) limit.

Effective date.—The provision in the House bill applies to benefits accruing in plan years beginning after December 31, 1993. Benefits accrued prior to the effective date for compensation in excess of the reduced limit are grandfathered.

Senate Amendment

The Senate amendment is the same as the House bill, except that the limit on compensation is indexed for inflation in increments of $10,000.

Effective date.—Same as the House bill except that special transition rules apply to governmental plans and plans maintained pursuant to a collective bargaining agreement.

In the case of an eligible participant in a plan maintained by a State or local government, the limit on compensation taken into

[47] Of course, as discussed below in the text, the grandfather ceases to apply if the plan is materially amended.

account is the greater of the limit under the Senate amendment and the compensation allowed to be taken into account under the plan as in effect on July 1, 1993. For purposes of this rule, an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the first plan year beginning after the earlier of: (1) the plan year in which the plan is amended to reflect the proposal, or (2) December 31, 1995. This special rule does not apply unless the plan is amended to incorporate the dollar limit in effect under section 401(a)(17) by reference, effective with respect to persons other than eligible participants for benefits accruing in plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).

In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified before the date of enactment, the provision does not apply to contributions or benefits accruing under such agreements in plan years beginning before the earlier of (1) the latest of (a) January 1, 1994, (b) the date on which the last of such collective bargaining agreements terminates (without regard to any extension or modification on or after the date of enactment), or (c) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act, the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on the date of enactment, or (2) January 1, 1997.

Conference Agreement

The conference agreement follows the Senate amendment.

9. Modify deduction for moving expenses (sec. 14213 of the House bill, sec. 8213 of the Senate amendment, sec. 13213 of the conference agreement, and secs. 62, 132, and 217 of the Code)

Present Law

An employee or self-employed individual may claim a deduction from gross income for certain expenses incurred as a result of moving to a new residence in connection with beginning work at a new location (sec. 217). The deduction is not subject to the floor that generally limits a taxpayer's allowable miscellaneous itemized deductions to those amounts that exceed two percent of the taxpayer's adjusted gross income. Any amount received directly or indirectly by such individual as a reimbursement of moving expenses must be included in the taxpayer's gross income as compensation (sec. 82). The taxpayer may offset this income by deducting the moving expenses that are deductible items under section 217.

Deductible moving expenses are the expenses of transporting the taxpayer and members of the taxpayer's household, as well as household goods and personal effects, from the old residence to the new residence; the cost of meals and lodging enroute; the expenses for pre-move househunting trips; temporary living expenses for up to 30 days in the general location of the new job; and certain expenses related to either the sale of (or settlement of an unexpired lease) on the old residence, or the purchase of (or acquisition of a lease on) a new residence in the general location of the new job.

The moving expense deduction is subject to a number of limitations. A maximum of $1,500 can be deducted for pre-move househunting and temporary living expenses in the general location of the new job. A maximum of $3,000 (reduced by any deduction claimed for househunting or temporary living expenses) can be deducted for certain qualified expenses for the sale or purchase of a residence or settlement or acquisition of a lease. If both a husband and wife begin new jobs in the same general location, the move is treated as a single commencement of work. If a husband and wife file separate returns, the maximum deductible amounts available to each are one-half the amounts otherwise allowed.

Also, in order for a taxpayer to claim a moving expense deduction, the taxpayer's new principal place of work must be at least 35 miles farther from the taxpayer's former residence than was the taxpayer's former principal place of work (or at least 35 miles from the taxpayer's former residence, if the taxpayer has no former place of work).

House Bill

The House bill excludes from the definition of moving expenses: (1) the costs related to the sale of (or settlement of an unexpired lease on) the old residence, and the purchase of (or acquisition of a lease on) the new residence in the general location of the new job, and (2) the costs of meals consumed while traveling and while living in temporary quarters near the new job.

Effective date.— Generally, the provision is effective for expenses incurred after December 31, 1993.

Senate Amendment

The Senate bill is the same as the House bill with an additional restriction. Under this restriction, an overall $10,000 cap is imposed on allowable moving expenses (including expenses subject to the limit on househunting and temporary living expenses) for each qualified move (including foreign moves). The $10,000 amount is indexed for inflation occurring after December 31, 1993.

Effective date.—Same as the House bill.

Conference Agreement

In general

The conference agreement follows the House bill with the following modifications: (1) the cost of pre-move househunting trips is excluded from the definition of moving expenses; (2) the cost of temporary living expenses for up to 30 days in the general location of the new job is excluded from the definition of moving expenses; (3) the mileage limit is increased from 35 miles to 50 miles; (4) moving expenses not paid or reimbursed by the taxpayer's employer are allowable as a deduction in calculating adjusted gross income; and (5) moving expenses paid or reimbursed by the taxpayer's employer are excludable from gross income.

Definition of moving expenses

Under the conference agreement, moving expenses are defined as the reasonable costs of (1) moving household goods and personal effects from the former residence to the new residence and (2) traveling (including lodging during the period of travel) from the former residence to the new place of residence. Moving expenses do not include any expenses for meals.

Employer-paid moving expenses

Moving expenses are excludable from gross income and wages for income and employment tax purposes to the extent paid for by the taxpayer's employer (whether directly or through reimbursement). Moving expenses are not excludable if the taxpayer actually deducted the expenses in a prior taxable year. The conferees intend that the employer treat moving expenses as excludable unless it has actual knowledge that the employee deducted the expenses in a prior year. The employer has no obligation to determine whether the individual deducted the expenses.

The conferees intend that rules similar to the rules relating to accountable plans under section 62(c) will apply to reimbursed expenses.

Moving expenses not paid for by the employer

Moving expenses are deductible in computing adjusted gross income to the extent not paid for by the taxpayer's employer (whether directly or through reimbursement). Allowing such a deduction will treat taxpayers whose expenses are not paid for by their employer in a comparable manner to taxpayers whose moving expenses are paid for by their employer.

Effective date

The conference agreement follows the House bill and the Senate amendment.

10. Modify estimated tax requirements for individuals (sec. 14214 of the House bill, sec. 8214 of the Senate amendment, sec. 13214 of the conference agreement, and sec. 6654 of the Code)

Present Law

Under present law, an individual taxpayer generally is subject to an addition to tax for any underpayment of estimated tax. An individual generally does not have an underpayment of estimated tax if he or she makes timely estimated tax payments at least equal to: (1) 100 percent of the tax shown on the return of the individual for the preceding year (the "100 percent of last year's liability safe harbor") or (2) 90 percent of the tax shown on the return for the current year. Income tax withholding from wages is considered to be a payment of estimated taxes. For estimated tax purposes, some trusts and estates are treated as individuals.

In addition, for taxable years beginning after 1991 and before 1997, a special rule provides that the 100 percent of last year's liability safe harbor generally is not available to a taxpayer that (1) has a modified adjusted gross income (AGI) in the current year that exceeds the taxpayer's AGI in the preceding year by more than $40,000 ($20,000 in the case of a separate return by a married individual) and (2) has a modified AGI in excess of $75,000 in the current year ($37,500 in the case of a separate return by a married individual).

House Bill

The special rule that denies the use of the 100 percent of last year's liability safe harbor is repealed for taxable years beginning after 1993. However, the 100 percent of last year's liability safe harbor is modified to be a 110 percent of last year's liability safe harbor for any individual with an AGI of more than $150,000 as shown on the return for the preceding taxable year. For this purpose, the AGI of a trust or an estate is determined pursuant to rules similar to those in Code section 67(e).

For taxable years beginning after 1993, the House bill does not change the availability of (1) the 100 percent of last year's liability safe harbor for an individual with a preceding year AGI of $150,000 or less, or (2) the present-law rule that allows any individual to base estimated tax payments on 90 percent of the tax shown on the return for the current year.

Effective date.—The provision is effective for estimated tax payments applicable to taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

11. Increase taxable portion of Social Security and Railroad Retirement Tier 1 benefits (sec. 14215 of the House bill, sec. 8215 of the Senate amendment, sec. 13215 of the conference agreement, and sec. 86 of the Code)

Present Law

Under present law, a portion of Social Security and Railroad Retirement Tier 1 benefits is includible in gross income for taxpayers whose provisional incomes exceed a threshold amount. For purposes of this computation, a taxpayer's provisional income includes modified adjusted gross income (adjusted gross income plus tax-exempt interest plus certain foreign source income) plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit. The threshold amount is $25,000 for unmarried taxpayers, $32,000 for married taxpayers filing joint returns, and $0 for married taxpayers filing separate returns. A taxpayer is required to include in gross income the lesser of: (1) 50 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 50 percent of the excess of the taxpayer's provisional income over the applicable threshold amount.

A taxpayer may receive a lump-sum payment of benefits which includes benefits for one or more earlier years. In general, such payments are includible in total benefits in the year received. However, a taxpayer receiving these lump-sum benefits may elect to calculate their tax liability as if the benefits had been received in the year to which they are attributable (using the other elements of provisional income related to that year) and then include the appropriate amount in gross income for the current taxable year (in addition to the amount of benefits attributable to the current taxable year that are includible in gross income).

Proceeds from the income taxation of these benefits are credited quarterly to the Old-Age and Survivors Insurance Trust Fund, the Disability Insurance Trust Fund, or the Social Security Equivalent Benefit Account (of the Railroad Retirement system), as appropriate.

House Bill

The House bill provides that, for taxpayers with provisional incomes above the applicable present-law thresholds, a taxpayer's gross income includes the lesser of: (1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit, or (2) 85 percent of the excess of the taxpayer's provisional income over the applicable present-law threshold amounts. A taxpayer's provisional income for purposes of this computation (modified adjusted gross income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit) is calculated in the same manner as under present law.

Proceeds from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income will be retained in the General Fund.

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment creates a second tier of Social Security benefit inclusion in gross income. Present-law inclusion rules apply to taxpayers with provisional income below $32,000 for unmarried taxpayers or $40,000 for married taxpayers filing joint returns.

For taxpayers with provisional incomes above these higher thresholds, gross income includes the lesser of:

(1) 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or

(2) the sum of:

(a) the smaller of (i) the amount included under present law; or (ii) $3,500 (for unmarried taxpayers) or $4,000 (for married taxpayers filing joint returns),[48]

plus,

(b) 85 percent of the excess of the taxpayer's provisional income over the applicable second-tier threshold amounts.

For married taxpayers filing separate returns, gross income includes the lesser of 85 percent of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit or 85 percent of the taxpayer's provisional income.

For purposes of this computation, a taxpayer's provisional income (modified adjusted gross income plus one-half of the taxpayer's Social Security or Railroad Retirement Tier 1 benefit) is calculated in the same manner as under present law.

Revenues from the income taxation of Social Security and Railroad Retirement Tier 1 benefits attributable to the increased portion of benefits included in gross income will be transferred to the Medicare Hospital Insurance (HI) Trust Fund.

Effective date.—The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the Senate amendment, except that present law applies to taxpayers with provisional income below $34,000 for unmarried individuals and $44,000 for married individuals filing joint returns. The conference agreement does not change the present-law election permitting a taxpayer to treat a lump-sum payment of benefits as received in the year to which benefits are attributable. Taxpayers electing this treatment compute the amount of benefits includible in gross income using the inclusion formula that applies to the taxable year to which the benefits are attributable. For example, if in 1994, a taxpayer receives a lump-sum payment of benefits that includes benefits attributable to 1992 and 1993, the amount of benefits attributable to 1992 and 1993 that is includible in gross income is determined using the present-law inclusion formula. The amount of benefits attributable to 1994 that is includible in gross income is computed using the inclusion formula in the conference agreement.

Effective date.—The conference agreement follows the House bill and the Senate amendment.

B. Business Provisions

1. Increase corporate tax rate (sec. 14221 of the House bill, sec. 8221 of the Senate amendment, sec. 13221 of the conference agreement, and sec. 11 of the Code)

Present Law

The highest marginal tax rate imposed on the taxable income of corporations is 34 percent. The maximum rate of tax on corporate net capital gain is also 34 percent. This rate applies to income in excess of $75,000. A 15-percent rate applies to taxable income not exceeding $50,000 and a 25-percent rate applies to taxable income over $50,000 and not exceeding $75,000. A corporation with taxable income in excess of $100,000 is required to increase its tax liability by the lesser of 5 percent of the excess or $11,750. This increase in tax phases out the benefits of the 15- and 25-percent rates for corporations with taxable income between $100,000 and $335,000; a corporation with taxable income in excess of $335,000, in effect, pays tax at a flat 34-percent rate.

House Bill

The bill provides a new 35-percent marginal tax rate on corporate taxable income in excess of $10 million. The maximum rate of tax on corporate net capital gains is also 35 percent.

A corporation with taxable income in excess of $15 million is required to increase its tax liability by the lesser of 3 percent of the excess or $100,000. This increase in tax recaptures the benefits of the 34-percent rate in a manner analogous to the recapture of the benefits of the 15- and 25-percent rates.

Effective date.—The 35-percent marginal rate is effective for taxable years beginning on or after January 1, 1993. Under existing law provisions regarding changes in tax rates during a taxpayer's taxable year (section 15 of the Code), a fiscal year corporation is required to use a "blended rate" for its fiscal year that includes January 1, 1993. Accordingly, the corporation's tax liability will be a weighted average of the tax resulting from applying the existing corporate rate schedule and the tax resulting from applying the changes described above, weighted by the number of days before and after January 1, 1993. Penalties for the underpayment of estimated taxes, however, are waived for underpayments of 1993 taxes attributable to the changes in tax rates.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

Some taxpayers may be subject to the increased corporate tax rates with respect to a taxable year that has already ended. Those taxpayers may have filed an application for an extension of the time for filing their corporate income tax returns pursuant to section 6081. For such a filing to be valid, the taxpayer must remit "the amount of the properly estimated unpaid tax liability" (Treas. Reg. sec. 1.6081-3). The conferees intend that the IRS apply this provision by computing that amount by reference to the law in effect on the date the application for the extension was filed.

2. Disallowance of deduction for lobbying expenses (sec. 14222 of the House bill, sec. 8222 of the Senate amendment, sec. 13222 of the conference agreement, and secs. 162, 170, and 6033 of the Code)

Present Law

Trade or business expenses

Taxpayers engaged in a trade or business generally are allowed a deduction for all ordinary and necessary expenses paid or incurred during the taxable year in carrying on such trade or business (sec. 162). Present-law section 162(e)(1) specifically provides a deduction for certain so-called "direct lobbying" expenses (including travel expenses, costs of preparing testimony, and a portion of dues) paid in carrying on a trade or business if such expenses are (1) in direct connection with appearances before, submissions of

[48] These figures equal 50 percent of the difference between the present law thresholds for 50-percent Social Security benefit inclusion and the proposed second-tier thresholds for 85-percent Social Security benefit inclusion.

statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or (2) in direct connection with communication of information between the taxpayer and an organization of which the taxpayer is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization.[49]

Section 162(e)(2) provides, however, that no deduction is allowed for any amount paid (whether by contribution, gift, or otherwise) for participation or intervention in any political campaign (i.e., "political campaign" expenses) or in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections or referendums (i.e., "grass roots lobbying").

Treasury regulations further provide that if expenditures for lobbying purposes do not meet the requirements of section 162(e)(1), such expenditures are not deductible as ordinary and necessary business expenses (Treas. Reg. sec. 1.162-20(c)(1)). Thus, for example, lobbying of foreign government officials is not a deductible business expense under section 162. Under the regulations, however, expenditures for institutional or "good will" advertising which keeps the taxpayer's name before the public are generally deductible, provided such expenditures are related to patronage the taxpayer might reasonably expect in the future (Treas. Reg. sec. 1.162-20(a)(2)).

Rules governing lobbying by tax-exempt organizations

Non-charitable tax-exempt organizations.—Although most tax-exempt organizations other than charitable organizations (e.g., social welfare organizations and trade associations) generally may engage in unlimited lobbying efforts, some restrictions do exist. If political campaign or grass roots lobbying activities constitute a substantial part of the activities of an organization such as a labor union or a trade association, the portion of dues or other payments to the organization attributable to such activities cannot be deducted by the payor under section 162.

Charitable organizations.—A charitable organization otherwise described in section 501(c)(3) is not entitled to tax-exempt status under that section if a substantial part of its activities consists of "carrying on propaganda, or otherwise attempting, to influence legislation."[50] There is no statutory definition under section 501(c)(3) of "propaganda, or otherwise attempting, to influence legislation," but Treasury regulations provide that an organization will be regarded as "attempting to influence legislation" if it (1) contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or (2) advocates the adoption or rejection of legislation (meaning action by Congress or another legislative body) (Treas. Reg. sec. 1.501(c)(3)-1(c)(3)). Conducting nonpartisan research (while not advocating legislative action) is not considered lobbying for purposes of the section 501(c)(3) restriction, nor is seeking to protect the organization's own existence or responding to a governmental request for testimony.[51]

An organization will not fail to meet the requirements of section 501(c)(3) merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation (Treas. Reg. sec. 1.501(c)(3)-1(c)(3)). Similarly, a public charity making the section 501(h) election can incur lobbying expenditures in an amount determined in accordance with a numeric formula set forth in section 501(h) without jeopardizing its exempt status. However, if a public charity's lobbying expenditures (for either all lobbying or grass roots lobbying in particular) made during a taxable year exceed the amount allowable under the formula, an excise tax equal to 25 percent of the excess lobbying expenditures is imposed on the organization (sec. 4911(a)). If the sum of the electing organization's lobbying expenditures during a four-year period exceeds 150 percent of the sum of the allowable amounts during that period, the organization loses its tax-exempt status under section 501(c)(3) (Treas. Reg. sec. 1.501(h)-3(b)).

Section 501(h) defines "lobbying expenditures" as "expenditures for the purpose of influencing legislation (as defined in section 4911(d))." Section 4911(d) defines the term "influencing legislation" as—

"(A) any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof, and

(B) any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation."

However, section 4911(d)(2) specifically *excludes* from the definition of "influencing legislation" the following activities:

(A) making available the results of nonpartisan analysis, study, or research;[52]

(B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;[53]

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization;

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications which directly encourage members to contact a legislative body in an attempt to influence legislation, or which directly encourage members to urge persons other than members to attempt to affect the opinions of the general public or to contact a legislative body in an attempt to influence legislation; and

(E) any communication with a government official or employee, other than—

(i) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or

(ii) a communication the principal purpose of which is to influence legislation.

For purposes of section 4911, the term "legislation" is defined in section 4911(e)(2) to include action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Treasury regulations provide that "legislation" for purposes of section 4911(e)(2) includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies" (Treas. Reg. sec. 56.4911-2(d)(3)). Treasury regulations further provide that "administrative bodies" include school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911-2(d)(4)).

Private foundations.—Private foundations (as distinguished from public charities) generally are subject to penalty excise taxes under section 4945 if they engage in any direct or grass roots lobbying. For purposes of

[49] Prior to 1963, Treasury Department regulations (originally dating back to 1915) provided that *all* expenditures for lobbying purposes, for the promotion or defeat of legislation, for political campaign purposes, or for propaganda (including advertising) related to any such purposes, were not deductible as "ordinary and necessary" business expenses. See *Cammarano v. United States*, 358 U.S. 498 (1959)(upholding validity of regulation denying deduction for lobbying expenses, even if expenses related to proposed legislation that affected the very survival of the taxpayer's business). In response to the *Cammarano* decision, Congress enacted, as part of the Revenue Act of 1962, the statutory rule contained in section 162(e)(1) specifically allowing a deduction for certain "direct lobbying" expenses.

[50] See *Regan v. Taxation With Representation*, 461 U.S. 540 (1983)(upholding constitutionality of section 501(c)(3) lobbying restriction on grounds that legislature is not required to subsidize lobbying through a tax exemption or deduction).

[51] See Rev. Rul. 70-79, 1970-1 C.B. 127; Rev. Rul. 70-449, 1970-2 C.B. 111; *Slee v. Commr*, 42 F.2d 184 (2d Cir. 1930).

[52] Under the section 4911 regulations, "nonpartisan analysis, study, or research" means an independent and objective exposition of a particular subject matter, including any activity that is "educational" within the meaning of Treasury Regulation section 1.501(c)(3)-1(d)(3). Thus, "nonpartisan analysis, study, or research" may advocate a particular position or viewpoint so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion does not qualify as "nonpartisan analysis, study, or research." Nonpartisan analysis may be made available to the general public, a segment thereof, or governmental bodies. Communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue (Treas. Reg. sec. 56.4911-2(c)(1)).

Furthermore, a Treasury regulation under section 4911 provides that "[e]xaminations and discussions of broad social, economic, and similar problems are neither direct lobbying communications . . . nor grass roots lobbying communications . . . even if the problems are of the type with which government would be expected to deal ultimately. Thus, . . . lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation" (Treas. Reg. sec. 56.4911-2(c)(2)).

[53] Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision rather than an individual member thereof; and the response to such request must be made available to every member of the requesting body, committee, or subdivision. Treasury regulations further provide that because such assistance or advice may be given only at the express request of a governmental body, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the governmental body or are directly related to the materials so requested (Treas. Reg. secs. 56.4911-2(c)(3) and 53.4945-2(d)(2)).;

section 4945, lobbying is defined in a manner similar to the definition under section 4911(d). Specifically, the section 4945 penalty excise taxes do not apply to nonpartisan analysis, the provision of technical advice to a governmental body in response to a written request or lobbying before a legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status or the deduction of contributions to such foundation (sec. 4945(e)).

House Bill

General rule

The House bill disallows a deduction for amounts paid or incurred in connection with any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

The present-law disallowance of business deductions for expenses of grass roots lobbying and participation in political campaigns remains in effect under the House bill, as does the present-law rule disallowing a deduction for lobbying of foreign governments.

Scope of general rule

The general disallowance rule contained in the House bill applies to attempts to influence legislation (as defined in present-law section 4911(e)(2)) through communications with the legislative branch, as well as the executive branch, of the Federal government, or any State or local government.[54]

Exception

Taxpayers are permitted to deduct expenditures for providing technical advice or assistance to a governmental body or to a committee or other subdivision thereof in response to a specific written request by such governmental entity.

Association dues

The House bill provides a flow-through rule to disallow a deduction for a portion of membership dues (or similar payments) paid to a tax-exempt organization which engages in political or lobbying activities. Trade associations and similar organizations are required to report annually to their members (and the IRS) the portion of membership dues (or similar payments) that is attributable to lobbying activities of the organization (unless this reporting requirement is waived by Treasury regulation).

Charities

Contributions to charities are not affected by the House bill. However, present-law rules which prevent charities from engaging in a substantial amount of lobbying remain in effect.

Penalties

Organizations will be subject to penalties for failing to meet the reporting requirements of the provision. In addition to the normal reporting penalties (generally, $50 for each failure to report to the IRS or organization member), a special penalty applies if an organization materially underreports its lobbying expenses to its members (meaning the aggregate amount of nondeductible dues reported to members is less than 75 percent of the correct amount).

Effective date

The House bill is effective for amounts paid or incurred after December 31, 1993.

Senate Amendment

General rule

The Senate amendment disallows the costs of any "lobbying contact," meaning (1) in the case of a "lobbyist" (as defined below), any oral or written communication with a legislative branch official or employee or certain high-ranking Federal executive branch officials,[55] and (2) in the case of any other person (i.e., a non-lobbyist), any oral or written communication with a legislative branch official or employee in an attempt to influence the formulation of legislation or with certain high-ranking Federal executive branch officials in an attempt to influence legislation or the formulation or administration of Federal rules, regulations, programs or policies (with certain exceptions described below).

Under the Senate amendment, the present-law rules disallowing business deductions for expenses of grass roots lobbying, participation in political campaigns, and lobbying of foreign governments remain in effect.

Scope of general rule

The general disallowance rule contained in the Senate amendment applies to attempts to influence legislation (as defined in present-law section 4911(e)(2)) through communications with the legislative branch, as well as the executive branch, of the Federal government, or any State or local government. In addition, the Senate amendment disallows expenses incurred in connection with lobbying with respect to certain Federal executive branch actions, and the costs of certain communications by "lobbyists" are disallowed under a *per se* rule.

Activities in support of lobbying

The Senate amendment disallows the costs of activities in support of a "lobbying contact" (as defined above), including (1) any preparation or planning activity relating to a lobbying contact (including, in the case of a lobbyist, the formulation, review, and management of the lobbying contacts on behalf of a client), (2) any research or other background work relating to a lobbying contact, and (3) any activity coordinating the lobbying activity of two or more persons.

Exceptions

Exception for legislative lobbying.—The Senate amendment does not apply to the costs of contacting a legislative branch official or employee if such contact is required by subpoena, civil investigative demand, or otherwise compelled by statute or other action of Congress or a State or local legislative body.

Exceptions for Federal executive branch lobbying.—Exceptions to the general disallowance rule for lobbying of certain high-ranking Federal executive branch officials are provided for contacts that are (1) compelled by statute, regulation, or other action of a Federal agency, (2) communications with respect to the administration or execution of Federal programs or policies (including the award of a Federal contract, grant, or license) if such communications are made to executive branch officials in the agency responsible for taking such action who serve in the Senior Executive Service, or who are members of the uniformed services whose pay grade is lower than O-9 under 37 U.S.C. section 201, (3) written comments filed in a public docket or other communications that are made on the record in a public proceeding, (4) made in response to a notice in the Federal Register, Commerce Business Daily, or similar publication soliciting communications from the public and directed to the agency official specifically designated in the notice to receive such communications, (5) made to agency officials with regard to judicial proceedings, criminal or civil law enforcement inquiries, investigations or proceedings, or filings required by statute or regulation, (6) made in compliance with written agency procedures regarding an adjudication conducted by the agency under 5 U.S.C. section 554 (or substantially similar provisions), or (7) made on behalf of an individual with regard to such individual's benefits, employment, other personal matters involving only that individual, or disclosures by that individual pursuant to applicable whistleblower statutes.

Definition of "lobbyist"

As described above, the Senate amendment provides a presumption that communications made by "lobbyists" to certain government officials are nondeductible lobbying. In contrast, communications made by other persons (i.e., non-lobbyists) to certain government officials are nondeductible lobbying only if such communications are made *in an attempt to influence* legislation or certain Federal executive branch actions. For purposes of the Senate amendment, the term "lobbyist" has a meaning similar to the definition under the Lobbying Disclosure Act of 1993 (S. 349), as passed by the Senate on May 6, 1993, and includes any person who is employed or retained by another for financial or other compensation to perform services that include any attempt to influence the formulation of legislation or the formulation or administration of Federal rules, regulations, programs, or policies (with the exceptions described above). However, the term "lobbyist" does not include a person whose lobbying activities are only incidental to, and are not a significant part of, the services provided by such person to the client. The

[54] For purposes of the provision, the term "legislation" has the same meaning as under section 4911(e)(2), which, in turn, defines "legislation" as including "action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."

Treasury regulations provide that "legislation" for purposes of section 4911(e)(2) includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies" (Treas. Reg. sec. 56.4911-2(d)(3)). Treasury regulations further provide that "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911-2(d)(4)). Thus, communications with, and attempts to influence, members of a local zoning board (acting in their capacity as members of that board, regardless of whether or not such members are elected to their position) will not be affected by the provision.

[55] The Senate amendment applies to the costs of communications with the following Federal executive branch officials: (1) the President; (2) the Vice President; (3) any officer or employee of the Executive Office of the President other than a clerical or secretarial employee; (4) any officer or employee serving in an Executive level I, II, III, IV, or V position, as designated in statute or Executive order (such as Secretaries, Deputy Secretaries and Assistant Secretaries, Directors, and Commissioners); (5) any officer or employee serving in a Senior Executive Service position as defined under 5 U.S.C. section 3232(a)(2); (6) any member of the uniformed services whose pay grade is at or in excess of O-7 under 37 U.S.C. section 201; and (7) any officer or employee serving in a position of confidential or policy-determining character under Schedule C of the excepted service pursuant to 5 U.S.C. section 7511. Under the Lobbying Disclosure Act of 1993 (S. 349), as passed by the Senate on May 6, 1993, such Federal executive branch officials are referred to as "covered executive branch officials," communications to whom are subject to the Act's reporting requirements.

determination of whether an individual is a "lobbyist" is made on a client-by-client basis.

Association dues

The Senate amendment provides a flow-through rule to disallow a deduction for a portion of membership dues (or other similar amounts) paid by a person to a tax-exempt organization (other than a charity eligible to receive tax-deductible contributions) if such dues are allocable to lobbying activities conducted by the organization. Trade associations and similar organizations are required to report annually to their members (and the IRS) the portion of membership dues (or similar payments) that is attributable to lobbying activities of the organization (unless this reporting requirement is waived by Treasury regulation).

However, the Senate amendment also provides a *de minimis* exception, so that flow-through reporting to members or the IRS is not required if the lobbying expenditures of the organization for the calendar year are less than $2,000. For purposes of applying the $2,000 *de minimis* exception, an organization is required to take into account direct expenses incurred for lobbying activities (i.e., labor and materials costs and fees paid to third parties for lobbying), but need not take into account indirect expenses (i.e., a portion of general overhead) otherwise allocable to lobbying.

Charities

The Senate amendment provides for a flow-through of the lobbying disallowance rule in the case of contributions, dues, or similar amounts paid to a charity (other than a church) eligible to receive tax-deductible contributions under section 170 to the extent that the contribution (or other amount) is attributable to amounts incurred for lobbying activities by the charity, provided that (1) the lobbying activities of the charity are of direct interest to the payor's (or a related person's) trade or business and (2) the payor makes total payments to the charity during the year exceeding $2,000. In such cases, a portion of a contribution that otherwise may be deductible under section 170 is disallowed.

Penalties

Under the Senate amendment, penalties may be imposed under present-law section 6721 on organizations for failing to make the required flow-through information reporting.

Meals, entertainment or travel

The Senate amendment provides a *per se* rule disallowing any amount paid or incurred by a taxpayer in connection with providing meals, entertainment, or travel to legislative officials or employees or certain high-ranking Federal executive branch officials (or to an individual accompanying such official or employee).

Effective date

The Senate amendment is effective for amounts paid or incurred after December 31, 1993.

Conference Agreement

The conference agreement includes a lobbying expense disallowance rule that contains elements from both the House bill and the Senate amendment.

General rule

Under the conference agreement, no deduction is allowed under section 162 for any amount paid or incurred in connection with (1) influencing Federal or State legislation or (2) any communication with certain covered Federal executive branch officials in an attempt to influence the official actions or positions of such officials.

The present-law rules disallowing business deductions for expenses of grass roots lobbying and participation in political campaigns will remain in effect. Similarly, the conferees intend that the present-law rule disallowing a deduction for lobbying of foreign governments will remain in effect.

Scope of general rule

The conference agreement applies to attempts to influence Federal or State legislation (as defined in present-law section 4911(e)(2)) through communication with a member or employee of Congress or a State legislative body, or with any other government official or employee who may participate in the formulation of legislation.[56] In addition, the conference agreement disallows a deduction for costs incurred in connection with any direct communication with a "covered executive branch official" in an attempt to influence the official actions or positions of such official.[57] For this purpose, the term "covered executive branch official" means the following Federal officials: (1) the President; (2) the Vice President; (3) an individual serving in a position in level I of the Executive Schedule (e.g., a Cabinet member)[58] or any other individual designated by the President as having Cabinet-level status; (4) any immediate deputy of an individual listed in (3) above; (5) the two most senior-level officers of each agency within the Executive Office of the President;[59] and (6) any other officer or employee of the White House Office of the Executive Office of the President.

The conference agreement does not apply to attempts to influence legislative actions of a "local council or similar governing body."[60] The conferees intend that any legislative body of a political subdivision of a State (e.g., a county or city council) be considered to be a "local council or similar governing body." Thus, attempts to influence the actions of such local bodies are not affected by the conference agreement and remain subject to present-law rules.[61]

De minimis rule

The conference agreement provides a *de minimis* rule that exempts certain in-house lobbying expenditures from the general disallowance rule if a taxpayer's total amount of such expenditures for a taxable year does not exceed $2,000 (computed without taking into account general overhead costs otherwise allocable to lobbying). For purposes of this rule, "in-house expenditures" means expenditures for lobbying (e.g., labor and materials costs) other than (1) payments to a person engaged in the trade or business of lobbying to conduct lobbying for the taxpayer (e.g., a payment to hire a professional lobbyist), and (2) dues or other similar payments that are allocable to lobbying (e.g., association dues).

Thus, so long as a taxpayer's in-house lobbying expenditures do not exceed $2,000, such expenditures (including allocable overhead) may be disregarded and are not subject to the disallowance rule. However, payments made by a taxpayer to third-party lobbyists and dues payments allocable to lobbying are subject to the disallowance rules of the conference agreement, regardless of whether or not the taxpayer's in-house expenses are exempted under the *de minimis* rule.[62] In addition, the *de minimis* rule contained in the conference agreement does not apply to expenses incurred for political activity, grass-roots lobbying, or foreign lobbying, which continue to be disallowed in their entirety under present-law rules.

Activities in support of lobbying

The conference agreement provides that any amount paid or incurred for research for, or preparation, planning, or coordination of, any lobbying activity subject to the general disallowance rule described above will be treated as paid or incurred in connection with such lobbying activity.

The conferees intend that the Secretary of the Treasury will provide guidance for distinguishing costs incurred in connection with (1) attempts to influence legislation from (2) mere monitoring of legislative activities where there is no attempt to influence the formulation or enactment of legislation. In cases where a taxpayer (or tax-exempt organization) monitors legislation and subsequently attempts to influence the formulation or enactment of the same (or similar) legislation, the conferees intend the costs of the monitoring activities generally will be treated as incurred "in connection with" nondeductible lobbying activity.[63]

In determining the expenses incurred in connection with any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official, only the costs attributable to the direct communication itself are nondeductible under the conference agreement. Thus, for example, if a taxpayer works for an extended period to influence the actions of non-covered executive branch officials and, at the end of the project, a covered executive branch official approves the final

---

[56] Thus, if a taxpayer communicates with any executive branch official or employee (regardless of rank) in an attempt to influence the official's or employee's participation in the Federal or State legislative process, then costs incurred in connection with the communication are nondeductible. Under present-law section 4911 regulations, "legislation" does not include actions of Federal or State administrative or special purpose bodies, whether elective or appointive (Treas. Reg. sec. 56.4911-2(d)(4)).

[57] The conferees intend that direct communications include all written and oral communications with covered executive branch officials. A communication will be considered to be a *direct* communication with a covered executive branch official if such official is the intended primary recipient of the communication, regardless of whether the communication is formally addressed to the official.

[58] See 5 U.S. Code sec. 5312.

[59] In the case of councils or other agencies within the Executive Office of the President with respect to which the President, Vice President or one or more Cabinet members serve as ranking members, the covered officers include the two most senior administrative officers (other than the ranking members) of the council or agency.

[60] The conference agreement provides that, for purposes of the section 162 lobbying rules, a tribal government of an Indian reservation will be treated as a "local council or similar governing body." Thus, lobbying with respect to such tribal governments continues to be governed by present-law rules.

[61] Under present law, at the local government level, lobbying expenses are deductible only if incurred in direct connection with communications to government officials (or an organization of which the taxpayer is a member) with respect to local legislation of direct interest to the taxpayer (and to the organization). Expenditures for grass roots lobbying with respect to local legislation or for participation in local elections are not deductible.

[62] The conference agreement includes a *de minimis* rule primarily to provide administrative convenience to taxpayers. Therefore, if, during a taxable year, a taxpayer incurs in-house expenditures in excess of $2,000, then the full amount of its lobbying expenses must be determined and such amount (including the first $2,000 of in-house expenditures) is subject to the disallowance rule.

[63] In addition, the conferees intend that the Secretary of the Treasury will permit taxpayers to adopt reasonable methods for allocating expenses to lobbying (and related research and other background) activities in order to reduce taxpayer recordkeeping responsibilities.

decision through a separate communication with the taxpayer (e.g., a briefing or review of the matter), only the direct costs of the communication with the covered official would be disallowed (and not the costs of the work product from the earlier period). In contrast, if a taxpayer conducts research and analysis with a view toward directly communicating with a covered executive branch official, the costs of such research and analysis would be disallowed as attributable to the direct communication with the covered official.

Exceptions

The conference agreement does not include any of the statutory exceptions to the general disallowance rule that are contained in the House bill or Senate amendment. However, the conferees wish to clarify that (consistent with pre-1962 interpretations) any communication compelled by subpoena, or otherwise compelled by Federal or State law, does not constitute an "attempt to influence" legislation or an official's actions and, therefore, is not subject to the general disallowance rule.

Association dues

The conference agreement provides a flow-through rule to disallow a deduction for a portion of the membership dues (or similar payments[16]) paid to a tax-exempt organization (other than a charitable organization) which engages in political or lobbying activities. Trade associations and similar organizations generally are required under the conference agreement to provide annual information disclosure (but not Form 1099 information reporting) to members estimating the portion of their dues allocable to lobbying. However, such disclosure is not required for an organization that (1) incurs only *de minimis* amounts of in-house lobbying expenditures; (2) elects to pay a proxy tax on its lobbying expenditures incurred during the taxable year; or (3) establishes pursuant to Treasury regulation (or other procedure) that substantially all of its dues monies are paid by members not entitled to deduct such dues in computing their taxable income.

De minimis rule

Under the conference agreement, in-house lobbying expenses of $2,000 or less incurred by a tax-exempt organization during a taxable year are exempt from the general disallowance rule. This *de minimis* rule for tax-exempt organizations operates in the same manner as the *de minimis* rule for taxable businesses (described above). That is, in determining whether the $2,000 *de minimis* exception applies, an organization is required to take into account any direct in-house expenses incurred for lobbying activities (i.e., labor and materials costs), but may disregard indirect expenses (i.e., a portion of general overhead) otherwise allocable to lobbying. Amounts paid to outside lobbyists (or as dues to another organization that lobbies) do not qualify for the *de minimis* exception.

Information disclosure

Tax-exempt organizations that engage in more than a *de minimis* amount of in-house lobbying (or make payments to third-party lobbyists or other associations that lobby) generally are required to meet certain disclosure requirements. First, the organization must disclose on its annual tax return both the total amount of its lobbying and political expenditures (as defined by the provisions of the conference agreement), and the total amount of dues (or similar payments) allocable to such expenditures. For this purpose, an organization's lobbying expenditures for the taxable year are allocated to the dues received during the taxable year. Any excess amount of lobbying expenditures is carried forward and allocated to dues received in the following taxable year.

An organization also is required to provide notice to each person paying dues (or similar payments) at the time of assessment or payment of such dues (or similar payments) of the portion of dues that the organization reasonably estimates will be allocable to the organization's lobbying expenditures during the year and that is, therefore, not deductible by the member. This estimate must be provided at the time of assessment or payment of such dues and be reasonably calculated to provide organization members with adequate notice of the nondeductible amount.[17] If an organization's actual lobbying and political expenditures for a taxable year exceed the estimated allocable amount of such expenditures (either because of higher-than-anticipated lobbying expenses or lower-than-projected dues receipts), then the organization is required to pay a proxy tax on the excess amount or may seek permission to adjust the following year's notice of estimated expenditures, as described below.

Proxy tax

As an alternative to the disclosure requirements described above, an organization may elect to pay a proxy tax on the total amount of its lobbying expenditures (up to the amount of dues and other similar payments received by the organization) during the taxable year. If, for the current taxable year, an organization does not provide its members with reasonable notice of anticipated lobbying expenditures allocable to dues, then the organization is subject to the proxy tax on its aggregate lobbying expenditures for such year. Similarly, as stated above, an organization is required to pay a proxy tax on the amount by which its actual lobbying and political expenditures for a taxable year exceed the estimated allocable amount of such expenditures.[18]

If the amount of lobbying expenditures exceeds the amount of dues and other similar payments for the taxable year, the proxy tax is imposed on an amount equal to the dues and similar payments; any excess lobbying expenditures are carried forward to the next taxable year.[19] The proxy tax rate is equal to the highest corporate rate in effect for the taxable year. If an organization elects to pay the proxy tax rather than to provide any information disclosure to members, no portion of any dues or other payments made by members of the organization will be deemed non-deductible as the result of the organization's lobbying activities.

Waiver

If an organization establishes to the satisfaction of the Secretary of the Treasury (pursuant to regulation or other procedure) that substantially all of the dues monies it receives are paid by members who (even if lobbying were not involved) are not entitled to deduct their dues payments, then the organization is not subject to the disclosure requirements or the proxy tax. The conferees intend that the waiver be available to any organization that receives 90 percent or more of its total dues (and similar payments) from persons not entitled to deduct such payments.[20] The conference agreement contemplates that waivers will be provided pursuant to Treasury Department regulation or other Treasury Department procedure.

Penalties

Any organization that underreports the total amount of its lobbying expenses in any taxable year is required to pay the proxy tax (at the highest corporate tax rate) on any undisclosed or underreported amount. This tax may be imposed regardless of whether the organization has elected disclosure of lobbying expenses to its members or payment of the proxy tax for the taxable year. In such cases, the conferees intend that the proxy tax be imposed in addition to interest charges and any other penalties which may apply.[21]

Charities

Under the conference agreement, charitable organizations described in section 501(c)(3) are not subject to the disclosure requirements (or proxy tax option) imposed on other tax-exempt organizations. However, the conference agreement does contain an anti-avoidance rule designed to prevent donors from using charities as a conduit to conduct lobbying activities, the costs of which would be nondeductible if conducted directly by the donor.

Therefore, the conference agreement provides that no deduction will be allowed under sections 170 or 162 for amounts contributed to a charity that conducts lobbying activities, if (1) the charity's lobbying activities regard matters of direct financial interest to the donor's trade or business and (2) a principal purpose of the contribution is to avoid the general disallowance rule that would apply if the contributor directly had conducted such lobbying activities.[22]

---

[16] Payments that are similar to dues include voluntary payments made by members and special assessments imposed by the recipient organization to conduct lobbying activities. This is comparable to the treatment of special assessments for grass roots lobbying or campaign expenses under present-law Treasury Regulation section 1.162-20(c)(3).

[17] The conferees intend that such notice be provided in a conspicuous and easily recognizable format. See section 6113 and the regulations issued thereunder for guidance regarding the appropriate format of the disclosure statement.

[18] In this case, the conference agreement grants the Secretary of the Treasury authority to waive the proxy tax otherwise imposed if an organization agrees to adjust its notice of estimated lobbying expenditures provided to members in the following year. Further, the conferees intend that the Secretary will prescribe regulations governing the treatment of organizations that incur actual lobbying expenditures below the estimated amount.

[19] For example, if during a taxable year, an organization receives $100,000 in dues, spends $150,000 on lobbying and elects to pay the proxy tax (rather than provide flow-through disclosure to members), the proxy tax for that year would be imposed on $100,000 of lobbying expenditures. The remaining $50,000 of lobbying expenditures would be carried forward to the subsequent year, during which the organization could comply with the disclosure requirements outlined above or elect to pay the proxy tax with respect to such amount, as well as any additional lobbying expenditures incurred during that subsequent year.

[20] Examples of such organizations include organizations that receive 90 percent or more of their dues monies from members that are tax-exempt charities or who are individuals not entitled to deduct the dues payments in determining taxable income because the payments are not ordinary and necessary business expenses. Another example would be a union that establishes to the satisfaction of the Secretary that 90 percent or more of its dues monies are paid by individuals who do not deduct such dues because of the operation of the two-percent floor on miscellaneous itemized deductions (sec. 67).

[21] See, e.g., section 6652(c)(1)(A)(ii).

[22] The conference agreement does not alter present-law rules under sections 501(c)(3) and 4911 regarding the impact of lobbying on a charity's tax-exempt status. Thus, even if a contributor is subject to the anti-avoidance rule in a particular case because its payment to a charity is made with a principal purpose of funding "lobbying" as defined under

The conferees intend that the determination regarding a principal purpose of the contribution for purposes of this rule be based on the facts and circumstances surrounding the contribution, including the existence of any formal or informal instructions relating to the charity's use of the contribution for lobbying efforts (including nonpartisan analysis), the temporal nexus between the making of the contribution and conduct of the lobbying activities, and any historical pattern of contributions by the donor to the charity.

Anti-cascading rule

The conference agreement contains a special provision to prevent a "cascading" of the lobbying disallowance rule. The purpose of the provision is to ensure that, when multiple parties are involved, the general lobbying disallowance rule results in the denial of a deduction at only one level. Thus, the conference agreement provides that, in the case of a taxpayer engaged in the trade or business of lobbying activities or a taxpayer who is an employee and receives employer reimbursements for lobbying expenses, the disallowance rule does not apply to expenditures of the taxpayer in conducting such activities directly on behalf of a client or employer. Instead, the lobbying payments made by the client (or employer) to the lobbyist (or employee) are nondeductible under the general disallowance rule.

The anti-cascading rule applies where there is a direct, one-on-one relationship between the taxpayer and the entity conducting the lobbying activity, such as a client or employee relationship. Thus, the conferees intend that the anti-cascading rule will *not* apply to dues or other payments to taxable membership organizations which act to further the interests of *all* their members rather than the interests of any one particular member. Such organizations are themselves subject to the general disallowance rule based on the amount of their lobbying expenditures, and dues payments to such organizations are not affected by the conference agreement.

Effective date

The conference agreement is effective for amounts paid or incurred after December 31, 1993.

3. Mark-to-market accounting method for dealers in securities (sec. 14223 of the House bill, sec. 8223 of the Senate amendment, sec. 13223 of the conference agreement, and new sec. 475 of the Code)

Present Law

A taxpayer that is a dealer in securities is required for Federal income tax purposes to maintain an inventory of securities held for sale to customers. A dealer in securities is allowed for Federal income tax purposes to determine (or value) the inventory of securities held for sale based on: (1) the cost of the securities; (2) the lower of the cost or market (LCM) value of the securities; or (3) the market value of the securities.

If the inventory of securities is determined based on cost, unrealized gains and losses with respect to the securities are not taken into account for Federal income tax purposes. If the inventory of securities is determined based on the LCM value, unrealized losses (but not unrealized gains) with respect to the securities are taken into account for Federal income tax purposes. If the inventory of securities is determined based on market value, both unrealized gains and losses with respect to the securities are taken into account for Federal income tax purposes.

House Bill

In general

The House bill provides two general rules (the "mark-to-market rules") that apply to certain securities that are held by a dealer in securities. First, any such security that is inventory in the hands of the dealer is required to be included in inventory at its fair market value. Second, any such security that is not inventory in the hands of the dealer and that is held as of the close of any taxable year is treated as sold by the dealer for its fair market value on the last business day of the taxable year and any gain or loss is required to be taken into account by the dealer in determining gross income for that taxable year.

If gain or loss is taken into account with respect to a security by reason of the second mark-to-market rule, then the amount of gain or loss subsequently realized as a result of a sale, exchange, or other disposition of the security, or as a result of the application of the mark-to-market rules, is to be appropriately adjusted to reflect such gain or loss.

Character of gain or loss

Any gain or loss taken into account under the provision (or any gain or loss recognized with respect to a security that would be subject to the provision if held at the end of the year) generally is treated as ordinary gain or loss. This character rule does not apply to any gain or loss allocable to any period during which the security (1) is a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule under the provision, or (2) is held by the taxpayer other than in its capacity as a dealer in securities. In addition, the character rule does not apply to any security that is improperly identified by the taxpayer.

No inference is intended as to the character of any gain or loss recognized in taxable years prior to the enactment of this provision or any gain or loss recognized with respect to any property to which this character rule does not apply.

Definitions

A dealer in securities is defined as any taxpayer that either (1) regularly purchases securities from, or sells securities to, customers in the ordinary course of a trade or business, or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.

A security is defined as: (1) any share of stock in a corporation; (2) any partnership or beneficial ownership interest in a widely-held or publicly-traded partnership or trust; (3) any note, bond, debenture, or other evidence of indebtedness; (4) any interest rate, currency, or equity notional principal contract (but not any other notional principal contract such as a notional principal contract that is based on the price of oil, wheat, or other commodity); and (5) any evidence of an interest in, or any derivative financial instrument in, any currency or in a security described in (1) through (4) above, including any option, forward contract, short position, or any similar financial instrument in such a security or currency.

In addition, a security is defined to include any position if: (1) the position is not a security described in the preceding paragraph; (2) the position is a hedge with respect to a security described in the preceding paragraph; and (3) before the close of the day on which the position was acquired or entered into (or such other time as the Treasury Department may specify in regulations), the position is clearly identified in the dealer's records as a hedge with respect to a security described in the preceding paragraph.

Exceptions to the mark-to-market rules

Under the House bill, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; (2) any evidence of indebtedness that is acquired (including originated) by a dealer in the ordinary course of its trade or business, but only if the evidence of indebtedness is not held for sale; (3) any security which is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to (a) a security held for investment, or (b) an evidence of indebtedness described in (2); and (4) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer.

In addition, the exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is clearly identified in the dealer's records as being described in one of the exceptions listed above.

Improper identification

The House bill provides that if (1) a dealer identifies a security as qualifying for an exception to the mark-to-market rules but the security does not qualify for that exception, or (2) a dealer fails to identify a position that is not a security as a hedge of a security but the position is a hedge of a security, then the mark-to-market rules are to apply to any such security or position, except that loss is to be recognized under the mark-to-market rules prior to the disposition of the security or position only to the extent of gain previously recognized under the mark-to-market rules (and not previously taken into account under this provision) with respect to the security or position.

Other rules

The House bill provides that the uniform cost capitalization rules of section 263A of the Code and the rules of section 263(g) of the Code that require the capitalization of certain interest and carrying charges in the case of straddles do not apply to any security to which the mark-to-market rules apply because the fair market value of a security should include the costs that the dealer would otherwise capitalize.

In addition, a security subject to the provision is not to be treated as sold and reacquired for purposes of section 1091 of the Code. Section 1092 of the Code will apply to any loss recognized under the mark-to-market rules (but will have no effect if all the offsetting positions that make up the straddle are subject to the mark-to-market rules).

Furthermore, the House bill provides that (1) the mark-to-market rules do not apply to any section 988 transaction (generally, a foreign currency transaction) that is part of a section 988 hedging transaction, and (2) the determination of whether a transaction is a section 988 transaction is to be made without regard to whether the transaction would otherwise be marked-to-market under the bill.

For purposes of the House bill, fair market value generally is determined by valuing each security on an individual security basis.

---

section 162, the charity's tax-exempt status will not be jeopardized if its activity qualifies as non-partisan analysis or does not constitute "substantial lobbying" under the present-law section 501(c)(3) or section 4911 standards.

Thus, if a taxpayer holds a large block of securities of the same type, the securities should be valued without taking any blockage discount into account. It is expected that the Treasury Department will authorize the use of appropriate valuation methods that will alleviate unnecessary compliance burdens of taxpayers under the bill.

Finally, the House bill authorizes the Treasury Department to promulgate such regulations as may be necessary or appropriate to carry out the provisions of the bill, including rules to prevent the use of year-end transfers, related persons, or other arrangements to avoid the provisions of the House bill.

Effective date

In general

The provision applies to taxable years ending on or after December 31, 1993. A taxpayer that is required to change its method of accounting to comply with the requirements of the provision is treated as having initiated the change in method of accounting and as having received the consent of the Treasury Department to make such change. The net amount of the section 481(a) adjustment is to be taken into account ratably over a 5-taxable year period beginning with the first taxable year ending on or after December 31, 1993.

Special rule for certain floor specialists and market makers

To the extent that a portion of the section 481(a) adjustment of a floor specialist or a market maker is attributable to the use of the LIFO inventory method of accounting for any qualified security, such portion of the adjustment generally is taken into account ratably over the shorter of (1) a 20-taxable year period or (2) the number of years the taxpayer (or any predecessor) had utilized the LIFO inventory method for that security, beginning with the first taxable year ending on or after December 31, 1993. In no event may the period be less than 5 years.

Senate Amendment

In general

Except as provided below, the Senate amendment generally is the same as the House bill.

Exceptions to the mark-to-market rules

Under the Senate amendment, the mark-to-market rules generally do not apply to: (1) any security that is held for investment; (2) any security that is a hedge with respect to a security that is not subject to the mark-to-market rules (i.e., any security that is a hedge with respect to a security held for investment); or (3) any security which is a hedge with respect to a position, right to income, or a liability that is not a security in the hands of the taxpayer. Under the Senate amendment, securities held for investment include debt instruments acquired (including originated) by the taxpayer in the ordinary course of a trade or business of the taxpayer and not held for sale.

Effective date

The effective date of the Senate amendment generally is the same as that of the House bill.

However, under the Senate amendment, to the extent that a portion of the section 481(a) adjustment of a floor specialist or a market maker is attributable to the use of the LIFO inventory method of accounting for any qualified security, such portion of the adjustment generally is taken into account ratably over a 15-taxable year period if the taxpayer (or any predecessor) had utilized the LIFO inventory method for that security for at least 5 years.

Conference Agreement

The conference agreement generally follows the House bill, with the following modifications:

Exceptions to the mark-to-market rules

The exceptions to the mark-to-market rules do not apply unless, before the close of the day on which the security (including any evidence of indebtedness) is acquired, originated, or entered into (or such other time as the Treasury Department may specify in regulations), the security is clearly identified in the dealer's records as being described in one of the exceptions listed above. The conferees anticipate that the Treasury regulations will permit a financial institution that is treated as a dealer under the provision and that originates evidences of indebtedness in the ordinary course of a trade or business to identify such evidences of indebtedness as held for investment based on the accounting practices of the institution, but in no event later than the date that is 30 days after the date that any such evidence of indebtedness is originated. Where appropriate, Treasury regulations may provide similar identification rules for similar debt that is acquired, rather than originated, by a financial institution. Further, it is anticipated that the Treasury regulations will permit a dealer that enters into commitments to acquire mortgages to identify such commitments as being held for investment if the dealer acquires the mortgages and holds the mortgages as investments. It is anticipated that this identification of commitments to acquire mortgages will occur within an appropriate period after the acquisition of the mortgages, but in no event later than the date that is 30 days after the date that the mortgages are acquired.

Further, the conferees anticipate that the identification rules with respect to hedges will be applied in such a manner as to minimize the imposition of additional accounting burdens on dealers in securities. For example, it is understood that certain taxpayers engage in risk management strategies known as "global hedging." Under global hedging, the positions of one business unit of the taxpayer may be counter-balanced by positions of another separate business unit; any remaining net risk of the enterprise may then be hedged by entering into positions with unrelated third parties. The conferees understand that taxpayers engaging in global hedging often use accounting systems that clearly identify and treat the transactions entered into between the separate business units as if such transactions were entered into with unrelated third parties. The conferees anticipate that, subject to Treasury regulations, such an accounting system generally will provide adequate evidence for purposes of determining whether, and to what extent, a hedge with a third party is (1) a hedge of a security that is subject to the mark-to-market rules or (2) a hedge of a position, right to income, or a liability that is not subject to a mark-to-market rule, for purposes of applying the mark-to-market rules and the special character rule to a hedge with a third party.

Regulatory authority

The provision grants authority to the Treasury Department to promulgate regulations as may be necessary or appropriate to carry out the provisions of the bill. Such authority includes the authority to promulgate such regulations to prevent the use of year-end transfers, related persons, or other arrangements to take unintended advantage of the provisions of the bill. For instance, assume that an individual who is not subject to the mark-to-market rules contributes a security that has a built-in loss in the hands of the individual to a partnership that is subject to the mark-to-market rules. Consistent with rules that govern the treatment of a security that ceases to qualify for one of the exceptions to the mark-to-market rules in the hands of a single taxpayer, the Treasury regulations may provide that any loss that arose prior to the contribution to the partnership may not be taken into account by the partnership under the mark-to-market rules and that the suspended loss may be taken into account when the security is sold. Conversely, assume that prior to year end, a partnership that is subject to the mark-to-market rules distributes a security with a built-in gain to a partner that is not subject to such rules. Consistent with the authority to apply the mark-to-market rules at times other than at the end of a taxable year, the Treasury regulations may provide that the mark-to-market rules are to apply to the partnership with respect to such security as of the date of distribution.

Valuation of securities

The conference agreement does not provide any explicit rules mandating valuation methods that are required to be used for purposes of applying the mark-to-market rules. However, the conferees expect that the Treasury Department will authorize the use of valuation methods that will alleviate unnecessary compliance burdens for taxpayers and clearly reflect income for Federal income tax purposes.

Other hedging transactions

The conference agreement generally provides that any gain or loss with respect to hedges that are subject to the mark-to-market rules of the bill will be treated as ordinary gain or loss. The conferees understand that hedging transactions are also important to the management of risks by businesses that are not subject to these mark-to-market rules. Hedging transactions are part of a sound business strategy in fields as diverse as farming, banking, manufacturing and energy production. However, the conferees understand that there may be a level of uncertainty regarding the tax treatment of such hedging transactions following a decision by the United States Supreme Court in 1988, *Arkansas Best Corp. v. Commissioner*, 485 U.S. 212 (1988). Despite subsequent litigation, (e.g., *Federal National Mortgage Association V. Commissioner*, 100 T.C. No. 36 (June 17, 1993)), the scope of the United States Supreme Court decision, and its effect on hedging transactions, may be unclear in some instances. The conferees believe that this is a significant issue. To the extent a solution to this issue may require coordination between the executive and legislative branches, the conferees urge the Administration, in the strongest terms, to advise the House Ways and Means and the Senate Finance Committees, within 90 days of the enactment of this Act, how best to proceed.

Effective date

The conference agreement adopts the effective date contained in the Senate amendment.

4. Tax treatment of certain FSLIC financial assistance (sec. 14224 of the House bill, sec. 8224 of the Senate amendment, sec. 13224 of the conference agreement, and secs. 165, 166, 585, and 593 of the Code)

Present Law and Background

A taxpayer may claim a deduction for a loss on the sale or other disposition of property only to the extent that the taxpayer's adjusted basis for the property exceeds the amount realized on the disposition and the loss is not compensated for by insurance or otherwise (sec. 165 of the Code). In the case of a taxpayer on the specific charge-off method of accounting for bad debts, a deduction is allowable for the debt only to the extent that the debt becomes worthless and the taxpayer does not have a reasonable prospect of being reimbursed for the loss. If the taxpayer accounts for bad debts on the reserve method, the worthless portion of a debt is charged against the taxpayer's reserve for bad debts, potentially increasing the taxpayer's deduction for an addition to this reserve.

A special statutory tax rule, enacted in 1981, excluded from a thrift institution's income financial assistance received from the Federal Savings and Loan Insurance Corporation (FSLIC), and prohibited a reduction in the tax basis of the thrift institution's assets on account of the receipt of the assistance. Under the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), taxpayers generally were required to reduce certain tax attributes by one-half the amount of financial assistance received from the FSLIC pursuant to certain acquisitions of financially troubled thrift institutions occurring after December 31, 1988. These special rules were repealed by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), but still apply to transactions that occurred before May 10, 1989.

In September 1990, the Resolution Trust Corporation (RTC), in accordance with the requirements of FIRREA, issued a report to Congress and the Oversight Board of the RTC on certain FSLIC-assisted transactions (the "1988/89 FSLIC transactions"). The report recommended further study of the covered loss and other tax issues relating to these transactions. A March 4, 1991 Treasury Department report on tax issues relating to the 1988/89 FSLIC transactions concluded that deductions should not be allowed for losses that are reimbursed with exempt FSLIC assistance.

House Bill

Any FSLIC assistance with respect to any loss of principal, capital, or similar amount upon the disposition of an asset shall be taken into account as compensation for such loss for purposes of section 165 of the Code. Any FSLIC assistance with respect to any debt shall be taken into account for purposes of determining whether such debt is worthless (or the extent to which such debt is worthless) and in determining the amount of any addition to a reserve for bad debts. For this purpose, FSLIC assistance means any assistance or right to assistance with respect to a domestic building and loan association (as defined in section 7701(a)(19) of the Code without regard to subparagraph (C) thereof) under section 406(f) of the National Housing Act or section 21A of the Federal Home Loan Bank Act (or under any similar provision of law).

The House bill does not apply to any financial assistance to which the amendments made by section 1401(a)(3) of FIRREA apply.

No inference is intended as to prior law or as to the treatment of any item to which the bill does not apply.

Effective date.—The House bill applies to financial assistance credited on or after March 4, 1991, with respect to (1) assets disposed of and charge-offs made in taxable years ending on or after March 4, 1991; and (2) assets disposed of and charge-offs made in taxable years ending before March 4, 1991, but only for purposes of determining the amount of any net operating loss carryover to a taxable year ending on or after March 4, 1991.

In accordance with the general estimated tax penalty provisions of the bill, no addition to tax is to be made under section 6654 or 6655 of the Code for any period before March 16, 1994 in the case of a corporation (April 16, 1994 in the case of an individual). However, in providing this relief, no inference is intended as to prior law, the effect of the bill on prior law, or the treatment of any item to which the bill does not apply.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and the Senate amendment.

As stated in both the House and Senate committee reports, it is expected that for purposes of the adjusted current earnings adjustment of the corporate alternative minimum tax, there will not be any net positive adjustment to the extent that FSLIC assistance is taken into account as compensation for a loss or in determining worthlessness and there is, therefore, no deductible loss or bad debt charge off. The conferees wish to clarify that this result is expected to apply to all taxpayers, including those who received IRS determinations regarding the treatment of FSLIC assistance for earnings and profits purposes in the form of a ruling or closing agreement. The conferees also wish to clarify that, for all taxpayers, Treasury is expected to treat such FSLIC assistance for other earnings and profits purposes in a manner that is consistent with the purposes of this provision.

5. Modify corporate estimated tax rules (sec. 14225 of the House bill, sec. 8225 of the Senate amendment, sec. 13225 of the conference agreement, and sec. 6655 of the Code)

Present Law

A corporation is subject to an addition to tax for any underpayment of estimated tax. For taxable years beginning after June 30, 1992, and before 1997, a corporation does not have an underpayment of estimated tax if it makes four equal timely estimated tax payments that total at least 97 percent of the tax liability shown on its return for the current taxable year. A corporation may estimate its current year tax liability prior to year-end by annualizing its income through the period ending with either the month or the quarter ending prior to the estimated tax payment due date. For taxable years beginning after 1996, the 97-percent requirement becomes a 91-percent requirement.

A corporation that is not a "large corporation" generally may avoid the addition to tax if it makes four timely estimated tax payments each equal to at least 25 percent of the tax liability shown on its return for the preceding taxable year. A large corporation may also use this rule with respect to its estimated tax payment for the first quarter of its current taxable year. A large corporation is one that had taxable income of $1 million or more for any of the three preceding taxable years.

House Bill

A corporation is required to base its estimated tax payments on 100 percent (rather than 97 percent or 91 percent) of the tax shown on its return for the current year, whether such tax is determined on an actual or annualized basis. The House bill does not change the present-law availability of the 100 percent of last year's liability safe harbor for large or small corporations.

In addition, the bill modifies the rules relating to income annualization for corporate estimated tax purposes. In general, the bill (1) adds a new, third set of periods over which corporations may elect to annualize income and (2) requires corporations to annually elect which of the three periods they will use to annualize income for the year.

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

6. Repeal stock-for-debt exception to cancellation of indebtedness income (sec. 8226(a) of the Senate amendment, sec. 13226(a) of the conference agreement, and sec. 108 of the Code)

Present Law

Gross income generally includes cancellation of indebtedness (COD) income. Taxpayers in title 11 cases and insolvent taxpayers, however, generally exclude COD income from gross income but reduce tax attributes by the amount of COD income. The amount of COD income that an insolvent taxpayer excludes cannot exceed the amount by which the taxpayer is insolvent.

The amount of COD income generally is the difference between the adjusted issue price of the debt being canceled and the amount of cash and the value of any property used to satisfy the debt. Thus, for purposes of determining the amount of COD income of a debtor corporation that transfers stock to a creditor in satisfaction of its indebtedness, the corporation generally is treated as realizing COD income equal to the excess of the adjusted issue price of the debt over the fair market value of the stock. However, if the debtor corporation is in a title 11 case or is insolvent, the excess of the debt discharged over the fair market value of the transferred stock generally does not constitute COD income (the "stock-for-debt exception"). Thus, a corporate debtor that qualifies for the stock-for-debt exception is not required to reduce its tax attributes as a result of the debt discharge. The stock-for-debt exception does not apply to the issuance of certain preferred stock, nominal or token shares of stock, or stock issued to unsecured creditors on a relatively disproportionate basis. In the case of an insolvent debtor not in a title 11 case, the exception applies only to the extent the debtor is insolvent.

House Bill

No provision.

Senate Amendment

The Senate amendment repeals the stock-for-debt exception. Thus, regardless of whether a debtor corporation is insolvent or in bankruptcy, the transfer of its stock in satisfaction of its indebtedness is treated as if the corporation satisfied the indebtedness with an amount of money equal to the fair market value of the stock that had been transferred. Under the Senate amendment, an insolvent corporation or a corporation in a title 11 case may exclude from income all or a portion of the COD income created by

the transfer of its stock in satisfaction of indebtedness by reducing tax attributes.

Effective date.—The provision is effective for stock transferred in satisfaction of any indebtedness after June 17, 1993, unless (1) the transfer is in a title 11 or similar case filed on or before June 17, 1993; (2) the transfer occurs on or before December 31, 1993, and the transfer is pursuant to a binding contract in effect on June 17, 1993; or (3) the transfer occurs on or before December 31, 1993, and the taxpayer had filed with the SEC on or before June 17, 1993, a registration statement which proposed a stock-for-debt exchange with respect to such indebtedness, and which discussed the possible application of the stock-for-debt exception to such exchange.

Conference Agreement

The conference agreement follows the Senate amendment with the following modifications.

The conference agreement provides authority to the Treasury Department to promulgate such regulations as are necessary to coordinate the present-law rules regarding the acquisition by a corporation of its debt from a shareholder as a contribution to capital (sec. 108(e)(6)) with the repeal of the stock-for-debt exception.

In addition, the conferees clarify that no inference is intended with the enactment of this provision as to the treatment of any cancellation of the indebtedness of any entity that is not a corporation in exchange for an ownership or equity interest in such entity.

Effective date.—The provision is effective for stock transferred after December 31, 1994, in satisfaction of any indebtedness, unless the transfer is in a title 11 or similar case that was filed on or before December 31, 1993.

7. Treatment of passive activity losses and credits and alternative minimum tax credits in certain discharges of indebtedness (sec. 8226(b) of the Senate amendment, sec. 13226(b) of the conference agreement, and sec. 108(b) of the Code)

Present Law

The discharge of indebtedness generally gives rise to gross income to the debtor taxpayer. Present law provides exceptions to this general rule. Among the exceptions are rules providing that income from the discharge of indebtedness of the taxpayer is excluded from income if the discharge occurs in a title 11 case, the discharge occurs when the taxpayer is insolvent, or in the case of certain farm indebtedness (sec. 108(a)(1)). The amount excluded from income under these exceptions is applied to reduce tax attributes of the taxpayer. The tax attributes reduced (in order) are (1) net operating losses and carryovers, (2) general business credit carryovers, (3) net capital losses and capital loss carryovers, (4) the basis of certain property of the taxpayer, and (5) foreign tax credit carryovers (sec. 108(b)). The amount of the reduction is generally one dollar for each dollar excluded, except that the reduction in the case of credits is 33-1/3 cents for each dollar excluded.

Under present law, the passive loss rules limit deductions and credits from passive trade or business activities (sec. 469). Deductions and credits suspended under these rules are carried forward to the next taxable year, and suspended losses are allowed in full when the taxpayer disposes of his entire interest in the passive activity to an unrelated person. Passive losses and credits are not tax attributes that are reduced under the rule relating to exclusion of discharge of indebtedness income.

Present law generally allows a minimum tax credit against a taxpayer's regular tax for the taxable year, for taxpayers who paid alternative minimum tax in a prior year (sec. 53). The minimum tax credit generally is the excess of (1) the sum of the minimum tax imposed for all prior taxable years following 1986, over (2) the amount allowed as a minimum tax credit for those prior taxable years. Minimum tax credits are not tax attributes that are reduced under the rule relating to exclusion of discharge of indebtedness income.

House Bill

No provision.

Senate Amendment

The Senate amendment adds additional tax attributes to the list of those that are reduced in the case of a discharge of indebtedness of the taxpayer that is excludable from income under section 108(a)(1). The attributes added are (1) minimum tax credits as of the beginning of the taxable year immediately after the taxable year of the discharge, and (2) passive activity loss and credit carryovers from the taxable year of the discharge. The amount of the reduction is generally one dollar for each dollar excluded, except that the reduction in the case of credits is 33-1/3 cents for each dollar excluded.

Effective date.—The provision is effective for discharges of indebtedness in taxable years beginning after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

8. Limitation on section 936 credit (sec. 14226 of the House bill, sec. 8227 of the Senate amendment, sec. 13227 of the conference agreement, and secs. 56, 936 and 7652 of the Code)

Present Law

Section 936 credit

Certain domestic corporations with business operations in the U.S. possessions[68] may elect the use of the section 936 credit which generally eliminates the U.S. tax on certain income related to their operations in the possessions.[69] Income exempt from U.S. tax under this provision falls into two broad categories: business income, which in order to be exempt must be income treated as foreign source income derived from the active conduct of a trade or business within a U.S. possession or from the sale or exchange of substantially all of the assets that were used in such a trade or business; and investment income, which in order to be exempt must be derived from certain investments in the possessions or in certain Caribbean Basin countries. The investment income exempted under the provision is known as "qualified possession source investment income" (QPSII). For these and other purposes, income derived within a possession is encompassed within the term "foreign source income."

In order to qualify for the section 936 credit, a domestic corporation must satisfy two requirements. Under one requirement, the corporation must be treated as deriving at least 75 percent of its gross income from the active conduct of a trade or business within a possession over a three-year period. Under the other requirement, the corporation must be treated as deriving at least 80 percent of its gross income from sources within a possession during that same three-year period.

Three alternative rules are provided that relate to allocating income from intangible property between a domestic corporation that elects the section 936 credit (a "possession corporation") and its U.S. shareholders. The general rule is to prohibit the possession corporation from earning any return on intangible property. A possession corporation can instead elect to subject itself to one of two alternative rules, if it satisfies certain conditions.

One such rule is referred to as the "cost sharing method." Use of this method requires the possession corporation to pay to the appropriate members of its affiliated group of corporations (including foreign affiliates) an amount which represents its current share of the costs of the research and development expenses of the group. The Code determines that share to be the greater of (1) the total amount of the group's research and development expenses concerning the possession corporation's product area, multiplied by 110 percent of the proportion of its sales as compared to total product area sales of the group; or (2) the amount of the royalty payment or inclusion that would be required under sections 367(d) and 482 with respect to intangible assets which the possession corporation is treated as owning under the cost sharing method, were the possession corporation a foreign corporation (whether or not the intangible assets actually are transferred to the possession corporation). By making this cost sharing payment, the possession corporation becomes entitled to treat its income as including a return from certain intangibles, primarily manufacturing intangibles, associated with the products it manufactures in the possessions.

The alternative elective rule for allocating income from intangible property between a possession corporation and its U.S. affiliates is a "profit split" approach. This method generally permits allocation to the possession corporation of 50 percent of the affiliated group of U.S. corporations' combined taxable income derived from sales of products which are manufactured in a possession.[70]

Dividends paid by a possession corporation to a U.S. shareholder may qualify for the deduction for dividends received from a domestic corporation (sec. 243). In cases where at least 80 percent of the stock of the possession corporation is owned by a single domestic corporation, the possession corporation's possession source income generally may be distributed without the parent corporation incurring any regular U.S. income tax.

Taxes paid or accrued by possession corporations to foreign countries or possessions on income which is taken into account in determining the section 936 credit are neither deductible nor allowable for purposes of determining the foreign tax credit.

A possession corporation's income, the tax on which may be offset by the section 936 credit, is not included in the alternative minimum taxable income (AMTI) of the possession corporation. Thus, possession corporations generally are exempt not only from the regular income tax but also from the alternative minimum tax (AMT). Moreover, dividends received by a U.S. corporation from a possession corporation generally

[68] Possessions to which special tax rules presently apply include Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

[69] In contrast to the foreign tax credit, the section 936 credit is a "tax sparing" credit. That is, the credit is granted whether or not the electing corporation pays income tax to the possession.

[70] A special allocation of research and development expenses as required by section 936(h)(5)(C)(ii)(II) can cause the proportion of the combined taxable income which is allocable to the possession corporation to be less than 50 percent.

do not constitute AMTI of the recipient corporation since, as described above, they may be offset by the dividends received deduction.

For purposes of determining a U.S. corporation's adjustment to AMTI based on adjusted current earnings (ACE), a deduction is allowed for certain dividends received. Specifically, a deduction is available (to the extent allowed under section 243 or 245) for any dividend that qualifies for the 100-percent dividends received deduction for regular tax purposes, or that is received from a 20-percent owned corporation (as defined in section 243(c)(2)), but only to the extent that the dividend is attributable to income of the paying corporation which is subject to U.S. income tax *determined after the application of section 936*. A dividend received by a U.S. corporation from its wholly owned possession corporation subsidiary generally does not qualify for the dividends received deduction, and thus increases the ACE of the recipient, because the income of the possession corporation typically is not taxed by the United States due to the section 936 credit.

For purposes of computing the foreign tax credit, the Code provides that dividends paid by a possession corporation to an affiliated U.S. corporation are characterized as foreign source income. Unless an exception applies, dividends are subject to the separate foreign tax credit limitation for passive income. In computing the AMT foreign tax credit, 75 percent of any withholding or income tax paid to a possession with respect to dividends received from a possession corporation generally is treated as a creditable tax.[71] Moreover for such computation, taxes paid to a possession by a possession corporation are deemed to be such a withholding tax for this purpose to the extent they would be treated as taxes paid by the recipient of the dividend under rules similar to the rules of the indirect foreign tax credit (secs. 78 and 902) if the possession corporation were a foreign corporation.

Cover over of excise taxes

U.S. excise taxes generally do not apply within the possessions, including Puerto Rico and the U.S. Virgin Islands. Articles that are manufactured in the possessions and brought into the United States for use or consumption are taxed on entry into the United States in the same manner as if the articles were imported from a foreign country. Thus, under general excise tax principles, these articles are taxed at the same rate that applies to domestically produced like articles.

In the case of excise taxes on certain articles brought into the United States from Puerto Rico and the Virgin Islands, and in the case of the distilled spirits excise tax on rum, a portion of the revenues is transferred ("covered over") to the treasuries of Puerto Rico and the Virgin Islands. This revenue cover over is significantly limited, both as to the taxes included and as to activities (e.g., manufacturing value added) that must occur in the possession from which the article comes as a condition of payment.

For example, revenues equal to $10.50 (less an administrative fee) per proof gallon of the $13.50 per proof gallon excise tax on rum imported from any foreign country is covered over to Puerto Rico and the Virgin Islands. On the other hand, cover over of tobacco excise tax revenues to Puerto Rico is limited to products where significant manufacturing value is added in the possession from which the product enters the United States, and no cover over is allowed for taxes on distilled spirits other than rum. Further, no cover over is permitted for many other excise taxes, e.g., the fuels excise taxes currently included in the Internal Revenue Code.

[71] The amount of tax allowable for purposes of the credit is limited to 75 percent of possessions tax paid in order to correspond to the portion of a dividend from a possession corporation that would be included in the recipient shareholder's AMTI as a result of the ACE adjustment.

House Bill

Section 936 credit

In general, the House bill provides that the section 936 credit is determined as under present law, but is subject to two limitations. Under the first limitation, the credit allowed to a possession corporation for a taxable year against U.S. tax on its business income (i.e., income derived from the active conduct of a possession-based business, or from the sale of assets used in such a business) is limited to 60 percent of the qualified possession wages the possession corporation pays to its employees.

For purposes of this limitation, qualified possession wages generally are wages paid or incurred by the possession corporation during the taxable year to any employee for services performed in a U.S. possession, but only if the services are performed while the principal place of employment of the employee is within the possession. In computing the wage-based credit limitation, only certain wages paid to employees in the possessions are taken into account. For this purpose, wages are defined by reference to the Federal Unemployment Tax Act (FUTA) definition of wages, and the amount of wages taken into account for each employee is limited to the maximum earnings subject to tax under the OASDI portion of Social Security (currently $57,600).

The House bill provides that qualified possession wages do not include amounts paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer (and any related possession corporations) is to make employees available for temporary periods to other persons in return for compensation.

The second limitation placed on the section 936 credit under the House bill deals with QPSII. Under this provision, the credit allowed against U.S. tax on QPSII is limited in cases where the possession corporation's assets that generate QPSII exceed 80 percent of its qualified tangible business investment in the possessions. In such a case, no section 936 credit is allowed against U.S. tax on the portion (determined on a pro-rata basis) of its QPSII attributable to QPSII assets which exceed that 80-percent threshold.

For purposes of the QPSII limitation, the amount of a possession corporation's QPSII assets for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and profits) of its assets which generate QPSII as of the close of each quarter of that year. Similarly, a possession corporation's qualified tangible business investment for a taxable year is determined by computing the average of the aggregate adjusted bases (for purposes of computing earnings and profits) of tangible property used in a possession by the corporation in the conduct of an active trade or business.

The House bill allows an affiliated group of corporations (generally as defined in sec. 1504, but treating possession corporations as includible corporations) to elect to consolidate related possession corporations for purposes of determining the application of the bill's two limitations on the section 936 credit. For a group so electing, the available consolidated credit amount is to be allocated among the possession corporations under rules prescribed by the Treasury Secretary.

If the section 936 credit of a possession corporation is reduced by either of the limitations for a taxable year, the House bill permits the corporation to claim a deduction for a portion of its income taxes paid or accrued to a possession for that year. The portion of the taxes so deductible would be the portion that is allocable on a pro-rata basis to the corporation's taxable income (computed before taking into account any possession tax), the U.S. tax on which is not offset by the section 936 credit as a result of the bill's limitations.

The House bill requires possession corporations to certify that the establishment of new operations in a possession after May 13, 1993 (or the addition, after that date, to an existing possession-based business) will not result in a decrease in employment at an existing business operation of the corporation or a related person in the United States. If the corporation fails to provide the certification with respect to such an establishment or addition, or if there is reason to believe that the establishment or addition was done with the intention of closing down a related U.S.-based operation, then for purposes of computing the House bill's limitations on the section 936 credit, the wages paid and the tangible business property used by the possession corporation with respect to the new operation will be disregarded.

Foreign tax credit limitation for dividends from possession corporations

The House bill also creates a new separate foreign tax credit limitation category for purposes of computing the AMT foreign tax credit. The new category would include the portion of dividends received from a possession corporation for which the dividends received deduction is disallowed, and thus is included in alternative minimum taxable income.

Effective date

The provision is effective for taxable years beginning after December 31, 1993. For taxable years beginning in 1994 and taxable years beginning in 1995, possession corporations may elect to claim an alternative credit not subject to the House bill's two limitations described above. The section 936 credit would be 80 percent of the current law-credit if this alternative is elected for taxable years beginning in 1994, and 60 percent of the current-law credit if elected for taxable years beginning in 1995. Taxes imposed by the possessions on income the U.S. tax on which is not offset by the section 936 credit as a result of the percentage limitations are deductible by the possession corporation.

Senate Amendment

Section 936 credit

In general

The Senate amendment generally cuts back the income-based section 936 credit by 2.5 percent.

In general, the Senate amendment provides that the section 936 credit allowed to a possession corporation for a taxable year against U.S. tax on its active business income (i.e., income derived from the active conduct of a possession-based business, or from the sale of assets used in such a business) is determined as under present law (as modified by the 2.5 percent reduction), but is subject to either of two alternative limitations. One alternative limitation is based on

factors that reflect the corporation's economic activity in the possessions (the "economic-activity limitation"), and the other limitation is based on a statutorily defined percentage of the section 936 credit that would be allowable under present-law rules (the "percentage limitation").

The option of which alternative limitation to apply is left to the taxpayer. In order to utilize the percentage limitation, however, a corporation must elect use of that limitation for its first taxable year beginning after 1993 for which it claims a section 936 credit. Once a possession corporation elects to use the percentage limitation, it must continue to compute its section 936 credit under that limitation for all subsequent taxable years unless the election is revoked.

The Senate amendment includes a consistency rule that requires all affiliated possession corporations to utilize the same alternative limitation. If, for example, a possession corporation that uses the percentage limitation becomes a member of an affiliated group that contains a second possession corporation that uses the economic-activity limitation, then the first corporation will be deemed to have revoked its election to use the percentage limitation. The determination whether a possession corporation is part of an affiliated group generally is made by reference to the consolidated return rules, except that stock owned by attribution under the rules of section 1563 is treated as owned directly, and the exclusions from the definition of "includible corporation" listed in section 1504(b) are disregarded. The Senate amendment also grants authority to the Treasury Secretary to develop rules that would treat 2 or more possession corporations as members of the same affiliated group to prevent avoidance of the consistency rule through deconsolidation or other means.

Other than the 2.5 percent reduction described above, the Senate amendment does not reduce the present-law section 936 credit against U.S. tax on QPSII.

Economic-activity limitation

In general

Under the economic activity limitation, the credit allowed to a possession corporation for a taxable year against U.S. tax on its business income may not exceed the sum of the following three components: (1) 95 percent of qualified compensation; (2) an applicable percentage of depreciation deductions claimed for regular tax purposes by the corporation for the taxable year with respect to qualified tangible property—i.e., tangible property located in a possession and used there by the corporation in the active conduct of its trade or business; and (3) if the corporation does not elect the profit-split method for computing its income, a portion of the possession income taxes it incurs during the taxable year. In order to compute the U.S. tax liability (if any) on the active business income of a possession corporation under the economic-activity limitation, the sum of the three components listed above is subtracted from an amount of pre-credit U.S. tax that would be owed if taxable income of the possession corporation were grossed up by qualified possession compensation and depreciation on qualified tangible property.

Compensation

For purposes of the economic-activity limitation, qualified compensation generally is the sum of (1) the aggregate amount of the possession corporation's qualified possession wages for the taxable year, and (2) its allocable employee fringe benefit expenses for the taxable year. The Senate amendment defines "qualified possession wages" as wages paid or incurred by the possession corporation during the taxable year to any employee for services performed in a possession, but only if the services are performed while the principal place of employment of the employee is within that possession.

For this purpose, the term wages refers to the Federal Unemployment Tax Act (FUTA) definition of wages, and the cumulative amount of wages for each employee that are taken into account for a taxable year in computing the credit limitation may not exceed 85 percent of the maximum earnings subject to tax under the OASDI portion of Social Security (currently $57,600). The Senate amendment specifies that the Treasury Secretary will provide rules for making appropriate adjustments to this limit in the cases of part-time employees and of employees whose principal place of employment is not within a possession for the entire year. In addition, the Senate amendment does not include in qualified possession wages amounts paid to employees who are assigned by the employer to perform services for another person, unless the principal trade or business of the employer (and any related possession corporations) is to make employees available for temporary periods to other persons in return for compensation.

Allocable employee fringe benefit expenses are equal to the aggregate amount allowable to the possession corporation as a deduction for the taxable year of the fringe benefits listed below, multiplied by a fraction the numerator of which is the aggregate amount of the corporation's qualified possession wages (as defined above) for the year and the denominator of which is the aggregate amount of the wages it pays or incurs during that year. In no event, however, may the corporation's allocable employee fringe benefit expenses for a taxable year exceed 15 percent of the aggregate amount of its qualified possession wages for that year.

Fringe benefit expenses that are taken into account for purposes of determining the credit limitation are (1) employer contributions under a stock bonus, pension, profit-sharing, or annuity plan, (2) employer-provided coverage under any accident or health plan for employees, and (3) the cost of life or disability insurance provided to employees. Fringe benefit expenses do not include any amount that is treated as wages.

Depreciation

Depreciation deductions taken into account in determining the economic-activity limitation are as follows. With respect to short-life qualified tangible property (i.e., qualified tangible property to which section 168 applies and which is 3-year or 5-year property as classified under section 168(e)), 50 percent of the depreciation deductions allowable to the possession corporation for the taxable year are taken into account. With respect to medium-life qualified tangible property (i.e., qualified tangible property to which section 168 applies and which is classified as 7-year or 10-year property under section 168(e)), 75 percent of such deductions are taken into account. With respect to long-life qualified tangible property (i.e., all other qualified tangible property to which section 168 applies), 100 percent of such deductions are taken into account.

Possession income tax

As a general rule, for possession corporations that do not elect the profit-split method, taxes paid or accrued to a possession with respect to taxable income which is taken into account in computing the section 936 credit are factored into the credit-limitation base. However, possession income taxes paid in excess of a 9-percent effective rate of tax are not included for purposes of determining the limitation. Moreover, only the portion of taxes satisfying the effective-rate requirement that are allocable (on a pro-rata basis taking all possession income taxes into account) to nonsheltered income are so included. The fraction of possession income taxes allocated to nonsheltered income is determined by computing the ratio of two hypothetical U.S. tax amounts that are computed under the assumption that no credit or deduction is allowed for possession income taxes.

The numerator of the ratio described above is the U.S. tax liability of the possession corporation that would arise under the bill by virtue of the economic-activity limitation determined without regard to any credit or deduction for possession income taxes. The denominator of the ratio is the pre-section 936 credit U.S. tax liability of the possession corporation that would be imposed on the income of the corporation (such income being computed under the rules that apply under current section 936) without regard to any credit or deduction for possession income taxes.

A possession corporation that utilizes the profit-split method for allocating any income from intangible property for the taxable year is not permitted to include any taxes in its credit-limitation base. Such a corporation, however, is allowed a deduction for a portion of its possession income taxes paid or accrued during that taxable year. The deductible portion of possession income taxes is the portion that is allocable (on a pro-rata basis) to the corporation's taxable income (computed before taking into account any deduction for such taxes), the U.S. tax on which is not offset by the section 936 credit as a result of the Senate amendment's limitation.

Denial of double benefit

For purposes of computing the pre-section 936 credit U.S. income tax liability of a possession corporation that utilizes the economic-activity limitation, the Senate amendment requires the corporation to compute taxable income by reducing its otherwise deductible amounts of compensation and depreciation by the amounts that are included in its credit-limitation base.

Election to treat affiliated corporations as one corporation

For purposes of computing the economic-activity limitation, the Senate amendment allows an affiliated group of corporations (generally as defined in sec. 1504, but treating possession corporations and foreign corporations as includible corporations) to elect to treat all affiliated possession corporations as one corporation. For a group so electing, the available consolidated credit amount is to be allocated among the possession corporations of the group under rules prescribed by the Treasury Secretary. Any election to consolidate applies to the taxable year for which made and to all succeeding taxable years unless revoked with the consent of the Treasury Secretary.

Percentage limitation

Under the percentage limitation, the section 936 credit allowed to a possession corporation against U.S. tax on business income for a taxable year is limited to an applicable percentage (40 percent once fully phased in) of the credit that would be allowable under present-law rules (as modified by the 2.5 percent reduction). Under a transition rule that

provides a 5-year phase in, the applicable percentage is as follows:

Taxable years beginning in:	*Applicable percentage*
1994	60
1995	55
1996	50
1997	45
1998 and thereafter	40

A taxpayer that utilizes the percentage limitation is permitted a deduction for a portion of its possession income taxes paid or accrued during the taxable year. The portion of the taxes so deductible is the portion that is allocable (on a pro-rata basis) to the corporation's taxable income (computed before taking into account any deduction for possession tax), the U.S. tax on which is not offset by the section 936 credit as a result of the limitation.

Foreign tax credit limitation for dividends from possession corporations

The Senate amendment also creates a new separate foreign tax credit limitation category for purposes of computing the AMT foreign tax credit. The new category includes the portion of dividends received from a possession corporation for which the dividends received deduction is disallowed, and thus is included in alternative minimum taxable income.

Excise tax cover over

The Senate amendment also temporarily increases the cover over of rum excise taxes to Puerto Rico and the Virgin Islands from $10.50 per proof gallon to $11.30 per proof gallon. This increased cover over rate applies in the case of distilled spirits brought into the United States during the five year period beginning on July 1, 1995.

Effective date

The provision generally is effective for taxable years beginning after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment with modifications and clarifications described below.

First, the conference agreement does not include the provision requiring a reduction of 2.5 percent of a taxpayer's otherwise allowable section 936 credit.

Second, the conference agreement provides that the economic-activity limitation base includes 60 percent of qualified compensation, 15 percent of depreciation deductions for short-life qualified tangible property, 40 percent of depreciation deductions for medium-life qualified tangible property, and 65 percent of depreciation deductions for long-life qualified tangible property. The conference agreement further provides that there is no disallowance of deductions for compensation or depreciation amounts which are included in the credit-limitation base.

Third, the conference agreement provides that the temporary increase in the cover over of rum excise taxes to Puerto Rico and the Virgin Islands applies in the case of distilled spirits brought into the United States during the five-year period beginning on October 1, 1993.

In addition, the conferees intend that the Secretary take into account the significant nature of the modifications made by the conference agreement to the operation of the section 936 credit in cases where a possession corporation either seeks to change its method of allocating income from intangible property or to revoke its election to use the section 936 credit.

9. Enhance earnings stripping rules (sec. 14227 of the House bill, sec. 8228 of the Senate amendment, sec. 13228 of the conference agreement, and sec. 163(j) of the Code)

Present Law

Interest expenses of a U.S. corporate taxpayer are generally deductible, whether or not the interest is paid to a related party and whether or not the interest income is subject to U.S. taxation in the hands of the recipient. In certain cases where interest is paid by a corporation to a related person, and no U.S. tax is imposed on the recipient's interest income, the so-called "earnings stripping rules" in the Code provide for denial of interest deductions by the corporate payor to the extent that the corporation's net interest expenses exceed 50 percent of its adjusted taxable income. The disallowance is limited by, among other things, the amount of tax-exempt interest paid to related persons. The disallowance does not apply to interest on debt with a fixed term which was issued on or before July 10, 1989, or which was issued after that date pursuant to certain written binding contracts in effect on that date.

The Treasury is authorized to provide such regulations as may be appropriate to prevent the avoidance of the purposes of this provision, including regulations that would disallow deductions for interest paid to unrelated creditors in certain cases: for example, certain cases that involve guarantees of the debt by parties related to the debtor. The legislative history accompanying the bill enacting the provision, however, indicates an intent that such regulations not generally subject third-party interest to disallowance whenever a guarantee is given in the ordinary course. The legislative history further indicates an expectation that any such regulations would not apply to debt outstanding prior to notice of the rule if and to the extent that the regulations depart from positions the Service and Treasury might properly take under analogous principles of law that would recharacterize guaranteed debt as equity.

To date, Treasury has promulgated no proposed or final regulations that interpret the application of the earnings stripping rules to third-party debt that is guaranteed by a person related to the debtor.

House Bill

Under the House bill, interest is subject to disallowance under the earnings stripping rules without regard to whether it is interest on a fixed-term obligation issued before, on, or after July 10, 1989. Under the House bill, interest paid on a loan from an unrelated party generally is treated under the earnings stripping rules as interest paid to a related person with respect to which no U.S. tax is imposed if no gross-basis U.S. income tax is imposed on the interest (whether or not the interest recipient is subject to net-basis U.S. income tax with respect to that interest), a related person guaranteed the loan, and the related person is either exempt from U.S. Federal income tax or is a foreign person. Exceptions apply where the taxpayer controls the guarantor, and in cases, identified by regulation, where the interest on the indebtedness would have been subject to net basis tax if the interest had been paid to the guarantor. Except as provided in regulations, a guarantee is defined to include any arrangement under which a person directly or indirectly assures, on a conditional or unconditional basis, the payment of another's obligation.

Effective date.—The House bill provision applies to any interest paid or accrued in taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

C. Foreign Provisions

1. Current taxation of certain earnings of controlled foreign corporations (secs. 14231–14233 of the House bill, secs. 8231–8233 of the Senate amendment, secs. 13231–13233 of the conference agreement, and secs. 951(a), 954(c), 956, 959, 960(b), 1296, 1297, and new sec. 956A of the Code)

Present Law

U.S. citizens and residents and U.S. corporations (collectively, "U.S. persons") generally are taxed currently by the United States on their worldwide income. Income earned by a foreign corporation, the stock of which is owned in whole or in part by U.S. persons, generally is not taxed by the United States until the foreign corporation repatriates those earnings by payment to its U.S. stockholders.

Under the controlled foreign corporation rules of subpart F, a controlled foreign corporation is defined generally as any foreign corporation if U.S. persons own more than 50 percent of the corporation's stock, taking into account only so-called "U.S. shareholders": namely, those U.S. persons that own (directly, indirectly or by attribution) at least 10 percent of its voting stock. A "U.S. shareholder" may be taxed by the United States on certain earnings of the controlled foreign corporation that have not been distributed by the foreign corporation to the U.S. shareholder. Such "inclusions" of undistributed controlled foreign corporation earnings are triggered by two different provisions of the controlled foreign corporation rules.

Under one such provision, a U.S. shareholder is taxed currently on its proportionate share of the controlled foreign corporation's "subpart F income" earned during the taxable year. Subpart F income typically is foreign income that is relatively movable from one taxing jurisdiction to another and that is subject to low rates of foreign tax relative to the U.S. rate. Excluded from the definition of subpart F income, among other things, are certain dividends and interest received from a related corporation organized and operated in the same foreign country as the recipient.

The other provision taxing U.S. shareholders on undistributed controlled foreign corporation earnings applies to the controlled foreign corporation's total current or accumulated earnings (other than subpart F income), to the extent of an increase in the amount of those earnings invested by the controlled foreign corporation in certain U.S. property (as defined in Code section 956).

Earnings and profits of a controlled foreign corporation that have been included in the income of U.S. shareholders before actual repatriation are not taxed again when such earnings are in fact distributed to the U.S. shareholders.

If any foreign corporation (including a controlled foreign corporation) is a "passive foreign investment company" (PFIC), U.S. persons (including 10-percent "U.S. shareholders") that own any stock in the PFIC may be subject to one of two other sets of operating rules that eliminate or reduce the benefits of

deferral. A PFIC generally is defined as any foreign corporation if (1) 75 percent or more of its gross income for the taxable year consists of passive income, or (2) 50 percent or more of its assets consist of passive assets, defined as assets that produce, or are held for the production of, passive income.

A U.S. person owning PFIC stock may elect to include currently in gross income its share of the PFIC's total earnings. A nonelecting U.S. person owning PFIC stock pays no current tax on the PFIC's undistributed income. However, when realizing income earned through ownership of PFIC stock (such as certain dividends distributed by the PFIC or capital gains from selling PFIC stock), the nonelecting U.S. person may pay an additional interest charge.

House Bill

In general

The House bill limits the availability of deferral of U.S. tax on certain earnings of controlled foreign corporations. As explained further below, the bill generally requires current inclusions in the income of U.S. shareholders of a controlled foreign corporation to the extent of the corporation's accumulated earnings invested in excess passive assets. The bill also conforms the treatment of earnings of controlled foreign corporations invested in U.S. property to the new rules for earnings invested in excess passive assets, and makes related modifications to other rules applicable to controlled foreign corporations and PFICs.

Inclusions based on excess passive assets

Amount included

The House bill adds new section 956A to the Code, which measures the amount of retained earnings of a controlled foreign corporation that potentially is subject to inclusion in the income of a U.S. shareholder of the foreign corporation as a result of the foreign corporation's investment in "excess passive assets." The amount determined under section 956A with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the controlled foreign corporation's "excess passive assets," over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of excess passive assets. The second amount, defined as the "applicable earnings" of the controlled foreign corporation, is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits), reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under new section 956A, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A).

Excess passive assets

"Excess passive assets" are defined as the excess (if any) for the taxable year of the average amount of passive assets held by the controlled foreign corporation as of the close of each quarter of its taxable year, over 25 percent of the average amount of total assets held by the controlled foreign corporation as of the close of each quarter of its taxable year. For this purpose, an asset is measured by its adjusted basis as determined for purposes of computing earnings and profits.[1]

Modification of section 956

The House bill treats earnings invested by a controlled foreign corporation in U.S. property under revised rules that parallel those that govern the treatment of excess passive assets, as described above. Under the revised rules, the amount determined under section 956 with respect to a U.S. shareholder of a controlled foreign corporation is the lesser of two amounts.

The first amount is the excess (if any) of the U.S. shareholder's pro rata share of the U.S. property of the controlled foreign corporation, over that portion of the retained earnings of the foreign corporation that is treated as having been previously included in the income of the U.S. shareholder on account of earnings invested in U.S. property. The second amount is the U.S. shareholder's pro rata share of the controlled foreign corporation's current and accumulated earnings and profits (but not reduced by a deficit in accumulated earnings and profits), reduced by the portion of the retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The income inclusion for a U.S. shareholder of the controlled foreign corporation is the amount determined as above under section 956, less retained earnings of the controlled foreign corporation that are treated as having been previously taxed to the U.S. shareholder as subpart F income of the controlled foreign corporation under section 951(a)(1)(A).

Study on investments in U.S. property

The House bill requires that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and provide the Committee on Ways and Means with a report of such study by December 31, 1993. The study is to include the Treasury's views as to whether those rules should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

Other modifications to the subpart F rules

The House bill limits the application of the same-country exception to the determination of subpart F income in the case of certain dividends received by controlled foreign corporations. Under the bill, amounts distributed with respect to stock owned by the controlled foreign corporation do not qualify for the same-country exception to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when the controlled foreign corporation did not hold the stock. In addition, the House bill modifies the effect on the foreign tax credit limitation of distributions of previously taxed income. Under the bill, receipt of a distribution of previously taxed income by a U.S. shareholder of one or more controlled foreign corporations increases the U.S. shareholder's foreign tax credit limitation to the extent of the aggregate amount in a single "excess limitation account" maintained by that U.S. shareholder for each of its separate foreign tax credit limitation categories.

Modification of certain PFIC rules

The House bill makes several modifications to the PFIC rules:

The House bill modifies the present-law rules for applying the PFIC asset test in the case of U.S. shareholders of controlled foreign corporations. In testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," under the bill, assets are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

The House bill excludes from the definition of passive income under the PFIC rules income derived in the active conduct of a securities business by certain corporations registered in the United States as brokers or dealers in securities, and, to the extent provided in Treasury regulations, income so derived by any other corporation engaged in the active conduct of a trade or business as a broker or dealer in securities. As with the asset-valuation rule above, this exclusion applies only to a controlled foreign corporation, and only for purposes of the treatment of its U.S. shareholders. The bill provides that similar rules apply in determining whether the income of a related person is passive (whether or not the related person is a corporation), solely for purposes of classifying amounts paid by that related person to a controlled foreign corporation pursuant to the PFIC related-person rule (sec. 1296(b)(2)(C)).

Under the House bill, inclusions of income on account of investments of earnings of a controlled foreign corporation in U.S. property, or ownership of excess passive assets, are treated as distributions for purposes of computing the interest charge on excess distributions to the U.S. shareholders of PFICs that are controlled foreign corporations.

The House bill treats certain leased property as assets held by the foreign corporation for purposes of the PFIC asset test. This rule applies to tangible personal property with respect to which the foreign corporation is the lessee under a lease with a term of at least 12 months. Under the bill, the measure of leased property for purposes of applying the asset test is the unamortized portion of the present value of the payments under the lease.

Effective date

The House bill generally is effective for taxable years of foreign corporations beginning after September 30, 1993, and for taxable years of domestic shareholders in which or with which such taxable years end.

Under the House bill, the excess passive assets provision is phased in during taxable years beginning after September 30, 1993, and before October 1, 1997. The amount of income included under the provision is 20 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1993, and before October 1, 1994; 25 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1994, and before October 1, 1995; 35 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1995, and before October 1, 1996; and 50 percent of the amount otherwise determined in the case of taxable years beginning after September 30, 1996, and before

[1] Unlike the PFIC rules of present law, the House bill offers no option to measure assets by fair market value.

October 1, 1997. The provision is fully effective for taxable years beginning after September 30, 1997.

Senate Amendment

The Senate amendment is the same as the House bill, except as described below.

Inclusions based on excess passive assets

The Senate amendment applies only to earnings and profits of the controlled foreign corporation that are attributable to taxable years beginning after September 30, 1993, and includes certain aggregation and anti-abuse rules.

Under the Senate amendment, the "applicable earnings" of the controlled foreign corporation include only that portion of the controlled foreign corporation's total current earnings and profits (but not reduced by a deficit in accumulated earnings and profits) and earnings and profits to the extent accumulated in taxable years beginning after September 30, 1993. In computing the potential amount of earnings invested in excess passive assets that might be includable in the income of the U.S shareholders of the controlled foreign corporation, applicable earnings under the Senate amendment are reduced by the portion of such post-1993 retained earnings of the foreign corporation that was previously included in the income of the U.S. shareholder on account of either investments in U.S. property or investments in excess passive assets.

The Senate amendment provides an aggregation rule applicable to any chain of controlled foreign corporations that are connected through stock ownership, where more than 50 percent, by vote or value, of the stock of each member of the chain (other than the top-tier controlled foreign corporation) is owned, directly or indirectly, by one or more other controlled foreign corporations that are members of the chain ("CFC chain"). Under this rule, the amount of excess passive assets of the CFC chain would be determined on the basis of the sum of the assets of each controlled foreign corporation in the CFC chain and the sum of the passive assets of each controlled foreign corporation in the CFC chain. The total applicable earnings of the CFC chain would be determined as the sum of the applicable earnings of each controlled foreign corporation in the CFC chain. Each controlled foreign corporation in the CFC chain would be treated as holding its pro rata share of the excess passive assets of the CFC chain, on the basis of that controlled foreign corporation's percentage share of the total applicable earnings of the CFC chain.

Modification of certain PFIC rules

The Senate amendment includes special rules to increase the basis of assets (for purposes of this provision) to reflect certain research and experimental expenditures and certain payments with respect to licensed intangible property.

Under the Senate amendment, as under the House bill, in testing a controlled foreign corporation for PFIC status with respect to its "U.S. shareholders," assets generally are measured by adjusted basis as determined for purposes of calculating earnings and profits, with no option to use fair market value.

Under the Senate amendment, however, adjusted basis for this purpose is modified to take into account certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. First, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the total amount of research and experimental expenditures made by the controlled foreign corporation for qualified research or experimental expenditures (as defined for purposes of Code section 174 and the Treasury regulations thereunder), taking into account payments and expenditures (including cost-sharing payments) made in the current taxable year and the two most recent preceding taxable years. In addition, the aggregate adjusted basis of the total assets of the controlled foreign corporation is increased by the amount of three times the total payments made during the taxable year to unrelated persons and related U.S. persons for the use of intangible property with respect to which the controlled foreign corporation is a licensee, and which the controlled foreign corporation uses in the active conduct of its trade or business. Payments made to related foreign persons are not taken into account.

Study on investments in U.S. property

The Senate amendment does not include the House bill provision requiring a Treasury department study on the tax treatment of certain investments in U.S. property.

Effective date

Like the House bill, the Senate amendment generally is effective for taxable years of foreign corporations beginning after September 30, 1993, and for taxable years of domestic shareholders in which or with which such taxable years end. However, under the Senate amendment, the excess passive assets provision is effective immediately rather than phased in during taxable years beginning after September 30, 1993, and before October 1, 1997.

Conference Agreement

The conference agreement follows the Senate amendment, with certain modifications.

Inclusions based on excess passive assets

Aggregation rule

The conference agreement clarifies the Senate amendment's aggregation rule for the determination of excess passive assets of related controlled foreign corporations. The aggregation rule in the conference agreement applies to a "CFC group" of controlled foreign corporations, clarifying that the group can include one or more chains of related controlled foreign corporations, linked by common ownership by a top-tier controlled foreign corporation. As is true for a "CFC chain" under the Senate amendment, the CFC group under the conference agreement determines the amount of excess passive assets for the group by treating all group members as a single corporation, and then apportions such aggregate excess passive assets among the members of the group on a pro rata basis in accordance with each member's percentage share of the total applicable earnings of the CFC group.

The conferees wish to clarify that under the conference agreement, as is typically the case where a group of corporations is treated as a single corporation for tax purposes, intercompany stock and obligations generally are disregarded in the determination of excess passive assets. For example, stock owned by one member of the group in another member of the group is disregarded, as are intercompany loans, other intercompany receivables, and intercompany licenses. As another example, assume that one member of the group provides goods or services to an unrelated customer, thereby acquiring a trade or service receivable. Assume further that the group member then factors the receivable to another member of the group, and the second member later receives the payment from the customer, which gives rise to income for the second member which is treated as passive interest income. During the period when the receivable is held by the second group member, the basis of the receivable in the hands of group, for purposes of applying the conference agreement to the group, would reflect the cost incurred by the second member to acquire the receivable in the factoring transaction with the first member. The conferees intend that the characterization of the receivable as a passive or nonpassive asset for purposes of determining excess passive assets depend on the activities by which the group as a whole derived the receivable. If the receivable properly would be viewed as a nonpassive asset based on those activities (without regard to which member of the group carried out the activities), the conferees anticipate that interest incidentally received by the second group member generally would not cause the receivable to be characterized as a passive asset (see, e.g., Notice 88-22, 1988-1 C.B. 489).

Inasmuch as stock owned by one member of the group in another member of the group would be disregarded, the look-through rule of section 1296(c) does not apply within a CFC group. However, the look-through rule of section 1296(c) does apply in the case of stock owned by one or more members of the CFC group in a foreign corporation that is not a member of the CFC group. For example, if one member of the CFC group owns 20 percent of the stock of another controlled foreign corporation that is not a member of the CFC group, and a second member of the CFC group owns 10 percent of the stock of such non-member controlled foreign corporation, the CFC group would be treated as owning 30 percent of the assets of the non-member controlled foreign corporation under the look-through rule of section 1296(c).

For purposes of the conference agreement's aggregation rule and look-through rule, all amounts of assets and earnings must be converted into units of a single currency, ordinarily the U.S. dollar. The conferees anticipate that Treasury will provide guidance as to the translation method appropriate to such conversion. The conferees anticipate that Treasury will authorize the use of the spot rate on the date of measurement for such purpose. In addition, the conferees anticipate that Treasury may authorize an alternative method, under which the U.S. shareholders of a controlled foreign corporation would be permitted to determine the adjusted basis of the assets of the controlled foreign corporation using the historical cost in U.S. dollars of the foreign-currency-denominated assets, in cases where the Secretary is satisfied that such historical costs can be established in a reasonably administrable fashion consistent with the purposes of the provision. Until guidance is issued by the Secretary, the conferees intend that taxpayers be permitted to convert asset costs to a single currency using any reasonable method (which may be, for example, a spot-rate conversion method or a historical dollar-cost method), so long as the method is consistently applied to all controlled foreign corporations (whether or not members of a CFC group) in all taxable years.

Treatment of certain previously taxed PFIC inclusions

The House bill and the Senate amendment provide rules for avoiding the double taxation of income in the case of subpart F inclusions under section 951(a)(1)(A) from controlled foreign corporations with excess passive assets. The conference agreement adds a similar coordination rule for controlled foreign corporations that are also PFICs, and

that are subject to current inclusion of income under section 1293. Under the conference agreement, any inclusion of income under section 1293 to a U.S. shareholder of a controlled foreign corporation that is also a PFIC is treated as an inclusion of income under section 951(a)(1)(A) for purposes of the rules of subpart F pertaining to previously taxed income.

Modification of certain PFIC rules

Treatment of certain banking and securities income

Present law provides regulatory authority to the Treasury to except from the definition of passive income certain income derived in the active conduct of a banking business. The House bill and the Senate amendment provide similar authority, in the case of U.S. shareholders of a PFIC that is also a controlled foreign corporation, with respect to certain income derived in the active conduct of a securities business. The conferees are informed that there is a significant commonality between the business activities that may be conducted by a controlled foreign corporation in the course of a banking business and the business activities that may be conducted by a controlled foreign corporation in the course of a securities business. The conferees intend to clarify that these grants of regulatory authority are sufficiently broad to encompass, in appropriate circumstances, the income derived by a single controlled foreign corporation in the active conduct of a business that consists in part of banking activities and in part of securities activities.

Study on treatment of certain financing and credit services businesses

The conference agreement provides that certain income derived in the conduct of a banking or insurance business, or, in the case of U.S. shareholders of a controlled foreign corporation, a securities business, may be excluded from the definition of passive income for purposes of the PFIC rules and the excess passive assets rules. These rules, however, do not apply to income derived in the conduct of financing and credit services businesses. The conferees intend that the Treasury Department study the tax treatment of income derived in the conduct of financing and credit services businesses, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by March 1, 1994. The study should include the Treasury's views and recommendations as to whether the PFIC rules and the excess passive assets rules should be amended insofar as they relate to the treatment of such income, along with a discussion of the merits and consequences of any such amendment. In addition, the study should address any special considerations that might pertain in this regard with respect to a foreign corporation that is not a controlled foreign corporation, and discuss the extent to which appropriate anti-abuse rules would be sufficient to address special concerns that might arise in this context.

Special rule for certain intangible property

The Senate amendment provides a special rule for determining the basis of assets in the case of certain research and experimental expenditures and certain payments for the use of intangible property that is licensed to the controlled foreign corporation. Payments made to related foreign persons are not taken into account. The conference agreement clarifies that all research and experimental expenditures that are taken into account for purposes of this special rule are net of any reimbursements (such as cost-sharing payments, to the extent they represent such expenditures) received by the controlled foreign corporation with respect to such expenditures. In addition, the conference agreement clarifies that payments made by a controlled foreign corporation for the use of intangible property are disregarded if one principal purpose of licensing the intangible property was to avoid the PFIC rules or the excess passive assets provisions. For example, assume a domestic corporation licensed intangible property through a controlled foreign corporation to an unrelated person, rather than directly to the unrelated person, and one principal purpose for licensing the property indirectly was to increase the measurement of the controlled foreign corporation's active assets. In such a case, the payment made by the controlled foreign corporation to its domestic parent with respect to the intangible property would not be taken into account. As another example, assume a controlled foreign corporation licensed intangible property to its domestic parent and the U.S. parent relicensed all or a portion of the intangible property rights to a second controlled foreign corporation, and one principal purpose for licensing the property indirectly was to increase the measurement of the second controlled foreign corporation's active assets. In such a case, the payment made by the second controlled foreign corporation to its domestic parent with respect to the intangible property would not be taken into account.

Study on treatment of certain marketing expenditures

The conference agreement increases the adjusted basis of the assets of a controlled foreign corporation by reference to expenditures deductible under section 174. When a controlled foreign corporation incurs research and experimental expenditures, the practical effect may be to enhance the corporation's ability to generate active business income over an extended period; yet inasmuch as such expenditures are commonly deductible under section 174, these types of expenditures may affect the corporation's adjusted basis in its assets differently than expenditures to generate active business income over an extended period that take the form of a purchase of tangible or intangible assets. The conference agreement provides for adjustments to the adjusted basis of the assets of the controlled foreign corporation to take account of this difference. Taxpayers have argued that the practical effect of marketing expenditures that are properly deductible under section 162 as ordinary and necessary business expenses may also be to enhance the corporation's ability to generate active business income over an extended period. The conferees intend that the Treasury Department study the question whether similar basis adjustments should be made for such expenses, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by March 1, 1994. The study should include the Treasury's views and recommendations as to whether the excess passive assets rules should be amended insofar as they relate to the treatment of such expenses, along with a discussion of the merits and consequences of any such amendment.

Modifications to section 956

Special rule for U.S. property acquired before foreign corporation is U.S. controlled

The conference agreement includes a provision that clarifies the application of section 956 of the Code, as modified by the bill, in the case of U.S. property acquired by a foreign corporation before the foreign corporation becomes a controlled foreign corporation. Under the conference agreement, the measure of U.S. property held by a controlled foreign corporation for any taxable year generally does not include any specific items of U.S. property that were acquired by the foreign corporation before the first day on which the foreign corporation was treated as a controlled foreign corporation. The aggregate amount of U.S. property so excluded with respect to a controlled foreign corporation for any taxable year, however, cannot exceed the applicable earnings of the controlled foreign corporation to the extent that they were accumulated in periods prior to the first day on which the foreign corporation was treated as a controlled foreign corporation.[73] The conferees note that applicable earnings are reduced, under the conference agreement, both by actual distributions and by income inclusions of excess passive assets or U.S. property.

The conference agreement also provides regulatory authority under which the Treasury is instructed to prescribe such regulations as may be necessary to carry out the purposes of section 956, and to prevent their avoidance. Within this authority, the conferees anticipate that the Treasury may prescribe regulations that, for example, would prevent taxpayers from taking advantage of the differences between the excess passive assets rules and the rules of section 956.

Study on investments in U.S. property

The conferees understand that a controlled foreign corporation is not treated as holding U.S. property under section 956 if it invests in an obligation of an unrelated U.S. corporation. A similar rule, however, is not applicable to an investment in an obligation of an unrelated U.S. person other than a corporation. The conferees intend that the Treasury Department study the tax treatment of investments by controlled foreign corporations in obligations of U.S. persons other than corporations, and provide the House Committee on Ways and Means and the Senate Committee on Finance with a report of such study by December 31, 1993. The study should include the Treasury's views and recommendations as to whether the rules of section 956 should be amended insofar as they relate to the treatment of investments by controlled foreign corporations in the obligations of unrelated U.S. persons other than corporations, along with a discussion of the merits and consequences of any such amendment.

Other modifications to the subpart F rules

The House bill and the Senate amendment limit the availability of the same-country exception applicable to the determination of subpart F income in the case of certain dividends received by controlled foreign corporations. Under the conference agreement, amounts distributed with respect to stock owned by the controlled foreign corporation do not qualify for the same-country exception to the extent that the distributed earnings and profits were accumulated by the distributing corporation during periods when

[73] Under the present-law ordering rules for the attribution of actual distributions or income inclusions to years of earnings, earnings from more recent years are treated as distributed or included before earnings from earlier years. Thus, the pre-acquisition earnings, which operate as a limit to the exclusion of certain U.S. property acquired before the foreign corporation became a controlled foreign corporation, will not be treated as distributed or included until actual distributions or income inclusions from the controlled foreign corporation carry out all more recent earnings.

the controlled foreign corporation did not hold the stock either directly or indirectly through a chain of one or more subsidiaries, each of which qualifies as a same-country corporation. For example, the same-country exception is available under the conference agreement in the case of a chain of three wholly owned same-country subsidiaries, where the middle-tier subsidiary is liquidated prior to the payment of a dividend from the lowest tier subsidiary to the highest tier subsidiary, and the dividend comprises earnings of the lowest tier subsidiary that were accumulated solely during periods when it was (indirectly) owned by the highest tier subsidiary.

2. Allocation of research expenditures (sec. 14234 of the House bill, sec. 8234 of the Senate amendment, sec. 13234 of the conference agreement, and sec. 864(f) of the Code)

Present Law

In order that the foreign tax credit will offset only the U.S. tax on the taxpayer's foreign source taxable income, a limitation formula is prescribed in the Code. To compute the limitations, it is necessary to divide the taxable income of a U.S. person into U.S. source taxable income, foreign source taxable income in each applicable separate limitation category, and foreign source taxable income in the general foreign tax credit limitation category.

Foreign source taxable income in any limitation category equals foreign source gross income in that category less the expenses, losses and other deductions properly apportioned or allocated to that income. A Treasury regulation issued in 1977 describes methods for allocating expenses between U.S. and foreign source income, including rules for the allocation of research expenses. Since 1981, however, the research expense allocation regulation has been subject to a series of statutory temporary suspensions and modifications. The most recent temporary statutory provision (set forth in Code section 864(f)) was applicable generally for the first six months of the first taxable year beginning after August 1, 1991. For this purpose, total research expenses for the year were deemed to be incurred evenly throughout the year.

For expenses deemed paid or incurred during the first six months of the year referred to above (other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source), 64 percent of U.S.-incurred research expenses were allocated to U.S. source income, and 64 percent of foreign-incurred research expenses were allocated to foreign source income. The remainder of research expenses were allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment was used, the amount apportioned to foreign source income could have been no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The Treasury has announced that during what would ordinarily be an 18-month period following the six-month period referred to above—that is, the last six months of the taxpayer's first taxable year beginning after August 1, 1991 and the immediately succeeding taxable year—taxpayers may continue to allocate research expenses in accordance with the method set forth in Code section 864(f). In granting the transitional period, Treasury stated that the transitional method was not intended to suggest any particular views about the proper allocation and apportionment of research expenses. Rather, Treasury stated, the transition method was intended solely to provide taxpayers with transitional relief and to minimize audit controversy and facilitate business planning during the conduct of the regulatory review.

House Bill

The House bill makes permanent the research allocation rules of Code section 864(f), except that the portion of research expense automatically allocated and apportioned to income sourced in the place of performance of the research is 50 percent, rather than 64 percent. Thus, for research expense other than amounts incurred to meet certain legal requirements, and thus allocable to one geographical source, 50 percent of U.S.-incurred research expense is allocated and apportioned to U.S. source income, and 50 percent of foreign-incurred research expense is allocated and apportioned to foreign source income. The remaining research expense is allocated and apportioned either on the basis of sales or gross income, but subject to the condition that if income-based apportionment is used, the amount apportioned to foreign source income can be no less than 30 percent of the amount that would have been apportioned to foreign source income had the sales method been used.

The House bill provides regulatory authority for the implementation of certain adjustments regarding section 936 companies. In addition, the bill authorizes the Treasury to prescribe such regulations as may be appropriate to carry out the purposes of this provision, including regulations relating to the determination of whether research activities are conducted inside or outside the United States and making such adjustments as may be appropriate in the case of cost sharing arrangements and contract research.

Effective date.—The House bill provision applies to taxable years ending after date of enactment, except that it does not apply to any taxable year to which Rev. Proc. 92-56 applies, or would have applied had the taxpayer elected the benefits of that Revenue Procedure.

Senate Amendment

The Senate amendment temporarily adopts for one year the provisions (including those providing regulatory authority) adopted permanently in the House bill. The Senate amendment applies to the first taxable year (beginning on or before August 1, 1994) following the taxpayer's last taxable year to which Rev. Proc. 92-56 applies, or would have applied had the taxpayer elected the benefits of that Revenue Procedure.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Eliminate working capital exception for foreign oil and gas and shipping income (sec. 14235 of the House bill, sec. 8235 of the Senate amendment, sec. 13235 of the conference agreement, and secs. 904(d), 907, and 954 of the Code)

Present Law

Foreign tax credit separate limitations

Foreign tax credit limitations are computed separately for certain categories of foreign source income, including passive income, high withholding tax interest, financial services income, shipping income, dividends from each noncontrolled section 902 corporation, certain distributions from DISCs and FSCs, certain types of income earned by a FSC, and all other (i.e., "overall basket" or "general basket") income. Passive income generally includes income which is of a kind which would be foreign personal holding company income as defined under Code section 954(c) (e.g., interest and dividends) and typically is not subject to high levels of foreign tax. The separate limitation for passive income generally prevents the cross-crediting of high foreign taxes on income which falls in the general basket against the residual U.S. tax on passive income.

The separate foreign tax credit limitation for passive income was enacted in 1986 and replaced the prior law separate foreign tax credit limitation for passive interest income.[74] Prior law excluded from the passive interest separate limitation category interest derived from any transaction which is directly related to the active conduct by the taxpayer of a trade or business in a foreign country. Regulations under prior law expressly treated certain types of interest on working capital as interest derived from a transaction which is directly related to the active conduct of a trade or business.[75] No such general working capital exception exists under the passive income definition as established in 1986. As a result of the interaction of the Code and Treasury regulations originally developed prior to 1987, however, the working capital exception has been retained for the oil and gas and shipping industries.

Special limitation on credits for foreign extraction taxes and taxes on foreign oil related income

In addition to the foreign tax credit limitations that apply to all creditable foreign taxes, a special limitation is placed on foreign income taxes on foreign oil and gas extraction income (FOGEI). Under this special limitation, amounts claimed as taxes paid on FOGEI of a U.S. corporation qualify as creditable taxes (if they otherwise so qualify) only to the extent they do not exceed the product of the highest marginal U.S. tax rate on corporations (presently 34 percent) multiplied by such extraction income. Foreign taxes paid in excess of that amount on such income are, in general, neither creditable nor deductible (unless a credit carryover provision applies).

A similar special limitation may apply to foreign taxes paid on foreign oil related income (FORI) in certain cases where that type of income is subjected to a materially greater level of tax by a foreign jurisdiction than non oil and gas income generally would be. Under this limitation, a portion of the foreign taxes on FORI may be deductible, but not creditable.

As previously described, regulations issued prior to 1986 and still effective define FOGEI and FORI to include interest on working capital related to extraction or oil related activities, as the case may be. Thus, under current regulations, FOGEI and FORI include what generally would be considered as passive income for foreign tax credit limitation purposes.

House Bill

In general

The House bill prevents the cross-crediting of foreign taxes on FOGEI, FORI, and shipping income by placing certain passive income related to oil and gas and shipping operations in the passive category for foreign tax credit limitation purposes. In addition, the House bill excludes certain passive income related to foreign oil and gas extraction or other foreign oil related activities from the computation of the FOGEI and FORI foreign tax credit limitations.

[74] P.L. 99-514, sec. 1201(a) (1986).

[75] Former Treas. Reg. sec. 1.904-4(b).

Foreign tax credit separate limitations

With respect to the separate foreign tax credit limitation for passive income, the House bill eliminates the present-law exclusion of FOGEI from the definition of passive income. Thus, if a taxpayer has gross income that falls within the definition of passive income under section 904, and also satisfies the definition of FOGEI under section 907, the income would be treated as passive income in determining the taxpayer's foreign tax credit.

In addition, the House bill amends the present-law rule applicable to income which by definition qualifies both as foreign personal holding company income under section 954(c) and as foreign base company oil related income under section 954(g). The House bill provides that such income is to be treated as foreign personal holding company income. As such, the income generally would be passive income for foreign tax credit purposes.

Likewise, the House bill specifies that dividend or interest income that by definition qualifies as both foreign personal holding company income and foreign base company shipping income is to be treated as foreign personal holding company income. Thus, for foreign tax credit purposes, the income would fall in the passive basket rather than in the separate basket for shipping income.

Special FOGEI and FORI limitations

The House bill provides that the term "foreign oil and gas extraction income" does not include any dividend or interest income which is passive income as defined for foreign tax credit limitation purposes. Since, as discussed above, the House bill treats gross interest income on working capital related to foreign oil and gas extraction activities, for example, as passive income, such income is not considered FOGEI for purposes of computing the special limitation for foreign taxes paid on FOGEI.

In addition, the House bill specifies that the term "foreign oil related income" does not include any dividend or interest income which is passive income as defined under the foreign tax credit provisions. As a result, for example, gross interest income on working capital related to activities which generate foreign oil related income would not be treated as FORI for purposes of computing the special limitation for foreign taxes paid on FORI.

Effective date

The provision applies to income earned in taxable years beginning after December 31, 1992.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and Senate amendment with clarifications.

The conference agreement clarifies that for purposes of applying section 954(f), dividends and interest received from a foreign corporation in respect of which taxes are deemed paid under section 902 are classified as foreign base company shipping income (as under present law) to the extent attributable to foreign base company shipping income. Similarly, the conferees intend that dividends and interest received from a foreign corporation in respect of which taxes are deemed paid under section 902 are classified as FOGEI or FORI, respectively, to the extent attributable to FOGEI or FORI.

The conferees also wish to clarify the treatment (under sec. 954(b)(6)(B)) of a post-effective date corporate distribution of income earned by the payor in a pre-effective date year. The determination whether such pre-effective date income was shipping income for this purpose will be made under the laws defining shipping income in effect for the year in which the income was earned.

4. Transfer pricing initiative (sec. 14236 of the House bill, sec. 8236 of the Senate amendment, sec. 13236 of the conference agreement, and sec. 6662 of the Code)

Present Law

A "substantial" valuation misstatement may result in a penalty of 20 percent of the understatement of tax attributable to the substantial valuation misstatement (sec. 6662(a) and (b)(2)). The penalty for a "gross" valuation misstatement is 40 percent of the tax understatement (sec. 6662(h)). No valuation misstatement penalty is imposed if it is shown that there was reasonable cause for the underpayment and that the taxpayer acted in good faith (see sec. 6664(c)).

There is a substantial valuation misstatement if, among other things, the net section 482 transfer price adjustment for the taxable year exceeds $10 million. The analogous "gross valuation misstatement" involves a net section 482 transfer price adjustment of $20 million. The net section 482 transfer price adjustment is the net increase in taxable income for a taxable year resulting from adjustments under section 482 in the price for any property or services (or use of property). However, a net increase in taxable income attributable to a price redetermination is disregarded, for this purpose, if it is shown that there was a reasonable cause for the taxpayer's determination of the price, and that the taxpayer acted in good faith with respect to the price.

House Bill

Under the House bill, the threshold amount of net section 482 transfer price adjustment that generally would trigger a substantial valuation misstatement penalty is lowered to $5,000,000. In addition, the term substantial valuation misstatement is expanded to include a case where the net section 482 transfer price adjustment for the taxable year exceeds 10 percent of the taxpayer's gross receipts. The term gross valuation misstatement includes a case where the net section 482 transfer price adjustment exceeds 20 percent of gross receipts.

In measuring the amount of a taxpayer's net section 482 transfer price adjustment, a net increase in taxable income attributable to a price redetermination is disregarded under the House bill only if the taxpayer satisfies certain statutory requirements.

The taxpayer would meet the requirements if it established that each of three criteria were met. First, the taxpayer would have to establish that the price it used was determined under a pricing method specified in the section 482 regulations. Second, the taxpayer would have to establish that it applied the method reasonably. (In order for the application of the method to have been reasonable, it is intended that any procedural or other requirements imposed under the regulations must have been observed. For example, if certain adjustments required under a particular method were not made, the application of that method would not be reasonable.) Third, the taxpayer would have to establish that it had documentation, in existence as of the time of filing its original return, setting forth the reasonable determination of the price as described above, which documentation the taxpayer provides to the IRS within 30 days of a request for it.

Alternatively, the taxpayer would meet the requirements if it established that none of the methods specified in the section 482 regulations was likely to result in a price that would clearly reflect income, that it used another method which was likely to result in such a price, and that it had documentation, in existence as of the time of filing its original return, setting forth the determination of the price and establishing the foregoing requirements, which documentation the taxpayer provides to the IRS within 30 days of a request for it.

Under the House bill, it is intended that the application of any method would not be considered reasonable if the taxpayer became aware prior to filing its tax return that such application more likely than not did not lead to an arm's length result.

In the case of a valuation misstatement due to a net section 482 transfer price adjustment, no penalty would be excused for reasonable cause and good faith unless the above requirements were met.

Effective date.—The House bill provision is effective for taxable years beginning after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment. The conferees note that under the agreement, a taxpayer that does not apply a pricing method specified in the section 482 regulations may nevertheless have its net increase in taxable income attributable to a section 482 adjustment disregarded in determining the amount of its net section 482 transfer price adjustment, but in order to do so the taxpayer must establish (among other things) that none of the methods specified in the section 482 regulations was likely to result in a price that would clearly reflect income. With respect to those various types of transactions that generally are not the subject of any pricing methods specified in the section 482 regulations, the conferees wish to clarify that to meet the above requirement, it will be necessary simply to establish that the transaction is of a type for which no methods are specified in the section 482 regulations.

5. Deny portfolio interest exemption for contingent interest (sec. 14237 of the House bill, sec. 8237 of the Senate amendment, sec. 13237 of the conference agreement, and secs. 871(h), 881(c), and 2105(b) of the Code)

Present Law

Deductibility of interest

As a general rule, a deduction is allowed for all interest paid or accrued on indebtedness. Whether a financial instrument is treated as debt for Federal income tax purposes depends on the facts of the particular case. Under existing law, an instrument may qualify as debt even if it provides the holder with significant equity participation rights. For example, the IRS has ruled that in certain cases, contingent interest paid on a shared appreciation mortgage loan used to finance the purchase of a personal residence may be deductible by a cash basis payor.[76] As another example, contingent interest based on a share of the borrower's profits has been determined to be deductible in certain cases.[77]

---

[76] Rev. Rul. 83-51, 1983-1 C.B. 48.

[77] See, e.g., *Dorzback v. Collison*, 195 F.2d 69 (3d Cir. 1952).

Interest received by foreign persons

The Internal Revenue Code provides that U.S. source interest income earned by a nonresident alien individual or a foreign corporation that is not effectively connected with the conduct of a U.S. trade or business generally is subject to a gross-basis 30-percent withholding tax. A significant statutory exemption from that tax applies to so-called "portfolio interest" received by foreign persons.

Portfolio interest generally is defined as any U.S. source interest (including original issue discount) that is not effectively connected with the conduct of a trade or business and (1) is paid on an obligation that satisfies certain registration requirements or specified exceptions thereto, and (2) is not received by a 10-percent owner of the issuer of the obligation, taking into account shares owned by attribution.[78]

Foreign investment in U.S. real property—shared appreciation debt

A foreign person's gain on the disposition of a U.S. real property interest (USRPI) is treated as income that is effectively connected with the conduct of a U.S. trade or business, and thus is subject to net-basis tax at ordinary U.S. income tax rates pursuant to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA). USRPIs include interests (other than solely as a creditor) in (1) real property, and (2) domestic corporations that are U.S. real property holding corporations (USRPHCs).

Whether a financial instrument is considered debt under any provisions of the Code is not determinative of whether it constitutes an "interest solely as a creditor" for purposes of FIRPTA. Regulations provide that an interest in real property other than an interest solely as a creditor includes any right to share in the appreciation in the value of, or in the gross or net proceeds or profits generated by, the real property. Similarly, an interest in an entity (such as a USRPHC) other than an interest solely as a creditor includes any right to share in the appreciation in the value of an interest in, or the assets of, the entity, or a right to share in the gross or net proceeds or profits derived by, the entity.

Regulations further provide that amounts otherwise treated for tax purposes as principal and interest payments on debt obligations of all kinds (including obligations that are interests other than solely as a creditor) do not give rise to gain or loss that is subject to U.S. tax under FIRPTA.[79] Thus, a foreign owner of a note that pays interest contingent on appreciation in U.S. real property incurs U.S. income tax if he disposes of the note, but may not incur U.S. income tax if he holds the note and receives interest payments under its terms.

Estate tax treatment of portfolio obligations

As a general rule, estate tax is imposed on the transfer of the taxable estate of every decedent nonresident who was not a citizen of the United States. For this purpose, the value of the gross estate of such a decedent that is subject to tax is that part of his or her gross estate which at the time of death (or as provided in section 2104(b)) is situated in the United States. Certain types of property are specifically excluded by statute from a nonresident decedent's gross estate. One type of property granted such an exclusion is a debt obligation if any interest thereon would be eligible for the exemption from income tax for portfolio interest were such interest received by the decedent at the time of his or her death, determined without regard to whether a statement has been received that the beneficial owner of the obligation is not a United States person.

House Bill

The House bill makes the portfolio interest exemption inapplicable to certain contingent interest income received by foreign persons. In the case of an instrument on which a foreign holder earns both contingent and noncontingent interest, denial of the portfolio interest exemption applies only to the portion of the interest which is contingent interest.

Under the House bill, contingent interest includes interest determined by reference to any of the following attributes of the debtor or any related person: receipts, sales, or other cash flow; income or profits; or changes in the value of property.[80] In addition, contingent interest includes interest determined by reference to any dividend, partnership distribution, or similar payment made by the debtor or a related person.

The House bill provides a number of exceptions to the general definition of contingent interest as detailed above. Under one such exception, interest is not considered contingent solely because the timing of the interest or any related principal payment is subject to a contingency. In addition, portfolio interest treatment is not denied under the House bill solely because the interest is paid with respect to nonrecourse or limited recourse indebtedness. Interest also is not denied portfolio treatment under the House bill if all or substantially all of it is determined by reference to certain other amounts of interest that is *not* described as contingent above (or by reference to the principal amount of indebtedness on which such other interest is paid). In determining whether all or substantially all of an amount of interest payable on a debt obligation is computed by reference to another amount of interest that is not contingent interest, other factors that affect the amount of interest payable on the debt obligation, but which are not contingencies as contemplated by the House bill, are not taken into account.

Another of the House bill's exceptions provides that interest is not denied portfolio treatment solely because the debtor or a related person enters into a hedging transaction to reduce the risk of interest rate or currency fluctuations with respect to such interest. Interest also is not denied portfolio treatment under the House bill if it is determined by reference to changes in the value of (or any index of the value of) actively traded property other than a USRPI. For this purpose, the term "property" includes stock, and the term "actively traded" has the meaning given to that term under section 1092(d) of the Code. In general, portfolio treatment also is not denied if the interest is determined by reference to the yield (or any index of the yield) on such actively traded property. However, this exception for interest contingent on the yield of actively traded property does not apply if the property is a debt instrument that itself pays contingent interest as described above, or the actively traded property is stock or other property that represents a beneficial interest in the debtor or a related person.

The House bill provides that application of the provision may be extended to any type of contingent interest not specifically described in the bill, if identified by the Treasury Secretary in regulations. The Secretary is granted authority under the House bill to issue such regulations to supplement the statutory description of contingent interest in order to address cases where a denial of the portfolio interest exemption is necessary or appropriate to prevent avoidance of U.S. income tax. The House bill additionally provides that the Secretary may by regulation exempt any type of interest from denial, under the bill, of portfolio treatment.

The provision is not intended to override existing treaties that reduce or eliminate U.S. withholding tax on interest paid to foreign persons.

Effective date.—The provision applies to interest received after December 31, 1993. It does not apply, however, to any interest paid or accrued with respect to any indebtedness with a fixed term that was issued on or before April 7, 1993, or was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before such indebtedness was issued.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment with one clarification. In addition, the conference agreement provides specific rules for the estate tax treatment of contingent interest obligations.

The conferees wish to clarify the treatment under the provision of a debt instrument with a minimum non-contingent interest rate. For example, assume that the interest rate on a debt instrument is stated as the greater of either of two amounts—6% of the principal amount or 10% of gross profits. In such a case, only the gross-profits-based interest is contingent interest. The conferees wish to clarify that with respect to such an instrument, only the excess of the contingent amount, if any, over the minimum fixed interest amount is disqualified from portfolio interest treatment.

The conference agreement provides that, for purposes of determining the gross estate of a nonresident noncitizen decedent subject to the estate tax, a special rule applies to debt instruments that provide for both contingent and noncontingent interest. Under the conference agreement, an appropriate portion of the value of such an instrument, as determined in a manner prescribed by the Secretary of the Treasury, is treated as property within the United States and, thus, is included in the decedent's gross estate. Until rules are issued that provide guidance as to the proper method for determining the appropriate portion of such an instrument that is treated as situated in the United States, the conferees intend that taxpayers be permitted to use any reasonable method for making such determination.

[78] Certain additional exceptions to this general rule apply only in the case of a corporate recipient of interest. In such a case, the term portfolio interest generally excludes (1) interest received by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), and (2) interest received by a controlled foreign corporation from a related person.

[79] Treas. Reg. sec. 1.897-1(h). FIRPTA applies in the case of a "disposition" of a USRPI. Treasury Reg. sec. 1.897-1(h) generally defines a disposition as a transaction that gives rise to gain under section 1001 of the Code. Section 1001 does not apply to interest received on indebtedness.

[80] For purposes of determining whether interest is contingent interest under the House bill, the term related person means any person who is related to the borrower under Code section 267(b) or 707(b)(1). In addition, a related person, for this purpose, includes a party to an arrangement undertaken for a purpose of avoiding the application of this provision of the House bill.

The estate tax provision is effective for decedents dying after December 31, 1993. The provision does not apply to any obligation with a fixed term that was issued on or before April 7, 1993, or was issued after such date pursuant to a written binding contract in effect on such date and at all times thereafter before it was issued.

6. Regulatory authority to address multiple-party financing arrangements (sec. 14238 of the House bill, sec. 8238 of the Senate amendment, sec. 13238 of the conference agreement, and new sec. 7701(l) of the Code)

Present Law

The tax treatment of a transaction may depend on the identity of the parties to the transaction. For example, a loan by a controlled foreign corporation to a related U.S. borrower is treated as an investment in U.S. property under Code section 956, and as such, may result in an inclusion of income to U.S. shareholders of the foreign corporation. On the other hand, an income inclusion to the U.S. shareholders of the foreign corporation would not have resulted had the loan been made by the same foreign corporation to an unrelated foreign borrower.

Under the Code, payments of interest by U.S. persons to related foreign persons may be subject to 30-percent gross-basis withholding tax. On the other hand, no such tax applies to payments by U.S. persons to unrelated foreign persons of so-called portfolio interest. Under treaties, payments of interest by U.S. persons to related foreign persons who are resident in the treaty country may be subject to little or no U.S. gross-basis tax. By contrast, if the related recipient of interest is resident in a country with respect to which no U.S. income tax treaty is in force, the 30-percent gross-basis tax would be imposed.

Courts have stated that the incidence of taxation depends upon the substance of a transaction as a whole.[81] In certain cases, courts have recharacterized transactions in order to impose tax consistent with this principle. For example, where three parties have engaged in a chain of transactions, the courts have at times ignored the "middle" party as a mere "conduit," and imposed tax as if a single transaction had been carried out between the parties at the ends of the chain.

In *Aiken Industries, Inc. v. Commissioner*,[82] the Tax Court recharacterized an interest payment by a U.S. person on its note held by a related treaty-country resident, which in turn had a precisely matching obligation to a related non-treaty-country resident, as a payment directly by the U.S. person to the non-treaty-country resident. The transaction in its recharacterized form resulted in a loss of the treaty protection that would otherwise have applied on the payment of interest by the U.S. person to the treaty-country resident, and thus caused the interest payment to give rise to 30-percent U.S. tax.

The IRS has taken the position that it will apply a similar result in cases where the back-to-back related party debt obligations are less closely matched than those in *Aiken Industries*, so long as the intermediary entity does not obtain complete dominion and control over the interest payments.[83] The IRS has taken an analogous position where an unrelated financial intermediary is interposed between the two related parties as lender to one and borrower from the other, as long as the intermediary would not have made or maintained the loan on the same terms without the corresponding borrowing.[84] In a recent technical advice memorandum, the IRS has taken the position that interest payments by a U.S. company to a related, treaty-protected financial intermediary may be treated as payments by the U.S. company directly to the foreign parent of the financial intermediary even though the matching payments from the intermediary to the parent are not interest payments, but rather are dividends.[85]

House Bill

The House bill authorizes the Treasury Secretary to promulgate regulations that set forth rules for recharacterizing any multiple-party financing transaction as a transaction directly among any two or more of such parties where the Secretary determines that such recharacterization is appropriate to prevent avoidance of any tax imposed by the Internal Revenue Code.

It is intended that the provision apply not solely to back-to-back loan transactions, but also to other financing transactions. For example, it would be within the proper scope of the provision for the Secretary to issue regulations dealing with multiple-party transactions involving debt guarantees or equity investments.

Effective date.—The provision is effective on date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

7. Exports of certain unprocessed softwood timber (sec. 8239 of the Senate amendment, sec. 13239 of the conference agreement, and secs. 861–865, 921–927, 951–964, and 991–996 of the Code)

Present Law

Rules for sourcing income

Subject to significant exceptions, income from the sale of personal property generally is sourced on the basis of the residence of the seller. One set of exceptions apply to sales of inventory property. Income derived from the purchase of inventory property within the United States and its sale outside the United States constitutes foreign source income. Similarly, income derived from the purchase of inventory property outside the United States and its sale within the United States constitutes domestic source income. Income attributable to the marketing of inventory property by U.S. residents in other cases may also have its source determined to be the place of sale. For this purpose, the place of sale generally is the place where title to the property passes to the purchaser (the "title passage" rule).

Income derived from the manufacture of products in the United States and their sale elsewhere is treated as having a divided source. Under Treasury regulations, 50 percent of such income generally is attributed to the place of production (in this case, the United States), and 50 percent of the income is attributed to marketing activities and is sourced on the basis of the place of sale (determined under the title passage rule). Under certain circumstances, the division of the income between production and marketing activities must be made on the basis of an independent factory or production price, rather than on a 50–50 basis, where a taxpayer sells part of its output to wholly independent distributors or other selling concerns in such a way as to establish fairly the independent factory or production price unaffected by considerations of tax liability (Treas. Reg. sec. 1.863-3(b)(2), *Example (1)*; Notice 89-10, 1989-4 I.R.B. 10).

Income earned by foreign corporations

The United States exerts jurisdiction to tax all income, whether derived in the United States or elsewhere, of U.S. citizens, residents, and corporations. By contrast, the United States taxes nonresident aliens and foreign corporations only on income with a sufficient nexus to the United States. In the case of income earned by a U.S.-owned foreign corporation, generally no U.S. tax is imposed until that income is distributed to the U.S. shareholders as a dividend.

When a U.S.-controlled foreign corporation earns so-called "subpart F income," the United States generally taxes the corporation's 10-percent U.S. shareholders currently on their pro-rata share of that income regardless of whether the income is actually distributed currently to the shareholders. Included among the types of income deemed distributed (generally referred to as "subpart F income") is foreign base company sales income.

Certain subpart F income derived by a controlled foreign corporation that is an export trade corporation (ETC) from certain export activities is exempt from current taxation. Under this exemption, the subpart F income of an ETC is reduced by certain amounts that constitute export trade income (as defined in section 971). No foreign corporation may qualify as an ETC unless it has so qualified generally since 1971.

Foreign sales corporations

A portion of the income of an eligible foreign sales corporation (FSC) that is generated from export property is exempt from Federal income tax. If the income earned by the FSC is determined under special administrative pricing rules, then the exempt foreign trade income generally is 15/23 of the foreign trade income the FSC derives from the transaction. In addition, a domestic corporation is allowed a 100-percent dividends-received deduction for dividends distributed from the FSC out of earnings attributable to certain foreign trade income. Thus, there generally is no corporate level tax imposed on a portion of the income from exports of a FSC.

Foreign trade income is defined as the gross income of a FSC attributable to foreign trading gross receipts. Foreign trade income includes both the profits earned by the FSC itself from exports and commissions earned by the FSC from products exported by others and services related thereto. In general, the term foreign trading gross receipts means the gross receipts of a FSC which are attributable to the export of certain goods and services. Foreign trading gross receipts are the gross receipts of the FSC that are attributable to the following types of transactions: the sale of export property, the lease or rental of export property, services related and subsidiary to the sale or lease of export property, engineering and architectural services, and export management services.

Export property, for purposes of the FSC rules, is defined as property that is (1) manufactured, produced, grown, or extracted in

[81] See, e.g., *Commissioner v. Court Holding Co.*, 324 U.S. 331 (1945).

[82] 56 T.C. 925 (1971), *acq. on another issue*, 1972-2 C.B. 1.

[83] Rev. Rul. 84-152, 1984-2 C.B. 381; Rev. Rul. 84-153, 1984-2 C.B. 383.

[84] Rev. Rul. 87-89, 1987-2 C.B. 195.

[85] Tech. Adv. Mem. 9133004 (May 3, 1991).

the United States by a person other than a FSC, (2) held primarily for sale, lease, or rental, in the ordinary conduct of a trade or business by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and (3) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

Domestic International Sales Corporations

Prior law provided for a system of tax deferral for corporations known as Domestic International Sales Corporations, or "DISCs," and their shareholders. Under this system, the profits of a DISC were not taxed to the DISC but were taxed to the shareholders of the DISC when distributed or deemed distributed to them. Each year, a DISC was deemed to have distributed a portion of its income, thereby subjecting that income to current taxation in its shareholders' hands. Federal income tax could generally be deferred on the remaining portion of the DISC's taxable income until the income was actually distributed to the shareholders.

Under current law, a DISC is permitted to continue to defer income attributable to $10 million or less of qualified export receipts. However, unlike the prior-law DISC rules, an interest charge is imposed on the shareholders of the DISC. The amount of the interest is based on the tax otherwise due on the deferred income computed as if the income were distributed. Taxable income of the DISC attributable to qualified export receipts that exceed $10 million is deemed distributed to the DISC's shareholders.

To qualify for DISC treatment, at least 95 percent of a domestic corporation's gross receipts must consist of qualified export receipts. In general, qualified export receipts are receipts, including commission receipts, derived from the sale or lease for use outside the United States of export property, or from the furnishing of services related or subsidiary to the sale or lease of export property. Export property must be manufactured, produced, grown, or extracted in the United States.

House Bill

No provision.

Senate Amendment

The Senate amendment modifies certain provisions of the Internal Revenue Code as they apply to exporters of unprocessed timber which is a softwood. For this purpose, the term "unprocessed timber" means any log, cant, or similar form of timber.

The Senate amendment excludes from the definition of "export property" for purposes of the FSC rules any unprocessed timber which is a softwood. Similarly, the Senate amendment excludes from the definition of "export property" for purposes of the DISC rules any unprocessed timber which is a softwood.

The Senate amendment also amends the sales source rules as they apply to inventory property. In this case, the Senate amendment provides that any income from the sale of any unprocessed timber which is a softwood and which was cut from an area located in the United States would be domestic source income.

Finally, the Senate amendment treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation in connection with the sale of any unprocessed timber which is a softwood and was cut from an area located in the United States. In addition, the Senate amendment treats as subpart F foreign base company sales income any income derived by a controlled foreign corporation from the milling of any such timber outside the United States. Any income treated as subpart F income under the Senate amendment that is earned by an export trade corporation is not subject to reduction by the export trade income of the corporation.

Effective date.—The Senate amendment provision is effective for transactions occurring after date of enactment of the proposal.

Conference Agreement

The conference agreement follows the Senate amendment.

D. Energy and Motor Fuels Tax Provisions

1. Energy Btu tax (sec. 14241 of the House bill)

Present Law

No comprehensive Federal energy tax is imposed under present law. Specific Federal excise taxes are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, gasoline and special motor fuels used in motorboats, diesel fuel used in trains, fuels used in inland waterway transportation, and aviation fuels used in noncommercial aviation. Excise taxes also are imposed on coal from domestic mines and on crude oil received at domestic refineries and petroleum products entered into the United States.

House Bill

In general

The House bill imposes excise taxes on petroleum products, natural gas, coal, alcohol fuels, and electricity. The taxes are imposed at a base rate of 26.8 cents per million Btus on all fuels; an additional (supplemental) rate of 34.2 cents per million Btus is imposed on most petroleum products and on alcohol fuels. The electricity tax rate is calculated separately by each seller based on the Btu content of the fuels used in generating its electricity, and on statutorily assumed Btu contents for hydro- and nuclear-generated electricity.

The bill imposes an imputed Btu tax on imported products that the Treasury Department designates as "energy intensive." The tax applies only to products of industries classified, or individual products classified, as having direct energy inputs, measured as a percentage of the value of the finished product, in excess of two percent.

Points of collection

The petroleum and alcohol fuels taxes are collected on removal of those fuels from registered terminal facilities. The natural gas, coal, and electricity taxes are collected at the retail level. Use of these products is taxable if the use occurs before the point at which tax normally is imposed.

Exemptions

Number 2 distillate fuel oil used for the heating of any building and gasoline and diesel fuel used on farms are exempt from the supplemental petroleum rate. Full exemptions are provided for: electricity generated from renewable sources or biomass; direct energy exports; feedstocks (including electricity used in electrolytic production processes); certain fuels used to produce taxable energy products; fuels used in international commercial transportation; a portion of coal used in certain coke production; and methane recovered from biomass or certain coal mining operations.

Effective date

Effective on July 1, 1994, with the full tax rates being phased in ratably over a three-year period. After that period, the tax rates are indexed for inflation. Floor stocks taxes are imposed on taxable products held beyond the point of collection on July 1, 1994, and on the date of each subsequent rate change.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

2. Transportation fuels tax increase (sec. 8241 of the Senate amendment, sec. 13241 of the conference agreement, and secs. 4041, 4042, 4081, 4091, 6416, 6421, 6427, 9502, 9503 of the Code)

Present Law

Several separate Federal excise taxes are imposed on specified transportation fuels. Taxable fuels include motor fuels (gasoline, diesel fuel and special motor fuels[86]) used for highway transportation gasoline used in motorboats diesel fuel used in trains fuels used in inland waterways transportation and aviation fuel (gasoline and jet fuel) used in most aviation.

In general, gasoline and special motor fuels used in highway vehicles and motorboats are taxed at a total rate of 14.1 cents per gallon; highway diesel fuel is taxed at a total rate of 20.1 cents per gallon (except certain intercity bus diesel fuel is taxed at a reduced rate of 3.1 cents per gallon); noncommercial aviation gasoline is taxed at a total rate of 15.1 cents per gallon; noncommercial aviation jet fuel is taxed at a total rate of 17.6 cents per gallon; commercial aviation fuels are taxed at a total rate of 0.1 cent per gallon; railroad diesel fuel is taxed at a total rate of 2.6 cents per gallon; and inland waterways fuels are taxed at a total rate of 17.1 cents per gallon in 1993 (increasing to 19.1 cents per gallon in 1994 and 20.1 cents per gallon in 1995 and thereafter).

Revenues from most of these excise taxes are deposited in various trust funds to finance specific Federal public works and environmental programs. The set of fuels subject to each tax generally reflects the purposes of the trust fund to which the revenues are dedicated. The above rates also include a 2.5-cents-per-gallon general deficit reduction tax (in effect through September 30, 1995[87]) imposed on highway motor fuels, motorboat gasoline and special motor fuels, and train diesel fuel. Revenues from this deficit reduction tax are retained in the General Fund of the Treasury.

One of the dedicated excise taxes is a 0.1 cent per gallon tax (0.05 cent per gallon for qualified ethanol and methanol fuels) imposed on all of the fuels listed above, except liquefied petroleum gas. This tax, in effect through 1995, is deposited into the Leaking Underground Storage Tank ("LUST") Trust Fund, which is used to fund cleanup costs associated with leaking underground storage tanks containing petroleum products.

Certain fuel uses are exempt from the LUST excise tax. Exempt uses include No. 2 distillate fuel oil[88] used as heating oil; gasoline and diesel fuel used on farms for farming purposes; off-highway business uses of fuel (for example, fuel used to operate pumps, generators, compressors, forklift trucks, or bulldozers, or fuel used in vessels used by

[86] Special motor fuels include benzol, benzene, naphtha, liquefied petroleum gas, casing head and natural gasoline, and any other liquid (other than kerosene, gas oil, fuel oil, or gasoline) sold for use in motor vehicles or motorboats.

[87] See Item II.D.4., below, for the extension and transfer of the deficit reduction tax rate.

[88] No. 2 residual fuel oil can be used either as diesel fuel or as home heating oil.

fisheries or whaling businesses); fuels used by State and local governments; fuels used by nonprofit educational organizations; exported fuels, including fuels used in international aviation and international shipping; and fuel for military ships and aircraft.

The gasoline excise tax (including the LUST rate on gasoline) is imposed when the fuel leaves terminal storage facilities (i.e., at the terminal rack). The diesel fuel excise tax is imposed on the wholesale sale of that fuel.

House Bill

No provision.

Senate Amendment

In general

The Senate amendment imposes a permanent excise tax of 4.3 cents per gallon on: (1) all transportation fuels currently subject to the Leaking Underground Storage Tank Trust Fund ("LUST") excise tax, except jet fuels used in aviation; (2) liquefied petroleum gases currently taxable as special motor fuels; and (3) diesel fuel used in noncommercial motorboats. Taxable fuels include motor fuels (gasoline, diesel fuel and special motor fuels) used for highway transportation or in motorboats; gasoline used in aviation; gasoline used in off-highway non-business uses (e.g., small engines and recreational trail uses); diesel fuel used in trains; and fuels used in inland waterways transportation.

Point of collection

The new 4.3-cents-per-gallon excise tax generally is collected in the same manner as the existing excise taxes on these fuels (i.e., the tax on gasoline and diesel fuel (see item II.D.3., below) is collected on removal of these fuels from registered terminal facilities, the tax on special motor fuels is collected upon the retail sale of these fuels, and the tax on fuels used in inland waterways is collected on the use of these fuels).

Exemptions

Most fuel uses that are exempt from the LUST tax are exempt from the new tax. These uses include, for example, number 2 distillate (diesel) fuel used as heating oil; gasoline and diesel fuel used on farms for farming purposes; off-highway business uses (such as to operate stationary pumps or compressors or in construction vehicles or vessels operated by fisheries); fuels used by State and local governments and nonprofit schools including fuel used in privately operated school and intracity buses; exported fuels; fuels used in international aviation; and, international and domestic shipping (other than shipping on the inland waterways system).

Disposition of revenues

The 4.3-cents-per-gallon highway and rail fuel revenues are to be transferred to the Highway Trust Fund; aviation gasoline revenues are to be transferred to the Airport and Airway Trust Fund; inland waterways transportation fuel revenues are to be transferred to the Inland Waterways Trust Fund; motorboat fuels and small-engine gasoline revenues are to be transferred to the Aquatic Resources Trust Fund; and non-highway recreational vehicle fuels revenues are to be transferred to the National Recreational Trails Trust Fund.

Effective date

The provision is effective on October 1, 1993, with appropriate floor stocks taxes being imposed on that date.

Conference Agreement

The conference agreement follows the Senate amendment, with the following modifications.

The tax base is expanded to include compressed natural gas (CNG) used in highway motor vehicles or motorboats, and jet fuel used in noncommercial aviation. In addition, gasoline and jet fuel used in commercial aviation is subject to the 4.3 cent-per-gallon rate beginning on October 1, 1995 (with appropriate floor stocks taxes being imposed on that date).

CNG used in highway vehicles or motorboats is taxed at a rate of 48.54 cents per mcf (thousand cubic feet) at standard temperature and pressure. The tax is collected on the retail sale or use of CNG under the same provisions as the special motor fuels tax currently is collected.

Revenues from the new 4.3-cents-per-gallon tax (48.54 cents per mcf on compressed natural gas) are retained in the General Fund of the Treasury.

Effective Date.—The provision is effective on October 1, 1993, with appropriate floor stocks taxes being imposed on that date.

3. Modification of the collection of the diesel fuel excise tax (secs. 14242–14243 of the House bill, secs. 8242–8243 of the Senate amendment, secs. 13242–13243 of the conference agreement, and secs. 4041, 4081 and 4091 of the Code)

Present Law

Diesel fuel tax collection

Taxes totalling 20.1 cents per gallon generally are imposed on the sale of diesel fuel by a producer or importer. A reduced rate of 3.1 cents per gallon applies to sales of diesel fuel for use in certain intercity buses. A reduced rate of 2.6 cents per gallon applies to sales of diesel fuel for use in trains.

Diesel fuel for heating and for certain other non-taxable uses (including use on a farm for farming purposes) is exempt from tax. Diesel fuel may be sold without the payment of tax only if certain prescribed conditions are satisfied, which may include registration by the buyer and seller and certification of exempt use by the buyer to the seller.

The producer making a taxable sale generally is liable for the tax. The term producer generally includes refiners, compounders, blenders, wholesale distributors of diesel fuel and dealers selling any diesel fuel exclusively to producers of diesel fuel. Producers must be registered with the Internal Revenue Service ("IRS") and, as a condition of registration, may be required to post a bond. Producers who are registered may sell diesel fuel to other registered producers without the payment of tax. Thus, in general, most diesel fuel tax is collected at the wholesale distributor level.

Reduced-rate and exempt users who buy diesel fuel after tax has been paid on the fuel may file a claim for credit or refund. These users must, however, keep business records that will enable the IRS to verify the amount claimed.

Gasoline tax collection

Taxes totalling 14.1 cents a gallon generally are imposed on (1) the removal of gasoline from any refinery, (2) the removal of gasoline from any terminal, (3) the entry of gasoline into the United States, and (4) the sale to any unregistered person unless there was a prior taxable removal or entry of the gasoline under (1), (2), or (3) above. The tax, however, does not apply to any entry or removal of gasoline transferred in bulk to a terminal if all the persons involved (including the terminal operator) are registered. Thus, tax generally is imposed when gasoline is removed by truck from a terminal (this is called removal at the "terminal rack").

As under the diesel fuel tax, exemptions from the gasoline tax are provided for certain uses, such as for farming or for off-highway business use. Taxpayers who use gasoline for an exempt use are eligible to claim a credit or refund of the excise tax included in the price of the gasoline.

Under Treasury Department regulations, the person liable for the tax imposed on gasoline removed from a terminal rack is the "position holder," which, in general, is the person that holds the inventory position to gasoline as reflected on the records of the terminal operator (i.e., has a contract with the terminal operator for the use of storage facilities and terminaling services at a terminal). In addition, the terminal operator may be jointly and severally liable for the tax if the position holder is not registered with Treasury. Terminal operators are required to be registered and, as a condition of registration, may be required to post a bond in such sum as the Treasury determines.

House Bill

Point of collection

The House bill provides that the full 20.1 cents per gallon diesel fuel excise tax rate will be collected on removal from a terminal (i.e., at the terminal rack) under generally the same rules as the gasoline tax currently is collected. However, unlike the gasoline tax, removal of diesel fuel that is destined for an exempt use will not be taxed as the fuel is removed from the terminal if certain dyeing (and marking) requirements are met.

As under present law, a reduced-rate or exempt user that uses tax-paid undyed diesel fuel is permitted a refund if the user establishes that a prior tax was paid with respect to the fuel and that the fuel has been used for an exempt or reduced-rate use.

Administrative provisions

As under present law, the Treasury Department is permitted to require appropriate registration, record-keeping and reporting by persons necessary to implement the collection of the diesel fuel tax.

In addition, the Treasury Department is authorized to impose a new penalty on any person who sold dyed fuel to a person whom the seller knew or had reason to know would use the fuel for a taxable use, or any person who knew or had reason to know that it used dyed fuel for a taxable use. This new penalty is the greater of $1,000 or twice the otherwise applicable tax on the diesel fuel so used.

Effective date

The provision applies to diesel fuel removed from terminals after March 30, 1994.

Senate Amendment

The Senate amendment generally is the same as the House bill, except that marking is not permitted for fuel that is destined for an exempt use. The amendment also provides that the color of the dye may be chosen by the person who is dyeing the fuel but the color must be approved by the Treasury Department or selected from a list of approved colors.

In addition, vendors to farmers and State and local governments are required to apply for refunds for these exempt users, if the vendors sell tax-paid fuel to these persons for use in an exempt use. For other cases of exempt use of tax-paid fuel (e.g., construction, mining, mineral extraction, timber, home heating fuel, nonprofit educational organizations), the exempt user must apply for the refund if tax-paid fuel is used.

Effective date.—The Senate amendment applies to diesel fuel removed from terminals after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment, except that marking is permitted (as provided by regulations) for fuel that is destined for an exempt use. In addition, the conference agreement clarifies that Treasury has authority to physically inspect terminals, dyes and dyeing equipment and storage facilities, and downstream storage facilities; to stop, detain and inspect vehicles, and to establish vehicle inspection sites. The conference agreement provides a $1,000 penalty on facility owners who refuse to permit the Treasury to perform its inspection duties.

The agreement also modifies the penalty for persons who improperly sell or use dyed fuel to be the greater of $1,000 or $10 for each gallon of dyed fuel involved in the violation. For repeated violations, the penalty is multiplied by the number of prior penalties that had been imposed under this provision. Any officer, employee, or agent who willfully participated in any act giving rise to the above penalties will be jointly and severally liable with any business entity that is liable for the penalty. Dyed fuel means any fuel that is dyed, regardless of whether or not the fuel was dyed to administer compliance with the diesel fuel tax provisions.

Effective date.—The conference agreement follows the Senate amendment.

4. Extend the current 2.5-cents-per-gallon motor fuels excise tax rate; Transfer of revenues (sec. 14244 of the House bill, sec. 8244 of the Senate amendment, sec. 13244 of the conference agreement, and secs. 4041, 4081, and 4091 of the Code)

Present Law

The Federal motor fuels excise taxes generally are imposed on motor fuels (gasoline, special motor fuels, and diesel fuel) used for highway transportation, gasoline and special motor fuels used in motorboats, and diesel fuel used in trains. Off-highway business uses generally are exempt from motor fuels taxes, as are sales for export, for the exclusive use of State and local governments and nonprofit educational organizations, and for farming uses.

The rate of tax on motor fuels is 14.1 cents per gallon on gasoline and special motor fuels and 20.1 cents per gallon on diesel fuel; this rate includes a "deficit reduction rate" (General Fund rate) of 2.5 cents per gallon and a Leaking Underground Storage Tank (LUST) Trust Fund rate of 0.1 cents per gallon. Diesel used in trains is subject only to the 2.5-cents deficit reduction rate and to the 0.1-cents LUST rate (not to the full 20.1 cents per gallon rate). The deficit reduction rate does not apply after September 30, 1995. Revenues from the deficit reduction rate are retained in the General Fund, while the balance of the highway motor fuels tax revenues are transferred to the Highway Trust Fund through September 30, 1999. Revenues from the 0.1-cent-per-gallon LUST tax rate are transferred to the LUST Trust Fund through December 31, 1995.

House Bill

The House bill extends the additional 2.5-cents-per-gallon motor fuels tax rate from October 1, 1995, through September 30, 1999. The revenues from this rate generally are to be transferred into the Highway Trust Fund, with revenues equivalent to 2 cents per gallon credited to the Highway Account and 0.5 cent per gallon to the Mass Transit Account. However, revenues from the 2.5-cents-per-gallon tax on diesel used in trains are to be retained in the General Fund as are revenues from 2.5 cents per gallon of the tax on motorboat, small-engine, and nonhighway recreational fuels. The provision retains present-law motor fuels tax exemptions.

Effective date.—The extension of the 2.5-cents-per-gallon rate applies after September 30, 1995.

Senate Amendment

The Senate amendment follows the House bill, except that the revenues from the taxes on motorboat fuels and small-engine gasoline are to be transferred to the Aquatic Resources Trust Fund.

Conference Agreement

The conference agreement follows the House bill, except that the tax is 1.25 cents per gallon on diesel used in trains (with the revenues to be retained in the general fund).

5. Increase inland waterways fuel excise tax (secs. 14413 and 8002 of the House bill and sec. 4042 of the Code)

Present Law

A Federal inland waterway fuel tax is imposed on diesel and other liquid fuels used by commercial cargo vessels on specified inland or intracoastal waterways of the United States (sec. 4042). Revenues from this tax are transferred to the Inland Waterways Trust Fund (sec. 9506).

The tax rate on these fuels is 17 cents per gallon for 1993, 19 cents per gallon for 1994, and 20 cents per gallon for 1995 and thereafter. In addition, there is a 0.1-cent-per-gallon tax on such fuels for the Leaking Underground Storage Tank Trust Fund through December 31, 1995 (sec. 9508).

House Bill

Title XIV

The House bill (sec. 14413) increases the Federal inland waterway fuel tax by 50 cents per gallon in a series of steps. Under the House bill, inland waterways fuel is to be taxed at a rate of 24 cents per gallon in 1994, 40 cents per gallon in 1995, 55 cents per gallon in 1996, and 70 cents per gallon in 1997 and thereafter. The House bill does not change the additional 0.1-cent-per-gallon fuel tax imposed for the Leaking Underground Storage Tank Trust Fund.

Effective date.—The provision is effective beginning January 1, 1994.

Title VIII

The House bill (sec. 8002) also includes a Sense of Congress resolution that the inland waterways fuel tax should not be further increased beyond those increases already scheduled under present law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provisions.

E. Compliance Provisions

1. Reporting rule for service payments to corporations (sec. 14251 of the House bill, and secs. 6041 and 6041A of the Code)

Present Law

A person engaged in a trade or business who makes payments during the calendar year of $600 or more to a person for services performed must file an information return with the Internal Revenue Service ("IRS") reporting the amount of such payments, as well as the name, address and taxpayer identification number of the person to whom such payments were made. A similar statement must also be furnished to the person to whom such payments were made. Treasury regulations generally provide, however, that payments to corporations (including payments for services) need not be reported (Treas. Reg. sec. 1.6041–3(c); Prop. Treas. Reg. sec. 1.6041A–1(d)(2)).[89]

House Bill

The House bill provides that payments for services purchased in the course of the payor's trade or business will not be exempt from the information reporting requirements merely because the payments are made to a corporation.

Effective date.— The provision in the House bill applies to payments for services made after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

The conferees intend that the Office of Management and Budget (OMB) provide a report to the chairmen of the House Ways and Means Committee and the Senate Finance Committee within six months from the date of enactment recommending ways to improve information reporting compliance by Federal executive agencies. Such recommendations could include, for example, requiring Federal executive agencies to disclose their level of compliance in their published annual reports and requiring OMB to report annually to the chairmen of the two tax-writing committees regarding Federal executive agencies' compliance with information reporting obligations. The OMB report should also address appropriate sanctions for Federal executive agency noncompliance with all information reporting requirements and any changes to the law that may be needed to impose such sanctions. For example, IRS could be permitted to assess penalties on an agency for failure to comply with information reporting requirements and to collect the penalties assessed out of the agency's appropriated funds.

The conferees understand that the effectiveness of information reporting generally will be enhanced, and the burden on reporting businesses will be reduced, by a comprehensive taxpayer identification number (TIN) matching system. Accordingly, the conferees encourage the IRS to establish a TIN matching pilot program as soon as practicable and to include governmental agencies in such pilot program.

2. Raise standard for accuracy-related and preparer penalties (sec. 14252(a) of the House bill, sec. 8252(a) of the Senate amendment, sec. 13251 of the conference agreement, and secs. 6662 and 6694 of the Code)

Present Law

A 20-percent penalty is imposed on any portion of an underpayment of tax that is attributable either to a substantial understatement of income tax on a return, or to negligence or disregard of rules or regulations (sec. 6662).

For this purpose, an understatement[90] is considered substantial if it exceeds the greater of 10 percent of the tax required to be shown on the year's return or $5,000 ($10,000 for corporations other than S corporations

[89] In general, information returns are required regarding payments to a corporation engaged in providing medical and health care services or engaged in billing and collecting payments with respect to medical and health care services.

[90] An "understatement" of income tax is the excess of the tax required to be shown on the return over the tax imposed which is shown on the return (reduced by any rebates of tax).

and personal holding companies). In determining whether an understatement is substantial, the amount of the understatement is reduced by any portion attributable to an item if (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the tax return (or a statement attached to the return), provided that the treatment of the disclosed item was not "frivolous" (Treas. Reg. sec. 1.6662-4). Special rules apply to tax shelters.

The term "negligence" includes any failure to make a reasonable attempt to comply with the internal revenue laws, a failure to exercise ordinary and reasonable care in the preparation of a tax return, and a failure to keep adequate books and records or to substantiate items properly (Treas. Reg. sec. 1.6662-3(b)(1)). The term "disregard" includes any careless, reckless, or intentional disregard of rules or regulations (sec. 6662(c)). The penalty for negligence or disregard of rules or regulations does not apply where the position taken is adequately disclosed, the position is not "frivolous", and the taxpayer has adequate books and records and has substantiated items properly (Treas. Reg. sec. 1.6662-3(c)).[91]

A $250 penalty with respect to a return or claim for refund of income tax may be imposed on the preparer if any understatement of tax liability on the return or claim for refund resulted from a position that did not have a realistic possibility of being sustained on its merits and the preparer knew or reasonably should have known of the position (sec. 6694(a)). The penalty is $1,000 per return or claim for refund if the understatement is due to any reckless or intentional disregard of rules or regulations (sec. 6694(b)). These penalties may be avoided where the position taken on the return or claim for refund is adequately disclosed and is not "frivolous" (Treas. Reg. secs. 1.6694-2(c), 1.6694-3(c)(2)).[92]

A "frivolous" position with respect to an item for purposes of all of these penalty provisions is one that is "patently improper" (Treas. Reg. sec. 1.6662-3(b)(3), 1.6662-4(e)(2)(i), 1.6694-2(c)(2), 1.6694-3(c)(2)).

House Bill

The House bill replaces the "not frivolous" standard with a "reasonable basis" standard for purposes of the accuracy-related and income tax return preparer penalties. Thus, under the House bill, a taxpayer can avoid a substantial understatement penalty by adequately disclosing a return position only if the position has at least a reasonable basis. Similarly, a taxpayer can avoid the penalty that applies to disregarding rules or regulations by adequately disclosing a return position only if the position has at least a reasonable basis. The disclosure exception is no longer relevant with respect to the penalty for negligence, because a taxpayer generally is not considered to have been negligent with respect to a return position, regardless of whether it was disclosed, if the position has a reasonable basis. Also, a preparer can avoid a penalty by adequately disclosing a return position only if the position has at least a reasonable basis.

The House bill also eliminates the reasonable cause and good faith exception for fraud, because fraud is inconsistent with reasonable cause and good faith.

Effective date.—The provision in the House bill applies to tax returns due (without regard to extensions) after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill, except that (i) the "not frivolous" standard remains applicable with respect to the income tax return preparer penalty, and (ii) the reasonable cause and good faith exception for fraud is not eliminated.

Conference Agreement

The conference agreement follows the Senate amendment. The conferees intend that "reasonable basis" be a relatively high standard of tax reporting, that is, significantly higher than "not patently improper." This standard is not satisfied by a return position that is merely arguable or that is merely a colorable claim.

3. Modify tax shelter rules for purposes of the substantial understatement penalty (sec. 14252(b) of the House bill and sec. 6662(d) of the Code)

Present Law

Under present law, a 20-percent penalty applies to any portion of an underpayment of income tax required to be shown on a return that is attributable to a substantial understatement of income tax (sec. 6662). For this purpose, an understatement is considered substantial if it exceeds the greater of (1) 10 percent of the tax required to be shown on the return, or (2) $5,000 ($10,000 in the case of a corporation other than an S corporation or a personal holding company). The amount of an understatement of income tax is the excess of the tax required to be shown on the return, over the tax imposed which is shown on the return (reduced by any rebates of tax).

In determining whether an understatement is substantial, the understatement generally is reduced by the portion of the understatement that is attributable to an item for which there was substantial authority or adequate disclosure (sec. 6662(d)(2)). However, in the case of tax shelter items, the understatement is reduced only by the portion of the understatement that is attributable to an item both for which there was substantial authority and with respect to which the taxpayer reasonably believed that the claimed treatment of the item was more likely than not the proper treatment (sec. 6662(d)(2)(C)(i)). Disclosure made with respect to a tax shelter item does not affect the amount of an understatement.

A "tax shelter" is any partnership or other entity, any investment plan or arrangement, or any other plan or arrangement if the principal purpose of such partnership, entity, plan or arrangement is to avoid or to evade Federal income tax (sec. 6662(d)(2)(C)(ii)). An item of income, gain, loss, deduction or credit is a "tax shelter item" if the item is directly or indirectly attributable to the principal purpose of the tax shelter (Treas. Reg. sec. 1.6662-4(g)(3)).

House Bill

Under the House bill, an understatement is reduced by the portion of the understatement attributable to a tax shelter item only if, in addition to satisfying existing requirements, the taxpayer can demonstrate that the reasonably anticipated after-tax benefits from the taxpayer's investment in the shelter do not significantly exceed the reasonably anticipated net pre-tax economic profit from such investment. The House bill does not alter the definition of "tax shelter" for purposes of the substantial understatement penalty and, therefore, applies only to investments in arrangements that are considered tax shelters without regard to the House bill.

Effective date.—This provision in the House bill applies to tax returns due (without regard to extensions) after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House bill provision.

4. Information returns relating to the discharge of indebtedness by certain financial entities (sec. 14253 of the House bill, sec. 8253 of the Senate amendment, sec. 13252 of the conference agreement, and sec. 6050P of the Code)

Present Law

Under section 61(a)(12), a taxpayer's gross income includes income from the discharge of indebtedness. The Code, however, does not currently require lenders to file information returns with respect to discharged debt.[93]

The determination of when a discharge of indebtedness occurs under section 61(a)(12) is a question of fact. See, e.g., *Carl T. Miller Trust v. Commissioner*, 76 T.C. 191 (1981). In general, a debtor has discharge of indebtedness income where a debt is repurchased or otherwise deemed satisfied for less than its outstanding balance. For example, discharge of indebtedness income may be triggered by a debt modification under Code section 1001 or where a court adjudicates favorably a defense for the borrower. Discharge of indebtedness income is generally not deemed to result merely because the lender (1) has not actively pursued its claim against the debtor, provided a legal claim still exists, (2) claims a deduction for financial or regulatory reporting purposes, or (3) claims a partial or full bad debt deduction for tax purposes. However, the existence of several factors such as these may, when considered collectively, indicate that a discharge of indebtedness has occurred.

Pursuant to a 1984 Office of Management and Budget memorandum, Treasury Department guidelines currently require Federal agencies to report forgiven debt amounts exceeding $600 to the Internal Revenue Service (IRS) on a Form 1099-G, except where prohibited by law. The Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC) do not issue such reports because of concerns that information reporting may violate the Right to Financial Privacy Act of 1978 (RFPA). The RFPA permits such information reporting if the Code specifically requires it.

House Bill

The House bill requires "applicable financial entities" to file information returns with the IRS regarding any discharge of indebtedness (within the meaning of sec. 61(a)(12)) of $600 or more. Such information returns are required regardless of whether the debtor is subject to tax on the discharged debt. For example, Congress does not expect reporting financial institutions and agencies to determine whether the debtor qualifies for an exclusion under section 108.

The information return must set forth the name, address and taxpayer identification

[91] In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

[92] In the case of a position contrary to a regulation, the position taken must also represent a good faith challenge to the validity of the regulation.

[93] Lenders are generally required to report any foreclosure or other acquisition of property in satisfaction of a debt secured by that property (sec. 6050J). Such events may effect a discharge of indebtedness. The conferees intend that the Treasury Department issue guidance to coordinate reporting under this section with reporting on foreclosures and abandonments under section 6050J.

number of the person whose debt was discharged, the amount of debt discharged, and the date on which the debt was discharged.[94] The information return must be filed in the manner and at the time specified by the IRS. The same information also must be provided to the person whose debt is discharged by January 31 of the year following the discharge.

For purposes of the House bill, "applicable financial entities" include: (1) the FDIC, the RTC, the National Credit Union Administration, and any successor or subunit of any of them;[95] (2) any financial institution (as described in secs. 581 or 591(a)); (3) any credit union; and (4) any subsidiary of an entity described in (2) or (3) which, by virtue of being affiliated with such entity, is subject to supervision and examination by a Federal or State agency regulating such entities.

Under the House bill, the penalties for failure to file correct information reports with the IRS and to furnish statements to taxpayers are similar to those imposed with respect to a failure to provide other information returns. For example, the penalty for failure to furnish statements to taxpayers is generally $50 per failure, subject to a maximum of $100,000 for any calendar year.[96] These penalties are not applicable if the failure is due to reasonable cause and not to willful neglect.

Effective date.—The provision applies to discharges of indebtedness after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill with a technical modification clarifying that other Federal agencies (which are required to report under the current Treasury Department guidelines) are also subject to this provision, so that all Federal agencies are subject to uniform rules.

Conference Agreement

The conference agreement follows the Senate amendment, except that non-governmental entities are only required to report under the provision with respect to discharges of indebtedness after December 31, 1993. Accordingly, governmental entities are required to report under the provision with respect to discharges of indebtedness after the date of enactment. The conferees do not intend that this provision alter the present law determination of when a discharge of indebtedness occurs under section 61(a)(12).

F. Treatment of Intangibles

1. Amortization of goodwill and certain other intangible assets (sec. 14261 of the House bill, sec. 8261 of the Senate amendment, sec. 13261 of the conference agreement, and new sec. 197 of the Code)

Present Law

In determining taxable income for Federal income tax purposes, a taxpayer is allowed depreciation or amortization deductions for the cost or other basis of intangible property that is used in a trade or business or held for the production of income if the property has a limited useful life that may be determined with reasonable accuracy. Treas. Reg. sec. 1.167(a)-(3). These Treasury Regulations also state that no depreciation deductions are allowed with respect to goodwill.

The U.S. Supreme Court recently held that a taxpayer able to prove that a particular asset can be valued, and that the asset has a limited useful life which can be ascertained with reasonable accuracy, may depreciate the value over the useful life regardless of how much the asset appears to reflect the expectancy of continued patronage. However, the Supreme Court also characterized the taxpayer's burden of proof as "substantial" and stated that it "often will prove too great to bear." *Newark Morning Ledger Co. v. United States*, —— U.S.——, 61 U.S.L.W. 4313 at 4320, 4319 (April 20, 1993).

House Bill

In general

The bill allows an amortization deduction with respect to the capitalized costs of certain intangible property (defined as a "section 197 intangible") that is acquired by a taxpayer and that is held by the taxpayer in connection with the conduct of a trade or business or an activity engaged in for the production of income. The amount of the deduction is determined by amortizing the adjusted basis (for purposes of determining gain) of the intangible ratably over a 14-year period that begins with the month that the intangible is acquired.[97] No other depreciation or amortization deduction is allowed with respect to a section 197 intangible that is acquired by a taxpayer.

In general, the bill applies to a section 197 intangible acquired by a taxpayer regardless of whether it is acquired as part of a trade or business. In addition, the bill generally applies to a section 197 intangible that is treated as acquired under section 338 of the Code. The bill generally does not apply to a section 197 intangible that is created by the taxpayer if the intangible is not created in connection with a transaction (or series of related transactions) that involves the acquisition of a trade or business or a substantial portion thereof.

Except in the case of amounts paid or incurred under certain covenants not to compete (or under certain other arrangements that have substantially the same effect as covenants not to compete) and certain amounts paid or incurred on account of the transfer of a franchise, trademark, or trade name, the bill generally does not apply to any amount that is otherwise currently deductible (i.e., not capitalized) under present law.

No inference is intended as to whether a depreciation or amortization deduction is allowed under present law with respect to any intangible property that is either included in, or excluded from, the definition of a section 197 intangible. In addition, no inference is intended as to whether an asset is to be considered tangible or intangible property for any other purpose of the Internal Revenue Code.

Definition of section 197 intangible

In general

The term "section 197 intangible" is defined as any property that is included in any one or more of the following categories: (1) goodwill and going concern value; (2) certain specified types of intangible property that generally relate to workforce, information base, know-how, customers, suppliers, or other similar items; (3) any license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof; (4) any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (5) any franchise, trademark, or trade name.

Certain types of property, however, are specifically excluded from the definition of the term "section 197 intangible." The term "section 197 intangible" does not include: (1) any interest in a corporation, partnership, trust, or estate; (2) any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract; (3) any interest in land; (4) certain computer software; (5) certain interests in films, sound recordings, video tapes, books, or other similar property; (6) certain rights to receive tangible property or services; (7) certain interests in patents or copyrights; (8) any interest under an existing lease of tangible property; (9) any interest under an existing indebtedness (except for the deposit base and similar items of a financial institution); (10) a franchise to engage in any professional sport, and any item acquired in connection with such a franchise; and (11) certain transaction costs.

In addition, the Treasury Department is authorized to issue regulations that exclude certain rights of fixed duration or amount from the definition of a section 197 intangible.

Goodwill and going concern value

For purposes of the bill, goodwill is the value of a trade or business that is attributable to the expectancy of continued customer patronage, whether due to the name of a trade or business, the reputation of a trade or business, or any other factor.

In addition, for purposes of the bill, going concern value is the additional element of value of a trade or business that attaches to property by reason of its existence as an integral part of a going concern. Going concern value includes the value that is attributable to the ability of a trade or business to continue to function and generate income without interruption notwithstanding a change in ownership. Going concern value also includes the value that is attributable to the use or availability of an acquired trade or business (for example, the net earnings that otherwise would not be received during any period were the acquired trade or business not available or operational).

Workforce, information base, know-how, customer-based intangibles, supplier-based intangibles and other similar items

Workforce.—The term "section 197 intangible" includes workforce in place (which is sometimes referred to as agency force or assembled workforce), the composition of a workforce (for example, the experience, education, or training of a workforce), the terms and conditions of employment whether contractual or otherwise, and any other value placed on employees or any of their attributes. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a highly-skilled workforce is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring an existing employment contract (or contracts) or a relationship with employees or consultants (including but not

[94] The date of discharge is required to facilitate the use of such information returns with respect to fiscal year taxpayers.

[95] With respect to these entities, any return required by the provision shall be made by the officer or employee appropriately designated to make these returns.

[96] In the case of intentional disregard of the filing requirements, the penalty is not less than $100 per failure and the $100,000 annual limitation does not apply.

[97] In the case of a short taxable year, the amortization deduction is to be based on the number of months in such taxable year.

limited to any "key employee" contract or relationship) as part of the acquisition of a trade or business is to be amortized over the 14-year period specified in the bill.

Information base.—The term "section 197 intangible" includes business books and records, operating systems, and any other information base including lists or other information with respect to current or prospective customers (regardless of the method of recording such information). Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the intangible value of technical manuals, training manuals or programs, data files, and accounting or inventory control systems is to be amortized over the 14-year period specified in the bill. As a further example, the cost of acquiring customer lists, subscription lists, insurance expirations,[98] patient or client files, or lists of newspaper, magazine, radio or television advertisers is to be amortized over the 14-year period specified in the bill.

Know-how.—The term "section 197 intangible" includes any patent, copyright, formula, process, design, pattern, know-how, format, or other similar item. For this purpose, the term "section 197 intangible" is to include package designs, computer software, and any interest in a film, sound recording, video tape, book, or other similar property, except as specifically provided otherwise in the bill.[99]

Customer-based intangibles.—The term "section 197 intangible" includes any customer-based intangible, which is defined as the composition of market, market share, and any other value resulting from the future provision of goods or services pursuant to relationships with customers (contractual or otherwise) in the ordinary course of business. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of customer base, circulation base, undeveloped market or market growth, insurance in force, mortgage servicing contracts, investment management contracts, or other relationships with customers that involve the future provision of goods or services, is to be amortized over the 14-year period specified in the bill. On the other hand, the portion (if any) of the purchase price of an acquired trade or business that is attributable to accounts receivable or other similar rights to income for those goods or services that have been provided to customers prior to the acquisition of a trade or business is not to be taken into account under the bill.[100]

In addition, the bill specifically provides that the term "customer-based intangible" includes the deposit base and any similar asset of a financial institution. Thus, for example, the portion (if any) of the purchase price of an acquired financial institution that is attributable to the checking accounts, savings accounts, escrow accounts and other similar items of the financial institution is to be amortized over the 14-year period specified in the bill.

Supplier-based intangibles.—The term "section 197 intangible" includes any supplier-based intangible, which is defined as the value resulting from the future acquisition of goods or services pursuant to relationships (contractual or otherwise) in the ordinary course of business with suppliers of goods or services to be used or sold by the taxpayer. Thus, for example, the portion (if any) of the purchase price of an acquired trade or business that is attributable to the existence of a favorable relationship with persons that provide distribution services (for example, favorable shelf or display space at a retail outlet), the existence of a favorable credit rating, or the existence of favorable supply contracts, is to be amortized over the 14-year period specified in the bill.[101]

Other similar items.—The term "section 197 intangible" also includes any other intangible property that is similar to workforce, information base, know-how, customer-based intangibles, or supplier-based intangibles.

Licenses, permits, and other rights granted by governmental units

The term "section 197 intangible" also includes any license, permit, or other right granted by a governmental unit or any agency or instrumentality thereof (even if the right is granted for an indefinite period or the right is reasonably expected to be renewed for an indefinite period).[102] Thus, for example, the capitalized cost of acquiring from any person a liquor license, a taxi-cab medallion (or license), an airport landing or takeoff right (which is sometimes referred to as a slot), a regulated airline route, or a television or radio broadcasting license is to be amortized over the 14-year period specified in the bill. For purposes of the bill, the issuance or renewal of a license, permit, or other right granted by a governmental unit or an agency or instrumentality thereof is to be considered an acquisition of such license, permit, or other right.

Covenants not to compete and other similar arrangements

The term "section 197 intangible" also includes any covenant not to compete (or other arrangement to the extent that the arrangement has substantially the same effect as a covenant not to compete; hereafter "other similar arrangement") entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof). For this purpose, an interest in a trade or business includes not only the assets of a trade or business, but also stock in a corporation that is engaged in a trade or business or an interest in a partnership that is engaged in a trade or business.

Any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof) is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill. In addition, any amount that is paid or incurred under a covenant not to compete (or other similar arrangement) after the taxable year in which the covenant (or other similar arrangement) was entered into is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the covenant (or other similar arrangement) as of the beginning of the month that the amount is paid or incurred.

For purposes of this provision, an arrangement that requires the former owner of an interest in a trade or business to continue to perform services (or to provide property or the use of property) that benefit the trade or business is considered to have substantially the same effect as a covenant not to compete to the extent that the amount paid to the former owner under the arrangement exceeds the amount that represents reasonable compensation for the services actually rendered (or for the property or use of property actually provided) by the former owner. As under present law, to the extent that the amount paid or incurred under a covenant not to compete (or other similar arrangement) represents additional consideration for the acquisition of stock in a corporation, such amount is not to be taken into account under this provision but, instead, is to be included as part of the acquirer's basis in the stock.

Franchises, trademarks, and trade names

The term "section 197 intangible" also includes any franchise, trademark, or trade name. For this purpose, the term "franchise" is defined, as under present law, to include any agreement that provides one of the parties to the agreement the right to distribute, sell, or provide goods, services, or facilities, within a specified area.[103] In addition, as provided under present law, the renewal of a franchise, trademark, or trade name is to be treated as an acquisition of such franchise, trademark, or trade name.[104]

The bill continues the present-law treatment of certain contingent amounts that are paid or incurred on account of the transfer of a franchise, trademark, or trade name. Under these rules, a deduction is allowed for amounts that are contingent on the productivity, use, or disposition of a franchise, trademark, or trade name only if (1) the contingent amounts are paid as part of a series of payments that are payable at least annually throughout the term of the transfer agreement, and (2) the payments are substantially equal in amount or payable under a fixed formula.[105] Any other amount, whether fixed or contingent, that is paid or incurred on account of the transfer of a franchise, trademark, or trade name is chargeable to capital account and is to be amortized ratably over the 14-year period specified in the bill.

Exceptions to the definition of a section 197 intangible

In general.—The bill contains several exceptions to the definition of the term "section 197 intangible." Several of the exceptions contained in the bill apply only if the intangible property is not acquired in a

[98] Insurance expirations are records that are maintained by insurance agents with respect to insurance customers. These records generally include information relating to the type of insurance, the amount of insurance, and the expiration date of the insurance.

[99] See below for a description of the exceptions for certain patents, certain computer software, and certain interests in films, sound recordings, video tapes, books, or other similar property.

[100] As under present law, the portion of the purchase price of an acquired trade or business that is attributable to accounts receivable is to be allocated among such receivables and is to be taken into account as payment is received under each receivable or at the time that a receivable becomes worthless.

[101] See below, however, for a description of the exception for certain rights to receive tangible property or services from another person.

[102] A right granted by a governmental unit or an agency or instrumentality thereof that constitutes an interest in land or an interest under a lease of tangible property is excluded from the definition of a section 197 intangible. See below for a description of the exceptions for interests in land and for interests under leases of tangible property.

[103] Section 1253(b)(1) of the Code.

[104] Only the costs incurred in connection with the renewal, however, are to be amortized over the 14-year period that begins with the month that the franchise, trademark, or trade name is renewed. Any costs incurred in connection with the issuance (or an earlier renewal) of a franchise, trademark, or trade name are to continue to be taken into account over the remaining portion of the amortization period that began at the time of such issuance (or earlier renewal).

[105] Section 1253(d)(1) of the Code.

transaction (or series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business. It is anticipated that the Treasury Department will exercise its regulatory authority to require any intangible property that would otherwise be excluded from the definition of the term "section 197 intangible" to be taken into account under the bill under circumstances where the acquisition of the intangible property is, in and of itself, the acquisition of an asset which constitutes a trade or business or a substantial portion of a trade or business.

The determination of whether acquired assets constitute a substantial portion of a trade or business is to be based on all of the facts and circumstances, including the nature and the amount of the assets acquired as well as the nature and amount of the assets retained by the transferor. It is not intended, however, that the value of the assets acquired relative to the value of the assets retained by the transferor is determinative of whether the acquired assets constitute a substantial portion of a trade or business.

For purposes of the bill, a group of assets is to constitute a trade or business if the use of such assets would constitute a trade or business for purposes of section 1060 of the Code (i.e., if the assets are of such a character that goodwill or going concern value could under any circumstances attach to the assets). In addition, the acquisition of a franchise, trademark or trade name is to constitute the acquisition of a trade or business or a substantial portion of a trade or business.

In determining whether a taxpayer has acquired an intangible asset in a transaction (or series of related transactions) that involves the acquisition of assets that constitute a trade or business or a substantial portion of a trade or business, only those assets acquired in a transaction (or a series of related transactions) by a taxpayer (and persons related to the taxpayer) from the same person (and any related person) are to be taken into account. In addition, any employee relationships that continue (or covenants not to compete that are entered into) as part of the transfer of assets are to be taken into account in determining whether the transferred assets constitute a trade or business or a substantial portion of a trade or business.

Interests in a corporation, partnership, trust, or estate.—The term "section 197 intangible" does not include any interest in a corporation, partnership, trust, or estate. Thus, for example, the bill does not apply to the cost of acquiring stock, partnership interests, or interests in a trust or estate, whether or not such interests are regularly traded on an established market.[106]

Interests under certain financial contracts.—The term "section 197 intangible" does not include any interest under an existing futures contract, foreign currency contract, notional principal contract, interest rate swap, or other similar financial contract, whether or not such interest is regularly traded on an established market. Any interest under a mortgage servicing contract, credit card servicing contract or other contract to service indebtedness issued by another person, and any interest under an assumption reinsurance contract[107] is not excluded from the definition of the term "section 197 intangible" by reason of the exception for interests under certain financial contracts.

Interests in land.—The term "section 197 intangible" does not include any interest in land. Thus, the cost of acquiring an interest in land is to be taken into account under present law rather than under the bill. For this purpose, an interest in land includes a fee interest, life estate, remainder, easement, mineral rights, timber rights, grazing rights, riparian rights, air rights, zoning variances, and any other similar rights with respect to land. An interest in land is not to include an airport landing or takeoff right, a regulated airline route, or a franchise to provide cable television services.

The costs of acquiring licenses, permits, and other rights relating to improvements to land, such as building construction or use permits, are to be taken into account in the same manner as the underlying improvement in accordance with present law.

Certain computer software.—The term "section 197 intangible" does not include computer software (whether acquired as part of a trade or business or otherwise) that (1) is readily available for purchase by the general public; (2) is subject to a non-exclusive license; and (3) has not been substantially modified. In addition, the term "section 197 intangible" does not include computer software which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

For purposes of the bill, the term "computer software" is defined as any program (i.e., any sequence of machine-readable code) that is designed to cause a computer to perform a desired function. The term "computer software" includes any incidental and ancillary rights with respect to computer software that (1) are necessary to effect the legal acquisition of the title to, and the ownership of, the computer software, and (2) are used only in connection with the computer software. The term "computer software" does not include any data base or similar item (other than a data base or item that is in the public domain and that is incidental to the software)[108] regardless of the form in which it is maintained or stored.

If a depreciation deduction is allowed with respect to any computer software that is not a section 197 intangible, the amount of the deduction is to be determined by amortizing the adjusted basis of the computer software ratably over a 36-month period that begins with the month that the computer software is placed in service. For this purpose, the cost of any computer software that is taken into account as part of the cost of computer hardware or other tangible property under present law is to continue to be taken into account in such manner under the bill. In addition, the cost of any computer software that is currently deductible (*i.e.*, not capitalized) under present law is to continue to be taken into account in such manner under the bill.

Certain interests in films, sound recordings, video tapes, books, or other similar property.—The term "section 197 intangible" does not include any interest (including an interest as a licensee) in a film, sound recording, video tape, book, or other similar property (including the right to broadcast or transmit a live event) if the interest is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

Certain rights to receive tangible property or services.—The term "section 197 intangible" does not include any right to receive tangible property or services under a contract (or any right to receive tangible property or services granted by a governmental unit or an agency or instrumentality thereof) if the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

If a depreciation deduction is allowed with respect to a right to receive tangible property or services that is not a section 197 intangible, the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is anticipated that the regulations may provide that in the case of an amortizable right to receive tangible property or services in substantially equal amounts over a fixed period that is not renewable, the cost of acquiring the right will be taken into account ratably over such fixed period. It is also anticipated that the regulations may provide that in the case of a right to receive a fixed amount of tangible property or services over an unspecified period, the cost of acquiring such right will be taken into account under a method that allows a deduction based on the amount of tangible property or services received during a taxable year compared to the total amount of tangible property or services to be received.

For example, assume that a taxpayer acquires from another person a favorable contract right of such person to receive a specified amount of raw materials each month for the next three years (which is the remaining life of the contract) and that the right to receive such raw materials is not acquired as part of the acquisition of assets that constitute a trade or business or a substantial portion thereof (i.e., such contract right is not a section 197 intangible). It is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right ratably over the three-year remaining life of the contract. Alternatively, if the favorable contract right is to receive a specified amount of raw materials during an unspecified period, it is anticipated that the taxpayer may be required to amortize the cost of acquiring the contract right by multiplying such cost by a fraction, the numerator of which is the amount of raw materials received under the contract during any taxable year and the denominator of which is the total amount of raw materials to be received under the contract.

It is also anticipated that the regulations may require a taxpayer under appropriate circumstances to amortize the cost of acquiring a renewable right to receive tangible property or services over a period that includes all renewal options exercisable by the taxpayer at less than fair market value.

Certain interests in patents or copyrights.—The term "section 197 intangible" does not include any interest in a patent or copyright which is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion of a trade or business.

[106] A temporal interest in property, outright or in trust, may not be used to convert a section 197 intangible into property that is amortizable more rapidly than ratably over the 14-year period specified in the bill.

[107] See below for a description of the treatment of assumption reinsurance contracts.

[108] For example, a data base would not include a dictionary feature used to spell-check a word processing program.

If a depreciation deduction is allowed with respect to an interest in a patent or copyright and the interest is not a section 197 intangible, then the amount of the deduction is to be determined in accordance with regulations to be promulgated by the Treasury Department. It is expected that the regulations may provide that if the purchase price of a patent is payable on an annual basis as a fixed percentage of the revenue derived from the use of the patent, then the amount of the depreciation deduction allowed for any taxable year with respect to the patent equals the amount of the royalty paid or incurred during such year.[109]

Interests under leases of tangible property.—The term "section 197 intangible" does not include any interest as a lessor or lessee under an existing lease of tangible property (whether real or personal).[110] The cost of acquiring an interest as a lessor under a lease of tangible property where the interest as lessor is acquired in connection with the acquisition of the tangible property is to be taken into account as part of the cost of the tangible property. For example, if a taxpayer acquires a shopping center that is leased to tenants operating retail stores, the portion (if any) of the purchase price of the shopping center that is attributable to the favorable attributes of the leases is to be taken into account as a part of the basis of the shopping center and is to be taken into account in determining the depreciation deduction allowed with respect to the shopping center.

The cost of acquiring an interest as a lessee under an existing lease of tangible property is to be taken into account under present law (see section 178 of the Code and Treas. Reg. sec. 1.162–11(a)) rather than under the provisions of the bill.[111] In the case of any interest as a lessee under a lease of tangible property that is acquired with any other intangible property (either in the same transaction or series of related transactions), however, the portion of the total purchase price that is allocable to the interest as a lessee is not to exceed the excess of (1) the present value of the fair market value rent for the use of the tangible property for the term of the lease,[112] over (2) the present value of the rent reasonably expected to be paid for the use of the tangible property for the term of the lease.

Interests under indebtedness.—The term "section 197 intangible" does not include any interest (whether as a creditor or debtor) under any indebtedness that was in existence on the date that the interest was acquired.[113] Thus, for example, the value of assuming an existing indebtedness with a below-market interest rate is to be taken into account under present law rather than under the bill. In addition, the premium paid for acquiring the right to receive an above-market rate of interest under a debt instrument may be taken into account under section 171 of the Code, which generally allows the amount of the premium to be amortized on a yield-to-maturity basis over the remaining term of the debt instrument. This exception for interests under existing indebtedness does not apply to the deposit base and other similar items of a financial institution.

Professional sports franchises.—The term "section 197 intangible" does not include a franchise to engage in professional baseball, basketball, football, or other professional sport, and any item acquired in connection with such a franchise. Consequently, the cost of acquiring a professional sports franchise and related assets (including any goodwill, going concern value, or other section 197 intangibles) is to be allocated among the assets acquired as provided under present law (see, for example, section 1056 of the Code) and is to be taken into account under the provisions of present law.

Certain transaction costs.—The term section 197 intangible does not include the amount of any fees for professional services, and any transaction costs, incurred by parties to a transaction with respect to which any portion of the gain or loss is not recognized under part III of subchapter C. This provision addresses a concern that some taxpayers might attempt to contend that the 14-year amortization provided by the provision applies to any such amounts that may be required to be capitalized under present law but that do not relate to any asset with a readily identifiable useful life.[114] The exception is provided solely to clarify that section 197 is not to be construed to provide 14-year amortization for any such amounts. No inference is intended that such amounts would (but for this provision) be properly characterized as amounts eligible for such 14-year amortization, nor is any inference intended that any amounts not specified in this provision should be so characterized. In addition, no inference is intended regarding the proper treatment of professional fees or transaction costs in other circumstances under present law.

Regulatory authority regarding rights of fixed term or duration.—The bill authorizes the Treasury Department to issue regulations that exclude a right received under a contract, or granted by a governmental unit or an agency or instrumentality thereof, from the definition of a section 197 intangible if (1) the right is not acquired in a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business (or a substantial portion thereof) and (2) the right either (A) has a fixed duration of less than 14 years or (B) is fixed as to amount[115] and the cost is properly recoverable (without regard to this provision) under a method similar to the unit of production method.

Generally, it is anticipated that the mere fact that a taxpayer will have the opportunity to renew a contract or other right on the same terms as are available to others, in a competitive auction or similar process that is designed to reflect fair market value and in which the taxpayer is not contractually advantaged, will not be taken into account in determining the duration of such right or whether it is for a fixed amount. However, the fact that competitive bidding occurs at the time of renewal and that there are or may be modifications in price (or in terms or requirements relating to the right that increase the cost to the bidder) shall not be within the scope of the preceding sentence unless the bidding also actually produces a fair market value price comparable to the price that would obtain if the rights were purchased immediately after renewal from a person (other than the person granting the renewal) in an arm's length transaction. Furthermore, it is expected that, as under present law, the Treasury Department will take into account all the facts and circumstances, including any facts indicating an actual practice of renewals or expectancy of renewals.

For example, assume Company A enters into a license with Company B to use certain know-how developed by B. In addition, assume that the license is for five years, that the license cannot be renewed by A except on terms that are fully available to A's competitors and that the price paid by A will reflect the arm's length price that a third party would pay A for the license immediately after renewal. Finally, assume that the license does not constitute a substantial portion of a trade or business and is not entered into as part of a transaction (or series of related transactions) that constitute the acquisition of a trade or business or substantial portion thereof. It is anticipated that in these circumstances the regulations will provide that the license is not a section 197 intangible because it is of fixed duration.

The regulations may also prescribe rules governing the extent to which renewal options and similar items will be taken into account for the purpose of determining whether rights are fixed in duration or amount. It is also anticipated that such regulations may prescribe the appropriate method of amortizing the capitalized costs of rights which are excluded by such regulations from the definition of a section 197 intangible.

Exception for certain self-created intangibles

The bill generally does not apply to any section 197 intangible that is created by the taxpayer if the section 197 intangible is not created in connection with a transaction (or a series of related transactions) that involves the acquisition of assets which constitute a trade or business or a substantial portion thereof.

For purposes of this exception, a section 197 intangible that is owned by a taxpayer is to be considered created by the taxpayer if the intangible is produced for the taxpayer by another person under a contract with the taxpayer that is entered into prior to the production of the intangible. For example, a technological process or other know-how that is developed specifically for a taxpayer under an arrangement with another person pursuant to which the taxpayer retains all rights to the process or know-how is to be considered created by the taxpayer.

The exception for "self-created" intangibles does not apply to the entering into (or renewal of) a contract for the use of a section 197 intangible. Thus, for example, the

---

[109] See *Associated Patentees, Inc.*, 4 T.C. 979 (1945); and Rev. Rul. 67–136, 1967–1 C.B. 58.

[110] The bill provides that a sublease is to be treated in the same manner as a lease of the underlying property. Thus, the term "section 197 intangible" does not include any interest as a sublessor or sublessee of tangible property.

[111] The lease of a gate at an airport for the purpose of loading and unloading passengers and cargo is a lease of tangible property for this purpose. It is anticipated that such treatment will serve as guidance to the Internal Revenue Service and taxpayers in resolving existing disputes.

[112] In no event is the present value of the fair market value rent for the use of the tangible property for the term of the lease to exceed the fair market value of the tangible property as of the date of acquisition. The present value of such rent is presumed to be less than the value of the tangible property if the duration of the lease is less than the economic useful life of the property.

[113] For purposes of this exception, the term "interest under any existing indebtedness" is to include mortgage servicing rights to the extent that the rights are stripped coupons under section 1286 of the Code. See Rev. Rul. 91–46, 1991–34 I.R.B. 5 (August 26, 1991).

[114] See, e.g., *INDOPCO, Inc. v. Commissioner*, 112 S. Ct. 1039 (1992).

[115] For example, an emission allowance granted a public utility under Title IV of the Clean Air Act Amendments of 1990 is a right that is limited in amount within the meaning of this provision, because each allowance grants a right to a fixed amount of emissions. It is expected that the Treasury Department will provide guidance regarding the interaction of section 461 with these provisions. No inference is intended that would require the Treasury Department to disturb the result in Rev. Proc. 92–91, 1992–46 I.R.B. 32.

exception does not apply to the capitalized costs incurred by a licensee in connection with the entering into (or renewal of) a contract for the use of know-how or other section 197 intangible. These capitalized costs are to be amortized over the 14-year period specified in the bill.

In addition, the exception for "self-created" intangibles does not apply to: (1) any license, permit, or other right that is granted by a governmental unit or an agency or instrumentality thereof; (2) any covenant not to compete (or other similar arrangement) entered into in connection with the direct or indirect acquisition of an interest in a trade or business (or a substantial portion thereof); and (3) any franchise, trademark, or trade name. Thus, for example, the capitalized costs incurred in connection with the development or registration of a trademark or trade name are to be amortized over the 14-year period specified in the bill.

Special rules

Determination of adjusted basis

The adjusted basis of a section 197 intangible that is acquired from another person generally is to be determined under the principles of present law that apply to tangible property that is acquired from another person. Thus, for example, if a portion of the cost of acquiring an amortizable section 197 intangible is contingent, the adjusted basis of the section 197 intangible is to be increased as of the beginning of the month that the contingent amount is paid or incurred. This additional amount is to be amortized ratably over the remaining months in the 14-year amortization period that applies to the intangible as of the beginning of the month that the contingent amount is paid or incurred.

Treatment of certain dispositions of amortizable section 197 intangibles

Special rules apply if a taxpayer disposes of a section 197 intangible that was acquired in a transaction or series of related transactions and, after the disposition,[116] the taxpayer retains other section 197 intangibles that were acquired in such transaction or series or related transactions.[117] First, no loss is to be recognized by reason of such a disposition. Second, the adjusted bases of the retained section 197 intangibles that were acquired in connection with such transaction or series of related transactions are to be increased by the amount of any loss that is not recognized. The adjusted basis of any such retained section 197 intangible is increased by the product of (1) the amount of the loss that is not recognized solely by reason of this provision, and (2) a fraction, the numerator of which is the adjusted basis of the intangible as of the date of the disposition and the denominator of which is the total adjusted bases of all such retained section 197 intangibles as of the date of the disposition.

For purposes of these rules, all persons treated as a single taxpayer under section 41(f)(1) of the Code are treated as a single taxpayer. Thus, for example, a loss is not to be recognized by a corporation upon the disposition of a section 197 intangible if after the disposition a member of the same controlled group as the corporation retains other section 197 intangibles that were acquired in the same transaction (or a series of related transactions) as the section 197 intangible that was disposed of. It is anticipated that the Treasury Department will provide rules for taking into account the amount of any loss that is not recognized due to this rule (for example, by allowing the corporation that disposed of the section 197 intangible to amortize the loss over the remaining portion of the 14-year amortization period).

Treatment of certain nonrecognition transactions

If any section 197 intangible is acquired in a transaction to which section 332, 351, 361, 721, 731, 1031, or 1033 of the Code applies (or any transaction between members of the same affiliated group during any taxable year for which a consolidated return is filed),[118] the transferee is to be treated as the transferor for purposes of applying this provision with respect to the amount of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor.

For example, assume that an individual owns an amortizable section 197 intangible that has been amortized under section 197 for 4 full years and has a remaining unamortized basis of $300,000. In addition, assume that the individual exchanges the asset and $100,000 for a like-kind amortizable section 197 intangible in a transaction to which section 1031 applies. Under the bill, $300,000 of the basis of the acquired amortizable section 197 intangible is to be amortized over the 10 years remaining in the original 14-year amortization period for the transferred asset and the other $100,000 of basis is to be amortized over the 14-year period specified in the bill.[119]

Treatment of certain partnership transactions

Generally, consistent with the rules described above for certain nonrecognition transactions, a transaction in which a taxpayer acquires an interest in an intangible held through a partnership (either before or after the transaction) will be treated as an acquisition to which the bill applies only if, and to the extent that, the acquiring taxpayer obtains, as a result of the transaction, an increased basis for such intangible.[120]

For example, assume that A, B and C each contribute $700 for equal shares in partnership P, which on January 1, 1994, acquires as its sole asset an amortizable section 197 intangible for $2,100. Assume that on January 1, 1998, (1) the sole asset of P is the intangible acquired in 1994, (2) the intangible has an unamortized basis of $1,500 and A, B, and C each have a basis of $500 in their partnership interests, and (3) D (who is not related to A, B, or C) acquires A's interest in P for $800. Under the bill, if there is no section 754 election in effect for 1998, there will be no change in the basis or amortization of the intangible and D will merely step into the shoes of A with respect to the intangible. D's share of the basis in the intangible will be $500, which will be amortized over the 10 years remaining in the amortization period for the intangible.

On the other hand, if a section 754 election is in effect for 1998, then D will be treated as having an $800 basis for its share of P's intangible. Under section 197, D's share of income and loss will be determined as if P owns two intangible assets. D will be treated as having a basis of $500 in one asset, which will continue to be amortized over the 10 remaining years of the original 14-year life. With respect to the other asset, D will be treated as having a basis of $300 (the amount of step-up obtained by D under section 743 as a result of the section 754 election) which will be amortized over a 14-year period starting with January of 1998. B and C will each continue to share equally in a $1,000 basis in the intangible and amortize that amount over the remaining 10-year life.

As an additional example, assume the same facts as described above, except that D acquires both A's and B's interests in P for $1,600. Under section 708, the transaction is treated as if P is liquidated immediately after the transfer, with C and D each receiving their pro rata share of P's assets which they then immediately contribute to a new partnership. The distributions in liquidation are governed by section 731. Under the bill, C's interest in the intangible will be treated as having a $500 basis, with a remaining amortization period of 10 years. D will be treated as having an interest in two assets: one with a basis of $1,000 and a remaining amortization period of 10 years, and the other with a basis of $600 and a new amortization period of 14 years.

As discussed more fully below, the bill also changes the treatment of payments made in liquidation of the interest of a deceased or retired partner in exchange for goodwill. Except in the case of payments made on the retirement or death of a general partner of a partnership for which capital is not a material income-producing factor, such payments will not be treated as a distribution of partnership income. Under the bill, however, if the partnership makes an election under section 754, section 734 will generally provide the partnership the benefit of a stepped-up basis for the retiring or deceased partner's share of partnership goodwill and an amortization deduction for the increase in basis under section 197.

For example, using the facts from the preceding examples, assume that on January 1, 1998, A retires from the partnership in exchange for a payment from the partnership of $800, all of which is in exchange for A's interest in the intangible asset owned by P. Under the bill, if there is a section 754 election in effect for 1998, P will be treated as having two amortizable section 197 intangibles: one with a basis of $1,500 and a remaining life of 10 years, and the other with a basis of $300 and a new life of 14 years.

Treatment of certain reinsurance transactions

The bill applies to any insurance contract that is acquired from another person

[116] For this purpose, the abandonment of a section 197 intangible or any other event that renders a section 197 intangible worthless is to be considered a disposition of a section 197 intangible.

[117] These special rules do not apply to a section 197 intangible that is separately acquired (i.e., a section 197 intangible that is acquired other than in a transaction or a series of related transactions that involve the acquisition of other section 197 intangibles). Consequently, a loss may be recognized upon the disposition of a separately acquired section 197 intangible. In no event, however, is the termination or worthlessness of a portion of a section 197 intangible to be considered the disposition of a separately acquired section 197 intangible. For example, the termination of one or more customers from an acquired customer list or the worthlessness of some information from an acquired data base is not to be considered the disposition of a separately acquired section 197 intangible.

[118] The termination of a partnership under section 708(b)(1)(B) of the Code is a transaction to which this rule applies. In such a case, the bill applies only to the extent that the adjusted basis of the section 197 intangibles before the termination exceeds the adjusted basis of the section 197 intangibles after the termination. (See the example below in the discussion of "Treatment of certain partnership transactions.")

[119] No inference is intended whether any asset treated as a section 197 intangible under the bill is eligible for like kind exchange treatment.

[120] This discussion is subject to the application of the anti-churning rules which are discussed below.

through an assumption reinsurance transaction (but not through an indemnity reinsurance transaction).[121] The amount taken into account as the adjusted basis of such a section 197 intangible, however, is to equal the excess of (1) the amount paid or incurred by the acquirer/reinsurer under the assumption reinsurance transaction,[122] over (2) the amount of the specified policy acquisition expenses (as determined under section 848 of the Code) that is attributable to premiums received under the assumption reinsurance transaction. The amount of the specified policy acquisition expenses of an insurance company that is attributable to premiums received under an assumption reinsurance transaction is to be amortized over the period specified in section 848 of the Code.

Treatment of amortizable section 197 intangible as depreciable property

For purposes of chapter 1 of the Internal Revenue Code, an amortizable section 197 intangible is to be treated as property of a character which is subject to the allowance for depreciation provided in section 167. Thus, for example, an amortizable section 197 intangible is not a capital asset for purposes of section 1221 of the Code, but an amortizable section 197 intangible held for more than one year generally qualifies as property used in a trade or business for purposes of section 1231 of the Code. As further examples, an amortizable section 197 intangible is to constitute section 1245 property, and section 1239 of the Code is to apply to any gain recognized upon the sale or exchange of an amortizable section 197 intangible, directly or indirectly, between related persons.

Treatment of certain amounts that are properly taken into account in determining the cost of property that is not a section 197 intangible

The bill does not apply to any amount that is properly taken into account under present law in determining the cost of property that is not a section 197 intangible. Thus, for example, no portion of the cost of acquiring real property that is held for the production of rental income (for example, an office building, apartment building or shopping center) is to be taken into account under the bill (i.e., no goodwill, going concern value or any other section 197 intangible is to arise in connection with the acquisition of such real property). Instead, the entire cost of acquiring such real property is to be included in the basis of the real property and is to be recovered under the principles of present law applicable to such property.

Modification of purchase price allocation and reporting rules for certain asset acquisitions

Sections 338(b)(5) and 1060 of the Code authorize the Treasury Department to promulgate regulations that provide for the allocation of purchase price among assets in the case of certain asset acquisitions. Under regulations that have been promulgated pursuant to this authority, the purchase price of an acquired trade or business must be allocated among the assets of the trade or business using the "residual method."

Under the residual method specified in the Treasury regulations, all assets of an acquired trade or business are divided into the following four classes: (1) Class I assets, which generally include cash and cash equivalents; (2) Class II assets, which generally include certificates of deposit, U.S. government securities, readily marketable stock or securities, and foreign currency; (3) Class III assets, which generally include all assets other than those included in Class I, II, or IV (generally all furniture, fixtures, land, buildings, equipment, other tangible property, accounts receivable, covenants not to compete, and other amortizable intangible assets); and (4) Class IV assets, which include intangible assets in the nature of goodwill or going concern value. The purchase price of an acquired trade or business (as first reduced by the amount of the assets included in Class I) is allocated to the assets included in Class II and Class III based on the value of the assets included in each class. To the extent that the purchase price (as reduced by the amount of the assets in Class I) exceeds the value of the assets included in Class II and Class III, the excess is allocable to assets included in Class IV.

It is expected that the present Treasury regulations which provide for the allocation of purchase price in the case of certain asset acquisitions will be amended to reflect the fact that the bill allows an amortization deduction with respect to intangible assets in the nature of goodwill and going concern value. It is anticipated that the residual method specified in the regulations will be modified to treat all amortizable section 197 intangibles as Class IV assets and that this modification will apply to any acquisition of property to which the bill applies.

Section 1060 also authorizes the Treasury Department to require the transferor and transferee in certain asset acquisitions to furnish information to the Treasury Department concerning the amount of any purchase price that is allocable to goodwill or going concern value. The bill provides that the information furnished to the Treasury Department with respect to certain asset acquisitions is to specify the amount of purchase price that is allocable to amortizable section 197 intangibles rather than the amount of purchase price that is allocable to goodwill or going concern value. In addition, it is anticipated that the Treasury Department will exercise its existing regulatory authority to require taxpayers to furnish such additional information as may be necessary or appropriate to carry out the provisions of the bill, including the amount of purchase price that is allocable to intangible assets that are not amortizable section 197 intangibles.[123]

General regulatory authority

The Treasury Department is authorized to prescribe such regulations as may be appropriate to carry out the purposes of the bill including such regulations as may be appropriate to prevent avoidance of the purposes of the bill through related persons or otherwise. It is anticipated that the Treasury Department will exercise its regulatory authority where appropriate to clarify the types of intangible property that constitute section 197 intangibles.

Study

The Treasury Department is directed to conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). The Treasury Department is to report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is to provide additional reports annually thereafter.

Report regarding backlog of pending cases

The purpose of the provision is to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern, and any principles established in such cases will no longer have precedential value due to the provision. Therefore, the Internal Revenue Service is urged in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedient and balanced manner, the Internal Revenue Service is strongly encouraged to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

The Treasury Department is required to report annually to the House Ways and Means Committee and the Senate Finance Committee, regarding the volume of pending disputes in audit and litigation involving the amortization of intangibles and the progress made in resolving such disputes. It is expected that the report will also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. The first such report is to be made no later than December 31, 1994.

Effective date

In general

The provision generally applies to property acquired after the date of enactment of the bill. As more fully described below, however, a taxpayer may elect to apply the bill to all property acquired after July 25, 1991. In addition, a taxpayer that does not make this election may elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill pursuant to a binding written contract in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. Finally, special "anti-churning" rules may apply to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Election to apply bill to property acquired after July 25, 1991

A taxpayer may elect to apply the bill to all property acquired by the taxpayer after July 25, 1991. If a taxpayer makes this election, the bill also applies to all property acquired after July 25, 1991, by any taxpayer that is under common control with the electing taxpayer (within the meaning of subparagraphs (A) and (B) of section 41(f)(1)) of the

[121] An assumption reinsurance transaction is an arrangement whereby one insurance company (the reinsurer) becomes solely liable to policyholders on contracts transferred by another insurance company (the ceding company). In addition, for purposes of the bill, an assumption reinsurance transaction is to include any acquisition of an insurance contract that is treated as occurring by reason of an election under section 338 of the Code.

[122] The amount paid or incurred by the acquirer/reinsurer under an assumption reinsurance transaction is to be determined under the principles of present law. (See Treas. Reg. sec. 1.817-4(d)(2).)

[123] There is no intention to codify any aspect of the existing regulations under section 1060 or other provisions. Furthermore, it is expected that the Treasury Department will review the operation of the regulations under sections 1060 and 338 in light of new section 197.

Code) at any time during the period that began on November 22, 1991, and that ends on the date that the election is made.[124]

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[125] and the election may be revoked only with the consent of the Treasury Department.

Elective binding contract exception

A taxpayer may also elect to apply present law (rather than the provisions of the bill) to property that is acquired after the date of enactment of the bill if the property is acquired pursuant to a binding written contract that was in effect on the date of enactment of the bill and at all times thereafter until the property is acquired. This election may not be made by any taxpayer that is subject to either of the elections described above that apply the provisions of the bill to property acquired before the date of enactment of the bill.

The election is to be made at such time and in such manner as may be specified by the Treasury Department,[126] and the election may be revoked only with the consent of the Treasury Department.

Anti-churning rules

Special rules are provided by the bill to prevent taxpayers from converting existing goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not have been allowable under present law into amortizable property to which the bill applies.

Under these "anti-churning" rules, goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill[127] may not be amortized as an amortizable section 197 intangible if: (1) the section 197 intangible is acquired by a taxpayer after the date of enactment of the bill; and (2) either (a) the taxpayer or a related person held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill; (b) the taxpayer acquired the intangible from a person that held such intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill. The anti-churning rules, however, do not apply to the acquisition of any intangible by a taxpayer if the basis of the intangible in the hands of the taxpayer is determined under section 1014(a) (relating to property acquired from a decedent).

For purposes of the anti-churning rules, a person is related to another person if: (1) the person bears a relationship to that person which would be specified in section 267(b)(1) or 707(b)(1) of the Code if those sections were amended by substituting 20 percent for 50 percent; or (2) the persons are engaged in trades or businesses under common control (within the meaning of subparagraphs (A) and (B) of section 41(f)(1) of the Code). A person is treated as related to another person if such relationship exists immediately before or immediately after the acquisition of the intangible involved.

In addition, in determining whether the anti-churning rules apply with respect to any increase in the basis of partnership property under section 732, 734, or 743 of the Code, the determinations are to be made at the partner level and each partner is to be treated as having owned or used the partner's proportionate share of the partnership property. Thus, for example, the anti-churning rules do not apply to any increase in the basis of partnership property that occurs upon the acquisition of an interest in a partnership that has made a section 754 election if the person acquiring the partnership interest is not related to the person selling the partnership interest.[128]

These "anti-churning" rules are not to apply to any section 197 intangible that is acquired from a person with less than a 50-percent relationship to the acquirer to the extent that: (1) the seller recognizes gain on the transaction with respect to such intangible; and (2) the seller agrees, notwithstanding any other provision of the Code, to pay a tax on such gain which, when added to any other Federal income tax imposed on such gain, equals the product of such gain and the highest rate of tax imposed by section 1 or 11 of the Code, whichever is applicable. The seller is treated as satisfying the second requirement if the excess of (1) the total tax liability for the year of the transaction over (2) what its tax liability for such year would have been had the sale of the intangible (but not the remainder of the transaction) been excluded from the computation equals or exceeds the product of the gain on that asset times the relevant maximum rate.

The bill also contains a general anti-abuse rule that applies to any section 197 intangible that is acquired by a taxpayer from another person. Under this rule, a section 197 intangible may not be amortized under the provisions of the bill if the taxpayer acquired the intangible in a transaction one of the principal purposes of which is to (1) avoid the requirement that the intangible be acquired after the date of enactment of the bill or (2) avoid any of the anti-churning rules described above that are applicable to goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill.

Finally, the special rules described above that apply in the case of a transactions described in section 332, 351, 361, 721, 731, 1031, or 1033 of the Code also apply for purposes of the effective date. Consequently, if the transferor of any section 197 property is not allowed an amortization deduction with respect to such property under this provision, then the transferee is not allowed an amortization deduction under this provision to the extent of the adjusted basis of the transferee that does not exceed the adjusted basis of the transferor. In addition, this provision is to apply to any subsequent transfers of any such property in a transaction described in section 332, 351, 361, 721, 731, 1031, or 1033.

Senate amendment

The Senate amendment is the same as the House bill with the following modifications:

The amount of deduction with respect to any amortizable section 197 intangible is determined by amortizing 75 percent of the adjusted basis of the intangible over 14 years. The remaining 25 percent of adjusted basis is not amortizable.

Purchased mortgage servicing rights not acquired with a trade or business or substantial portion thereof are excluded from the definition of a section 197 intangible. Any depreciation deduction allowable with respect to such excluded rights must be taken over 9 years (108 months) on a straight-line basis.

In addition to the provisions of the House bill regarding computer software, special allocation and amortization rules apply to acquisitions of certain businesses that have made certain computer software expenditures. Fifty percent of the amortizable portion of "amortizable section 197 intangibles" (i.e., 50 percent of 75 percent of the basis of such assets) is amortized on a straight-line basis over 5 years. The remaining 50 percent of 75 percent is amortized over 14 years under the general rule of the provision.

The Senate amendment does not contain any requirement of reports from the Treasury department.

Conference Agreement

The conference agreement follows the House bill, deleting the statutory requirements of reports from the Treasury Department and with the following additional modifications:

Period of amortization

The straight line amortization period for an amortizable section 197 intangible is 15 years rather than 14 years.

Treasury regulatory authority regarding rights of fixed duration or amount

As a conforming amendment to the change in amortization period, under the conference agreement the Treasury regulatory authority regarding rights of fixed duration or amount applies to rights that have a fixed duration of less than 15 years (rather than 14 years).

Purchased mortgage servicing rights

The conference agreement follows the Senate bill in excluding purchased mortgage

---

[124] However, with certain exceptions, an amortization deduction is not to be allowed under the bill for goodwill, going concern value, or any other section 197 intangible for which a depreciation or amortization deduction would not be allowable but for the provisions of the bill if: (1) the section 197 intangible is acquired after July 25, 1991; and (2) either (a) the taxpayer or a related person held or used the intangible on July 25, 1991; (b) the taxpayer acquired the intangible from a person that held such intangible on July 25, 1991, and, as part of the transaction, the user of the intangible does not change; or (c) the taxpayer grants the right to use the intangible to a person (or a person related to such person) that held or used the intangible on July 25, 1991. See below for a more detailed description of these "anti-churning" rules.

[125] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

[126] It is anticipated that the Treasury Department will require the election to be made on the timely filed Federal income tax return of the taxpayer for the taxable year that includes the date of enactment of the bill.

[127] Amounts that are properly deductible pursuant to section 1253 under present law are to be treated for purposes of the anti-churning provision as amounts for which depreciation or amortization is allowable under present law.

[128] In addition to these rules, it is anticipated that rules similar to the anti-churning rules under section 168 of the Code will apply in determining whether persons are related. (See Prop. Treas. Reg. 1.168-4 (February 16, 1984).) For example, it is anticipated that a corporation, partnership, or trust that owned or used property at any time during the period that begins on July 25, 1991, and that ends on the date of enactment of the bill and that is no longer in existence will be considered to be in existence for purposes of determining whether the taxpayer that acquired the property is related to such corporation, partnership, or trust.

As a further example, it is anticipated that in the case of a transaction to which section 338 of the Code applies, the corporation that is treated as selling its assets will not to be considered related to the corporation that is treated as purchasing the assets if at least 80 percent of the stock of the corporation that is treated as selling its assets is acquired by purchase after July 25, 1991.

servicing rights (not acquired in connection with the acquisition of a trade or business or substantial portion thereof) from the definition of a section 197 intangible. Any depreciation deduction allowable with respect to such excluded rights must be computed on a straight line basis over a period of 9 years (108 months).[129]

Technical correction regarding losses on covenants not to compete

The conference agreement contains a technical correction conforming the statute to both the House and Senate committee reports regarding the amortization of covenants not to compete. The correction provides that a covenant not to compete (or other arrangement to the extent such arrangement has substantially the same effect as a covenant not to compete) shall not be considered to have been disposed of or to have become worthless until the disposition or worthlessness of all interests in the trade or business or substantial portion thereof that was directly or indirectly acquired in connection with such covenant (or other arrangement).

Thus, for example, in the case of an indirect acquisition of a trade or business (e.g., through the acquisition of stock that is not treated as an asset acquisition), it is clarified that a covenant not to compete (or other arrangement) entered into in connection with the indirect acquisition cannot be written off faster than on a straight-line basis over 15 years (even if the covenant or other arrangement expires or otherwise becomes worthless) unless all the trades or businesses indirectly acquired (e.g., acquired through such stock interest) are also disposed of or become worthless.

Modification of related party rule for purposes of the July 25, 1991 election

The conference agreement modifies the rules regarding the effect of an election on certain related parties, in order to reflect the passage of time since the election was originally proposed (H. Res. 292, introduced November 22, 1991).

The conference agreement provides that an election by a taxpayer affects all property acquired by that taxpayer since July 25, 1991, and also affects all property acquired since that date by parties that are related to the taxpayer at any time between August 2, 1993 (rather than November 22, 1991) and the date of the election.

Consistent with the operation of the consolidated return rules, for this purpose it is intended that any property acquired after July 25, 1991 by an entity that is a member of an affiliated group filing a consolidated return at the time of such acquisition is treated as property acquired by the taxpayer group filing such return for purposes of any election by that taxpayer group.

An election by an affiliated group filing a consolidated return would not force an election to be made by an acquirer of a former group member, even if such acquirer would normally continue the treatment of such former group member's assets (e.g., an acquirer in a transaction that does not affect the inside basis of the assets of the former group member). Similarly, a failure by the former group to make an election would not affect the ability of the former group member, or a new acquirer that is related to such member on the date of the election, to make an election that would affect the post-July 25, 1991 intangible asset acquisitions of that former group member (including such intangible asset acquisitions made while it was a member of the former group).[130]

The conferees expect that the Treasury Department will provide rules regarding appropriate adjustments, if any, to be made where property acquired after July 25, 1991 has been transferred from one related party group to another in a transaction that would not involve a change in asset basis and one or both groups independently make a July 25, 1991 election that would affect the amortization of such property.[131]

Reports regarding backlog of pending cases and implementation and effects of the bill

The conferees reiterate the intended purpose of the provision, as stated in both the House and Senate reports, to simplify the law regarding the amortization of intangibles. The severe backlog of cases in audit and litigation is a matter of great concern to the conferees; and any principles established in such cases will no longer have precedential value due to the provision contained in the conference agreement. Therefore, the conferees urge the Internal Revenue Service in the strongest possible terms to expedite the settlement of cases under present law. In considering settlements and establishing procedures for handling existing controversies in an expedited and balanced manner, the conferees strongly encourage the Internal Revenue Service to take into account the principles of the bill so as to produce consistent results for similarly situated taxpayers. However, no inference is intended that any deduction should be allowed in these cases for assets that are not amortizable under present law.

The conferees intend that the Treasury Department report annually to the House Ways and Means Committee and the Senate Finance Committee regarding the volume of pending disputes in audit and litigation involving the amortization of intangibles and the progress made in resolving disputes. It is intended that the report also address the effects of the provision on the volume and nature of disputes regarding the amortization of intangibles. It is intended that the first such report shall be made no later than December 31, 1994.

The conferees also intend that the Treasury Department conduct a continuing study of the implementation and effects of the bill, including effects on merger and acquisition activities (including hostile takeovers and leveraged buyouts). It is expected that the study will address effects of the legislation on the pricing of acquisitions and on the reported values of different types of intangibles (including goodwill). It is intended that the Treasury Department will report the initial results of such study as expeditiously as possible and no later than December 31, 1994. The Treasury Department is expected to provide additional reports annually thereafter.

2. Modify special treatment of certain liquidation payments (sec. 14262 of the House bill, sec. 8262 of the Senate amendment, sec. 13262 of the conference agreement, and sec. 736 of the Code)

Present Law

Payments for purchase of goodwill and accounts receivable

A current deduction generally is not allowed for a capital expenditure (i.e., an expenditure that yields benefits beyond the current taxable year). The cost of goodwill acquired in connection with the assets of a going concern normally is a capital expenditure, as is the cost of acquiring accounts receivable. The cost of acquiring goodwill is recovered only when the goodwill is disposed of, while the cost of acquiring accounts receivable is taken into account only when the receivable is disposed of or becomes worthless.

Payments made in liquidation of partnership interest

The tax treatment of a payment made in liquidation of the interest of a retiring or deceased partner depends upon whether the payment is made in exchange for the partner's interest in partnership property. A liquidating payment made in exchange for such property is treated as a distribution by the partnership (sec. 736(b)). Such distribution generally results in gain to the retiring partner only to the extent that the cash distributed exceeds such partner's adjusted basis in the partnership interest.

A liquidating payment not made in exchange for the partner's interest in partnership property receives either of two possible treatments. If the amount of the payment is determined without reference to partnership income, it is treated as a guaranteed payment and is generally deductible (sec. 736(a)(2)). If the amount of payment is determined by reference to partnership income, the payment is treated as a distributive share of partnership income, thereby reducing the distributive shares of other partners (which is equivalent to a deduction) (sec. 736(a)(2)).

A special rule treats amounts paid for goodwill of the partnership (except to the extent provided in the partnership agreement) and unrealized receivables as not made in exchange for an interest in partnership property (sec. 736(b)(2)(B)). Thus, such amounts may be deductible. Unrealized receivables include unbilled amounts, accounts receivable, depreciation recapture, market discount, and certain other items (sec. 751(c)).

Sale or exchange of a partnership interest

The sale or exchange of a partnership interest results in capital gain or loss to the transferor partner, except to the extent that ordinary income or loss is recognized with respect to the partner's share of the partnership's unrealized receivables and substantially appreciated inventory items (sec. 741).

[129] Consistent with both the House and Senate bills, purchased mortgage servicing rights are not depreciable to the extent that the rights are stripped coupons under section 1286 of the Code. To the extent that the rights are stripped coupons under section 1286 of the Code, they will not be amortized on a straight line basis over 108 months. See Rev. Rul. 91-46, 1991-2 C.B. 358.

[130] For example, assume the following facts. Corporation P is the parent of an affiliated group filing a consolidated return that includes subsidiary S. The P group files its consolidated return on the basis of the calendar year. S acquires certain intangible assets on August 1, 1991. The stock of S is sold to corporation X on December 31, 1992, in a transaction in which S's adjusted basis in its assets is not changed. Corporation X is also the parent of an affiliated group filing a consolidated return that now includes S. S remains in the X group. Under the conference agreement, if the X group makes the July 25, 1991 election, such election does not require the P group also to make the election. If the P group makes the July 25, 1991 election, the election will affect the amortization deductions allowed on the P group's 1991 and 1992 consolidated returns with respect to the assets acquired by S on August 1, 1991. Such election does not require the X group also to make the election.

[131] For example, such rules would apply if a corporation that is a member of an affiliated group filing a consolidated return acquires property after July 25, 1991 and then, before August 2, 1993 becomes a member of another group in a transaction that does not affect the basis of that corporation's assets. In such a case, the first group could make the election for periods when the corporation was included in that group's consolidated return. In addition, the second group could make the election because the corporation was related to the second group on August 2, 1993.

It is often unclear whether a payment by a partnership to a retiring partner is made in sale or exchange of, or in liquidation of, a partnership interest.

House bill

In general

The bill generally repeals the special treatment of liquidation payments made for goodwill and unrealized receivables. Thus, such payments would be treated as made in exchange for the partner's interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent. The bill does not change present law with respect to payments made to a general partner in a partnership in which capital is not a material income-producing factor. The determination of whether capital is a material income-producing factor would be made under principles of present and prior law.[132] For purposes of this provision, capital is not a material income-producing factor where substantially all the gross income of the business consists of fees, commissions, or other compensation for personal services performed by an individual. The practice of his or her profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is a material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which such individual conducts his or her practice so long as such capital investment is merely incidental to such professional practice. In addition, the bill does not affect the deductibility of compensation paid to a retiring partner for past services.

Unrealized receivables

The bill also repeals the special treatment of payments made for unrealized receivables (other than unbilled amounts and accounts receivable) for all partners. Such amounts would be treated as made in exchange for the partner's interest in partnership property. Thus, for example, a payment for depreciation recapture would be treated as made in exchange for an interest in partnership property, and not as a distributive share or guaranteed payment that could give rise to a deduction or its equivalent.

Effective Date

The provision generally applies to partners retiring or dying on or after January 5, 1993. The provision does not apply to any partner who retires on or after January 5, 1993, if a written contract to purchase the partner's interest in the partnership was binding on January 4, 1993 and at all times thereafter until such purchase. For this purpose, a written contract is to be considered binding only if the contract specifies the amount to be paid for the partnership interest and the timing of any such payments.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement is the same as the House bill and the Senate amendment.

[132] E.g., sections 401(c)(2) and 911(d) of the Code and old section 1348(b)(1)(A) of the Code.

G. Miscellaneous Revenue-Raising Provisions

1. Expansion of 45-day interest-free period for certain refunds (sec. 14273 of the House bill, sec. 7950 of the Senate amendment, sec. 13271 of the conference agreement, and sec. 6611(e) of the Code)

Present Law

No interest is paid by the Government on a refund arising from an original income tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed (sec. 6611(e)).

There is no parallel rule for refunds of taxes other than income taxes (i.e., employment, excise, and estate and gift taxes), for refunds of any type of tax arising from amended returns, or for claims for refunds of any type of tax.

If a taxpayer files a timely original return with respect to any type of tax and later files an amended return claiming a refund, and if the IRS determines that the taxpayer is due a refund on the basis of the amended return, the IRS will pay the refund with interest computed from the due date of the original return.

House Bill

No interest is to be paid by the Government on a refund arising from any type of original tax return if the refund is issued by the 45th day after the later of the due date for the return (determined without regard to any extensions) or the date the return is filed.

A parallel rule applies to amended returns and claims for refunds: if the refund is issued by the 45th day after the date the amended return or claim for refund is filed, no interest is to be paid by the Government for that period of up to 45 days (interest would continue to be paid for the period from the due date of the return to the date the amended return or claim for refund is filed). If the IRS does not issue the refund by the 45th day after the date the amended return or claim for refund is filed, interest would be paid (as under present law) for the period from the due date of the original return to the date the IRS pays the refund.

A parallel rule also applies to IRS-initiated adjustments (whether due to computational adjustments or audit adjustments). With respect to these adjustments, the IRS is to pay interest for 45 fewer days than it otherwise would.

Effective date.—The extension of the 45-day processing rule is effective for returns required to be filed (without regard to extensions) on or after January 1, 1994. The amended return rule is effective for amended returns and claims for refunds filed on or after January 1, 1995 (regardless of the taxable period to which they relate). The rule relating to IRS-initiated adjustments applies to refunds paid on or after January 1, 1995 (regardless of the taxable period to which they relate).

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

2. Deny deductions relating to travel expenses paid or incurred in connection with travel of taxpayer's spouse or dependents (sec. 14274 of the House bill, sec. 8271 of the Senate amendment, sec. 13272 of the conference agreement, and sec. 274(m) of the Code)

Present Law

In general, a taxpayer is permitted a deduction for all ordinary and necessary expenses paid or incurred during the taxable year (1) in carrying on any trade or business and (2) in the case of an individual, for the production of income. Such deductible expenses may include reasonable travel expenses paid or incurred while away from home, such as transportation costs and the cost of meals and lodging.

In the case of ordinary and necessary business expenses, if a taxpayer travels to a destination and while at that destination engages in both business and personal activities, travel expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, expenses while at the destination that are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible (Treas. Reg. sec. 1.162-2(b)(1)).

Under Treasury regulations, if the taxpayer's spouse accompanies the taxpayer on a business trip, expenses attributable to the spouse's travel are not deductible unless it is adequately shown that the spouse's presence on the trip has a bona fide business purpose (Treas. reg. sec. 1.162-2(c)). The performance of some incidental service by the spouse does not cause the expenses to qualify as deductible business expenses. Under the Treasury regulations, the same rules apply to any other members of the taxpayer's family who accompany the taxpayer on such a trip.

House Bill

The House bill denies a deduction for travel expenses paid or incurred with respect to a spouse, dependent, or other individual accompanying a person on business travel, unless (1) the spouse, dependent, or other individual accompanying the person is a bona fide employee of the person paying or reimbursing the expenses, (2) the travel of the spouse, dependent, or other individual is for a bona fide business purpose, and (3) the expenses of the spouse, dependent, or other individual would otherwise be deductible. No inference is intended as to the deductibility of these expenses under present law. The denial of the deduction does not apply to expenses that would otherwise qualify as deductible moving expenses.

Effective date.—The provision is effective for amounts paid or incurred after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

3. Increase withholding rate on supplemental wage payments (sec. 14275 of the House bill, sec. 8272 of the Senate amendment, sec. 13273 of the conference agreement, and sec. 3402(g) of the Code)

Present Law

Under Treasury regulations, withholding on supplemental wage payments (such as bonuses, commissions, and overtime pay) that are not paid concurrently with wages (or

that are paid concurrently with wages, but are separately stated) for a payroll period may be done at a rate of 20 percent (at the employer's election) (Treas. Reg. sec. 31.3402(g)-1).[133]

House Bill

The House bill increases the applicable withholding rate on supplemental wage payments to 28 percent.

Effective date.—The provision is effective for payments made after December 31, 1993.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

III. EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. Tax benefits for empowerment zones and enterprise communities (secs. 14301–14304 of the House bill, sec. 15001 of the Senate amendment, secs. 13301–13304 of the conference agreement, and new secs. 1391–1397D of the Code)

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or possessions of the United States to encourage the conduct of trades or businesses within these areas.

House Bill

Designation of eligible areas

In general

A total of 10 empowerment zones and 100 enterprise communities will be designated (subject to availability of eligible areas) during 1994 and 1995. Empowerment zones and enterprise communities will be designated from areas nominated by State and local governments or a governing body of an Indian reservation.[134] Empowerment zones will be eligible for additional tax incentives beyond those provided in the areas designated as enterprise communities.

The Secretary of Housing and Urban Development (HUD) will designate in eligible urban areas six empowerment zones and 65 enterprise communities. (The six empowerment zones located in urban areas will include at least one zone in an urban area the most populous city of which has a population of 500,000 or less.) The Secretary of Agriculture will designate in eligible rural areas[135] three empowerment zones and 30 enterprise communities. In addition, the Secretary of the Interior will designate in eligible Indian reservation areas one empowerment zone and five enterprise communities.[136] Nominated areas located in Indian reservations also will be eligible for designation (provided the bill's criteria are met) as rural areas. All designations will be made in consultation with an Enterprise Board (to be established in the future), which will include officials from various Federal agencies. The designations will be made prior to January 1, 1996.

Designations of areas as empowerment zones or enterprise communities generally will remain in effect for 10 years. An area's designation can be revoked if the local government(s) or State(s) modify the boundaries of the designated area or do not comply with the agreed-upon strategic plan for the area (described below).[137]

Eligibility criteria for zones

The eligibility criteria for urban areas, rural areas, and Indian reservations generally are the same (except as noted below). To be eligible for designation, a nominated area is required to possess *all* of the following characteristics:

Resident population.—An eligible urban area is subject to a maximum population of the lesser of (1) 200,000, or (2) the greater of 50,000 or 10 percent of the population of the most populous city within the nominated area. (In addition, the Secretary of HUD is required to designate empowerment zones located in urban areas in such a manner that the *aggregate* population of such zones does not exceed 750,000.) Rural areas are subject to a maximum population of 30,000. Indian reservations are not subject to a population limit.

General condition.—An eligible area must have a condition of pervasive poverty, unemployment, and general economic distress (which may include distress from a high incidence of crime and narcotics use).

Area.—The nominated area must either (1) have a continuous boundary, or (2) except in the case of a rural area located in more than one State, consist of not more than three noncontiguous parcels. Urban areas must be located entirely within no more than two contiguous States, and rural areas must be located entirely within no more than three contiguous States.

Size.—The nominated area must not exceed (1) 20 square miles for urban areas, or (2) 1,000 square miles for rural areas and Indian reservations.

Poverty.—Each of the census tracts within a nominated area must have a poverty rate of at least 20 percent;[138] at least 90 percent of the area's census tracts must each have a poverty rate of at least 25 percent; and at least 50 percent of the area's census tracts must each have a poverty rate of at least 35 percent.[139] For purposes of these measurements, unpopulated census tracts and census tracts with limited populations and 75 percent or more zoned for commercial or industrial use will be treated as satisfying the bill's 20-percent and 25-percent poverty rate criteria. With respect to empowerment zones, each census tract located in a central business district (as such term is used for purposes of the most recent Census of Retail Trade) must have a poverty rate of at least 35 percent. With respect to enterprise communities, each census tract located in a central business district must have a poverty rate of at least 30 percent.[140] If the nominated area consists of noncontiguous parcels, each parcel must separately satisfy the above poverty criteria.

Strategic plan.—A strategic plan must be submitted by the nominating body for purposes of accomplishing the goals of this legislation.

Contents of strategic plan

In order for a nominated area to be eligible for designation, the local government(s) and State(s) in which the area is located[141] are required to provide a strategic plan that: (1) describes the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area; (2) describes the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process; (3) identifies the amount of State, local, and private resources that will be available in the nominated area and the private/public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities; (4) identifies the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities; (5) identifies baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient, and (6) generally does not include any action to assist any establishment in relocating from an area outside the nominated area to the nominated area.[142]

---

[133] If the employer chooses not to use the 20-percent method, withholding may be computed by aggregating the supplemental payments with regular wages paid within the same calendar year for the last preceding payroll period or the current payroll period. The employer would then use withholding tables to determine the total tax on this aggregate amount. The amount to be withheld for the supplemental wages is the total tax less any amount already withheld for regular wages included in the aggregate amount.

[134] An area will be treated as nominated by a State or local government if it is nominated by such other entity as may be specified by an Enterprise Board (to be established in the future).

[135] For purposes of the House bill, a "rural area" means any area which is (1) outside a metropolitan statistical area as defined by the Secretary of Commerce, or (2) determined by the Secretary of Agriculture to be a rural area. The term "urban area" means any area which is not a rural area.

[136] Under the House bill, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)).

[137] An area's designation may be revoked only after a hearing on the record at which officials of the State and local governments are given an opportunity to participate.

[138] The poverty rate is to be determined by the 1990 census or subsequent census data. If areas are not tracted as population census tracts, the equivalent county divisions as defined by the Bureau of the Census for purposes of defining poverty areas would be treated as population census tracts.

[139] With respect to an area nominated to be an empowerment zone, the appropriate Secretary may reduce one of these poverty criteria by five percentage points for not more than 10 percent of the population census tracts (up to a maximum of five population census tracts) in the nominated area. With respect to an area nominated to be an enterprise community, the appropriate Secretary may reduce one of the poverty criteria as described in the preceding sentence or, as an alternative, may reduce the 35-percent poverty threshold by ten percentage points (i.e., to 25 percent) for up to three population census tracts.

[140] The appropriate Secretary has no discretion to reduce the 35-percent poverty rate threshold for tracts located in a central business district that is part of an empowerment zone or to reduce the 30-percent poverty rate threshold for tracts located in a central business district that is part of an enterprise community.

[141] In the case of an Indian reservation, the reservation governing body is deemed to be both the State and local governments with respect to such area.

[142] The House bill provides that the required strategic plan may not include any action to assist any business in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through establishment of a new branch, affiliate, or subsidiary is permitted if (1) the establishment of the new branch, affiliate, or subsidiary will

Selection process and criteria

From among the eligible areas, designations of empowerment zones and enterprise communities will be made on the basis of (1) the effectiveness of the strategic plan for a nominated area and the assurances that such plan will be implemented and (2) criteria specified by the Enterprise Board.

Tax incentives for empowerment zones

Employer wage credit

A 25-percent credit against income tax liability is available to all employers for the first $20,000 of qualified wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone[143]), and (2) performs substantially all employment services within the zone in a trade or business of the employer.

The maximum credit per qualified employee is $5,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $20,000, although only the first $20,000 of wages will be eligible for the credit.[144] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the investment tax incentives described below).[145]

The credit will be phased out beginning in 2001. The credit rate will be reduced to 20 percent in 2001, 15 percent in 2002, 10 percent in 2003, and five percent in 2004. The credit will not be available after December 31, 2004.

Qualified wages include the first $20,000 of "wages," defined to include (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are excludable from gross income of the employee under section 127 (which is retroactively and permanently extended under another provision of the bill), or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.[146]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year. Wages are not be taken into account for purposes of the empowerment zone employment credit if taken into account in determining the employer's targeted jobs tax credit (TJTC).

The credit is allowable to offset up to 25 percent of alternative minimum tax liability.

Expansion of targeted jobs tax credit (TJTC)

The present-law targeted jobs tax credit (sec. 51) is expanded so that an economically disadvantaged person[147] who resides in an empowerment zone but is employed outside of an empowerment zone will be treated as a member of a targeted group for purposes of that credit.[148] Thus, employers located outside of empowerment zones are entitled to claim the 40-percent TJTC credit on up to $6,000 of qualified first-year wages paid to economically disadvantaged employees who reside within an empowerment zone. An employer located in an empowerment zone may be able to claim the TJTC with respect to wages paid to a member of another targeted group (e.g., a qualified summer youth employee or a participant in a school-to-work program), but such an employer may not utilize the bill's expanded TJTC provision for certain empowerment zone residents who work outside of the zone.

As under present law, an employer's deduction otherwise allowed for wages paid is reduced by the amount of TJTC claimed for that taxable year.

Empowerment savings credit

A tax credit is available to employers for certain contributions made to a tax-qualified defined contribution plan on behalf of employees with respect to whom the wage credit could be claimed. Thus, in general, the credit is available with respect to contributions made on behalf of employees who (1) are zone residents and (2) perform substantially all employment services within the zone in a trade or business of the employer.[149] The credit is equal to 50 percent of contributions up to two percent of compensation (as defined in sec. 414(s)) not in excess of $35,000. If an area is not designated as an empowerment zone for an entire taxable year, the $35,000 compensation limit is ratably reduced to reflect the portion of the year the designation is not in effect.

The credit is available for contributions to any tax-qualified defined contribution plan other than an employee stock ownership plan, stock bonus plan, or a plan subject to the minimum funding requirements (sec. 412). Contributions may also be made to a simplified employee pension (as defined in sec. 408(k) (SEP)). Except as specifically provided, the rules applicable to qualified plans and SEPs (as the case may be) apply to contributions for which the credit is available.

To be eligible for the credit, the employer contribution must be 100 percent vested, and must be either a matching or nonelective contribution; salary reduction contributions are not eligible for the credit. The plan is required to permit an employee with respect to whom the credit can be claimed to withdraw contributions from the plan (and earnings thereon) for higher education or health expenses, first-time home purchase, or to invest in a qualified enterprise zone business. A plan that permits such withdrawals will not fail to be a tax-qualified plan merely because it does so. The 10-percent early withdrawal tax (sec. 72(t)) will not apply to such withdrawals. The special withdrawal provisions apply only while the employee meets the qualifications for the credit.

The credit is available in lieu of the otherwise available deduction for the contributions and may be claimed in addition to the employment and training credit. The credit is elective.

Definition of "enterprise zone business"

The investment tax incentives for empowerment zones described below (but not the labor incentives described above) are available only with respect to trade or business activities that satisfy the criteria for an "enterprise zone business." Under the proposal, an "enterprise zone business" is defined as a corporation or partnership (or proprietorship) if for the taxable year: (1) the sole trade or business of the corporation or partnership is the active conduct of a qualified business within an empowerment zone;[150] (2) at least 80 percent of the total gross income is derived from the active conduct of a "qualified business" within a zone; (3) substantially all of the use of its tangible property occurs within a zone; (4) substantially all of its intangible property is used in, and exclusively related to, the active conduct of such business; (5) substantially all of the services performed by employees are performed within a zone; (6) at least 35 percent of the employees are residents of the zone;[151] and (7) no more than five percent of the average of the aggregate unadjusted bases of the property owned by the business is attributable to (a) certain financial property, or (b) collectibles not held primarily for sale to customers in the ordinary course of an active trade or business.

A "qualified business" is defined as any trade or business other than a trade or business that consists predominantly of the development or holding of intangibles for sale or license.[152] In addition, the leasing of real

---

not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations, and (2) there is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operations.

[143] The House committee report indicates that it is intended that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate a wage credit claimed under the House bill.

[144] To prevent avoidance of the $20,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) would be treated as a single employer.

[145] Employers would be required to take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of receiving advance payments of the earned income tax credit (EITC).

[146] The wage credit is not available with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the wage credit is not available with respect to any individual employed by a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) and (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

[147] For this purpose, an individual is economically disadvantaged if he or she is a member of an economically disadvantaged family under present-law section 51(d)(11).

[148] The TJTC expired on June 30, 1992, but it is to be extended until December 31, 1994 by section 13102 of the conference agreement.

[149] The restrictions regarding employees with respect to whom the wage credit can be claimed also apply here. Thus, for example, the credit for savings contributions is not available with respect to any individual employed at certain facilities. See the discussion under the wage credit for further explanation.

[150] This requirement does not apply to a business carried on by an individual as a proprietorship.

[151] For this purpose, the term "employee" includes a self-employed individual (within the meaning of section 401(c)(1)).

The House committee report indicates that it is intended that the Secretary of the Treasury will prescribe regulations to determine the appropriate treatment of part-time employees for purposes of calculating whether 35 percent of the employees are residents of the empowerment zone.

[152] However, the House bill specifically provides that a "qualified business" does not include (1) any

property that is located within the empowerment zone to others is treated as a qualified business only if (1) the leased property is not residential property, and (2) at least 50 percent of the gross rental income from the real property is from enterprise zone businesses. The rental of tangible personal property to others is not a qualified business unless substantially all of the rental of such property is by enterprise zone businesses or by residents of an empowerment zone.

Activities of legally separate (even if related) parties would not be aggregated for purposes of determining whether an entity qualifies as an enterprise zone business.

Increased section 179 expensing

The expensing allowance for certain depreciable business property provided under section 179 is increased to $75,000 for qualified zone property of an enterprise zone business (as defined above). In addition, the types of property eligible for section 179 expensing are expanded to include buildings used in enterprise zone businesses.

"Qualified zone property" is defined as depreciable tangible property (including buildings), provided that: (1) such property was acquired by the taxpayer (but not from a related party) after the zone designation took effect; (2) the original use of the property in the zone commences with the taxpayer;[153] and (3) substantially all of the use of the property is in the zone in the active conduct of a trade or business by the taxpayer in the zone. In the case of property which is substantially renovated by the taxpayer, however, such property need not be acquired by the taxpayer after zone designation or originally used by the taxpayer within the zone if during any 24-month period after zone designation the additions to the taxpayer's basis in such property exceed 100 percent of the taxpayer's basis in such property at the beginning of the period or $5,000 (whichever is greater).[154]

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in qualified property during the taxable year above a specified threshold. However, under the bill, the present-law phase-out range is applied by decreasing the amount of the cost of qualified zone property that is deductible under section 179 by one-half of the amount by which the cost of qualified zone property (other than real estate) and other section 179 property exceeds $200,000. Thus, the section 179 deduction applicable to qualified zone property is completely phased-out when the cost of qualified zone property (other than real estate) and other section 179 property placed in service during the taxable year reaches $350,000. For example, assume that a taxpayer places $270,000 of qualified zone property (none of which is real estate) in service during the taxable year and that the taxpayer does not place any property in service outside the zone. Under the bill, the taxpayer will be allowed to claim a section 179 deduction of $40,000 ($75,000 section 179 amount less $35,000 (one-half of the difference between $270,000 and $200,000)).

As under present-law section 179, all component members of a controlled group are treated as one taxpayer for purposes of the expensing allowance and application of the phaseout range (sec. 179(d)(6)). Also, as under present law, the $75,000 expensing allowance is to apply at both the partnership (and S corporation) and partner (and shareholder) levels.

The increased expensing allowance would apply for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in a enterprise zone business (under rules similar to present-law section 179(d)(10)).

Accelerated depreciation

An enterprise zone business (as defined above) will determine depreciation deductions with respect to "qualified zone property" (also defined above) by using the following recovery periods:

	Years
3-year property	2
5-year property	3
7-year property	4
10-year property	6
15-year property	9
20-year property	12
Nonresidential real property	22

The shorter recovery periods allowed for qualified zone property of enterprise zone businesses will be allowed for alternative minimum tax purposes.

Tax-exempt financing

In general.—The House bill creates a new category of exempt facility private activity bonds, qualified enterprise zone facility bonds for use in empowerment zones. Generally qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which is used to finance qualified zone property (as generally defined under the bill) for a qualified enterprise zone business (as generally defined under the bill) and land located in the empowerment zone which is functionally related and subordinate to the qualified zone property. These bonds may be issued only while a zone designation is in effect.

Special rules on issue size and use to finance certain facilities.—The aggregate face amount of all outstanding qualified enterprise zone bonds per qualified enterprise zone business may not exceed $3 million for each zone. In addition total outstanding qualified enterprise zone bond financing for each qualified enterprise zone business may not exceed $20 million for all zones. For purposes of these determinations, the aggregate amount of outstanding enterprise zone facility bonds allocable to any business shall be determined under rules similar to rules contained in section 144(a)(10).

As with other exempt facility bonds, these bonds may be issued only to finance identified facilities. However the House committee report indicates that it is not intended that the $3 million per enterprise zone business requirement will limit issuance of a single issue of bonds (in excess of $3 million) for more than one identified facility, provided that the $3 million limit is satisfied with respect to each zone business. The House committee report contemplates that ease of marketing these exempt facility bonds, like other exempt facility bonds, may require common marketing of separate issues of bonds for discrete facilities if such issues are simultaneous or proximate in time.

The House bill exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds are exempted from the general restriction on financing land (or an interest therein) with 25 percent or more of the net proceeds of a bond issue (sec. 147(c)(1)(A)). Unless otherwise noted, all tax-exempt bond rules relating to exempt facility bonds shall apply to qualified enterprise zone facility bonds.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business.—The House bill extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the enterprise zone, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs. This penalty is waived if: (1) the issuer and principal user in good faith attempted to meet these requirements and (2) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered. This penalty does not apply solely by reason of the termination or revocation of a designation as an empowerment zone. The good faith rule described above also applies to certain other requirements of qualified enterprise zone facility bonds.

Partial exemption from State volume limitations.—Under the House bill, only 25 percent of the amount of qualified enterprise zone facility bonds is subject to the State private activity volume cap, provided that enterprise zone residents possess more than a 50-percent ownership interest in the principal user of the bond-proceeds. If the resident ownership requirement is not satisfied, then 50 percent of the qualified enterprise zone facility bonds (rather than 25 percent) is subject to the State private activity volume cap.

Exception from bank pro rata interest deduction disallowance.—The House bill exempts financial institutions from the general rule denying them a ratable portion of their otherwise allowable interest expense deductions to the extent that they have invested in qualified enterprise zone facility bonds (sec. 265(b)).

Tax incentives available in both empowerment zones and enterprise communities

Tax-exempt financing

Under the House bill, the tax-exempt financing benefits described above are available (with one modification) to otherwise qualifying businesses that are located in enterprise communities. The one modification to the tax-exempt financing benefits is that 50 percent (rather than 25 percent) of the amount of the enterprise zone facility bonds is subject to the State private activity volume cap, regardless of whether enterprise zone residents possess more than a 50 percent ownership interest in the principal user of the bond-proceeds.

---

trade or business consisting of the operation of any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, or (2) any trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) or (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

[153] Thus, used property may constitute qualified zone property so long as it has not previously been used within the empowerment zone.

[154] Qualified zone property does not include any property to which the alternative depreciation system under section 168(g) applies, determined (1) without regard to section 168(g)(7), and (2) after application of section 280F(b).

Low-income housing credit (LIHC) expansion

For purposes of the low-income housing credit (sec. 42)[155], a building located (1) in an empowerment zone or an enterprise community, and (2) in a census tract having a poverty rate of at least 30 percent will be treated as being located in a "difficult to develop" area, within which the eligible basis of buildings for purposes of computing the credit is 130 percent of the cost basis. (Thus, the credit will be based on 91 percent of present value instead of the regular LIHC rate of 70 percent of present value.) The present-law State credit cap and other rules continue to apply.

The House bill also provides an additional housing credit dollar amount of $818,000 to each empowerment zone and enterprise community. Allocation of this amount may be made over a three-year period. This amount is available for allocation only during calendar years 1994, 1995, and 1996. The House committee report indicates that it is intended that these amounts be allocated in a way that will not displace, but will supplement, allocations to low-income housing credit buildings located within empowerment zones and enterprise communities.

Effective date

Under the House bill, empowerment zone and enterprise community designations will be made only during calendar years 1994 and 1995. The tax incentives will be available during the period that the designation remains in effect, which generally will be a period of 10 years.

Senate Amendment

No provision. (However, section 15001 of the Senate amendment states that it is the sense of the Senate that Congress should adopt Federal enterprise zone legislation.)

Conference Agreement

The conference agreement generally follows the House bill in providing certain tax benefits for areas designated as empowerment zones and enterprise communities. However, the conference agreement makes certain modifications regarding the designation of areas as zones or communities as well as the extent and nature of tax incentives available in such areas.[156]

Designation of eligible areas

In general

The conference agreement follows the House bill, except that Indian reservations are not eligible for designation as empowerment zones or enterprise communities. The conference agreement provides separate tax incentives for businesses operating in Indian reservations in sections 13411 and 13412. Thus, under the conference agreement, nine empowerment zones and 95 enterprise communities will be designated (subject to availability of eligible areas) during 1994 and 1995. Six empowerment zones and 65 enterprise communities will be located in eligible urban areas[157] and three empowerment zones and 30 enterprise communities will be located in rural areas.[158]

Eligibility criteria for zones

The conference agreement follows the House bill, except that, with respect to an area nominated to be an empowerment zone, the conference agreement does not allow the appropriate Secretary (the Secretary of HUD with respect to urban areas and the Secretary of Agriculture with respect to rural areas) discretion to reduce the applicable poverty criteria in a nominated area.[159] In addition, as under the House bill, no area may be designated as an empowerment zone or enterprise community unless the nominating State and local governments provide written assurances that their strategic plan will be implemented.[160]

"General distress" may be indicated by factors such as high crime rates, high vacancy rates, or designation of an area as a disaster area or high intensity drug trafficking area ("HIDTA") under the Anti-Drug Abuse Act of 1988; job loss (including manufacturing job loss); and economic distress due to closures of military bases or restrictions on timber harvesting. In addition, consideration should be given to communities along the U.S. border in which population has increased significantly, without a corresponding expansion of basic infrastructure, and in which a significant portion of the area's population reside in substandard housing.

Tax incentives for empowerment zones

The conference agreement provides the following tax incentives for areas designated as empowerment zones:

Employer wage credit

A 20-percent credit against income tax liability is available to all employers for the first $15,000 of qualified wages paid to each employee who (1) is a zone resident (i.e., his or her principal place of abode is within the zone[161]), and (2) performs substantially all employment services within the zone in a trade or business of the employer.

The maximum credit per qualified employee is $3,000 per year. Wages paid to a qualified employee continue to be eligible for the credit if the employee earns more than $15,000, although only the first $15,000 of wages will be eligible for the credit.[162] The wage credit is available with respect to a qualified employee, regardless of the number of other employees who work for the employer or whether the employer meets the definition of an "enterprise zone business" (which applies for the increased section 179 expensing and the tax-exempt financing provisions described below).[163]

The credit will be phased out beginning in 2002. The credit rate will be reduced to 15 percent in 2002, 10 percent in 2003, and five percent in 2004. The credit will not be available after December 31, 2004.

Qualified wages include the first $15,000 of "wages," defined to include (1) salary and wages as generally defined for FUTA purposes, and (2) certain training and educational expenses paid on behalf of a qualified employee, provided that (a) the expenses are paid to an unrelated third party and are excludable from gross income of the employee under section 127 (which is retroactively and permanently extended under another provision of the bill), or (b) in the case of an employee under age 19, the expenses are incurred by the employer in operating a youth training program in conjunction with local education officials.

The credit is allowed with respect to full-time and part-time employees. However, the employee must be employed by the employer for a minimum period of at least 90 days. Wages are not eligible for the credit if paid to certain relatives of the employer or, if the employer is a corporation or partnership, certain relatives of a person who owns more than 50 percent of the business. In addition, wages are not eligible for the credit if paid to a person who owns more than five percent of the stock (or capital or profits interests) of the employer.[164]

An employer's deduction otherwise allowed for wages paid is reduced by the amount of credit claimed for that taxable year. Wages are not be taken into account for purposes of the empowerment zone employment credit if taken into account in determining the employer's targeted jobs tax credit (TJTC).

The credit is allowable to offset up to 25 percent of alternative minimum tax liability.

Increased section 179 expensing

For an enterprise zone business, the expensing allowance for certain depreciable business property provided under section 179 is increased by the lesser of: (1) $20,000 or (2) the cost of section 179 property that is "qualified zone property" (as defined in the

---

[155] The low-income housing credit expired on June 30, 1992, but is permanently extended by section 13142 of the Conference agreement.

[156] The conference agreement does not include section 15001 of the Senate amendment (the sense of the Senate resolution).

[157] The conference agreement provides that, if six urban empowerment zones are designated, not less than one urban empowerment zone must be designated in an area the most populous city of which has a population of 500,000 or less, and not less than one urban empowerment zone shall be a nominated area (1) with a population of 50,000 or less, and (2) which includes areas located in two States.

[158] The conference agreement does not provide for the creation of an Enterprise Board which, under the House bill, was to participate in the designation of eligible areas as empowerment zones and enterprise communities. In addition, the conference agreement does not provide a procedure for the revocation of an area's designation as an eligible zone or community. However, the conferees intend that (i) the Secretary will promulgate rules regarding both the selection and revocation processes and (ii) a designation will be revoked only after a hearing on the record involving officials of the State and local governments. The conferees further intend that, if an area's zone or community designation is revoked, the relevant Secretary shall not designate another area as a zone or community in lieu thereof.

[159] With respect to an area nominated to be an enterprise community, the appropriate Secretary may reduce one of the poverty criteria by five percentage points for not more than 10 percent of the population census tracts (up to a maximum of five population census tracts) in the nominated area, or, as an alternative, may reduce the 35-percent poverty threshold by 10 percentage points (i.e., to 25 percent) for up to three population census tracts.

[160] The conferees intend that, in the case of an urban empowerment zone located in two States, the nominating States and local governments shall provide written assurances satisfactory to the Secretary of HUD that the incentives afforded the zone on the account of the designation will be distributed equitably between the two States.

[161] The conferees intend that employers will undertake reasonable measures to verify an employee's residence within the zone, so that the employer will be able to substantiate a wage credit claimed under the conference agreement.

[162] To prevent avoidance of the $15,000 limit, all employers of a controlled group of corporations (or partnerships or proprietorships under common control) will be treated as a single employer.

[163] The conferees intend that employers take reasonable steps to notify all qualified zone employees of the availability to eligible individuals of advance payments of the earned income tax credit (EITC).

[164] The wage credit is not available with respect to any individual employed at any facility described in present-law section 144(c)(6)(B) (i.e., a private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises). In addition, the wage credit is not available with respect to any individual employed by a trade or business the principal activity of which is farming (within the meaning of subparagraphs (A) and (B) of section 2032A(e)(5)), but only if, as of the close of the preceding taxable year, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of assets of the farm exceed $500,000.

House bill) and that is placed in service during the taxable year. As under present law, the types of property eligible for section 179 expensing under this provision do not include buildings.

As under present law, the section 179 expensing allowance is phased out for certain taxpayers with investment in qualified property during the taxable year above a specified threshold. However, under the conference agreement, the present-law phaseout range is applied by taking into account only one-half of the cost of qualified zone property that is section 179 property. In applying the section 179 phaseout, the cost of section 179 property that is not qualified zone property is not reduced.

In general, all other provisions of present-law section 179 apply to the increased expensing for enterprise zone businesses. Thus, all component members of a controlled group are treated as one taxpayer for purposes of the expensing allowance and the application of the phaseout range (sec. 179(d)(6)). The limitations apply at both the partnership (and S corporation) and partner (and shareholder) levels. The increased expensing allowance is allowed for purposes of the alternative minimum tax (i.e., it is not treated as an adjustment for purposes of the alternative minimum tax). The section 179 expensing deduction will be recaptured if the property is not used predominantly in a enterprise zone business (under rules similar to present-law section 179(d)(10)).

Definition of "enterprise zone business"

The conference agreement follows the House bill.

Tax-exempt facility bonds available for both empowerment zones and enterprise communities

In general

The conference agreement creates a new category of exempt facility private activity bonds—qualified enterprise zone facility bonds—for use in empowerment zones and enterprise communities. These bonds are fully subject to the State private activity bond volume limitations.

Generally, qualified enterprise zone facility bonds are bonds 95 percent or more of the net proceeds of which are used to finance: (1) qualified zone property the principal user of which is a qualified enterprise zone business, and (2) functionally related and subordinate land located in the empowerment zone or enterprise community. Qualified zone property for these purposes is generally defined as under the House bill, except that it also includes property which would qualify as qualified zone property but for the fact that it is located in an enterprise community rather than in an empowerment zone. For these purposes, the term "enterprise zone business" has the same meaning generally given to it under the House bill, but also includes a business located in a zone or community which would qualify as an enterprise zone business if it were separately incorporated.[165] These bonds may only be issued while an empowerment zone or enterprise community designation is in effect.

Special rules on issue size and use to finance certain facilities

The aggregate face amount of all outstanding qualified enterprise zone bonds per qualified enterprise zone business may not exceed $3 million for each zone or community. In addition, total outstanding qualified enterprise zone bond financing for each principal user of these bonds may not exceed $20 million for all zones and communities. For purposes of these determinations, the aggregate amount of outstanding enterprise zone facility bonds allocable to any business shall be determined under rules similar to rules contained in section 144(a)(10).

As with other exempt facility bonds, these bonds may be issued only to finance identified facilities. However, the $3 million-per-enterprise zone business requirement should not limit issuance of a single issue of bonds (in excess of $3 million) for more than one identified facility, provided that the $3 million limit is satisfied with respect to each zone business. The conferees recognize that it may be necessary to permit common marketing of separate issues of bonds for discrete facilities (if such issues are simultaneous or proximate in time) to enable qualified enterprise zone facility bonds to be marketed in a manner comparable to other exempt facility bonds.

The conference agreement exempts qualified enterprise zone facility bonds from the general restrictions on financing the acquisition of existing property (sec. 147(d)). Additionally, these bonds are exempted from the general restriction on financing land (or an interest therein) with 25 percent or more of the net proceeds of a bond issue (sec. 147(c)(1)(A)). Unless otherwise noted, all other tax-exempt bond rules relating to exempt facility bonds (including the restrictions on bank deductibility of interest allocable to tax-exempt bonds) apply to qualified enterprise zone facility bonds.

Penalty for failure to continue as zone business or to use bond-financed property in the zone business

The conference agreement extends change-in-use rules to qualified enterprise zone facility bonds. Accordingly, interest on all bond-financed loans to a business that no longer qualifies as an enterprise zone business, or on loans to finance property that ceases to be used by the business in the empowerment zone or enterprise community, becomes nondeductible, effective from the first day of the taxable year in which the disqualification or cessation of use occurs. This penalty is waived if: (1) the issuer and principal user in good faith attempted to meet these requirements and (2) any failure to meet such requirements is corrected within a reasonable period after such failure is first discovered. This penalty does not apply solely by reason of the termination or revocation of a designation as an empowerment zone or enterprise community. The good faith rule described above also applies to certain other requirements of qualified enterprise zone facility bonds.

Effective date

The conference agreement follows the House bill.

2. Tax credit for contributions to certain community development corporations (sec. 14311 of the House bill, sec. 13311 of the conference agreement, and sec. 38 of the Code)

Present Law

There are no tax credits available for contributions to community development corporations (CDCs).

House Bill

Under the House bill, a taxpayer will receive a credit for qualified cash contributions made to certain CDCs. If a taxpayer makes a qualified contribution, the credit may be claimed by the taxpayer for each taxable year during a 10-year period beginning with the taxable year during which the contribution was made. The credit that may be claimed for each year is equal to five percent of the amount of the contribution to the CDC. Thus, during the 10-year credit period, the taxpayer may claim aggregate credit amounts totalling 50 percent of the contribution.

For purposes of this provision, a qualified contribution is defined as any transfer of cash that meets the following requirements: (1) it is made to one of up to 10 CDCs selected by the Secretary of HUD, provided that the contribution is made during the five-year period after the CDC is so selected by the Secretary of HUD; (2) the amount is available for use by the CDC for at least 10 years;[166] (3) the contribution is to be used by the CDC to provide qualified low-income assistance[167] within its operational area; and (4) the CDC designates the contribution as eligible for the credit. The aggregate amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $4 million.

Prior to July 1, 1994, the Secretary of HUD may select up to 10 CDCs as eligible to participate in the program (subject to the availability of eligible CDCs), at least four of which must operate in rural areas. To be selected, a CDC must have the following characteristics: (1) it must be a tax-exempt charity described in section 501(c)(3) of the Code; (2) its principal purposes must include promoting employment and business opportunities for individuals who are residents of its operational area; and (3) its operational area must (a) meet the geographic limitations that would apply if the area were designated as an empowerment zone or enterprise community, (b) have an unemployment rate that is not less than the national average, and (c) have a median family income which does not exceed 80 percent of the median family income of residents within the jurisdiction of the local government.

The credit is subject to the general business credit limitations of section 38 and, therefore, may not be used to reduce tentative minimum tax.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, except that the aggregate amount of contributions which may be designated by a selected CDC as eligible for the credit may not exceed $2 million, and the Secretary of HUD may select up to 20 CDCs as eligible to

[165] For example, an establishment which is part of a national chain could qualify as an enterprise zone business for purposes of the tax-exempt financing incentive, provided that such establishment would satisfy the definition of an enterprise zone business if it were separately incorporated.

[166] The contribution of the CDC must be available for use by the CDC for up to a 10-year period, but need not meet the requirements of a "contribution or gift" for purposes of section 170. In other words, a contribution eligible for the credit under the bill may be made in the form of a 10-year loan (or other long-term investment), the principal of which is to be returned to the taxpayer after the 10-year period. However, in the case of a donation of cash made by a taxpayer to an eligible CDC, the taxpayer would be allowed to claim a charitable contribution deduction (subject to the present-law rules under section 170) and, in addition, could claim the credit under the bill's provisions.

[167] The House bill defines "qualified low-income assistance" as assistance (1) which is designed to provide employment and business opportunities to individuals who are residents of the operational area of the CDC, and (2) which is approved by the Secretary of HUD.

participate in the program.[168] In addition, the conferees intend that, in selecting CDCs, the Secretary of HUD shall give priority to corporations with a demonstrated record of performance in administering community development programs which target at least 75 percent of the jobs emanating from their investment funds to low income or unemployed individuals.

3. Tax incentives for businesses on Indian reservations (secs. 8181–8182 of the Senate amendment, sec. 13321–13322 of the conference agreement, secs. 280C(a), 196(c), 39(d), and 38(b), and new secs. 168(j) and 45A of the Code)

Present Law

The Internal Revenue Code does not contain general rules that target specific geographic areas for special Federal income tax treatment. Within certain Code sections, however, there are definitions of targeted areas for limited purposes (e.g., low-income housing credit and qualified mortgage bond provisions target certain economically distressed areas). In addition, present law provides favorable Federal income tax treatment for certain U.S. corporations that operate in Puerto Rico, the U.S. Virgin Islands, or a possession of the United States to encourage the conduct of trades or businesses within these areas.

House Bill

No provision.

Senate Amendment

In general

Under the Senate amendment, businesses located on Indian reservations[169] generally are allowed a credit against income tax liability for certain investments (the "Indian reservation credit") and a credit against income tax liability for certain wages and health insurance costs (the "Indian employment credit").

Indian reservation credit

A credit against income tax liability is allowed for investments in certain property located or used within an Indian reservation which has a level of unemployment that greatly exceeds the national average. In general, the amount of the credit allowed a taxpayer for any taxable year equals the sum of: (1) 10 percent of the qualified investment in "reservation personal property" placed in service by the taxpayer during the taxable year; and (2) 15 percent of the qualified investment in "new reservation construction property" and "reservation infrastructure investment" placed in service by the taxpayer during the taxable year.

The full amount of the credit is allowed only if the Indian unemployment rate[170] on the applicable Indian reservation exceeds 300 percent of the national average unemployment rate at any time during the calendar year in which the property is placed in service or during either of the immediately preceding two calendar years.[171] If the Indian unemployment rate on the applicable Indian reservation exceeds 150 percent but does not exceed 300 percent of the national average unemployment rate at any time during the relevant calendar years, then only one-half of the otherwise allowable credit may be claimed (i.e., the credit rates are 7.5 percent and 5 percent). If the Indian unemployment rate on the applicable Indian reservation does not exceed 150 percent of the national average unemployment rate at any time during the relevant calendar years, then no credit is allowed.

For purposes of the credit, "reservation personal property" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code; (2) which is not nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation; and (4) which is not used or located outside the Indian reservation on any regular basis.

In addition, "new reservation construction property" is defined as property: (1) which is nonresidential real property, residential rental property, or any other real property with a class life of more than 12.5 years for which a depreciation deduction is allowable under section 168 of the Code; (2) which is located in an Indian reservation; (3) which is used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation;[172] and (4) which is originally placed in service by the taxpayer.

Further, "reservation infrastructure investment" is defined as property: (1) for which a depreciation deduction is allowable under section 168 of the Code (whether real or personal property); (2) which benefits the tribal infrastructure; (3) which is available to the general public; and (4) which is placed in service in connection with the taxpayer's active conduct of a trade or business within an Indian reservation. The term "reservation infrastructure investment" is to include otherwise qualifying property that is used or located outside an Indian reservation only if the purpose of the property is to connect to existing tribal infrastructure in the reservation (including, but not limited to, roads, power lines, water systems, railroad spurs, and communications facilities).

Notwithstanding the above definitions, property will not qualify for the Indian reservation credit if the property is acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C) of the Code). In addition, property will not qualify for the credit if the property (or any portion thereof) is placed in service for purposes of conducting or housing certain gaming activities.[173] Finally, property will not qualify for the Indian reservation credit if the energy credit or the rehabilitation credit is allowed with respect to the property.

In the case of reservation personal property and new reservation construction property, the qualified investment for purposes of determining the amount of the credit is the taxpayer's basis in the property. In the case of reservation infrastructure investment, the qualified investment for purposes of determining the amount of the credit is the amount expended by the taxpayer for the acquisition or construction of the property. The at-risk rules of section 49 of the Code also apply in determining the amount of the qualified investment for purposes of the Indian reservation credit.

The basis of new reservation construction property is reduced by the full amount of the credit allowed with respect to the property. The basis of reservation personal property and reservation infrastructure investment is reduced by only 50 percent of the credit allowed with respect to the property. The Indian reservation credit is recaptured (i.e., the amount of tax due is increased) if, before the end of the applicable recovery period with respect to the property, the property is disposed of by the taxpayer, or, in the case of reservation personal property, is removed from the Indian reservation, converted, or otherwise ceases to be reservation personal property with respect to the taxpayer.

Indian employment credit

A credit against income tax liability is also allowed to employers for certain wages and health insurance costs paid or incurred by the employer with respect to certain employees. In general, the amount of the credit allowed an employer for any taxable year equals 10 percent[174] of the sum of (1) the wages paid or incurred by the employer for services performed by an employee while the employee is a qualified employee ("qualified wages");[175] and (2) the amount paid or incurred by the employer for health insurance (other than health insurance provided pursuant to a salary reduction arrangement) to the extent that such amount is attributable to coverage provided to an employee while the employee is a qualified employee ("qualified employee health insurance costs").

The credit is available to an employer, however, only to the extent its qualified wages and health insurance costs during the current year exceed such wages and costs incurred by the employer during 1993. Specifically, the amount of the credit allowed an employer for any taxable year is limited to an amount equal to the credit rate multiplied by the excess (if any) of (1) the sum of the qualified wages and qualified health insurance costs paid or incurred by the employer during the taxable year with respect to employees whose wages (which are paid or incurred by the employer) for such taxable year do not exceed the amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1993), over (2) the sum of the qualified wages and qualified health insurance costs paid or incurred

---

[168] Under the conference agreement, at least eight of the selected CDCs must operate in rural areas.

[169] For purposes of the Indian employment and investment incentives, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), as in effect on the date of enactment of the provision, or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), as in effect on the date of enactment of the provision.

[170] The Indian unemployment rate is to be based on the number of Indians unemployed and able to work and is to be certified by the Secretary of the Interior.

[171] A special rule applies to qualifying property that has (or is a component of a project that has) an estimated construction period of more than two years or a cost of more than $1 million. With respect to such property, the relevant unemployment rate is the rate during the calendar year in which the taxpayer enters into a binding agreement to make a qualified investment (or, if earlier, the first calendar year in which the taxpayer has expended at least 10 percent of the qualified investment) or during the immediately preceding calendar year.

[172] The active conduct of a trade or business for purposes of the Indian reservation credit includes the rental to others of real property located in an Indian reservation. In addition, the credit for new reservation construction property is allowed with respect to otherwise qualifying property that is used to furnish lodging.

[173] The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

[174] If, for the entire taxable year of the employer, at least 85 percent of the employees of the employer are enrolled members of an Indian tribe or spouses of enrolled members of an Indian tribe, then the amount of the credit for such taxable year is to be determined by using a 30-percent rate rather than the 10-percent rate.

[175] Wages are not eligible for the credit if attributable to services rendered by an employee during the first year he or she begins work for the employer if any portion of such wages is taken into account in determining the targeted jobs tax credit (TJTC) under present-law section 51.

by the employer (or any predecessor) during the 1993 calendar year with respect to employees whose wages (which are paid or incurred by the employer or any predecessor) for such taxable year do not exceed the amount determined at an annual rate of $30,000.[176] For purposes of this limitation, all employees of a controlled group of corporations (or partnerships or proprietorships under common control) are treated as employed by a single employer.

In general, an individual is a qualified employee of an employer for any period only if: (1) the individual is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe;[177] (2) substantially all of the services performed during such period by the employee for such employer are performed within an Indian reservation; (3) the principal place of abode of the employee while performing such services is on or near the Indian reservation within which the services are performed; and (4) the employee began work for such employer on or after January 1, 1994.

An employee may be treated as a qualified employee for a maximum period of seven years after the day on which the employee first begins work for the employer. In addition, an employee will not be treated as a qualified employee for any taxable year of the employer if the total amount of wages paid or incurred by the employer with respect to such employee during such taxable year (whether or not for services rendered within the Indian reservation) exceeds an amount determined at an annual rate of $30,000 (as adjusted for inflation for years beginning after 1993). Further, an employee will be treated as a qualified employee for a taxable year of the employer only if more than 50 percent of the wages paid or incurred by the employer to such employee during such taxable year are for services performed in a trade or business of the employer.

Qualified employees do not include certain relatives or dependents of the employer (described under present-law section 51(i)(1)) or, if the employer is a corporation, certain relatives of a person who owns more than 50 percent of the corporation. In addition, any person who owns more than five percent of the stock of the employer (or if the employer is not a corporation, more than five percent of the capital or profits interests in the employer) cannot be a qualified employee. Finally, a qualified employee does not include any individual if the services performed by the individual for the employer involve certain gaming activities or are performed in a building housing such gaming activities.[178]

The Indian employment credit is allowed with respect to full-time and part-time employees. However, if an employee is terminated less than one year after the date of initial employment, the amount of credits previously claimed by the employer with respect to that employee generally is recaptured (unless the employee voluntarily leaves, becomes disabled, or is fired due to misconduct).

An employer's deduction otherwise allowed for wages is reduced by the amount of the credit claimed for the taxable year. The Senate amendment also provides that the employment credit is not refundable. Finally, the Indian employment credit is subject to the general business credit limitations of section 38,[179] and, therefore, the credit may not be used to reduce tentative minimum tax.

Effective date

Under the Senate amendment, the Indian reservation credit applies to property placed in service after December 31, 1993, and the Indian employment credit applies to wages paid or incurred after December 31, 1993.

Conference Agreement

The conference agreement provides the following tax incentives for Indian reservations.[180]

Accelerated Depreciation

With respect to certain property used in connection with the conduct of a trade or business within an Indian reservation, depreciation deductions for purposes of section 168 will be determined using the following recovery periods:

	Years
3-year property	2 years
5-year property	3 years
7-year property	4 years
10-year property	6 years
15-year property	9 years
20-year property	12 years
Nonresidential real property	22 years

"Qualified Indian reservation property" eligible for accelerated depreciation includes property which is (1) used by the taxpayer predominantly in the active conduct of a trade or business within an Indian reservation[181], (2) not used or located outside the reservation on a regular basis, (3) not acquired (directly or indirectly) by the taxpayer from a person who is related to the taxpayer (within the meaning of section 465(b)(3)(C)), and (4) described in the recovery-period table above.[182] In addition, property is not "qualified Indian reservation property" if it is placed in service for purposes of conducting gaming activities.[183]

The conference agreement includes a special rule for "qualified infrastructure property" which may be eligible for the accelerated depreciation even if located *outside* an Indian reservation, provided that the purpose of such property is to connect with qualified infrastructure property located *within* the reservation (e.g., roads, power lines, water systems, railroad spurs, and communications facilities). For this purpose, "qualified infrastructure property" must be property that is (1) allowed a depreciation deduction under section 168, (2) benefits the tribal infrastructure, (3) available to the general public, and (4) placed in service in connection with the taxpayer's active conduct of a trade or business within a reservation.

The depreciation deduction allowed for regular tax purposes is also allowed for purposes of the alternative minimum tax.

Indian employment credit

The conference agreement follows the Senate amendment, except that (1) a single-rate 20-percent credit applies (rather than the two-tiered 10-percent and 30-percent credit rates of the Senate amendment); and (2) the credit is available only for the first $20,000 of qualified wages and qualified employee health insurance costs paid to each qualified employee.

As under the Senate amendment, a tribal member or spouse is a qualified employee only if he or she works on a reservation (and lives on or near that reservation) and is paid wages that do not exceed $30,000 annually.[184] The credit is an incremental credit, such that an employer's current-year qualified wages and qualified employee health insurance costs (up to $20,000 per employee) are eligible for the credit only to the extent that the sum of such costs exceeds the sum of comparable costs paid during 1993 to employees whose wages did not exceed $30,000.

Effective date

The accelerated depreciation for Indian reservations is available with respect to property placed in service on or after January 1, 1994, and before December 31, 2003. The wage credit is available for wages paid or incurred on or after January 1, 1994, in a taxable year that begins before December 31, 2003.

IV. OTHER REVENUE PROVISIONS

A. Disclosure Provisions

1. Extend access to tax information for the Department of Veterans Affairs (sec. 14401 of the House bill, secs. 7901 and 13008 of the Senate amendment, sec. 13401 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

Among the disclosures permitted under the Code is disclosure to the Department of Veterans Affairs ("DVA") of self-employment

[176] In the case of a short taxable year, the qualified wages and the qualified health insurance costs paid or incurred by the employer are to be annualized and the limitation for such taxable year is to equal the otherwise applicable limitation determined using such annualized amounts multiplied by a fraction, the numerator of which is the number of days in the taxable year and the denominator of which is 365.

[177] For this purpose, an Indian tribe is defined as any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village, or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et. seq.), as in effect on the date of enactment of the provision, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[178] The limitation applies to class I, II, or III gaming as defined in section 4 of the Indian Regulatory Act (25 U.S.C. 2703), as in effect on the date of enactment of the provision.

[179] No portion of the unused business credit for any taxable year that is attributable to the Indian employment credit may be carried back to a taxable year ending before the date of enactment of the provision.

[180] As under the Senate amendment, the term "Indian reservation" means a reservation as defined in (1) section 3(d) of the Indian Financing Act of 1974 (25 U.S.C. 1452(d)), as in effect on the date of enactment of this provision, or (2) section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), as in effect on the date of enactment of this provision.

[181] The conference agreement treats the rental of real property located within a reservation as an active trade or business.

[182] In addition, the conference agreement provides that accelerated depreciation is not available for any property to which the alternative depreciation system under section 168(g) applies (determined without regard to subsection 168(g)(7) and after application of section 280F(b)).

[183] For this purpose, gaming activities include class I, II, or III gaming, as defined in section 4 of the Indian Regulatory Act (25 U.S.C. sec. 2703), as in effect on the date of enactment of this provision.

[184] The $30,000 amount for determining qualified employees is adjusted for inflation beginning after 1994.

tax information and certain tax information supplied to the Internal Revenue Service and Social Security Administration by third parties. Disclosure is permitted to assist DVA in determining eligibility for, and establishing correct benefit amounts under, certain of its needs-based pension and other programs (sec. 6103(l)(7)(D)(viii)). The income tax returns filed by the veterans themselves are not disclosed to DVA.

The DVA is required to comply with the safeguards currently contained in the Code and in section 1137(c) of the Social Security Act (governing the use of disclosed tax information). These safeguards include independent verification of tax data, notification to the individual concerned, and the opportunity to contest agency findings based on such information.

The DVA disclosure provision is scheduled to expire after September 30, 1997.

House Bill

The House bill extends the authority to disclose tax information to the DVA for one year, through September 30, 1998.

Effective date.—The provision in the House bill applies after September 30, 1997.

Senate Amendment

Section 7901 of the Senate amendment is the same as the House bill. Section 13008 of the Senate amendment permanently extends the authority to disclose tax information to the DVA.

Conference Agreement

The conference agreement follows the House bill and section 7901 of the Senate amendment.

2. Access to tax information by the Department of Education (secs. 4032, 4033, and 14402 of the House bill, secs. 7902, 12011, and 12055 of the Senate amendment, sec. 13402 of the conference agreement and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information except to the extent specifically authorized by the Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the Internal Revenue Service (IRS) to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

The IRS may disclose to the Department of Education the mailing address of taxpayers who have defaulted on certain student loans. The Department of Education may in turn make this information available to its agents and to the holders of such loans (and their agents) for the purpose of locating the taxpayers and collecting the loan.

House Bill

Access to certain tax return information to implement direct student loan program

Section 14402 of the House bill gives the Department of Education access to certain tax return information in order to implement a direct student loan program. The only information the Department of Education is permitted to obtain is the name, address, taxpayer identification number, filing status, and adjusted gross income of the former student. Disclosure of this information may be made only to Department of Education employees and may only be used by these employees in establishing the appropriate income-contingent repayment amount for an applicable student loan. Applicable student loans are loans under the new direct student loan program and other student loans that are in default and have been assigned to the Department of Education. The Department of Education and its employees would be subject to the restrictions on unauthorized disclosure in present law.

The authority to disclose tax information to the Department of Education for purposes of implementing the direct student loan program expires on September 30, 1998.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

Section 14402 of the House bill also permits the Department of Education to obtain the mailing address of any taxpayer who owes an overpayment (i.e., has received more than the proper amount) on a Federal Pell Grant or who has defaulted on certain additional student loans administered by the Department of Education. This authority is permanent.

Evaluation of student loan repayment through wage withholding

Section 14402 of the House bill requires the Treasury Department, in consultation with the Department of Education, to conduct a study of the feasibility of student loan repayment through wage withholding or other means involving the IRS. The study is to include an examination of (1) whether the IRS could conduct such a system of student loan repayment within its current resources and without impairing its ability to collect tax revenues, (2) the impact of increased disclosure of tax information on voluntary compliance with the tax laws, (3) the effect of such a system of student loan repayment on collections and repayment of such loans, and (4) the ability of the IRS to service student loans. The study must be submitted to the Congress within six months of the date of enactment. If the Treasury Department finds that the IRS's current resources are inadequate to permit the IRS to increase its involvement in student loan collection, then it should identify the amount of additional resources or appropriations needed.

Section 4032 of the House bill contains the same provision for a feasibility study, except that the requirement is imposed on the Department of Education, in consultation with the Treasury Department.

Preference for IRS collection of student loan repayments

Section 4033 of the House bill expresses the sense of the Committee on Education and Labor supporting IRS collection of student loan repayments.

Effective date

The provisions in section 14402 of the House bill are effective on the date of enactment.

Senate Amendment

Access to certain tax return information to implement direct student loan program

With respect to this provision, Section 7902 of the Senate amendment is the same as section 14402 of the House bill.

With respect to this provision, Section 12055 of the Senate amendment is the same as both section 7902 of the Senate amendment and section 14402 of the House bill, except that disclosure of the tax return information is permitted to agents of the Department of Education.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

With respect to this provision, Section 7902 of the Senate amendment is the same as section 14402 of the House bill.

With respect to this provision, Section 12055 of the Senate amendment is the same as both section 7902 of the Senate amendment and section 14402 of the House bill, except that the authority expires after September 30, 1998.

Evaluation of student loan repayment through wage withholding

Section 12011 of the Senate amendment requires the Secretaries of Education and Treasury to present to the President a plan that provides for repayment of student loans through wage withholding and evaluates the feasibility of other wage withholding repayment options for such loans. The study must be submitted to the President within six months of the date of enactment.

With respect to this provision, Section 12055 of the Senate amendment is similar to section 14402 of the House bill, except that (1) no study is required; (2) upon a determination by the President (pursuant to the study described in section 12011 of the Senate amendment) that repayment of student loans should be done through wage withholding or other means involving the IRS, the Secretary of the Treasury may enter into an agreement with the Secretary of Education to allow the IRS to collect student loan repayments as if they were taxes (without the need for additional legislative authorization); and (3) the agreement described in (2) is authorized to include an alternate system of fees and penalties for nonpayment of amounts due.

Effective date

Same as the provisions in section 14402 of the House bill.

Conference Agreement

Access to certain tax return information to implement direct student loan program

With respect to this provision, the conference agreement follows section 14402 of the House bill and section 7902 of the Senate amendment.

Access to mailing addresses of taxpayers owing overpayments of Pell Grants

With respect to this provision, the conference agreement follows section 14402 of the House bill and section 7902 of the Senate amendment.

Evaluation of student loan repayment through wage withholding

With respect to this provision, the conference agreement does not include the provisions in sections 4032, 4033, or 14402 of the House bill or sections 12011 or 12055 of the Senate amendment.

The conferees direct the Treasury Department, in consultation with the Department of Education, to conduct a study of the feasibility of implementing a system for the repayment of Federal student loans through wage withholding or other means involving the IRS. Such study should include an examination of: (1) whether the IRS could implement such a system of student loan repayment with its current resources and without adversely affecting its ability to collect tax revenues, (2) the cumulative impact of increased disclosure of tax information and increased IRS involvement in nontax collection activities on voluntary compliance with the tax laws, (3) the ability of the IRS to enforce collection of student loans using an alternate system of dispute resolution, penalties, and collection devices, (4) the effect of

separating loan collection from other loan servicing functions, and (5) the anticipated effect on the management of Federal student loan collections and on borrower repayment of such loans. If the study concludes that IRS collection is feasible, the Treasury Department and the Department of Education should develop a plan to implement such a collection system. The feasibility study and any plan that is developed, together with any legislative recommendations that the Secretaries may deem advisable, should be submitted to the Congress within six months of the date of enactment.

Effective date

The provisions in the conference agreement are effective on the date of enactment.

3. Access to tax information by the Department of Housing and Urban Development (sec. 14403 of the House bill, secs. 7903 and 3003 of the Senate amendment, sec. 13403 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Internal Revenue Code prohibits disclosure of tax returns and return information, except to the extent specifically authorized by the Internal Revenue Code (sec. 6103). Unauthorized disclosure is a felony punishable by a fine not exceeding $5,000 or imprisonment of not more than five years, or both (sec. 7213). An action for civil damages also may be brought for unauthorized disclosure (sec. 7431). No tax information may be furnished by the IRS to another agency unless the other agency establishes procedures satisfactory to the IRS for safeguarding the tax information it receives (sec. 6103(p)).

House Bill

The House bill permits disclosure of certain tax information with respect to applicants for, and participants in, certain Department of Housing and Urban Development (HUD) programs. Such disclosure may be made only to HUD employees and is to be used solely in verifying the taxpayer's eligibility for (or correct amount of benefits under) those HUD programs. The House bill extends the current law restrictions on unauthorized disclosure to HUD and its employees. HUD employees may not redisclose tax information to State or local housing agencies, public housing authorities, or any other third party. However, they may inform such parties of the fact that a discrepancy exists between the information provided by the applicant (or participant) and information provided by other sources.

The House bill requires the Treasury Department, in consultation with HUD, to conduct a study to determine (1) whether the tax return information disclosed to HUD is being used effectively, (2) whether HUD is complying with the Code's safeguards against unauthorized disclosure of the information, and (3) the impact on the privacy rights of applicants and participants in HUD housing programs. The study must be submitted to the tax-writing committees before January 1, 1998.

Effective date.—The provision in the House bill is effective on the date of enactment. The authority to disclose tax information to HUD under the House bill expires after September 30, 1998.

Senate Amendment

Section 7903 of the Senate amendment is the same as the House bill, except that no study is required. Section 3003 of the Senate amendment is the same as the House bill, except that (1) requests for disclosure need not be written, (2) information may only be disclosed with respect to applicants for, and participants in, HUD programs who have executed consent forms under section 904(b)(3) of the Stewart B. McKinney Homeless Assistance Act of 1988, and (3) no study is required.

Conference Agreement

The conference agreement follows section 7903 of the Senate amendment. The conferees anticipate that information will be provided to HUD by means of low-cost computer exchanges of information. The conferees intend that the Treasury Department, in consultation with HUD, shall conduct a study to determine (1) whether the tax return information disclosed to HUD is being used effectively, (2) whether HUD is complying with the Code's safeguards against unauthorized disclosure of the information, and (3) the impact on the privacy rights of applicants and participants in HUD housing programs. The study shall be submitted to the tax-writing committees before January 1, 1998.

B. Increase in Public Debt Limit (sec. 14421 of the House bill, sec. 7955 of the Senate amendment, and sec. 13411 of the conference agreement)

Present Law

The statutory limit on the public debt currently is $4.37 trillion. It was set at this level temporarily in P.L. 103–12, enacted into law on April 6, 1993. The current debt limit will expire after September 30, 1993.

House Bill

The bill repeals the temporary limit that expires after September 30, 1993, and instead increases the statutory limit on the public debt to $4.9 trillion. The new debt limit has no expiration date.

Effective date.—The provision is effective on the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement follows the House bill and the Senate amendment.

C. Vaccine Provisions:

Extension of the excise tax on certain vaccines for the Vaccine Injury Compensation Trust Fund; Provisions relating to the childhood vaccine immunization program (secs. 14431–14433 of the House bill, secs. 8237 and 12203(b) of the Senate amendment, secs. 13421–13422 of the conference agreement, and secs. 4131, 4980B(f), and 9510 of the Code)

Present Law

The Vaccine Injury Compensation Trust Fund ("Vaccine Trust Fund") provides a source of revenue to compensate individuals who are injured (or die) as a result of the administration of certain vaccines: diphtheria, pertussis, and tetanus ("DPT"); diphtheria and tetanus ("DT"); measles, mumps, and rubella ("MMR"); and polio. The Vaccine Trust Fund provides the funding source for the National Vaccine Injury Compensation Program ("Program"), which provides a substitute, Federal "no-fault" insurance system for the State-law tort and private liability insurance systems otherwise applicable to vaccine manufacturers.

Under the Program, all persons who were immunized with a covered vaccine after the effective date of the Program, October 1, 1988, are prohibited from commencing a civil action in State court for vaccine-related damages unless they first file a petition with the United States Claims Court, where such petitions are assigned to a special master and governed by streamlined procedural rules designed to expedite the proceedings.[185] In these cases, the Federal Government is the respondent party in the proceedings, and the claimant generally must show only that certain medical conditions (or death) followed the administration of a covered vaccine and that the first onset of symptoms occurred within a prescribed time period.[186] Compensation under the Program generally is limited to actual and projected unreimbursed medical, rehabilitative, and custodial expenses, lost earnings, pain and suffering (or, in the event of death, a recovery for the estate) up to $250,000, and reasonable attorney's fees.[187] Only if the final settlement under the Program is rejected may the claimant proceed with a civil tort action in the appropriate State court, where recovery generally will be governed by State tort law principles,[188] subject to certain limitations and specifications imposed by the National Childhood Vaccine Injury Act of 1986.[189]

Present law authorizes up to $6 million per year from the Vaccine Trust Fund for administrative expenses incurred in administering the Vaccine Injury Compensation Program.

The Vaccine Trust Fund is funded by net revenues from a manufacturer's excise tax on DPT, DT, MMR, and polio vaccines (and any other vaccines used to prevent these diseases). Prior to the expiration of the vaccine excise tax, the excise tax per dose was $4.56 for DPT, $0.06 for DT, $4.44 for MMR, and $0.29 for polio vaccines.

The vaccine excise tax expired after December 31, 1992. Amounts in the Vaccine Trust Fund are available for the payment of compensation under the Program with respect to vaccines administered after September 30, 1988, and before October 1, 1992.

House Bill

Permanent extension of excise tax and Program funding

The House bill permanently extends the excise taxes imposed on certain vaccines. Authorization for compensation to be paid from the Vaccine Trust Fund under the National Vaccine Injury Compensation Program for certain damages resulting from

---

[185] Persons who received vaccines before the Program's effective date of October 1, 1988 ("retrospective cases") also may be eligible for compensation under the Program if they had not yet received compensation and elected to file a petition with the United States Claims Court on or before January 31, 1991. Under the Program, awards in retrospective cases are somewhat limited compared to "prospective cases" (i.e., those where the vaccine was administered on or after October 1, 1988). Awards in retrospective cases are not paid out of the Vaccine Trust Fund but are paid out of funds specially authorized by Congress. See 42 U.S.C. sec. 300aa-15(i), (j) (appropriating $80 million for fiscal year 1989 and for each subsequent year).

[186] Compensation may not be awarded, however, if there is a preponderance of the evidence that the claimant's condition or death resulted from factors unrelated to the vaccine in question.

[187] 42 U.S.C. sec. 300aa-15.

[188] In most State proceedings, significant issues arise whether injuries suffered by an individual after immunization were, in fact, caused by the vaccine administered and whether the manufacturer was at fault in either the manufacture or marketing of the vaccine.

[189] Title III, P.L. 99-660. This Act preempts State tort law to a limited extent by imposing limits on recovery from vaccine manufacturers. Among the limitations are a prohibition on compensation if the injury or death resulted from side effects that were unavoidable; a presumption that manufacturers are not negligent in manufacturing or marketing vaccines if they complied, in all material respects, with Federal Food and Drug Administration requirements; and limits on punitive damage awards.

vaccines administered after September 30, 1988, also is permanently extended.[190]

Study

The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, is directed to conduct a study of: (1) the estimated amount that will be paid from the Vaccine Trust Fund with respect to vaccines administered after September 30, 1988; (2) the rates of vaccine-related injury or death with respect to various types of vaccines; (3) new vaccines and immunization practices being developed or used for which amounts may be paid from the Vaccine Trust Fund; (4) whether additional vaccines should be included in the National Vaccine Injury Compensation Program; and (5) the appropriate treatment of vaccines produced by State governmental entities. Not later than one year after the date of enactment, the Secretary of the Treasury must submit a report detailing his findings to the House Committee on Ways and Means and the Senate Committee on Finance.

Childhood immunization program trust fund

The House bill establishes a new Childhood Immunization Trust Fund ("Childhood Trust Fund") in the Internal Revenue Code. Monies in the Childhood Trust Fund are to be available, subject to appropriations Acts, for the childhood immunization entitlement program (under part A of subtitle 3 of title XXI of the Public Health Service Act), adopted by the Committee on Energy and Commerce as part of its reconciliation recommendations.

Maintenance-of-effort requirement for pediatric vaccine health care coverage

The House bill makes the failure of health plans that provide coverage for the cost of pediatric vaccines as of May 1, 1993, to continue to provide that level of coverage subject to the excise tax penalty (under sec. 4980B(f)) applicable to plans that fail to provide COBRA health plan continuation coverage.

Effective date

The extension of coverage under the National Vaccine Injury Compensation Program is effective for vaccines administered on or after October 1, 1992. The extension of the vaccine excise taxes is effective on the date of enactment, with a floor stocks tax imposed on vaccines purchased after December 31, 1992, that are being held for sale or use on the date of enactment.

The maintenance-of-effort requirement for pediatric vaccine health care coverage applies to plan years beginning after the date of enactment.

Senate Amendment

Permanent extension of excise tax and Program funding

The Senate amendment is the same as the House bill.

Study

No provision.

Childhood immunization program trust fund

No provision for a childhood immunization program trust fund.

Maintenance-of-effort requirement for pediatric vaccine health care coverage

No tax provision.

Conference Agreement

Permanent extension of excise tax and Program funding

The conference agreement follows the House bill and the Senate amendment.

Study

The conference agreement follows the Senate amendment, but the conferees intend that the Secretary of the Treasury will conduct a study of the Vaccine Trust Fund and related matters as contemplated by the statutory provision contained in the House bill, including a report to the House Committee on Ways and Means and the Senate Committee on Finance within one year after the date of enactment.

Childhood immunization program trust fund

The conference agreement does not include the House bill provision for a childhood immunization program trust fund.

Maintenance-of-effort requirement for pediatric vaccine health care coverage

The conference agreement follows the House bill.

D. Other Revenue-Related Provisions

1. Disaster loss relief for individuals whose principal residences were damaged by Presidentially declared disasters (sec. 13431 of the conference agreement and sec. 1033 of the Code)

Present Law

Under present law, no gain is recognized by the taxpayer if property is involuntarily converted into property similar or related in service or use. If property is involuntarily converted into money or property not similar or related in service or use to the converted property, then gain generally is recognized. If during the applicable period, however, the taxpayer replaces the converted property with property similar or related in service or use to the converted property, the taxpayer may elect to recognize gain only to the extent that the amount realized upon such conversion exceeds the cost of the replacement property. The applicable period begins with the date of the disposition of the converted property (or the earliest date of the threat or imminence of requisition or condemnation of the converted property, whichever is earlier) and generally ends two years after the close of the first taxable year in which any part of the gain upon conversion is realized.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement contains provisions applicable to taxpayers whose principal residence[191] (or any of its contents) is involuntarily converted as a result of a Presidentially declared disaster. In such cases, no gain is recognized by reason of the receipt of insurance proceeds for unscheduled personal property that was part of the contents of such residence. In the case of any other insurance proceeds for such residence or its contents, the proceeds may be treated as a common pool of funds. If such pool of funds is used to purchase any property similar or related in service or use to the converted residence (or its contents), the taxpayer may elect to recognize gain only to the extent that the amount of the pool of funds exceeds the cost of the replacement property.

In addition, the conference agreement extends the ending of the applicable period for the replacement of property involuntarily converted as a result of a Presidentially declared disaster to four years after the close of the first taxable year in which any part of the gain upon conversion is realized.

The conference agreement applies to residences located in areas subject to a disaster that resulted in a subsequent determination by the President that assistance by the Federal Government was warranted under the Disaster Relief and Emergency Assistance Act.

Effective date.—The provisions are effective for property involuntarily converted as a result of disasters for which a Presidential declaration is made on or after September 1, 1991, and to taxable years ending on or after such date.

2. Increase amount of Presidential Election Campaign Fund checkoff (sec. 7953 of the Senate amendment, sec. 13441 of the conference agreement, and sec. 6096(a) of the code)

Present Law

The Presidential Election Campaign Fund ("Fund") provides for public financing of a portion of qualified Presidential election campaign expenditures and certain qualified convention costs (sec. 9001 et seq.). The Fund is financed through the voluntary designation by individual taxpayers on tax returns of $1 of tax liability, which is commonly known as the Presidential election campaign checkoff. The Treasury Department accumulates revenues in the Fund over a four-year period and then disburses funds to eligible candidates for President, Vice President, and conventions during the Presidential election year.

House Bill

No provision.

Senate Amendment

The Senate amendment increases the amount of the checkoff from $1 to $3.

Effective date.—Effective for tax returns required to be filed after December 31, 1993.

Conference Agreement

The conference agreement follows the Senate amendment.

3. Disallowance of deduction for amounts paid or incurred in connection with certain noncomplying group health plans (sec. 13442 of the conference agreement and new sec. 162(n) of the Code)

Present Law

Under present law, employers can generally deduct the full cost of health coverage provided to participants under a group health plan. Under New York state law, commercial insurers of inpatient hospital services, group health plans, health maintenance organizations, and Blue Cross and Blue Shield corporations are required to reimburse hospitals for inpatient hospital services at various rates set by the state of New York. In February of 1993, a Federal district court invalidated a number of New York statutes imposing inpatient hospital-rate surcharges on the ground that they were preempted by the Employee Retirement Income Security Act of 1974 (ERISA), but ordered insurers of inpatient hospital services to comply with New York's rate-setting statutes pending a final determination of the case.

House Bill

No provision. (However, section 4203 of the House bill would have temporarily waived ERISA preemption as applied to the New York surcharges and certain other New York statutes.)

Senate Amendment

No provision.

[190] The House committee report states that it is intended that the Secretary of the Treasury expeditiously (within 60 days of enactment) adopt rules for purposes of Code section 4221 for determining the conditions under which exported vaccines to be administered to individuals not eligible for compensation under the program are not subject to tax.

[191] Principle residence is defined as under section 1034, except that renters receiving insurance proceeds as a result of the involuntary conversion of their property in a rented residence also qualify for relief under this provision to the extent the rented residence would constitute their principal residence if they owned it.

Conference Agreement

In general, the conference agreement disallows employer deductions for any amounts paid or incurred in connection with a group health plan (including amounts reimbursed through a voluntary employees' beneficiary association (VEBA)) if the plan fails to reimburse hospitals for inpatient services provided in the state of New York at the same rate that licensed commercial insurers are required to reimburse hospitals for inpatient services for individuals not covered by a group health plan. For purposes of this provision, a licensed commercial insurer is a commercial insurer licensed to do business in the state of New York and authorized to write accident and health insurance, and whose policies provide inpatient hospital coverage on an expense incurred basis. Blue Cross and Blue Shield is not a licensed commercial insurer for this purpose.

If a group health plan provides inpatient hospital services through a health maintenance organization (HMO), the conference agreement disallows employer deductions in connection with the plan if the plan fails to reimburse hospitals for inpatient services at the same rate (without regard to exempt individuals) that HMOs are required to reimburse hospitals for individuals not covered by a group health plan.

If a group health plan provides coverage for inpatient hospital services through a Blue Cross and Blue Shield corporation, the conference agreement disallows employer deductions in connection with the plan if the plan fails to reimburse hospitals for inpatient services at the same rate that such corporations are required to reimburse hospitals for individuals not covered by a group health plan.

The deduction disallowance does not apply to any group health plan which is not required under the laws of the state of New York (determined without regard to this provision or other provisions of Federal law) to reimburse for hospital services at the rates described above. Thus, self-insured plans are not subject to the deduction disallowance with respect to the 11 percent surcharge imposed on commercial insurers through March 31, 1993. Similarly, the deduction disallowance does not apply to self-insured plans that do not provide for reimbursement directly to hospitals on an expense incurred basis. The deduction denial also does not apply to payments by self-insured plans exempt from New York's all-payer reimbursement system because of agreements in effect on May 1, 1985.

No inference is intended as to whether any provision of the New York all-payer hospital reimbursement system is preempted by ERISA.

Effective date.—The provision is effective with respect to inpatient hospital services provided to participants after February 2, 1993, and on or before May 12, 1995.

4. Employer tax credit for FICA taxes paid on tip income (sec. 13443 of the conference agreement and sec. 45B of the Code)

Present Law

Under present law, all employee tip income is treated as employer-provided wages for purposes of the Federal Unemployment Tax Act (FUTA) and the Federal Insurance Contributions Act (FICA). For purposes of the minimum wage provisions of the Fair Labor Standards Act (FLSA), reported tips are treated as employer-provided wages to the extent they do not exceed one-half of such minimum wage.

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement provides a business tax credit for food or beverage establishments in an amount equal to the employer's FICA tax obligation (7.65 percent) attributable to reported tips with respect to the food or beverage establishment in excess of those treated as wages for purposes of satisfying the minimum wage provisions of the FLSA. A food or beverage establishment is any trade or business (or portion thereof) which provides food or beverages for consumption on the premises and with respect to which the tipping of employees serving food or beverages by customers is customary. No credit is allowed with respect to FICA taxes paid on tips that are not received in connection with the provision of food or beverages on the premises of the establishment. It is intended that the rules under section 6053(c)(4) apply [192] in determining whether the tips are received with respect to a trade or business (or portion thereof) which provides food or beverages and with respect to which the tipping of employees serving food or beverages by customers is customary.

To prevent double dipping, no deduction is allowed for any amount taken into account in determining the credit. The conference agreement prohibits carryback of unused FICA credits to a taxable year ending before the date of enactment.

Effective date.—The provision is effective for taxes paid after December 31, 1993.

5. Availability and use of death information (sec. 13020 of the House bill, sec. 13444 of the conference agreement, and sec. 6103 of the Code)

Present Law

The Secretary of Health and Human Services is authorized to enter into voluntary contracts with the States for the purpose of obtaining death certificate and other related information. In addition, the Secretary is authorized to redisclose this information to other Federal, State, and local agencies for certain specified purposes, subject to such safeguards as the Secretary determines are necessary to prevent any unauthorized redisclosure. However, because these contracts with the States are entirely voluntary, the States are able, at their discretion, to include contract provisions preventing the Secretary from redisclosing this information to other Federal, State, and local agencies.

House Bill

The House bill prohibits a State from using an individual's Social Security account number in the administration of any driver's license or motor vehicle registration law where the State has not entered into a contract to provide death certificate and related information to the Secretary, or where the State is a party to a contract with the Secretary which includes any restrictions on the use of the death information provided to the Secretary by the State, except to the extent that such use may be restricted under section 205(r)(6) of the Social Security Act.

In addition, the House bill requires the Secretary of Health and Human Services to conduct a study of possible improvements in the current methods of gathering and reporting death information by Federal, State, and local governments that would result in more efficient and expeditious handling of such information. The House bill also requires the Secretary to submit a written report by June 1, 1994, to the Committee on Ways and Means and the Committee on Finance setting forth the results of this study, together with such administrative and legislative recommendations as the Secretary considers appropriate.

Effective date.—The House bill is effective one year after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with modifications. The conference agreement prohibits the disclosure of Federal tax returns or return information to any agency, body or commission of any State in connection with the administration of State tax laws where the State has not entered into a contract to provide death certificate and related information to the Secretary, or where the State is a party to a contract with the Secretary that includes any restrictions on the use of the death information provided to the Secretary by the State, except that such contract may provide that such information is only to be used for purposes of ensuring that Federal benefits or other payments are not erroneously paid to deceased individuals. The conference agreement does not apply to any State that, on July 1, 1993, was not furnishing by contract any death certificate or related information to the Secretary of Health and Human Services. The conference agreement does not include the provision in the House bill prohibiting a State from using Social Security account numbers for certain purposes.

Effective date.—The conference agreement is effective one year after the date of enactment, except that it is effective two years after the date of enactment with respect to a State if it is established to the satisfaction of the Secretary of the Treasury that it is legally impossible under existing State law for such a contract to be signed. The conferees intend that the authority of the Secretary of the Treasury to grant an extension of the effective date insure that those States that have not yet entered into a contract with the Federal Government allowing for government-wide dissemination of death information have up to two years to resolve, through their State legislatures, any legal impediments to the timely signing of such a contract.

6. BATF user fees for processing applications for alcohol certificates of label approval (sec. 14411 of the House bill and sec. 7951 of the Senate amendment)

Present Law

The Treasury Department's Bureau of Alcohol, Tobacco, and Firearms (BATF) is required to approve all alcoholic beverage labels and conduct various laboratory analyses to assure compliance with the Federal Alcohol Administration Act (27 U.S.C., Chapter 8) and Chapter 51 of the Internal Revenue Code. There is currently no charge or fee for these BATF services.

Under the Internal Revenue Code, annual alcohol occupational excise taxes are imposed as follows:

Producers of distilled spirits, wines or beer (secs. 5081, 5091).	$100 per year[1] per premise
Wholesale dealers of liquors, wines or beer (sec. 5121).	$500 per year
Retail dealers in liquors, wines or beer (sec. 5121).	$250 per year
Nonbeverage use of distilled spirits (sec. 5131).	$500 per year

[192] Section 6053(c)(4) is to be applied without regard to the number of employees.

Industrial use of distilled spirits (sec. 5276).	$250 per year

[1]Tax is $500 per year per premise for businesses with gross receipts of less than $500,000 in the preceding taxable year.

House Bill

Under the House bill, BATF user fees are established for the processing of applications for certificates of alcohol label approval (or exemptions therefrom) required by the Federal Alcohol Administration Act and formula (and statement of process) reviews or laboratory tests and analyses performed under that Act and the Internal Revenue Code and regulations.

The Secretary of the Treasury is authorized to implement the user fee program and to establish fee rates: not less than $50 for each application and not less than $250 for each formula (and statement of process) review or test and analysis. The fees charged under this program are to be determined so that the Secretary estimates that the aggregate of such fees received during any fiscal year will be $5 million. A maximum of $5 million of these fees are to be offsetting receipts deposited in the Treasury and ascribed to BATF's Compliance Alcohol Program.

Effective date.—The provision applies for applications filed and for formula (and statement of process) reviews or tests and analyses initiated 90 days from the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment.

7. Use of Harbor Maintenance Trust Fund for administrative expenses (sec. 14412 of the House bill, sec. 7952 of the Senate amendment, and sec. 9505(c) of the Code)

Present Law

Under present law (Code sec. 9595(c)), amounts in the Harbor Maintenance Trust Fund ("Harbor Fund") are available, as provided by appropriation Acts, for making expenditures:

(1) under section 210(a) of the Water Resources Development Act of 1986 (Army Corps of Engineers costs for dredging and maintaining harbors at U.S. ports);

(2) for payments of rebates of certain St. Lawrence Seaway tolls or charges; and

(3) for payment of expenses incurred by the Department of the Treasury in administering the harbor maintenance excise tax (but not more than $5 million per fiscal year) for periods during which no Customs processing fee applies under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("1985 Act").

The Customs processing fee currently is in effect through September 30, 1995.[193] Thus, since the Customs processing fee is in effect under the 1985 Act, the Harbor Fund is not currently permitted to be used for Treasury expenses for administering the harbor maintenance excise tax.

House Bill

The House bill allows (subject to appropriations) up to $5 million per fiscal year from the Harbor Fund to be used by the Department of the Treasury to improve compliance with the existing harbor maintenance excise tax. This is accomplished by removing the current Harbor Fund restriction against such use while the Customs processing fee is in effect.

Effective date.—The provision applies to fiscal years beginning after the date of enactment.

Senate Amendment

The Senate amendment is the same as the House bill, except that the Senate amendment also includes the Army Corps of Engineers and the Department of Commerce as eligible to receive Harbor Fund money for expenses of administering the harbor maintenance excise tax.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment.

8. Federal and State income tax refund offset for medical assistance (sec. 7433 of the Senate amendment)

Present Law

Federal agencies are authorized to notify the IRS that a person owes a past due, legally enforceable debt to the agency. The IRS then is required to reduce the amount of any Federal tax refund due such person by the amount of the debt and pay that amount to the agency. The refund offset program applies with respect to debts of individuals and corporations.

Before a refund can be offset under this program, the agency owed the debt is required to certify to the IRS that the debtor has been notified about the proposed offset and has been given at least 60 days to present evidence that all or part of the debt is not past due or not legally enforceable. The agency also is required to enter into agreement with the IRS prior to transmitting proposed offsets. If a refund otherwise due an individual is subject to offset both under this provision and because of past-due support under the Aid to Families with Dependent Children (AFDC) program, the offset for AFDC past-due support is implemented first.

House Bill

No provision.

Senate Amendment

The Senate amendment permits States to request that the Internal Revenue Service offset a Federal income tax refund by the amount of a legally enforceable debt to the State for specified medical assistance. A State may request a refund offset only if it has in place a parallel State refund offset program.

Effective date.—The provision is effective for taxable years beginning after December 31, 1993.

Conference Agreement

The conference agreement does not include the Senate amendment provision.

9. Annual report to taxpayers on Federal finances (sec. 15002 of the Senate amendment)

Present Law

The IRS is required to include two pie charts in individual income tax return instruction booklets: one showing sources of Government revenue and the other showing how that revenue is spent. There is no requirement that the instruction booklets include a financial report of the Federal government.

House Bill

No provision.

Senate Amendment

Under the Senate amendment, the director of the Office of Management and Budget is required to supervise and direct the content and preparation of an annual financial report of the Federal government. The Secretary of the Treasury is required each year to include in the instruction booklets for individual income tax returns a summary of the annual financial report. The complete annual financial report would be made available to taxpayers upon request (subject to a possible processing fee).

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

CHAPTER 2

SUBTITLE A—MEDICARE

PROVISIONS RELATING TO PART A

1. Inpatient Hospital Services Update (Sec. 13401 of the House bill; sec. 7101 of the Senate amendment)

Present Law

(a) PPS Hospitals.—The update factor for hospitals located in urban areas is set to equal the percentage increase in the hospital market basket for fiscal years 1994 and thereafter. The fiscal year 1994 update factor for rural hospitals is set to equal the increase in the hospital market basket plus 1.5 percentage points. For fiscal year 1995, the update factor for rural hospitals is set to equal the market basket increase plus the amount needed to equalize the standardized amount for rural hospitals to the standardized amount for hospitals in urban areas other than those with more than one million people.

The standardized amounts are updated annually effective with discharges occurring on or after October 1 of each year. Other factors in PPS payments, including DRG classifications, the area wage index, outlier payment thresholds, and hospital geographic classification are also revised at the start of each fiscal year. Disproportionate share payments for urban hospitals with 100 or more beds are scheduled to increase, effective for discharges on or after October 1, 1993.

A sole community hospital or Medicare-dependent small rural hospital is paid based on the higher of the applicable standardized amount or a hospital-specific rate. The hospital-specific rate is updated annually effective with the beginning of the hospital's cost reporting period. The update is set equal to the projected percentage increase in the hospital market basket for the fiscal year in which the cost reporting period begins.

(b) PPS-Exempt Hospitals.—For cost reporting periods beginning during fiscal years 1994 and thereafter, the target amounts for PPS-exempt hospitals are increased by the projected increase in the hospital market basket. The Secretary is authorized to grant exceptions or adjustments to target amounts to reflect cost increases beyond a hospital's control or other extraordinary circumstances.

House Bill

(a) PPS Hospitals.—For fiscal years 1994 and 1995 the market basket used in updating the prospective payment system standardized amounts would be deemed to equal zero. The additional amounts provided under current law to eliminate the differential between the rural and "other urban" standardized amounts by fiscal year 1995 would continue to apply.

(b) PPS-Exempt Hospitals.—For cost reporting periods beginning in fiscal years 1994 and 1995, the market basket used in updating the target amounts for PPS-exempt hospitals would be deemed to equal zero.

[193]A separate trade provision (sec. 13602 of the House bill and sec. 7701 of the Senate amendment) would extend the current Customs processing fee for three years, through September 30, 1998.

Senate Amendment

(a) PPS Hospitals.—PPS rates would be updated annually effective for discharges occurring on or after January 1 of each year. The payment rates in effect as of September 30, 1993 would continue in effect through December 31, 1993. No changes in the standardized amounts, DRG classification system or relative weights, outlier thresholds, wage index values, or in a hospital's geographic classification would occur until January 1, 1994. The increase in disproportionate share payments for urban hospitals with at least 100 beds would be postponed and would become effective for discharges occurring on or after January 1, 1994. The regional floor would be extended through December 31, 1993.

The standardized amounts would be updated on a calendar year basis as follows:

1994: The urban standardized amounts would be updated by the estimated percentage increase in the hospital market basket minus 2.18 percentage points. The rural standardized amounts would be updated by the market basket increase minus .68 percentage points.

1995: The urban standardized amounts would be updated by the estimated percentage increase in the hospital market basket minus 2.27 percentage points and the labor and non-labor portions of the standardized amounts would be recomputed based on the labor and non-labor proportions in the national average standardized amount for all hospitals. The rural standardized amount would be updated to equal the standardized amount applicable to hospitals located in "other urban" areas so that there would be a single standardized amount applicable to hospitals located in rural and "other urban" areas.

1996: The standardized amounts would be updated by the percentage increase in the hospital market basket minus 2.0 percentage points.

1997: The standardized amounts would be updated by the percentage increase in the hospital market basket minus 1.0 percentage point.

1998 and thereafter: The standardized amounts would be updated by the percentage increase in the hospital market basket.

The effective date of the update in the hospital-specific rate applicable to a sole community hospital or a Medicare-dependent, small rural hospital would be changed from the beginning of the hospital's cost reporting period to January 1. The update factor would equal 75 percent of the difference between the percentage increase in the hospital market basket and 2.0 percentage points in 1994 (after a 3 month freeze) and the percentage increase in the hospital market basket minus 2.0 percentage points in 1995. For 1996 and later years the update would be the same as for PPS hospitals.

(b) PPS-Exempt Hospitals.—Beginning January 1, 1994, the market basket projection would be made on a calendar year basis and would be applicable to cost reporting periods beginning in that calendar year. For cost reporting periods beginning in 1994, the update factor for the target amount would be determined based on 75 percent of the difference between the estimated percentage increase in the hospital market basket and 1.0 percentage point. For cost reporting periods beginning in 1995 through 1997, the update factor for the target amount would equal the percentage increase in the hospital market basket minus 1.0 percentage point.

Conference Agreement

(a) PPS Hospitals.—The conference agreement includes the Senate amendment, with modifications. Annual updates and other changes in PPS payment factors will continue to take effect on a fiscal year basis, and the scheduled change in disproportionate share payment policy is not postponed. The provision relating to recomputation of the labor and non-labor portions of the standardized amounts is not included.

Update factors are revised as follows:

Fiscal year 1994: For urban hospitals, the estimated percentage increase in the hospital market basket minus 2.5 percentage points; for rural hospitals, the market basket increase minus 1.0 percentage point.

Fiscal year 1995: For urban hospitals, the percentage increase in the hospital market basket minus 2.5 percentage points; for rural hospitals, the amount necessary to equalize the rural and "other urban" standardized amounts.

Fiscal year 1996: For all hospitals, the percentage increase in the hospital market basket minus 2.0 percentage points.

Fiscal year 1997: For all hospitals, the percentage increase in the hospital market basket minus 0.5 percentage points.

For fiscal years 1998 and thereafter, the update is set equal to the percentage increase in the hospital market basket.

The update factors for the hospital-specific rates applicable to a sole community hospital or a Medicare-dependent, small rural hospital are set equal to the percentage increase in the hospital market basket minus 2.3 percent in fiscal year 1994, and minus 2.2 percent in fiscal year 1995. These factors are equal to the weighted average updates for urban and rural hospitals in those years. For fiscal years 1996 and thereafter, the update is set equal to the update factors for other hospitals. The effective date of the update is moved from the beginning of the hospital's cost reporting period to October 1. The conferees believe that the Secretary should evaluate the policy of combining base year data when two sole community hospitals merge.

For discharges occurring after fiscal year 1993, the agreement reduces the Federal rate for hospital capital expenses by 7.4 percent, to correct inflation forecast errors accrued prior to the most recent update of capital cost data. Effective with cost reporting periods beginning in fiscal year 1994, the Secretary is required to redetermine which capital payment methodology should be applied to each hospital, to take account of this reduction.

The conferees note that in the proposed rule for fiscal year 1994 changes to the hospital inpatient prospective payment systems that was published in the Federal Register on May 26, 1993, the Secretary indicated that insufficient information was available to complete a systematic evaluation of the obligated capital criteria for hospitals in States with a lengthy Certificate-of-Need process in time to consider appropriate changes during the fiscal year 1994 rule-making process. The conferees expect the Secretary to complete the assessment in time for consideration in the fiscal year 1995 rule-making process and that appropriate changes in payment policy will be made to address the problems of hospitals subject to a lengthy Certificate-of-Need review process or subject to other circumstances which are not fully addressed under the current transition rules. In addition, the conferees believe the Secretary should evaluate whether current policies provide adequate protection to sole community hospitals and hospitals that serve a disproportionate share of low income patients.

(b) PPS-Exempt Hospitals.—The conference agreement includes the Senate amendment, with modifications. Updates in target amounts will continue to take effect for cost reporting periods beginning in a fiscal year. Update factors are set equal to the percentage increase in the hospital market basket minus 1.0 percentage point in fiscal years 1994 through 1997. For cost reporting periods beginning in fiscal years 1998 and thereafter, the update is set equal to the percentage increase in the hospital market basket. A hospital whose operating costs during a cost reporting period beginning in fiscal year 1990 exceeded its target amount by 10 percent or more will be exempt from these reductions in all years, with partial reductions applied to hospitals near the 10 percent threshold. The Secretary is instructed not to consider the reductions in granting exceptions or adjustments to target amounts.

The conferees note that OBRA 90 required the Secretary to develop a proposal to modify the current payment methodology for hospitals that are excluded from the prospective payment system. The report was to be submitted to Congress by April 1, 1992. The conferees urge that the Secretary submit the report promptly.

2. Payments for Hospice Care (Sec. 13401 of the House bill)

Present Law

Payment rates for hospice services are updated each year by the projected increase in the hospital market basket.

House Bill

The hospital market basket used to update payment rates for hospice services for fiscal years 1994 and 1995 would be deemed to equal zero.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment. Update factors for hospice services are set equal to the percentage increase in the hospital market basket minus 2.0 percentage points in fiscal year 1994, market basket minus 1.5 percentage points in fiscal years 1995 and 1996, and market basket minus 0.5 percentage point in fiscal year 1997. For fiscal years 1998 and thereafter, the update is set equal to the percentage increase in the hospital market basket.

3. Skilled Nursing Facilities (Secs. 13402 and 13425 of the House bill; Secs. 7105 and 7104 of the Senate amendment)

(a) Cost Limits.—Payments for skilled nursing facility services are made on a reasonable cost basis, subject to per-diem cost limits. The limit is based on 112 percent of the mean per diem routine service costs for freestanding facilities. There is an add-on to the limit for hospital-based facilities equal to 50 percent of the difference between 112 percent of the mean per diem routine costs for free-standing facilities and 112 percent of the mean per diem costs for hospital-based facilities. The Secretary is required to make payment, regardless of the cost limits, for costs of a hospital-based facility attributable to excess overhead cost allocated to the facility. Any skilled nursing facility may receive an exception to the cost limits based on case mix or circumstances beyond the control of the facility.

(b) Return on Equity.—Proprietary skilled nursing facilities (SNFs) receive, in addition to payments for the costs of providing services, a return on equity payment, which provides the investors in the facility a return on

their investment equivalent to what they would have earned if they had invested the same amount in specified government securities. SNFs are the only providers still receiving Medicare return on equity payments.

(c) Wage Index.—Skilled nursing facilities are reimbursed on a reasonable cost basis, subject to per-diem limits. The labor-related portion of the limits are to be adjusted by an appropriate wage index. The Secretary currently uses a wage index based on wage data collected from hospitals. In its March 1, 1992, Report and Recommendations to the Congress, the Prospective Payment Assessment Commission recommended that the Secretary collect data on employee compensation and paid hours of employment for nursing facilities for the purpose of implementing a nursing facility wage index to adjust the cost limits. The limits are to be updated every two years.

House Bill

(a) Cost Limits.—The Secretary would be prohibited from applying an update factor to the cost limits for skilled nursing facility cost reporting periods beginning in fiscal years 1994 and 1995.

(b) Return on Equity.—No provision.

(c) Wage Index.—The Secretary would be required to begin collecting the data necessary to compute a wage index based on wages specific to skilled nursing facilities within one year of enactment. The Prospective Payment Assessment Commission would be required to study and report by March 1, 1994, on the impact of applying routine per-diem cost limits on a regional basis.

Senate Amendment

(a) Cost Limits.—The cost limit would be lowered to 110 percent of the median per diem routine service costs for freestanding facilities. The add-on for hospital-based facilities would equal 50 percent of the difference between 110 percent of the median per diem routine costs for freestanding facilities and 110 percent of the median per diem routine costs for hospital-based facilities. The lower cost limits would be effective for cost reporting periods beginning on or after October 1, 1993. The other requirements would be effective upon the date of enactment.

(b) Return on Equity.—The payment to SNFs for return on equity capital would be eliminated, applicable to portions of cost reporting periods beginning on or after October 1, 1993.

(c) Wage Index.—Similar to House bill, except that the Commission report is due March 31, 1994.

Conference Agreement

(a) Cost Limits.—The conference agreement includes the House provision, with an amendment to require that there be no changes in skilled nursing facility cost limits (including no adjustments for changes in the wage index or applicable MSAs) for cost reporting periods beginning in fiscal years 1994 and 1995, or in prospective payment amounts for services rendered during such cost reporting periods. The Secretary is required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in cost limits. Additional payments for excess overhead costs allocated to hospital-based facilities are eliminated, effective for cost reporting periods beginning on or after October 1, 1993.

The conferees believe that Medicare costs for skilled nursing facilities can best be controlled through a prospective payment system. Such a payment system will encourage provider efficiency and simplify administrative requirements. Therefore, the conferees expect that the Secretary will complete development of a prospective payment system and present recommendations to Congress in time for implementation no later than October 1, 1995. The recommendations should also address whether the differential payment for hospital-based facilities should be maintained. The conferees understand that sufficient information on which to base a prospective payment system on case mix may not be available. However, the conferees expect the Secretary to develop an interim prospective payment system for inpatient routine service costs, using appropriate proxies to account for differences in patient resource requirements, with improved case mix indicators incorporated into the system over time.

(b) Return on Equity.—The conference agreement includes the Senate amendment. The conferees expect the Secretary to adjust prospective payment rates for low-volume skilled nursing facilities to reflect the elimination of return-on-equity payments as of that date.

(c) Wage Index.—The conference agreement does not include the House provision or the Senate amendment. The conferees expect that the Secretary will begin to collect data on employee compensation and hours of employment specific to skilled nursing facilities, for potential use in development of a skilled nursing facility wage index, within one year of enactment.

4. Hospital Wage Index (Sec. 13411 of the House bill)

Present Law

A change in classification of hospitals from one wage area to another may not result in the reduction in the wage index for a county to an amount below the level of the rural wage index for a State. No similar protection applies in the case of an urban area with a wage index already below the rural wage index for a State, or in the case of an urban area located in a State without any rural areas. Certain hospitals in rural counties adjacent to one or more urban areas are treated as part of an urban area if they otherwise meet certain requirements with respect to commuting standards used in designating Metropolitan Statistical Areas or New England County Metropolitan Areas as published in the Federal Register on January 3, 1980. In development of guidelines for reclassification of hospitals into different wage index areas, the Secretary is required to take into account occupational mix.

House Bill

A change in classification of hospitals from one area to another could not result in a reduction in the wage index for an urban area if the area has a wage index below the rural wage index for the State. A change in classification of hospitals could not result in a reduction in the wage index for an urban area if the area is the only urban area in a State with no rural areas. The Secretary would be instructed not to make retroactive revisions in standardized amounts to reflect the wage index changes. The January 3, 1980, requirements with respect to commuting standards would be replaced with the most recently available standards. Any hospital qualifying for treatment as an urban county under the 1980 standards, but not meeting the most recent standards would continue to qualify. The Secretary would be authorized, but not required, to take occupational mix into account in the development of guidelines for reclassification to the extent the Secretary determines is appropriate.

Effective on the date of enactment, except that the provision relating to urban areas with a wage index below the rural wage index for the State would be effective on October 1, 1991, the provision relating to commuting standards would be effective on October 1, 1993, and the provision relating to occupational mix would be effective as if included in the Omnibus Reconciliation Act of 1989 (OBRA 89).

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with amendments. The provision relating to commuting standards is eliminated. The provision relating to an urban area in a State with no rural areas is made effective on October 1, 1991. The agreement does not include the provision related to consideration of occupational mix.

The conferees note that in the proposed rule for FY 1994 changes to the hospital inpatient prospective payment systems that was published May 26, 1993, the Secretary indicated an intention to evaluate the "nearest neighbor" labor market areas recommended by the Prospective Payment Assessment Commission and other alternatives to the existing labor market area definition. The conferees reaffirm that sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Social Security Act give the Secretary broad discretion to define hospital labor market areas. In the event new labor market areas are established that are not based on Metropolitan Statistical Areas, the conferees note that the hold harmless protections provided under section 1886(d)(8)(C) would have no practical effect.

5. Hospital Outlier Payments (Sec. 13412 of House bill)

Present Law

The Secretary of Health and Human Services (the Secretary) is required to make additional payment for outlier cases, which are defined as those cases involving long stays or extraordinary costs as compared to other cases in the same DRG.

House Bill

The Secretary would be required to phase out payments for day outlier cases beginning in fiscal year 1995 and ending in fiscal year 1998. The proportion of outlier payments calculated using the day outlier methodology in fiscal year 1994 would be reduced by 25% for fiscal year 1995, 50% for fiscal year 1996, 75% for fiscal year 1997, and eliminated beginning in fiscal year 1998.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment to require that the payment threshold for cost outlier cases be set at the applicable DRG payment plus a fixed dollar amount. The Secretary is authorized to achieve reductions in the proportion of outlier payments attributable to day outliers by reducing payments for marginal costs of days of care exceeding the outlier threshold.

The conferees note that the Prospective Payment Assessment Commission has expressed concern that the Secretary's outlier policy penalizes hospitals that receive a large number of transfer cases. The conferees expect that the Commission will evaluate whether the changes in outlier policy required by this Act will be sufficient to reduce the risk of large losses on transfer cases

for such hospitals and make recommendations regarding whether additional changes in payment methodology would be appropriate.

6. Essential Access Community Hospital Amendments (Sec. 13413 of the House bill)

(a) Under the Essential Access Community Hospital demonstration program up to 7 States may be designated by the Secretary to receive grants to develop rural health networks consisting of essential access community hospitals and rural primary care hospitals. Individual hospitals may be designated as essential access community hospitals (EACHs) and rural primary care hospitals (RPCHs). Authorization of appropriations for fiscal years 1990, 1991, and 1992 is $10 million a year for grants to States and $15 million a year for grants to hospitals. In order to receive designation by a State as a rural primary care hospital, a facility must meet certain criteria, including a requirement that inpatient stays not exceed 72 hours.

(b) The Secretary of Health and Human Services is required to make grants to up to seven States to participate in the EACH program.

(c) The Secretary may designate an urban hospital as an essential access community hospital if it meets the criteria for designation as a regional referral center.

(d) The Secretary may designate a hospital as an essential access community hospital if it is located in a State receiving an EACH program grant.

(e) Rural primary care hospitals are required to have written policies governing the provision of services, and have a physician, physician assistant, or nurse practitioner responsible for the execution of those policies.

(f) A rural primary care hospital may not provide more than 6 inpatient beds, meeting such conditions as the Secretary may establish. RPCHs are authorized to maintain "swing beds" as skilled nursing beds or to operate a distinct-part skilled nursing facility.

(g) Medicare inpatient hospital benefits are subject to the inpatient hospital deductible and to coinsurance after 60 days of hospitalization during a spell of illness.

(h) Payments for outpatient services in a rural primary care hospital prior to 1993 are determined either by a cost-based facility fee or an all-inclusive rate, as elected by the RPCH. The Secretary is required to develop and implement by January 1, 1993, a prospective payment system for outpatient services provided in an RPCH.

House Bill

(a) Authorization for appropriations would be continued at current levels ($10 million a year for grants to States and $15 million a year for grants to hospitals) through fiscal year 1995. The length of stay requirement for State designation of rural primary care hospitals would be modified to provide that no patient may be admitted unless the attending physician certifies that the patient may reasonably be expected to be discharged or transferred within 72 hours, and that the facility may not provide surgery or other services requiring general anesthesia (other than procedures approved for performance on an ambulatory basis) unless the attending physician certifies that the risk of transfer to another facility for the services outweighs the benefits. The Secretary would be authorized to terminate the designation of a rural primary care hospital whose average length of stay (not counting longer stays during periods of inclement weather or other emergencies) exceeds 72 hours. The General Accounting Office would report to the Congress, within 2 years after enactment, on the application and impact of the changes in length-of-stay requirements.

(b) The number of States eligible for grants under the EACH program would be increased from seven to nine.

(c) The Secretary would be authorized to designate an urban hospital as an essential access community hospital if the hospital otherwise meets the criteria for designation. However, urban hospitals would not be eligible for a change in Medicare payment as a result of the designation.

(d) A State receiving a grant under the EACH program could designate a facility in an adjoining State as an essential access community hospital or a rural primary care hospital if the facility is otherwise eligible for designation. The Secretary would be authorized to designate a facility as an essential access community hospital or a rural primary care hospital if the facility is not in a State receiving an EACH program grant and if the facility is a member of a rural health network of a State receiving a grant.

(e) The requirements for written policies and procedures and the supervision of those procedures in rural primary care hospitals would be amended to clarify that the requirements are similar to those for hospitals. Specifically, rural primary care hospitals would be required to appoint a physician, as defined in section 1861(r)(1) of the Social Security Act, to supervise the implementation of the policies.

(f) A rural primary care hospital that had a swing-bed agreement at the time of designation would be authorized to provide swing-bed services up to the hospital's licensed acute care bed capacity at the time of conversion, minus the number of inpatient beds retained by the rural primary care hospital.

(g) The applicability of the inpatient hospital deductible and coinsurance to stays in rural primary care hospitals would be clarified.

(h) The Secretary would be required to implement a prospective payment system for outpatient RPCH services by January 1, 1996. The election of payment alternatives would continue until the Secretary implemented the new system. Payment for outpatient rural primary care hospital services would be made without regard to lesser-of-cost-or-charges limits. Minor drafting errors would be corrected.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

7. Rural Health Transition Grant Program (Sec. 13414 of the House bill)

Present Law

OBRA 87 instituted a program of grants to assist rural hospitals with fewer than 100 beds in developing and implementing projects to modify the type and extent of services they provide. Grants may be used to develop health systems with other providers, diversify services, recruit physicians, improve management systems, and provide instruction and consultation via telecommunications to physicians in manpower shortage areas. The program is authorized at $25 million per year for fiscal years 1990, 1991, and 1992.

House Bill

Appropriations for the rural health transition grant program would be authorized at $30 million a year for fiscal years 1993 through 1997.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

8. Regional Referral Center Extension (Sec. 13415 of the House bill; sec. 7102 of the Senate amendment)

Present Law

OBRA 89 provided that hospitals classified as regional referral centers on September 30, 1989, would retain such status through cost reporting periods beginning before October 1, 1992.

House Bill

All hospitals classified as regional referral centers on September 30, 1992, would retain such status through September 30, 1994. The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as regional referral centers. Hospitals to which this provision applies that lost regional referral center status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would have the opportunity to decline the reclassification and retain referral center status.

Senate Amendment

Hospitals that were classified as regional referral centers as of September 30, 1992 would continue to receive the "other urban" standardized amount for discharges occurring before the earlier of January 1, 1995, or the date on which the hospital is reclassified by the Medicare Geographic Classification Review Board.

Similar provision with respect to lump sum payments, except that payments would not make up for any lost disproportionate share payments resulting from the loss of regional referral center status. Identical provision with respect to the opportunity to decline reclassification.

Conference Agreement

The conference agreement includes the House provision.

9. Small Medicare-Dependent, Rural Hospital Payment Extension (Sec. 13416 of the House bill; sec. 7103 of the Senate amendment)

Present Law

OBRA 89 provides for special payment for rural hospitals qualifying as Medicare dependent hospitals (MDHs). In order to qualify for MDH status, a hospital must be located in a rural area, have no more than 100 beds, and have had at least 60 percent of its inpatient days or discharges attributed to Medicare patients during the cost reporting period beginning during fiscal year 1987. MDHs are eligible for payment under the same rules as sole community hospitals for cost reporting periods beginning on or after April 1, 1990, and ending before April 1, 1993. Beginning on October 1, 1994, payments to all hospitals in rural areas will be based on the same standardized amount as payment to hospitals in "other urban" areas (those with less than 1 million people).

House Bill

Special payments for small rural, Medicare dependent hospitals would be continued for discharges occurring through September 30, 1994, on a phase-down basis. For discharges occurring during cost reporting periods beginning on or after April 1, 1990, and before

April 1, 1993, existing MDH payments would apply. For discharges occurring during any cost reporting period beginning on or after April 1, 1993, through September 30, 1994, an MDH would receive 50 percent of the difference between their payment under the existing MDH rules and the payment regularly provided under the prospective payment system. The Secretary would be required to make a lump sum payment to these hospitals for the additional payments that would have been made had they not lost classification as Medicare dependent hospitals. Hospitals that lost MDH status as a result of a favorable reclassification decision by the Medicare Geographic Classification Review Board for fiscal years 1993 or 1994 would be offered the opportunity to decline the reclassification and retain Medicare dependent hospital status.

Senate Amendment

Similar provision to House bill, except that the 50 percent payment would continue for portions of cost reporting periods occurring before January 1, 1995.

Conference Agreement

The conference agreement includes the House provision.

10. Extension of Regional Floor (Sec. 13417 of the House bill; sec. 7101 of the Senate amendment)

Present Law

For discharges occurring beginning on or after April 1, 1988, and ending on September 30, 1993, payments to prospective payment system hospitals in census regions for which the regional standardized amount is higher than the national standardized amount are equal to 15% of the regional amount and 85% of the national amount.

House Bill

The regional floor provision would be extended through fiscal year 1996.

Senate Amendment

The regional floor would be extended through December 31, 1993.

Conference Agreement

The conference agreement includes the House provision.

11. Rural Demonstration Extension (Sec. 13418 of the House bill)

Present Law

OBRA 90 gave the Secretary authority to waive provisions of Title XVIII as necessary in order to conduct any demonstration project of limited-service rural hospitals with respect to which the Secretary has entered into an agreement prior to enactment of OBRA 89.

House Bill

The Secretary would be required to continue any such demonstration projects at least through December 31, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision, with an amendment to extend the demonstration projects until at least July 1, 1997.

The conferees expect that the Secretary will make recommendations by January 1995 regarding legislative changes that are needed to make the limited-service rural hospital demonstration projects permanent. The recommendations should take into consideration the adequacy of the current payment system, staffing and service standards, and quality assurance procedures.

12. Hemophilia Pass-through Extension (Sec. 13419 of the House bill)

Present Law

Additional payments for the costs of administering blood clotting factor to Medicare beneficiaries with hemophilia admitted for hospital stays were applied to clotting factor furnished between June 19, 1990, and December 19, 1991.

House Bill

Additional payments for hemophilia clotting factor would be extended for clotting factor furnished through September 30, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

13. State Hospital Payment Programs (Sec. 13420 of House bill)

Present Law

Under Section 1814(b) of the Social Security Act, the Secretary may provide that Medicare payments to hospitals in a State be made in accordance with a State hospital reimbursement system meeting certain standards. The State system must meet requirements pertaining to the rate of increase in hospital costs per admission for Medicare beneficiaries occurring under the State system relative to the national average.

House Bill

In the case of a State with a Medicare-approved payment system under section 1814(b), no provision of law would be construed as preventing the system from providing that payment for services covered under the State system be made on the basis of rates provided for under the system. The State program would continue to be required to meet the standards for Medicare-approved payment systems under section 1814.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

14. Psychology Services in Hospitals (Sec. 13421 of the House bill)

Present Law

Clinical psychologists are authorized to provide qualified psychologist services to Medicare beneficiaries. In order to participate in Medicare, hospitals must require that all Medicare patients are under the care of a physician, defined to include doctors of medicine, osteopathy, dentists, podiatrists, chiropractors, and optometrists practicing within the scope of State law. Certain States authorize psychologists to supervise the care of inpatients receiving psychologist services.

House Bill

In a State in which such supervision is authorized by State law, the care of hospital inpatients receiving qualified psychologist services could be supervised by a clinical psychologist with respect to such services to the extent permitted by State law.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

15. Graduate Medical Education Payments in Hospital-Owned Community Health Centers (Sec. 13422 of the House bill)

Present Law

Additional payments to hospitals for the indirect costs of medical education are based on the ratio of interns and residents at the hospital to the number of beds in the hospital. Interns and residents training in a hospital outpatient department are included for purposes of determining the ratio.

House Bill

Services of an intern or resident in a community health center (as defined in the Public Health Service Act) that is wholly owned or controlled by a hospital would be counted for purposes of determining the hospital's intern and resident-to-bed ratio if the hospital incurs all or substantially all of the cost of such services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

16. Treatment of Certain Military Facilities (Sec. 13423 of the House bill)

Present Law

Other than Indian Health Service hospitals, hospitals owned by, or under contract to, the Federal government are not eligible for reimbursement under Medicare. Uniformed services treatment facilities are private hospitals under contract to the Federal government and are not eligible for reimbursement under Medicare for services provided to individuals eligible for Department of Defense health programs. The Assistant Secretary of Defense for Health Affairs has been directed to prepare a report on joint military/civilian health centers.

House Bill

The Secretary would be prohibited from taking action to recover certain amounts paid by Medicare to uniformed services treatment facilities in Boston, Baltimore, and Seattle for services that were provided between October 1, 1986, and December 31, 1989, to members of the uniformed services or their dependents who were also eligible for Medicare except to the extent that funds are made available for that purpose under the fiscal year 1993 Department of Defense Appropriations Act. The Secretary, in consultation with the Secretary of Defense and the Secretary of Veterans Affairs, would be required to conduct a study of the feasibility and desirability of establishing joint medical facilities among the Department of Defense, Department of Veterans Affairs, and other public and private entities and report to Congress by October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Epilepsy DRG (Sec. 13424 of the House bill)

Present Law

The Secretary is required to establish and maintain classifications of inpatient hospital discharges by diagnosis related group (DRG) and a methodology for classifying specific hospital discharges within these groups.

House Bill

The Secretary would be required to (1) complete the appropriate analyses of Medicare inpatient claims data for patients with intractable epilepsy admitted to the hospital for a comprehensive medical evaluation including intensive neurodiagnostic monitoring and (2) determine the most appropriate mechanism to account for the resource requirements of these patients beginning with

discharges occurring during fiscal year 1995. In carrying out these requirements, the Secretary would be required to consult with the ProPAC and national organizations that represent individuals with epilepsy or those who provide specialized medical services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

18. Hospice Information to Beneficiaries (Sec. 13426 of the House bill)

Present Law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Skilled nursing facilities (SNFs) are required to provide each resident at the time of admission with a written statement of rights. SNFs must also inform each resident of services available and of the related charges for services, including any charges not covered under Medicare or by the facility's basic per diem charge.

Hospitals are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries. Conditions of participation for discharge planning in hospitals require an evaluation of a patient's likely need for appropriate post-hospital services and the availability of those services.

House Bill

Skilled nursing facilities would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare-participating hospice is located in the geographic area of the SNF or it is common medical practice to refer patients to hospices out of the area. SNFs would be required to provide the information to all beneficiaries at the time of admission as part of the oral and written statement of rights.

Hospital conditions of participation with respect to discharge planning would be modified to require an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Part A Premium (Sec. 13427 of the House bill)

Present Law

In general, individuals become entitled to benefits under Medicare Part A when they reach age 65 and are also eligible for monthly Social Security retirement or survivor benefits or railroad retirement benefits. Individuals ages 65 or over who are not entitled to benefits under Part A may enroll in the program if they pay a monthly premium. The monthly premium is based upon the actuarial value of benefits under Part A.

House Bill

The Part A premium would be reduced, on a phased-in basis, for individuals with credits for 30 or more quarters paid into the Social Security system, and the spouses of such individuals. The Part A premium would be reduced by 25 percent in 1994, by 30 percent in 1995, by 35 percent in 1996, by 40 percent in 1997, and by 45 percent in 1998 and subsequent years. The reduction in Part A premium payments would also apply to the surviving spouse, or divorced spouse of an individual who had at least 30 quarters of coverage under the Social Security system.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

20. Periodic Updates to Salary Equivalency Guidelines (Sec. 13428 of the House bill)

Present Law

Skilled nursing facilities and other providers may provide physical, respiratory and other therapy services to patients by contracting with independent therapists or companies that employ such therapists. Medicare reimbursement is limited to no more than what Medicare would pay if the therapist was on salary as an employee of the provider. Salary equivalency guidelines, developed by HCFA to determine Medicare reimbursement for physical and rehabilitation therapy provided under such arrangements, are currently based upon 1982 data.

House Bill

The Secretary would be required to recalculate and issue updated salary equivalency guidelines for physical and respiratory therapy services, based upon data appropriate for services provided in nursing homes, using timely and accurate data. The updated guidelines should be issued by no later than December 31, 1993, effective for cost reporting periods beginning on or after July 1, 1993, and every three years thereafter.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

21. Extension of Application Deadline for Certain Reclassified Hospitals (Sec. 13429 of the House bill)

Present Law

Hospitals may apply to the Medicare Geographic Reclassification Review Board for a change in geographic classification under the prospective payment system. Hospitals requesting a change for payments in a fiscal year must submit an application to the Board not later than the first day of the preceding fiscal year.

House Bill

Hospitals that have been reclassified from urban to rural as a result of revisions to the Metropolitan Statistical Area definitions issued by the Office of Management and Budget on December 28, 1992, may submit applications for reclassification in fiscal year 1994 to the Medicare Geographic Classification Review Board. Applications must be submitted not later than 60 days after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

22. Clarification of DRG Window (Sec. 13430 of the House bill)

Present Law

Services provided by a hospital (or an entity wholly owned or operated by the hospital) to an inpatient of a hospital during the three days prior to admission are not separately reimbursed under part B of Medicare if they are diagnostic services or otherwise related to the admission.

House Bill

The DRG window provision would not apply to hospitals that are not paid on the basis of diagnosis related groups (DRGs). Other minor technical corrections would be made to Part A.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

23. Skilled Nursing Facilities (Sec. 7422 of Senate amendment)

Present Law

A skilled nursing facility may not require individuals to waive their rights to Medicare or Medicaid benefits or to require assurance that such individuals are not eligible for, or will not apply for, benefits under Medicare or Medicaid. A similar provision applicable to nursing facilities is in the Medicaid law.

House Bill

No provision.

Senate Amendment

Skilled nursing facilities would be prohibited from requiring individuals applying to reside in the facility, or family members of such individuals, to provide any financial information other than to identify the source of payment the individual intends to use.

Conference Agreement

The conference agreement does not include the Senate amendment.

SUBTITLE C—MEDICARE

AMENDMENTS RELATING TO PART B

1. Updates for Physician Services (Secs. 13431 and 5001 of House bill; sec. 7201 of Senate amendment)

Present Law

Under current law, payments for services covered under Part B are generally updated each year by an inflation index. Prior to 1984, physician fees were updated annually by the Medicare Economic Index (MEI). The MEI measures inflation in the cost of providing physician services. From 1984 through 1991, the MEI update was generally set in reconciliation legislation. The MEI is currently estimated to be 2.6 percent for 1994 and 2.7 percent for 1995.

Beginning in 1992, Medicare fees for physician services are updated annually by a default formula. The update is based on two things: (a) the MEI; and (b) a comparison of actual physician spending in a base period compared to an expenditure goal known as the Medicare Volume Performance Standard (MVPS). Separate goals are set for surgical and non-surgical services.

If the MVPS was exceeded in the base period, the update for services within the category is equal to the MEI reduced by the percentage by which the target was exceeded. If expenditures were less than the MVPS, the update is the MEI increased by the percentage by which expenditures in the category were below the target.

Under the default formula, the estimated 1994 increase would be 12.2% for surgical services and 6.6% for non-surgical services.

House Bill

W&M: The Medicare Economic Index (MEI) would be deemed to be zero for 1994 and 1995. Physician fees still would be adjusted by the percentage by which spending under the Medicare Volume Performance Standard system is above or below the goals established.

E&C: The default update otherwise applicable to all non-surgical services for calendar year 1994, except primary care services, is reduced by 2 percentage points, and the update for surgical services is reduced by 3 percentage points.

Senate Amendment

The default updates would be reduced by 8.0 percentage points for surgical services, 4.4 percentage points for non-surgical services, except for primary care, which would receive the full update under current law for non-surgical services.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment. The provision reduces the default update for the fee schedule conversion factor for 1994 and 1995. For 1994, the default update is reduced by 3.6 percentage points for surgical services. The default update is reduced by 2.6 percentage points for all other services (including anesthesia services) with the exception of primary care services which receive the full default update.

For 1995, the default update is reduced by 2.7 percentage points for surgical and all other services (including anesthesia services) with the exception of primary care services which receive the full default update.

2. Reduction in Performance Standard Rate of Increase and Increase in Maximum Reduction Permitted in Default Update and Creation of Primary Care Category (Secs. 5002 and 5003 of House bill; and sec. 7202 of Senate amendment)

Present Law

(a) Establishment of Primary Care Category.—The Secretary is required to establish separate Medicare Volume Performance Standards (MVPSs) for two categories of physicians' services. Currently, there are separate volume performance standards for surgical and non-surgical services.

(b) Reduction in Default MVPS and Updates.—The Secretary is required to establish a MVPS for each fiscal year for surgical services and non-surgical services. The rate of increase is determined by a formula that takes into account inflation, changes in program enrollment, historic average increases in the volume and intensity of services, and changes in law or regulations, reduced by a specified performance standard factor. For fiscal year 1994 the performance standard factor is 2 percentage points.

Under the default update formula, the annual MEI increase is reduced if actual expenditures in the base period exceeded the MVPS for that period. However, the update in 1994 and 1995 can be no lower than the MEI minus 2.5 percentage points; in subsequent years it can be no lower than the MEI minus 3 percentage points.

House Bill

(a) Establishment of Primary Care Category.—W&M: No provision.

E&C: Effective for Fiscal Year 1994, the Secretary would establish a separate category for primary care services (as defined in Section 1842(i)(4)) with respect to the application of a volume performance standard. The default update formula would be applied to the new primary care services category for calendar year 1996 and all succeeding years.

(b) Reduction in Default MVPS and Updates.—W&M: No provision.

E&C: The performance standard factor for fiscal year 1994 would be increased to 3 and one-half percentage points, and to 4 percentage points for each subsequent fiscal year. In addition, the allowable reduction in the default update formula related to the Medicare Volume Performance Standard would be increased from 3 percentage points in calendar year 1994 to 5 percentage points in calendar year 1995 and any succeeding year.

Senate Amendment

(a) Establishment of Primary Care Category.—Identical to E&C provision.

(b) Reduction in Default MVPS and Updates.—Identical to E&C, except that the performance standard factor for primary care would be zero.

Conference Agreement

(a) Establishment of Primary Care Category.—The conference agreement includes the House E&C provision with an amendment relating to anesthesia services. The agreement specifies that for purposes of calculating the Medicare volume performance standards, anesthesia services are included in the surgical services category beginning in fiscal year 1994. This will affect calculation of the conversion factor update beginning with calendar year 1996. The anesthesia services moved into the category of surgical services are those that are paid on the basis of base and time units.

(b) Reduction in Default MVPS and Updates.—The conference agreement includes the House E&C provision.

3. Phased-in Reduction in Practice Expense Relative Value Units for Certain Services (Sec. 5004 of House bill; and sec. 7203 of Senate amendment)

Present Law

Under current law Medicare payments for physicians' services are based on three components: 1) a work component; 2) a practice expense component; and 3) a malpractice component. Relative values are determined for each component and combined into a single relative value for each service. While the relative values for the work component of physicians' services are based on resource costs, relative values for practice and malpractice expenses are based on historic charges.

House Bill

W&M: No provision.

E&C: The Secretary would phase-in reductions to the practice expense relative value units (RVUs) for certain services. Specifically, for a given service, the number of practice expense RVUs would be reduced if they exceed 110 percent of the number of work RVUs. Beginning in 1994, 25 percent of the difference between practice cost RVUs and work RVUs would be eliminated. Further differences would be eliminated in 25 percent increments over the succeeding two years. In no case would practice cost RVUs for any service be reduced below 110 percent of the work RVUs.

Reductions in practice cost RVUs would not be applied to services without a work component, to anesthesia and radiology services or to services provided in an office setting at least 75 percent of the time.

The Secretary would be required to develop a methodology for implementing in 1997 a resource-based system for determining practice expense RVUs. The Secretary would be required to submit a report to Congress on the methodology by June 30, 1996.

Senate Amendment

Similar to E&C provision except that anesthesiology and radiology services would not be exempt from the application of the rules for reducing RVUs.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment to specify that the practice expense relative value units may not be reduced to a number less than 128 percent of the number of work relative value units. The agreement does not require the Secretary to develop a resource-based system for determining practice expense RVUs.

4. Limitation on Payments for Medically Directed CRNAs and for the Anesthesia Care Team (Secs. 13471 and 5005 of House bill; sec. 7204 of Senate amendment)

Present Law

A significant proportion of anesthesia services in the United States are provided by anesthesia care teams consisting of an anesthesiologist supervising two or more certified registered nurse anesthetists (CRNAs). When anesthesia services are provided by a team, Medicare payments to the supervising anesthesiologist are based on reduced base and time units. The law specifies that the base units are reduced by 10 percent for supervision of two concurrent procedures, 25 percent for supervision of three concurrent procedures, and forty percent for supervision of four concurrent procedures. When services are personally performed by an anesthesiologist, time units are measured in fifteen minute periods; for medically-directed services, time units are measured in on 30 minute intervals. The law specifies that time units are to be counted based on actual time rather than rounded to full time units.

Payments to the CRNA are based on a separate fee schedule with its own dollar conversion factor. Time units for medically-directed services are based on 30 minute intervals.

As a result of this payment policy, payments for a procedure to an anesthesia care team are significantly higher than payment would be to a single anesthesiologist. According to the Physician Payment Review Commission (PPRC), in most payment areas, payments to a team consisting of one anesthesiologist supervising two CRNAs are 20 percent to 30 percent higher than payments to a single anesthesiologist.

OBRA 90 set payment levels for medically directed CRNAs at 70 percent of the amount paid to physicians. These services are paid on the basis of a fee schedule which contains a dollar conversion factor. OBRA 90 specified the conversion factors through 1997 based on the amount physicians were estimated to be paid for these services. Since that time, however, the actual amounts paid to physicians for these services have been lowered as a result of refinements to physician payments. As a result, the dollar conversion factors specified in the law are greater than 70 percent.

House Bill

W&M: The conversion factor used to determine payments to medically-directed CRNAs would be frozen at $10.75, from 1993 through 1997. In subsequent years, the percentage update for these services would be the same as for physician anesthesia services.

E&C: For anesthesia services provided by anesthesia care teams on or after January 1, 1994, payments would be limited to 120 percent of the fee that would be made to a single anesthesiologist in the same locality. This anesthesia care team fee for a procedure would be equally divided between the supervising anesthesiologist and the CRNA. In each of the succeeding four calendar years the anesthesia care team payment would be reduced by 5 percent, so that in 1998, payments to the anesthesia care team would be limited to 100 percent of the fee for a single anesthesiologist in the same locality. The provision would also repeal the reduction in the number of base units paid to anesthesiologists medically directing CRNAs.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment. For services furnished on or after January 1, 1994, the methodology for determining base and time units is the same for services furnished by physicians, for physician medical direction of two, three or four CRNAs, or for services furnished by CRNAs (whether or not medically directed). The calculation is to be based on the methodology currently in effect for anesthesiology services furnished by physicians.

5. Reinstating Separate Payment for the Interpretation of Electrocardiograms (EKGs) (Secs. 13441 and 5007 of House bill; sec. 7205 of Senate amendment)

Present Law

OBRA 90 eliminated separate payments for interpretation of EKGs performed or ordered to be performed as part of, or in conjunction with, a medical visit or consultation, effective January 1, 1992.

House Bill

W&M: The prohibition on separate payments for interpretation of EKGs would be repealed. Separate fee schedule payment amounts for interpreting EKGs in all settings would be established. The proposal provides for several adjustments to the fee schedule in order to comply with budget neutrality rules.

The Secretary would subtract the relative value units for EKG interpretation that were bundled into medical visits and consultation relative values. The Secretary would be required to reduce the relative value for all services (except anesthesia services) so that beginning in 1996 expenditures under the fee schedule would not exceed those which would have been made in the absence of this provision. For anesthesia services, the adjustment would be made to the conversion factor. Adjustments also would be made to the historical payment basis in the fee schedule to account for the fact that more EKG interpretations would be paid at the full fee schedule amount than medical visits and consultations during the transition.

E&C: Identical provision.

Senate Amendment

Identical to W&M provision.

Conference Agreement

The conference agreement includes the Senate amendment. The conferees are concerned about the impact of the restoration of separate payments for the interpretation of EKGs on payments for services provided in hospital emergency rooms. The conferees urge HCFA, when implementing this provision, to reexamine the issue of providing payment to emergency physicians for the interpretation of EKGs provided in emergency rooms.

6. Payments for New Physicians and Practitioners (Secs. 13432 and 5008 of House bill; sec. 7206 of Senate amendment)

Present Law

New physicians and practitioners receive reduced payments during their first four years of practice. These reductions were imposed on the first two years of practice by OBRA 87 and extended to the third and fourth years of practice in OBRA 90. Payments are 80 percent of the amount otherwise recognized during the first year of practice, 85 percent during the second year, 90 percent during the third year, and 95 percent during the fourth year. These reductions apply to payments under the fee schedule, prevailing charges, or other fee schedule payment amounts.

House Bill

W&M: The reductions in payments to new physicians and practitioners would be repealed.

The Secretary would reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) so that Part B expenditures would not exceed the amount of expenditures that would have been made in the absence of this provision. The specified values and amounts are: (i) the relative values for services (except for anesthesia services, where the reduction would be applied to the conversion factor); (ii) the historical payment portion of the 1994 transition payments; and (iii) the prevailing charge or fee schedule amounts to be applied for services of a health care practitioner (as that term was defined before enactment of this Act).

E&C: Identical provision.

Senate Amendment

Identical provision.

Conference Agreement

The conference agreement includes the Senate amendment.

7. Retaining Payment for Actual Anesthesia Time (Secs. 13443 and 5006 of House bill)

Present Law

Anesthesia services are paid on the basis of a fee schedule. One component of the fee schedule is actual time spent administering anesthesia. In the proposed rule implementing the RBRVS physician fee schedule, the Health Care Financing Administration announced its intention to eliminate the use of actual time and substitute average time. The final rule stated that actual time would continue to be used temporarily while other methods of accounting for time in the payment of anesthesia services were being analyzed.

House Bill

W&M: The Secretary could not change the methodology of calculating anesthesia time in the fee schedules for anesthesia services from the methodology that applied as of January 1, 1992.

E&C: Similar provision, except specifies that for services furnished on or after January 1, 1994, the Secretary may not modify the methodology in effect as of January 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provisions.

8. Geographic Adjustment Refinements (Secs. 13444 and 5009 of House bill)

Present Law

(a) Use of More Recent Data.—One of the components of the Medicare fee schedule for physicians' services is a geographic adjustment which is designed to measure local variations in the costs of practicing medicine. Separate geographic cost of practice indexes (GPCIs) have been developed for each of the three components of the relative value unit, namely a work GPCI, a practice expense GPCI, and a malpractice GPCI. A separate geographic adjustment is made for each component. The three adjusted components are added together to produce an indexed relative value for the locality. The Secretary is required to review the GPCI values at least every three years. HCFA has previously indicated that they intend to revise the GPCI by 1995. The current index is based in part on 1980 data from the Bureau of Census.

(b) Development of Criteria for Use in Determining Payment Localities.—Geographic adjustments for physician payments are based on geographic localities. In general, the current localities were defined when Medicare was initially established in 1965, and have not been significantly revised since then.

House Bill

(a) Use of More Recent Data.—W&M: The Secretary would review and revise the geographic practice cost index by January 1, 1995 using the most recent data available. The Secretary would consult with appropriate representatives of physicians in reviewing the adjustment factors and indices. The Secretary would report to the Congress on the construction of the index by April 1, 1994.

The Secretary would conduct a study and, within one year of enactment, report to the Congress on: (1) the data necessary to review and revise the GPCI indices; (2) any limitations on the availability of data necessary to review and revise the indices at least every 3 years; (3) ways to address such limitations, with attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and (4) the costs of developing more accurate and timely data sources.

E&C: Similar provision except does not require the April 1, 1994 report to Congress.

(b) Development of Criteria for Use in Determining Payment Localities.—W&M: The Physician Payment Review Commission would conduct a study to develop criteria that would be used for redefining the localities used within States for adjusting physician fees under the RB RVS. The Commission would include the results of the study in its 1994 annual report to the Congress.

E&C: No provision.

Senate Amendment

(a) Use of More Recent Data.—No provision.

(b) Development of Criteria for Use in Determining Payment Localities.—No provision.

Conference Agreement

(a) Use of More Recent Data.—The conference agreement does not include the House provision.

(b) Development of Criteria for Use in Determining Payment Localities.—The conference agreement does not include the House provision.

9. Extra-billing (Secs. 13445 and 5010 of House bill; sec. 7207 of Senate amendment)

Present Law

(a) Limitations on Beneficiary Liability.—OBRA 89 established limits on the amount above the Medicare approved payment amount nonparticipating physicians may charge Medicare beneficiaries. OBRA 89 permitted the Secretary to impose sanctions on physicians who knowingly and willfully bill above the limiting charge on a repeated basis. However, it did not specifically prohibit physicians from billing beneficiaries more than the limiting charge. OBRA 89 also did not require physicians to make refunds to beneficiaries when they billed above the limiting charge and did not absolve beneficiaries from liability for amounts billed above the Medicare limiting charge.

(b) Pre-Payment Screening of Claims.—Carriers are not currently required by law to screen unassigned claims submitted by nonparticipating physicians prior to payment in order to determine whether the amount billed exceeds the limiting charge.

(c) Information Regarding Limiting Charges.—There is currently no requirement that beneficiaries be given information on the Explanation of Medicare Benefits (EOMB) form if physicians have charged beneficiaries in excess of the limiting charge.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—The five percent differential in payments to nonparticipating physicians and suppliers does not apply to nonphysician services furnished under the Medicare physician fee schedule. These services generally consist of the technical components of services, such as services rendered by free-standing radiology centers or independent physiological laboratories.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.—There is some ambiguity in current law regarding the application of mandatory assignment rules for certain nonphysician practitioners.

House Bill

(a) Limitations on Beneficiary Liability.—W&M: Nonparticipating physicians and nonparticipating suppliers would be prohibited from billing or collecting from any person an actual charge in excess of the Medicare limiting charge. No person would be liable for payment of any amount billed in excess of the limiting charge. Physicians, suppliers and other persons who bill or collect amounts exceeding the limiting charge would be required to: (1) refund the full amount collected in excess of the limiting charge; (2) reduce the outstanding balance owed for other items and services furnished to the individual by the amount of the charge exceeding the limiting charge and refund any amount in excess of the outstanding balance; or (3) in the case of where the excess charges have not been collected by the physician, reduce the actual charge billed for the service to the amount approved by Medicare.

The physician would be required to refund or credit excess charges within 30 days after the date the physician, supplier, or other person is notified by the carrier of the violation.

A physician who (1) knowingly and willfully bills or collects amounts in excess of the limiting charge on a repeated basis; or (2) fails to comply with the refund requirements would be subject to sanctions in accordance with Section 1842(j) of the Social Security Act.

E&C: Identical provision.

(b) Pre-Payment Screening of Claims.—W&M: Carriers would be required to screen 100 percent of unassigned claims submitted by nonparticipating physicians prior to making payment to determine whether the amount billed exceeds the limiting charge. Carriers would be required to notify a physician within 30 days if the physician has billed in excess of the limiting charge.

E&C: Identical provision.

(c) Information Regarding Limiting Charges.—W&M: Carriers would be required to provide limiting charge information on the Explanation of Medicare Benefits form after the submission of an unassigned claim which exceeds the limiting charge, and to include on such forms information relating to the beneficiary's right to a refund of any excess amounts collected.

The Secretary would report to the Congress annually on the extent to which annual charges exceeded limiting charges, the number and types of services involved, and the average amount of excess charges.

E&C: Identical provision.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—W&M: The five percent differential between payments to participating and nonparticipating physicians and suppliers and limiting charge restrictions would apply to: the technical components of nonphysician services paid on the basis of the physician fee schedule, services of nonparticipating suppliers or other persons who furnish a physician's service that is paid under the physician fee schedule, and services that would be paid under the fee schedule but have been excluded from the fee schedule by the Secretary.

E&C: Identical provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.—W&M: Specifies that physicians' assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse-midwives, clinical social workers and clinical psychologists could only bill for services on an assignment-related basis and that no person is liable for amounts billed in violation of the assignment-related basis. The Secretary could impose sanctions under Section 1842(j) of the Social Security Act on a practitioner who knowingly and willfully bills in violation of this requirement.

E&C: Identical provision.

Senate Amendment

(a) Limitations on Beneficiary Liability.—Identical provision.

(b) Pre-Payment Screening of Claims.—Identical provision.

(c) Information Regarding Limiting Charges.—Identical provision.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—Identical provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.—Identical provision.

Conference Agreement

(a) Limitations on Beneficiary Liability.—The conference agreement does not include the House or Senate provisions.

(b) Pre-Payment Screening of Claims.—The conference agreement does not include the House or Senate provisions.

(c) Information Regarding Limiting Charges.—The conference agreement does not include the House or Senate provisions.

(d) Applying the Limiting Charge to Nonphysician Services Provided Under the Physician Fee Schedule.—The conference agreement includes the House provision.

(e) Clarification of Mandatory Assignment Rules for Certain Practitioners.—The conference agreement does not include the House or Senate provisions.

10. Development of RB RVS for Pediatric Services (Secs. 13446 and 5011 of House bill)

Present Law

No provision.

During the development of the RB RVS by Harvard University, pediatric services were included in the initial study. These data were not fully refined by Harvard nor were they refined by the Secretary during further development of the RB RVS.

House Bill

W&M: The Secretary would fully develop and refine by July 1, 1994 the relative values for the full range of physicians' pediatric services. The Secretary would conduct a study of the relative values for pediatric and other physicians' services to determine whether there are significant variations in the resources used in providing similar services to different populations. In conducting the study, the Secretary would consult with appropriate organizations representing pediatricians and other physicians, and submit a report to the Congress by July 1, 1994.

E&C: Similar to W&M except that the Secretary is also directed to consult with physical and occupational therapists.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

11. Antigens Under RB RVS (Secs. 13447 and 5012 of House bill)

Present Law

In general, physician services are paid under the RB RVS. Antigens used in allergy immunotherapy currently are paid on a reasonable charge basis.

House Bill

W&M: Payments for antigens and related services would be paid under the RB RVS physician fee schedule, effective January 1, 1995.

E&C: Identical to W&M but would be effective on January 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision with an amendment providing for a budget neutrality adjustment in 1995.

12. Claims Relating to Physician Services (Secs. 13448 and 5013 of House bill)

Present Law

The law does not specifically prohibit the imposition of carrier user fees.

OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

House Bill

W&M: The Secretary and carriers would be prohibited from imposing any fees related to the filing of claims for physicians' services, for claims errors or denials, for administrative appeals, for obtaining unique identifier numbers, or for responding to inquiries concerning the status of pending claims.

The Secretary would be permitted to recognize substitute billing arrangements between two physicians. In order to be recognized, such substitute billing arrangements would be required either to be informal, reciprocal, coverage agreements or per diem or other fee-for-time agreements. The duration of such agreements would be limited to 60 continuous days, and claims for services provided pursuant to such agreements would be required to include the unique identifying number of both physicians. These requirements would be effective for services provided under such arrangements in the first month beginning more than 60 days after the enactment of this Act.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

13. Miscellaneous Technical Corrections (Secs. 13449 and 5014 of House bill)

Present Law

(a) Overvalued Procedures.—OBRA 90 subjected all unsurveyed overvalued services to

a 6.5 percent reduction unless the law specifically exempted them from the reduction. Unsurveyed services are those not included in earlier surveys conducted to determine relative values of physicians' services; these unsurveyed services were considered to be overvalued. The list of services specifically exempted from the 6.5 percent reduction contained certain errors.

(b) Radiology Services.—OBRA 90 reduced the locally defined conversion factors for radiology services paid on the basis of the radiology fee schedule. The maximum reduction was not to exceed 9.5 percent. However, OBRA 90 contained an error that would increase conversion factors in some localities.

(c) Anesthesia Services.—OBRA 87 established a fee schedule for anesthesia services based on a relative value guide for anesthesia services and local conversion factors. OBRA 90 reduced the local conversion factors. The maximum reduction was not to exceed 9.5 percent. However OBRA 90 contained an error that would increase the conversion factors in some localities.

(d) Assistants at Surgery.—OBRA 90 specified that payment to a physician serving as an assistant at surgery cannot exceed 16 percent of the payment made for the global surgical service.

(e) Technical Components of Diagnostic Services.—OBRA 90 capped the reasonable charge for technical components of specified diagnostic services at the national median charge for the service in all localities.

(f) Statewide Fee Schedules.—OBRA 90 required the Secretary to treat the States of Nebraska and Oklahoma as statewide payment localities if they met certain requirements specified in the law. Each member of the Congressional delegation from those States and organizations representing urban and rural physicians would have to agree to the statewide locality provision. This requirement raised constitutional concerns relating to the separation of powers between the executive and legislative branches.

(g) Reciprocal Billing Arrangements.—OBRA 90 permitted physicians to submit a claim for a service provided by a second physician when the first physician was not available to provide the service. Such billing was permitted only in cases where the arrangement is temporary and reciprocal.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—OBRA 90 required the Secretary to study the effects of aggregating physician claims and report to the Congress by December 31, 1992.

(i) Additional Technical Amendments.—The law requires the Secretary to report to Congress on modifying visit codes to reflect time. The law also authorizes bonus payments to carriers who increase the proportion of physicians in the locality who are participating physicians.

House Bill

(a) Overvalued Procedures.—W&M: Some procedures would be deleted from the list of exempted services and errors in the names of other services would be corrected. The procedures that would be deleted from the list of exempted services are: lobectomy; enterectomy; colectomy; cholecystectomy; and sacral laminectomy.

E&C: Identical provision.

(b) Radiology Services.—W&M: The conversion factors below the maximum reduction amount would not be permitted to be increased. The provision makes other technical changes to OBRA 90.

E&C: Identical provision.

(c) Anesthesia Services.—W&M: The conversion factors below the maximum reduction amount would not be permitted to increase. The provision makes other technical changes to OBRA 90.

E&C: Identical provision.

(d) Assistants at Surgery.—W&M: The application of the extra-billing limits to physicians serving as assistants at surgery would be clarified.

E&C: Identical provision.

(e) Technical Components of Diagnostic Services.—W&M: The limits on payment for the technical component of diagnostic services would not apply to services whose payments were reduced under the OBRA 89 overvalued procedure list.

E&C: Identical provision.

(f) Statewide Fee Schedules.—W&M: The OBRA 90 requirement for agreement from members of Congress would be eliminated, and Nebraska and Oklahoma would be statewide localities beginning in 1991.

E&C: Identical provision.

(g) Reciprocal Billing Arrangements.—W&M: OBRA 90 would be amended to clarify the services that may be covered under reciprocal billing. All physician services, including services incident to physician services, would be covered. The provision would also permit reciprocal billing arrangements that are both informal or reciprocal (as in current law) or involve per diem or other fee-for-time compensation.

E&C: No provision. (See Item 12.)

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—W&M: The date that the study must be submitted to the Congress would be changed from December 31, 1992 to December 31, 1993.

A number of technical and drafting errors contained in OBRA 90 would be made through minor and conforming amendments.

E&C: Identical provision.

(i) Additional Technical Amendments.—W&M: The provision would make additional technical changes.

E&C: Similar provision. In addition, the provision would delete the requirement for a report to Congress on modifying visit codes to reflect time; it would also delete the provision authorizing carrier bonus payments.

Senate Amendment

(a) Overvalued Procedures.—No provision.

(b) Radiology Services.—No provision.

(c) Anesthesia Services.—No provision.

(d) Assistants at Surgery.—No provision.

(e) Technical Components of Diagnostic Services.—No provision.

(f) Statewide Fee Schedules.—No provision.

(g) Reciprocal Billing Arrangements.—No provision.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—No provision.

(i) Additional Technical Amendments.—No provision

Conference Agreement

(a) Overvalued Procedures.—The conference agreement does not include the House provision.

(b) Radiology Services.—The conference agreement does not include the House provision.

(c) Anesthesia Services.—The conference agreement does not include the House provision.

(d) Assistants at Surgery.—The conference agreement does not include the House provision.

(e) Technical Components of Diagnostic Services.—The conference agreement does not include the House provision.

(f) Statewide Fee Schedules.—The conference agreement does not include the House provision.

(g) Reciprocal Billing Arrangements.—The conference agreement does not include the House provision.

(h) Study of Aggregation Rule for Claims of Similar Physician Services.—The conference agreement does not include the House provision.

(i) Additional Technical Amendments.—The conference agreement does not include the House provision.

14. Extension of 10 Percent Reduction in Payments for Capital-Related Costs of Outpatient Hospital Services (Sec. 5021 of House bill; sec. 7221 of Senate amendment)

Present Law

Medicare pays the capital costs of hospitals allocated to outpatient departments on the basis of reasonable cost principles, subject to a 10 percent reduction through fiscal year 1995. Sole community hospitals and primary care hospitals are exempt from these reductions.

House Bill

W&M: No provision.

E&C: The 10 percent reduction for such hospital outpatient capital payments would be extended through fiscal year 1998.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the House provision.

15. Extension of Reduction in Payments for Cost Related Outpatient Hospital Services (Sec. 5022 of House bill; sec. 7222 of Senate amendment)

Present Law

Under current law, Medicare payments for hospital outpatient services made on a reasonable cost basis and the cost portion of outpatient services paid on the basis of a blended amount are both reduced by 5.8 percent through fiscal year 1995.

House Bill

W&M: No provision.

E&C: The bill extends the 5.8 percent reduction in such payments through fiscal year 1998.

Senate Amendment

Identical to E&C provision.

Conference Agreement

The conference agreement includes the Senate amendment.

16. Updates for Ambulatory Surgical Centers (Secs. 13433 and 5023 of House bill)

Present Law

Payments for services in ASCs do not have a statutory annual update. However, the Secretary has generally provided for an update equal to the CPI–U under the Secretary's general authority for determining reasonable costs and charges.

House Bill

W&M: Payments for services in ASCs would not be updated in 1994 and 1995.

E&C: The update to ambulatory surgery payments would be suspended for fiscal year 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision freezing payments for FY's 1994 and 1995.

17. Designation of Certain Hospitals As Eye and Ear Hospitals (Secs. 13451 and 5024 of House bill)

Present Law

Hospitals designated as eye, or as eye and ear hospitals, receive a blended payment

rate for ambulatory surgery for which 75 percent is based on the hospital's costs and 25 percent is based on the rate paid to freestanding Ambulatory Surgery Centers (ASCs). This special rule applies for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995. In general, the blended payment rate to hospitals for outpatient surgery is based 42 percent on costs and 58 percent on the ASC rate. To receive designation as an eye, or eye and ear hospital, a facility must specialize in these services, receive more than 30 percent of its revenue from outpatient services, and must have been an eye, or an eye and ear hospital, on October 1, 1987.

House Bill

W&M: The eligibility for designation as an eye, or as an eye and ear hospital, would be extended to hospitals that otherwise meet the criteria but, on October 1, 1987, operated as a physically separate, or distinct eye and ear unit of a general acute care hospital, which has sold or otherwise disposed of a substantial portion of its other acute care operations, effective for portions of cost-reporting periods beginning on or after January 1, 1994.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

18. Payment Limits for Intraocular Lenses (IOLs) (Secs. 13452 and 5025 of House bill; sec. 7223(a) of Senate amendment)

Present Law

OBRA 90 established a payment limit of $200 for intraocular lenses inserted during 1991 and 1992.

House Bill

W&M: The $200 payment limit for IOLs would be extended for two years, through 1994.

The Secretary would conduct a study of the recent costs of IOLs provided to Medicare beneficiaries. Included in the study would be an examination of issues related to new technology lenses. The Secretary would submit a report on the study, including recommendations on the reasonable costs and charges for IOLs, within one year of the date of enactment.

E&C: Identical provision, except that it does not include the study.

Senate Amendment

The $200 payment limit would be maintained until December 31, 1993. The provision would establish payments for intraocular lenses inserted in an ambulatory surgery center during or subsequent to cataract surgery on or after January 1, 1994 and on or before December 31, 1998 at $150.

Conference Agreement

The conference agreement includes the Senate amendment.

19. Technical Amendments for Ambulatory Surgical Services (Secs. 13453 and 5026 of House bill; secs. 7223(b)(1), (b)(2), and (b)(3) of Senate amendment)

Present Law

(a) Payment Amounts.—Current law requires the Secretary to update ambulatory surgery center payment rates by July 1, 1987 and annually thereafter, if the Secretary determines that an update is appropriate.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—OBRA 90 included a provision capping payments for IOLs at $200 in 1991 and 1992. As drafted, the statutory language could be interpreted as limiting payments for cataract surgery to $200. The OBRA 90 conferees also agreed to a provision providing for a process by which the fee for new technology intraocular lenses (IOLs) could be adjusted. Statutory language reflecting this agreement was inadvertently omitted from OBRA 90.

(c) Other Technical Amendments.—OBRA 90 included several technical errors relating to the calculation of the blend amounts for limiting payment in hospital outpatient departments and relating to payments for cataract surgery.

House Bill

(a) Payment Amounts.—W&M: The update for ambulatory surgery services would be established, beginning with fiscal year 1995, at the CPI–U for the twelve-month period ending with March of the preceding year. The Secretary would be required to conduct a survey, based on a representative sample of procedures and facilities, taken not later than January 1, 1994 and updated every five years thereafter, of the actual audited costs of ambulatory surgery facilities. The survey results would be used in establishing payment rates. The Secretary would be required to consult with appropriate trade and professional organizations in updating the list of procedures that can be performed in ambulatory surgery centers.

E&C: Similar provision, except that the survey would be taken not later than January 1, 1995, and that the initial update under this policy would apply to services provided in or after fiscal year 1996.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—W&M: The Secretary would be required, within one year after the date of enactment, to develop and implement a process for reviewing reimbursement for new technology intraocular lenses (IOLs). In order to be considered a new technology IOL, the device would have to be approved by the FDA. The Secretary would also be required to consider specific circumstances in determining whether to adjust the payment amount for new technology IOLs. The provision also would specify the administrative procedures for reviewing and approving new technology IOLs.

E&C: Identical provision.

(c) Other Technical Amendments.—W&M: Certain technical corrections would be made.

E&C: No provision.

Senate Amendment

(a) Payment Amounts.—Similar to E&C provision, except does not include requirement for the update.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—Identical to W&M provision.

(c) Other Technical Amendments.—Identical to W&M provision.

Conference Agreement

(a) Payment Amounts.—The conference agreement does not include the House provision or the Senate amendment.

(b) Adjustments to Payment Amounts for New Technology Intraocular Lenses.—The conference agreement does not include the House provision or Senate amendment.

(c) Other Technical Amendments.—The conference agreement does not include the House provision or the Senate amendment.

20. Payments for Laboratory Services (Secs. 13432(a) and 5061 of House bill; sec. 7262 of Senate amendment)

Present Law

(a) Update.—Medicare payments for clinical laboratory services are made on the basis of local fee schedules that are in place in payment areas designated by the Secretary. The fee schedules are adjusted annually by the increase or decrease in the CPI–U, except that for fiscal years 1991, 1992, and 1993 the update was limited to 2 percent.

(b) Lower Cap on Fee Schedules.—Each fee schedule is limited by a national cap which is currently equal to 88 percent of the median of all the fee schedules established for a particular test.

House Bill

(a) Update.—W&M: The consumer price index (CPI–U) would be deemed to be zero for the purposes of updating these fees in 1994 and 1995.

E&C: The 2 percent annual update policy would be extended through fiscal year 1998.

(b) Lower Cap on Fee Schedules.—W&M: No provision.

E&C: The national cap on the fee schedules for laboratory services would be reduced to 76 percent of the median of all the fee schedules for a particular test.

Senate Amendment

(a) Update.—The update to the clinical laboratory fee schedule would be eliminated from 1994 through 1998.

(b) Lower Cap on Fee Schedules.—Identical to E&C provision.

Conference Agreement

(a) Update.—The conference agreement includes the House W&M provision.

(b) Lower Cap on Fee Schedules.—The conference agreement follows the Senate amendment with an amendment to phase-in the reduction in the cap over a 3-year period. The cap is set at 84 percent of the median in 1994, 80 percent in 1995, and 76 percent in 1996 and thereafter.

21. Updates for Other Part B Items and Services (Sec. 13434 of House bill; sec. 7261(d) of Senate Amendment)

Present Law

Part B services, other than physician services, laboratory services, durable medical equipment, and ASC services, are subject to payment screens or payment caps that are used to determine reasonable costs or reasonable charges. These are updated annually according to a variety of different rules.

House Bill

W&M: All payment screens used to determine reasonable costs or reasonable charges for such services would not be updated in 1994 and 1995. Services affected would include services in Federally Qualified Health Centers, and ambulance services.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

22. Payment for Durable Medical Equipment (Secs. 13432, 5031, and 5032 of the House bill; secs. 7231, 7232 and 7233 of the Senate amendment)

Present Law

(a) Update for DME.—Fees for durable medical equipment, orthotics and prosthetics, and enteral and parenteral services are updated annually by the CPI–U. The CPI–U is currently estimated to be 2.6 percent for 1994 and 1995.

(b) Use of national limits for prosthetics and orthotics.—Medicare currently pays for prosthetics and orthotics on a basis of a fee schedule that has regional floors and ceilings on payments.

(c) Use median to set national limits.—Medicare currently pays for DME on the basis of a fee schedule that has national floors and ceilings. The floor is equal to 85 percent of the weighted average of local payment amounts and the ceiling is equal to 100 percent of the weighted average of local payment amounts. Medicare pays for prosthetics and orthotics on the basis of a fee schedule that has regional floors and ceiling, with the floor equal to 85 percent of the weighted average of local payment amounts and the ceiling equal to 120 percent of the weighted average of local payment amounts.

House Bill

(a) Update for DME.—W&M: Provision would set the update to zero for DME, orthotics and prosthetics, and enteral and parenteral services for 1994 and 1995.

E&C: Provision would eliminate the update for parenteral and enteral nutrients, supplies, and equipment for 1994.

(b) Use of national limits for prosthetics and orthotics.—W&M: No provision.

E&C: Provision would establish national payment limits, based on the median of local payment amounts, for orthotics and prosthetics.

(c) Use median to set national limits.—W&M: No provision.

E&C: Provision would base national payment limits for DME on median of local payment amounts.

Senate Amendment

(a) Update for DME.—No provision.

(b) Use of national limits for prosthetics and orthotics.—Identical to E&C provision.

(c) Use median to set national limits.—Identical to E&C provision.

Conference Agreement

(a) Update for DME.—The conference agreement follows the House provisions with amendments to eliminate updates for orthotics and prosthetics and parenteral and enteral nutrients, supplies, and equipment for FY 1994 and FY 1995.

(b) Use of national limits for prosthetics and orthotics.—The conference agreement does not include the House E&C provision or the Senate amendment.

(c) Use of median to set national limits.—The conference agreement includes the House provision with an amendment to base national payment limits for DME on the median of local payment amounts. The provision regarding application of the median limits to prosthetics and orthotics is not included.

23. Durable Medical Equipment (Secs. 13461, and 5034 of the House bill)

Present Law

(a) Certification of Suppliers.—There are no statutory standards that suppliers of durable medical equipment (DME), prosthetic devices, prosthetics and orthotics, surgical dressings, splints, casts, and other devices for fractures and dislocations, home dialysis supplies, and immunosuppressive drugs must meet in order to supply items to Medicare beneficiaries.

(b) Prohibition Against Multiple Billing Numbers.—No provision.

(c) Standardized Certificates of Medical Necessity.—There are no provisions relating to standardized medical necessity certificates.

(d) Distribution of Certificates of Medical Necessity.—OBRA 90 prohibited suppliers of durable medical equipment from distributing, for commercial purposes, completed or partially completed certificates of medical necessity to physicians or Medicare beneficiaries.

(e) Uniform National Coverage and Utilization Review Requirements.—There are no provisions relating to uniform coverage or utilization review criteria for DME. HCFA is currently in the process of developing uniform coverage and utilization review policies for 100 items.

(f) Studies.—

(i) Use of covered items by disabled beneficiaries.—No provision.

(ii) Variations in quality of equipment.—No provision.

House Bill

(a) Certification of Suppliers.—W&M: Suppliers of medical equipment and supplies (durable medical equipment, prosthetic devices, orthotics and prosthetics, surgical dressings and such other items as the Secretary may determine and home dialysis supplies and equipment and immunosuppressive drugs) will not be reimbursed for these items unless they have a Medicare supplier number. A supplier may not obtain a supplier number for equipment and supplies furnished on or after October 1, 1993, and before December 31, 1994, unless the supplier meets uniform national standards prescribed by the Secretary. By January 1, 1995, the Secretary would revise the standards. The standards would require suppliers to (1) comply with all applicable State and Federal licensure and regulatory requirements; (2) maintain a physical facility and inventory on an appropriate site; (3) have proof of appropriate liability insurance; (4) meet other requirements established by the Secretary. In addition, the requirement for suppliers to obtain a supplier number does not apply to medical equipment and supplies furnished as an incident to a physician's service. The Secretary is prohibited from delegating the responsibility to determine whether the supplier meets the standards necessary to obtain a supplier number.

E&C: Identical to W&M provision, with the exception that application begins one year later.

(b) Prohibition Against Multiple Billing Numbers.—W&M: The Secretary would be prohibited from issuing more than one billing number to any supplier, unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

E&C: Identical to W&M provision.

(c) Standardized Certificates of Medical Necessity.—W&M: The Secretary would be required to develop by October 1, 1993, one or more standardized certificates of medical necessity for medical equipment and supplies if a certificate of medical necessity is required by the Secretary.

E&C: Identical to W&M provision, with the exception that requirement applies one year later.

(d) Distribution of Certificates of Medical Necessity.—W&M: The OBRA 90 provision prohibiting suppliers of medical equipment and supplies from distributing completed or partially completed certificates of medical necessity would be modified. Beginning October 1, 1993, suppliers of potentially overused and abused items would be prohibited from distributing completed or partially completed certificates of medical necessity. Suppliers of items which are not potentially overused and abused would be permitted to complete information identifying beneficiaries and suppliers, a description of the item, a product code identifying the item, and any other information required by the Secretary. If a supplier provides any of the above information on a certificate of medical necessity, the supplier would be required to include the fee schedule amount and the supplier's charge prior to distribution to the physician for completion. Suppliers who violate the provisions would be subject to a civil money penalty in an amount not to exceed $1,000 for each certificate of medical necessity so distributed.

E&C: Identical to W&M provision, with the exception that provisions apply one year later.

(e) Uniform National Coverage and Utilization Review Requirements.—W&M: Not later than January 1, 1995, the Secretary would, in consultation with representatives of DME suppliers, beneficiaries, and medical specialty organizations, develop and establish uniform national coverage and utilization review criteria for 200 items of medical equipment and supplies. The criteria would be published as instructions to carriers and intermediaries, and no further publication, including Federal Register publication, would be required.

The Secretary would select an item for development of national coverage and utilization review criteria if: (1) the item is frequently rented or purchased by beneficiaries; (2) the item is frequently subject to a determination that it is not medically necessary; or (3) coverage or utilization review criteria applied to the item is not consistent among carriers. The Secretary would be required annually to review and determine whether items not on the list should be subject to uniform national coverage and utilization review criteria and to subject them to these criteria if necessary. The Secretary would also be required to submit a report to the Congress by July 1, 1995, analyzing the impact of these uniform criteria on the utilization of items subject to the criteria by Medicare beneficiaries.

E&C: Identical to W&M provision, with the exception that application begins one year later and the report is due July 1, 1996.

(f) Studies.—

(i) Use of covered items by disabled beneficiaries.

W&M: The Secretary would study and report to the Congress by May 1, 1994 on the effects of the methodology for determining payments for durable medical equipment items and supplies on the ability of persons entitled to disability benefits to obtain equipment, including customized items.

E&C: Identical to W&M provision, with the exception that the report is due one year after enactment.

(ii) Variations in quality of equipment.

W&M: The Secretary would study and report to the Congress by July 1, 1994, describing prosthetic devices or orthotics and prosthetics that do not require individualized or custom fitting and adjustment and report an appropriate method for determining the amount of payment for such items under the program that do not require individualized or custom fitting and adjustment.

E&C: Identical to W&M, with the exception that the report is due one year after enactment.

Senate Amendment

(a) Certification of Suppliers.—No provision.

(b) Prohibition Against Multiple Billing Numbers.—No provision.

(c) Standardized Certificates of Medical Necessity.—No provision.

(d) Distribution of Certificates of Medical Necessity.—No provision.

(e) Uniform National Coverage and Utilization Review Requirements.—No provision.

(f) Studies.—

(i) Use of covered items by disabled beneficiaries.—No provision.

(ii) Variations in quality of equipment.—No provision.

Conference Agreement

(a) Certification of Suppliers.—The conference agreement does not include the House provision.

(b) Prohibition Against Multiple Billing Numbers.—The conference agreement does not include the House provision.

(c) Standardized Certificates of Medical Necessity.—The conference agreement does not include the House provision.

(d) Distribution of Certificates of Medical Necessity.—The conference agreement does not include the House provision.

(e) Uniform National Coverage and Utilization Review Requirements.—The conference agreement does not include the House provision.

(f) Studies.—

(i) Use of covered items by disabled beneficiaries.—The conference agreement does not include the House provision.

(ii) Variations in quality of equipment.—The conference agreement does not include the House provision.

24. Prohibition Against Carrier Forum Shopping (Secs. 13462 and 5035 of the House bill)

Present Law

There are no prohibitions against carrier forum shopping in current DME law. HCFA is currently establishing four regional carriers to process all claims for beneficiaries residing within their areas.

House Bill

W&M: The Secretary would be authorized to designate in a regulation one carrier for one or more entire regions to process all claims within the region for covered durable medical equipment, prosthetic devices, and orthotics and prosthetics. Suppliers would be required to submit claims to the carrier having jurisdiction over the geographic area that includes the permanent residence of the patient to whom the item is furnished.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

25. Restrictions on Certain Marketing and Sales Activity (Secs. 13463 and 5036 of the House bill)

Present Law

No provision.

House Bill

W&M: Suppliers would be prohibited from making unsolicited telephone contacts with Medicare beneficiaries, unless the individual gives permission to the supplier, or the supplier has furnished the individual with a covered item within the preceding 15 months. Medicare would not pay for items provided subsequent to a prohibited telephone contact. The Secretary would be required to exclude from programs under the Social Security Act suppliers who knowingly make prohibited telephone contacts to such an extent that the supplier's conduct establishes a pattern of contacts in violation of the prohibition. Beneficiaries would not be liable for the cost of items provided as a result of prohibited telephone contacts, and the supplier would be required to refund any amounts collected on a timely basis or be subject to certain sanctions.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

26. Anti-kickback Clarification (Sec. 13464 and 5037 of the House bill)

Present Law

Current law exempts employees in bona-fide employment relationships from penalties assessed for knowingly and willfully soliciting or receiving remuneration (including kickbacks, bribes, or rebates) or offering or paying remuneration as an incentive for Medicare business.

House Bill

W&M: The exemption from anti-kickback penalties for employees in bona-fide employment relationships with providers of Medicare-covered services and supplies would not include the tasks of transmitting assignment rights of Medicare beneficiaries to suppliers of covered items, or performing warehousing or stock inventory functions.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

27. Limitations on Beneficiary Liability for Non-covered Services (Secs. 13465 and 5038 of the House bill)

Present Law

No provision.

House Bill

W&M: Effective October 1, 1993, Medicare beneficiaries would not be financially liable for covered items furnished by a supplier on an unassigned basis if: (1) the supplier is excluded from Medicare participation; (2) Medicare has denied payment for the item in advance; or (3) the supplier does not meet Medicare standards for suppliers of medical equipment and supplies.

E&C: Similar to W&M provision, with the exception that it also applies to items furnished on an assigned basis and is effective one year later.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

28. Adjustments for Inherent Reasonableness (Secs. 13466 and 5039 of the House bill)

Present Law

The Secretary is permitted to increase or decrease the Medicare DME fee schedules in cases where the payment amount is grossly excessive or grossly deficient and not inherently reasonable. Such adjustment must reflect costs in the base year of the fee schedules.

House Bill

W&M: The Secretary would determine whether the payment amounts for decubitus care mattresses, transcutaneous electrical nerve stimulators (TENS), and any other items considered appropriate by the Secretary are inherently reasonable and would adjust payments for these items if the amounts are not inherently reasonable. Adjustments for these items would be based on the prices and costs applicable at the time the item is furnished.

E&C: Identical to W&M provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

29. Treatment of Nebulizers and Aspirators (Secs. 13467 and 5033 of the House bill; sec. 7232 of Senate amendment)

Present Law

There are five categories of items and supplies in the DME fee schedule. Aspirators, nebulizers, ventilators, and IPPB machines are in a category referred to as items requiring frequent and substantial servicing. This category is intended to include items which require frequent servicing in order to avoid imminent danger to a beneficiary's health.

House Bill

W&M: Aspirators and nebulizers would be removed from the category of DME items requiring frequent and substantial servicing. Disposable supplies used in conjunction with aspirators and nebulizers would be placed in the category of inexpensive and other routinely purchased equipment.

E&C: Identical to W&M provision.

Senate Amendment

Similar to W&M provision but would also remove ventilators and IPPB from the category of DME items requiring frequent and substantial servicing.

Conference Agreement

The conference agreement follows the Senate amendment with an amendment to specify that the frequent servicing category will include IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices. Separate payment will be made for accessories used with nebulizers, aspirators or excluded ventilators as inexpensive or routinely purchased items.

30. Payment for Ostomy Supplies and Other Supplies (Secs. 13468, 5031(b), 5040 and 5041 of the House bill; secs. 7233 and 7234 of Senate amendment)

Present Law

Ostomy supplies, tracheostomy supplies, urologicals, surgical and other medical supplies are included in the prosthetics and orthotics fee schedule, which is subject to regional payment limits.

The DME fee schedule specifies reductions in payments for transcutaneous electrical nerve stimulators (TENS).

House Bill

W&M: Ostomy supplies, tracheostomy supplies and urologicals would be subject to national payment limits. Payment for surgical dressings would be made in a lump sum in an amount equal to eighty percent of the lesser of the actual charge for the item or the national payment limit (computed based on local payment amounts using average reasonable charges for the twelve month period ending December 31, 1992, increased by the covered item update for 1993 and 1994.

These provisions would not apply to surgical dressings furnished incident to a physician's professional service or furnished by a home health agency.

The DME fee schedule amount for transcutaneous electrical nerve stimulation (TENS) devices would be reduced by an additional thirty percent.

E&C: Identical to W&M provision.

Senate Amendment

Similar to W&M provision, except does not include a separate provision for ostomy supplies, tracheostomy supplies, and urologicals. (Note: the bill establishes elsewhere national payment limits for prosthetics and orthotics.)

Conference Agreement

The conference agreement includes the House provision.

31. DME Miscellaneous and Technical Corrections (Secs. 13469 and 5042 of the House bill)

Present Law

(a) Updates to Payment Amounts.—OBRA 90 contains a drafting error regarding the update to the durable medical equipment fee schedule for 1991 and 1992.

(b) Potentially Overused Items and Advance Determinations of Coverage.—OBRA 90 included two provisions regarding special carrier review of potentially overutilized items and advance determinations of coverage for certain items. These two provisions were combined in drafting so that they do not properly reflect the conference agreement.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—OBRA 90 provided for a system of upper and lower limits on DME fees. The OBRA 90 conferees agreed to a study of regional variations in durable medical equipment supplier costs which was not included in the statutory language.

(d) Oxygen Retesting.—OBRA 90 included a provision requiring periodic retesting of beneficiaries receiving oxygen if their initial blood gas reading value was at or above a partial value of 55.

House Bill

(a) Updates to Payment Amounts.—W&M: The OBRA 90 error would be corrected by specifying that the 1991 and 1992 update is the CPI-U minus one percentage point.

E&C: Identical to W&M provision.

(b) Potentially Overused Items and Advance Determinations of Coverage.—W&M: OBRA 90 would be modified with respect to treatment of potentially overused items. The Secretary would be able to add items to the list of potentially overused items if they are marketed directly to beneficiaries, if offers to waive coinsurance are made, if items have been subject to consistent patterns of overutilization, or if a high proportion of claims for an item are denied based on absence of medical necessity. Payment for items on this list would not be made unless the carrier has subjected the claim to special scrutiny or has determined in advance whether an item is medically necessary and covered by Medicare. Carriers would also be required to make advance coverage decisions for customized items and for specified covered items requiring a physician's written order.

E&C: Identical to W&M provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—W&M: The Secretary would be required to collect data on supplier costs for DME and analyze them to determine costs attributable to service and product components and the extent to which they vary by type of equipment and geographic region. The HCFA administrator would be required to submit a report and recommendations for a geographic cost adjustment index for DME supplies and an analysis of the impact of such an index on Medicare payments. The Comptroller General would be required to submit a report analyzing on a geographic basis the supplier costs of durable medical equipment under the Medicare program.

E&C: Identical to W&M provision.

(d) Oxygen Retesting.—W&M: The OBRA 90 language regarding the arterial blood gas values would be amended to require retesting when a beneficiary's initial value is at or above 56.

In addition, the proposal includes certain technical corrections to Sections 4152 and 4153 of OBRA 90.

E&C: Identical to W&M provision.

Senate Amendment

(a) Updates to Payment Amount.—No provision.

(b) Potentially Overused Items and Advance Determinations of Coverage.—No provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—No provision.

(d) Oxygen Retesting.—No provision.

Conference Agreement

(a) Updates to Payment Amounts.—The conference agreement does not include the House provision.

(b) Potentially Overused Items and Advance Determinations of Coverage.—The conference agreement does not include the House provision.

(c) Study in Variations in Durable Medical Equipment Supplier Costs.—The conference agreement does not include the House provision.

(d) Oxygen Retesting.—The conference agreement does not include the House provision.

32. Extension of Alzheimer's Demonstration Projects (Secs. 13472 and 5064 of House bill)

Present Law

OBRA 86 authorized $40 million to conduct up to 10 Alzheimer's disease demonstration projects to provide comprehensive services to Medicare beneficiaries with Alzheimer's disease. The demonstrations were originally authorized for three years, but were extended an additional year in OBRA 90.

House Bill

W&M: The Alzheimer's disease demonstration projects would be extended for an additional year.

E&C: Identical provision, except increases expenditures to $60 million instead of $58 million for extension of demonstration.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House W&M provision.

33. Oral Cancer Drugs (Secs. 13473 and 5065 of House bill)

Present Law

(a) Coverage of Self-Administered Drugs.—Under current law, Medicare coverage for outpatient prescription drugs (with exceptions for immunosuppressive drugs and erythropoietin) is limited to drugs which are not to be self-administered. Drugs taken orally are not covered.

(b) Coverage of Off-Label Uses of Anti-Cancer Drugs.—No provision.

(c) Study.—No provision.

House Bill

(a) Coverage of Self-Administered Drugs.—W&M: Medicare coverage would be extended to include oral cancer drugs if they are the same chemical entity as anti-cancer drugs covered by Medicare when administered intravenously, effective January 1, 1994.

E&C: Identical provision.

(b) Coverage of Off-Label Uses of Anti-Cancer Drugs.—W&M: Medicare would cover drugs or biologicals used in an anti-cancer chemotherapeutic regimen for a medically accepted indication. Coverage would be limited to the Food and Drug Administration (FDA) approved drugs but not necessarily limited to the uses approved by the FDA as described on the label.

Carriers would determine, based upon guidance by the Secretary, that the use is medically accepted taking into account (1) the inclusion of such drugs in one of the three specified major medical compendia, or (2) supportive clinical research regarding the off-label use of such drugs that appears in peer-reviewed medical literature. The Secretary would specify the medical journals which would be appropriate for consideration by the carriers in making these coverage decisions.

E&C: No provision.

(c) Study.—W&M: The Secretary would be required to study the costs of patient care for Medicare beneficiaries enrolled in clinical trials of new cancer therapies (where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an Institutional Review Board). The Secretary would be required to report on the study within two years and include recommendations as to coverage under Medicare of such beneficiaries.

E&C: No provision.

Senate Amendment

(a) Coverage of Self-Administered Drugs.—No provision.

(b) Coverage of Off-Label Uses of Anti-Cancer Drugs.—No provision.

(c) Study.—No provision.

Conference Agreement

(a) Coverage of Self-Administered Drugs.—The conference agreement includes the House provision.

(b) Coverage of Off-Label Uses of Anti-Cancer Drugs.—The conference agreement includes the House provision with an amendment providing that coverage would be extended to other uses of anti-cancer drugs if such use is supported by one or more citations in one of three specified medical compendia and other authoritative compendia identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia.

(c) Study.—The conference agreement does not include the House provision.

34. Part B Premium Penalty (Sec. 13474 of House bill)

Present Law

(a) Part B Premium Penalty for Late Enrollment.—Individuals who enroll in Medicare Part B after the applicable enrollment period are subject to an increased premium for late enrollment. The monthly premiums are increased by ten percent for every twelve months of late enrollment. In general, the premium increase is calculated based upon the number of months of delayed enrollment beyond the initial enrollment period. In the case of individuals who delay enrollment because they have primary coverage under an employer group health plan, months of enrollment in the employer group health plan are not included for purposes of calculating the increased premium.

(b) Part B Premium Payments by States.—States are permitted to pay premiums on behalf of individuals who enroll in Part B.

House Bill

(a) Part B Premium Penalty for Late Enrollment.—W&M: The Part B premium penalty for delayed enrollment would be capped at 25 percent for Federal employees who meet the following conditions. First, at the time of the initial enrollment period, the individual delayed enrollment because he or she was enrolled in a group health plan that provided items or services covered under Part B. Second, the individual was enrolled in a group health plan that stopped providing coverage of such services subsequent to

the individual's initial enrollment period. This provision would apply to premiums for months beginning January 1, 1992.

E&C: No provision.

(b) Part B Premium Payments by States.—W&M: The Secretary would be authorized to enter into agreements with States for purposes of allowing States to make premium payments for penalties associated with late enrollment under Part B. States would be permitted to make quarterly payments on a lump-sum basis, effective upon enactment. Individuals covered under the agreement would not be subject to a delayed enrollment penalty.

E&C: No provision.

Senate Amendment

(a) Part B Premium Penalty for Late Enrollment.—No provision.

(b) Part B Premium Payments by States.—No provision.

Conference Agreement

(a) Part B Premium Penalty for Late Enrollment.—The conference agreement does not include the House provision.

(b) Part B Premium Payments by States.—The conference agreement does not include the House W&M provision.

35. Coverage of Speech-Language Pathologists and Audiologists (Sec. 13475 of House bill)

Present Law

The services of speech therapists and audiologists are covered under certain limited circumstances. In addition, speech therapy is covered under the home health benefit. The law does not include a specific definition of these services or providers.

House Bill

W&M: The term "speech pathologist" would be changed to "speech-language pathologist" where it appears, except that this amendment would not change the definition of services covered in any setting. A statutory definition of speech-language pathologists and audiologists would be established, consistent with current coverage guidelines.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

36. Municipal Health Service Demonstration Projects (Secs. 13476 and 5066 of House bill)

Present Law

OBRA 89 extended existing waivers for the four municipal health service demonstration projects through December 31, 1993, and provided for a study of the waiver program with respect to the quality of health care and beneficiary costs.

House Bill

W&M: The waivers for the four municipal health service demonstration projects would be extended through December 31, 1997. In conducting the study mandated under OBRA 89, HCFA would be required to include consideration of costs to Medicaid and other payers, access to care, outcomes, beneficiary satisfaction, and utilization differences among the different populations being served by the centers.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision. The conferees intend that the Department (HCFA) assess its current process of examining and paying claims for Municipal Health Services Program Demonstration services and alter the process where necessary to make it more accurate and efficient.

37. Treatment of Certain Indian Health Programs and Facilities as Federally Qualified Health Centers (Secs. 13477 and 5067 of House bill)

Present Law

Medicare provides payments to services provided in certain qualified health centers, known as Federally Qualified Health Centers (FQHC).

House Bill

W&M: The current definition of Federally Qualified Health Centers would be revised, for services furnished on or after January 1, 1994, to include outpatient programs and facilities operated by Indian tribes under the Indian Self-Determination Act.

E&C: Identical provision, except that it is effective as if included in OBRA 90.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House E&C provision.

38. Treatment of Inpatients and Provision of Diagnostic and Therapeutic X-ray Services by Rural Health Clinics and Federally Qualified Health Centers (Sec. 5062 of House bill)

Present Law

Under current law, Rural Health Clinic (RHC) and Federally Qualified Health Center (FQHC) services are a covered Medicare benefit. RHCs and FQHCs that provide physician and other covered outpatient services to Medicare beneficiaries are paid on the basis of an inclusive rate.

House Bill

W&M: No provision.

E&C: The provision clarifies that RHCs and FQHCs are not limited to providing services solely to outpatients. Physician services provided to Medicare patients of a RHC or a FQHC would be covered (and paid for through the all-inclusive rate) when such patients are inpatients in a covered medical facility. In addition, diagnostic and therapeutic X-ray services would be covered as qualified RHC and FQHC services.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

39. Application of Mammography Certification Requirements (Sec. 5063 of House bill)

Present Law

In 1992, the Congress enacted the Mammography Quality Standards Act which established a certification program for mammography facilities under Section 354 of the Public Health Service Act.

House Bill

W&M: No provision.

E&C: Any mammography facility providing covered screening or diagnostic mammograms to Medicare beneficiaries would be required to hold a certificate (or provisional certificate) issued in accordance with the provisions of the Public Health Service Act.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

40. Clarification of Coverage of Certified Nurse-midwife Services Performed Outside the Maternity Cycle (Sec. 5069 of House bill)

Present Law

OBRA 1987 provided for direct reimbursement of certified nurse midwives under both Medicare and Medicaid. The statutory definition of certified nurse midwifery services has been erroneously interpreted under regulations promulgated by the Secretary to limit coverage to services provided within the maternity cycle.

House Bill

W&M: No provision.

E&C: The statutory definition of nurse midwifery services would be amended by deleting any reference to the maternity cycle.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

41. Increase in, and Study of, Annual Cap on Amount of Medicare Payment for Outpatient Physical Therapy and Occupational Therapy Services (Sec. 5069A of House bill)

Present Law

Under current law, covered outpatient physical and occupational therapy services provided by independently practicing physical and occupational therapists are limited on an annual basis to $750.

House Bill

W&M: No provision.

E&C: The bill increases the annual limit on these outpatient therapy services to $900, effective for services provided on or after January 1, 1994. The Physician Payment Review Commission would be required to conduct a study of the appropriateness of continuing an annual limitation on outpatient therapy services and report on the study by January 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision with an amendment to delete the study requirement.

42. Other Technical Amendments Relating to Part B of the Medicare Program (Secs. 13478 and 5070 of House bill)

Present Law

(a) Revision of Information on Part B Claims.—Each Part B claim for which the entity submitting the claim knows or has reason to believe that there has been a referral by a physician must include the name and provider number of the referring physician and must indicate whether the referring physician is an investor in the entity.

(b) Consultation for Social Workers.—OBRA 90 provided for direct reimbursement for the services of clinical psychologists and clinical social workers. The Secretary was required to develop criteria for psychologists' services under which psychologists would be required to consult with a patient's attending physician.

(c) Reports on Hospital Outpatient Payment.—OBRA 87 required the Prospective Payment Assessment Commission (ProPAC) to conduct a study of Medicare payment for hospital outpatient services. Part of the

study was to be submitted to the Congress by July 1, 1990 and part by March 1, 1991. Section 1135(d)(6) of the Social Security Act also requires the Secretary to report to the Congress on the development of a prospective method for ambulatory surgery services.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—Payment for outpatient radiology and diagnostic services is limited to a blend of the hospital's costs and physician fee schedule that would apply if the procedure were performed in a physician's office.

(e) Payments to Nurse Practitioners in Rural Areas.—OBRA 90 provided for direct reimbursement of nurse practitioners and clinical nurse specialists in rural areas. While current law excludes the services of physician assistants, nurse midwives, certified registered nurse anesthetists, and psychologists from the definition of inpatient hospital care, payments for nurse practitioners and clinical nurse specialists were not included in this provision.

(f) Other Technical and Conforming Amendments.—Elderly or disabled employees and their spouses who are covered by employer health plans are not required to enroll in the same enrollment period applicable to others. However, they cannot enroll while enrolled in an employer group health plan. Coverage for such individuals begins generally on the first day of the month in which the individual is no longer enrolled in an employer group health plan. The OBRA 90 conferees intended to modify this provision, but statutory language to that effect was omitted from the law.

House Bill

(a) Revision of Information on Part B Claims.—W&M: The claim form would be required to include the unique physician identification number (UPIN), and the requirement that claims indicate whether the referring physician is an investor in the entity would be repealed.

E&C: Identical provision.

(b) Consultation for Social Workers.—W&M: Clinical social workers would be required to consult with a patient's attending physician in the same manner as clinical psychologists.

E&C: Identical provision.

(c) Reports on Hospital Outpatient Payment.—W&M: The requirement for the preparation of reports contained in Section 6137 of OBRA 89 and Section 1135(d)(6) of the Social Security Act would be repealed.

E&C: Identical provision.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—W&M: Outpatient payment limits would apply to diagnostic services. The physician component of the limit would be based on the resource based relative value scale.

E&C: Identical provision.

(e) Payments to Nurse Practitioners in Rural Areas.—W&M: The services of nurse practitioners and clinical nurse specialists would be added to the list of services excluded from the definition of inpatient hospital services.

E&C: Identical provision.

(f) Other Technical and Conforming Amendments.—W&M: The special enrollment period would be modified to allow individuals who have employer group health coverage to enroll in Part B at any time they are enrolled in the group health plan, rather than after they leave the plan. If an individual enrolls in Part B while enrolled in the group health plan or in the first month after leaving the plan, Medicare coverage would begin on the first day of the month in which the individual enrolled (or, at the option of the individual) on the first day of any of the following three months).

Various technical and conforming amendments to Sections 4154 through 4164 of OBRA 90 would be made.

E&C: Identical provision, except does not include technical amendment on certified registered nurse anesthetists.

Senate Amendment

(a) Revision of Information on Part B Claims.—No provision.

(b) Consultation for Social Workers.—No provision.

(c) Reports on Hospital Outpatient Payment.—No provision.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—No provision.

(e) Payments to Nurse Practitioners in Rural Areas.—No provision.

(f) Other Technical and Conforming Amendments.—No provision.

Conference Agreement

(a) Revision of Information on Part B Claims.—The conference agreement does not include the House provision.

(b) Consultation of Social Workers.—The conference agreement does not include the House provision.

(c) Reports on Hospital Outpatient Payments.—The conference agreement does not include the House provision.

(d) Radiology and Diagnostic Services Provided in Hospital Outpatient Departments.—The conference agreement does not include the House provision.

(e) Payments to Nurse Practitioners in Rural Areas.—The conference agreement does not include the House provision.

(f) Other Technical and Conforming Amendments.—The conference agreement does not include the House provision.

CHAPTER 3

AMENDMENTS RELATING TO PARTS A AND B AND OTHER HEALTH AMENDMENTS

1. Direct Medical Education (Secs. 13501, 13551 and 5072 of House bill; sec. 7301 of Senate amendment)

Present Law

(a) Updating Base Year Amounts.—Payments to hospitals for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index.

(b) Adjustment in GME Base-Year Costs for FICA Taxes.—Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning during FY 1984. The law provides for no adjustments to the base year amount.

Prior to enactment of OBRA 90, some teaching institutions were not required to pay either FICA taxes, or to make other retirement contributions for residents. Section 11332(b) of OBRA 90 required these institutions to begin making such payments. However, their base-year costs do not reflect such payments, and the Secretary is prohibited from adjusting their base year costs to reflect the new requirements for such payments.

(c) Adjustments for Certain Family Residency Programs.—Payments for the direct costs of graduate medical education are based on Medicare's share of each hospital's direct costs per full-time equivalent (FTE) resident, in a base year, updated each year by the consumer price index. The base year is defined as a hospital's cost reporting period beginning during FY 1984. The law provides for no adjustments to the base year amount. In the case of a hospital that did not have an approved medical residency training program or was not participating in the Medicare program during the base year, the Secretary shall provide for an FTE resident amount as the Secretary determines to be appropriate based on approved FTE resident amounts for comparable programs.

(d) Preventive Care Residencies.—Medicare payments for the direct costs of medical education are based on the recognized costs during a resident's so-called "initial period" of residency. This period is defined as the period necessary to be board eligible plus one year, but in no case more than five years. Up to two years of a geriatric residency or fellowship are treated as part of the initial residency period, but the time spent in the geriatric program is not counted toward the limitation on the initial residency period.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.—Full time residents in their initial residency period count as 1.0 FTE. Residents beyond their initial residency period count as 0.5 FTE.

(f) Initial Residency Period.—Medicare payments for the direct costs of medical education are based on the recognized costs during a resident's so-called "initial period" of residency. This period is defined as the period necessary to be board eligible plus one year, but in no case more than five years. Up to two years of a geriatric residency or fellowship are treated as part of the initial residency period, but the time spent in the geriatric program is not counted toward the limitation on the initial residency period.

(g) Report.—No provision.

(h) Foreign Medical Graduates.—A graduate of a foreign medical school is not counted unless the resident has passed parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS).

House Bill

(a) Updating Base Year Amounts.—W&M: Per-resident amounts would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

E&C: No provision.

(b) Adjustment in GME Base-Year Costs for FICA Taxes.—W&M: In the case of a hospital that did not pay FICA taxes or make other specified retirement contributions for residents in the base year and that must now pay such taxes or contributions as a result of section 11332(b) of OBRA 1990, the Secretary shall redetermine the FTE resident amount to reflect the amount that would be allowed if the hospital had made such payments during the base year.

The provision would apply to cost reporting periods beginning on or after October 1, 1992.

E&C: No provision.

(c) Adjustments for Certain Family Residency Programs.—In the case of a facility whose only medical residency program in the cost reporting period that began in fiscal year 1984 was in family and community medicine, received Federal, State or local funding, and had a base year per resident amount of $10,000 or less, the Secretary would be required, in computing FTE resident amount in the base year, to estimate the costs that would have been allowed as reasonable if the program had not received such government

assistance, other than such assistance under Medicare or Medicaid programs. The Secretary would also reduce the payment amount so determined by the amount equal to the proportion of such program payments during the base period by Medicare. This would apply to cost reporting periods beginning on or after October 1, 1990.

E&C: No provision.

(d) Preventive Care Residencies.—For cost reporting periods beginning on or after October 1, 1993, for the purpose of determining whether a resident is in an initial residency period for payment purposes, a resident in a preventive care residency or fellowship program would be treated in the same way as a geriatric resident or fellow; that is, a period of up to two years of such training would be treated as part of the initial residency period and would not count towards the limitation on such period.

E&C: No provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.—W&M: No provision.

E&C: The Secretary would be directed to conduct a study of the methodology used to determine payments to hospitals for the costs of graduate medical education programs, including an analysis of the causes of the variation among such hospital per resident costs, including the extent of support for such programs from non-hospital sources. The report, which shall include any recommendations for modifications to current payment policy, would be due to the Congress one year after the date of enactment of this provision.

(f) Initial Residency Period.—No provision.

(g) Report.—No provision.

(h) Foreign Medical Graduates.—W&M: No provision.

E&C: No provision.

Senate Amendment

(a) Updating Base Year Amounts.—No provision.

(b) Adjustment in GME Base-Year Costs for FICA Taxes.—No provision.

(c) Adjustments for Certain Family Residency Programs.—No provision.

(d) Preventive Care Residencies.—Similar provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.—Effective for residents entering a primary care or non-primary care specialty training program (including a sub-specialty training program) on or after September 1, 1993, a full-time resident in the initial residency period of a primary care residency program would be counted as 1.1 FTE; a full-time resident in the initial residency period of a non-primary care residency program would be counted as 0.7 FTE. If completion of a primary care training program is a prerequisite for board eligibility in a non-primary care specialty or sub-specialty, a resident would count as 1.1 FTE for the time spent in the primary care residency program. A full-time resident in training beyond the initial residency period would continue to count as 0.5 FTE.

Primary care residency programs would be defined as residency programs in family medicine, general internal medicine, general pediatrics, preventive care, geriatric care and osteopathic general practice.

(f) Initial Residency Period.—Effective July 1, 1995, the "initial residency period" would be defined as the minimum number of years required for board eligibility.

(g) Report.—The Secretary would be required to submit by July 31, 1994, a report concerning 1) the causes for the variation in the per resident amounts, 2) whether provisions should be made for adjustments in the per resident amounts to recognize substantial changes in operating a residency program since the base year, and 3) any changes that should be made in graduate medical education payments that would promote residency training in non-hospital ambulatory sites.

(h) Foreign Medical Graduates.—Effective as if included in COBRA 85, a foreign medical graduate would be counted if the resident has passed parts I and II of the FMGEMS or a successor test recognized by the Secretary.

Conference Agreement

(a) Updating Base Year Amounts.—The conference agreement includes the House provision, with an amendment exempting primary care residents and residents in obstetrics and gynecology from the elimination of the update to the per resident payment amount. The term "primary care resident" is defined as a resident enrolled in a training program in family medicine, general internal medicine, general pediatrics, geriatric medicine, preventive medicine, or osteopathic general practice.

(b) Adjustment in GME Base-Year Costs for FICA Taxes.—The conference agreement includes the House provision.

(c) Adjustments for Certain Family Residency Programs.—The conference agreement includes the House provision, with an amendment changing the effective date to October 1, 1992. The conferees intend that hospitals with residency programs meeting the stated conditions receive the adjustment whether the hospital or residents received Federal or State payments directly, or indirectly through a university.

(d) Preventive Care Residencies.—The conference agreement includes the House provision.

(e) Different Weighting Factors for Primary Care and Non-Primary Care Residency Programs.—The conference agreement does not include the Senate amendment.

(f) Initial Residency Period.—The conference agreement includes the Senate amendment, with an amendment making the effective date of the provision July 1, 1995.

(g) Report.—The conference agreement does not include the Senate amendment.

(h) Foreign Medical Graduates.—The conference agreement does not include the Senate amendment.

2. Home Health Services (Secs. 13502 and 5071 of House bill; sec. 7302 of Senate amendment)

Present Law

Home health services are reimbursed on a reasonable cost basis, subject to aggregate cost limits which are updated annually. The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) limited payment for home health agency costs to 112 percent of the mean labor-related and non labor per visit costs for freestanding HHAs. For hospital-based HHAs, the Secretary is required to make appropriate adjustments in the limits for administrative and general costs. A home health care agency may receive an exception to the cost limits based on the special care needs of patients or circumstances beyond its control.

House Bill

W&M: Effective upon the date of enactment, cost limits applicable to home health services would not be updated for cost reporting periods beginning during fiscal years 1994 and 1995.

E&C: The provision would repeal the requirement for the special adjustment for the administrative costs of hospital-based home health agencies effective for cost reporting periods beginning after fiscal year 1993.

Senate Amendment

Effective for cost reporting periods beginning on or after October 1, 1993, the cost limit would be lowered to 110 percent of the median labor-related and non labor per visit costs for all home health agencies. The add-on for hospital-based home health agencies would be eliminated.

Conference Agreement

The conference agreement follows the House provisions with an amendment to prohibit the Secretary from making any changes in home health services cost limits (including no adjustments for changes in the wage index or applicable MSAs) for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. The Secretary is required, when granting or extending exceptions to cost limits, to limit any exception to the amount that would have been granted if there were no restriction on changes in the cost limits. Additional payments for administrative and general costs of hospital-based home health agencies are eliminated for cost reporting periods beginning on or after October 1, 1993.

3. Secondary Payer Provisions (Secs. 13511–13514 and 5073 of House bill; sec. 7302 of Senate amendment)

Present Law

(a) Extension of Transfer of Data.—OBRA 89 authorized the establishment of a database to identify working beneficiaries and their spouses to improve identification of cases in which Medicare is secondary to other third party payers. The data match links Internal Revenue Service (IRS) tax records with data from the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA). OBRA 90 extended through September 30, 1995 the requirements established in OBRA 90 pertaining to identification of secondary payer situations.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.—Medicare is secondary payer to certain group health plans, offered by employers of 100 or more, covering disabled beneficiaries. The authority for this provision expires September 30, 1995.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.—Medicare is secondary payer to certain employer group health plans covering beneficiaries with end stage renal disease (ESRD) beneficiaries during the first 18 months of a beneficiary's entitlement to Medicare on the basis of ESRD. The authority for this provision expires September 30, 1995.

(d) Medicare Secondary Payer Reforms.—

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.—The Department of HHS identifies Medicare secondary payer cases in the following ways: beneficiary questionnaires; provider identification of third party coverage when services are provided; Medicare contractor screening and data collection and exchange; and data transfers with other Federal and State agencies including the Internal Revenue Service and the Social Security Administration.

The Secretary is authorized to develop standards, criteria, procedures and reporting requirements to evaluate the performance of organizations facilitating Medicare payments to providers of services. Primary payers are required to make payments for any item or service for which Medicare is secondary payer when they receive notice that payments are due. The Secretary is authorized

to charge interest on late recoveries under the Medicare Secondary Payer program.

(2) Application to Members of Religious Orders.—Medicare secondary payer provisions do not apply to certain members of religious orders for items and services furnished on or after October 1, 1989.

(3) Uniform Rules for Size of Employer.—Under current law, different rules apply to employer size and type of eligibility for Medicare. For the working aged, secondary payer rules apply to employers with 20 or more employees. For the disabled, secondary payer rules apply to employers with 100 or more employees. For beneficiaries with end stage renal disease, secondary payer rules apply to all employers, regardless of the number of employees.

(4) Permanent Application to Disabled Active Individuals.—Under current law, Medicare is secondary payer to a large group health plan providing benefits to a disabled active individual, which is defined as an individual who (1) is eligible for Medicare on the basis of disability; and (2) continues to be treated as an employee by an employer, on the basis of commonly accepted indicators of employee status, even though the individual is not currently working. This provision expires October 1, 1995.

House Bill

(a) Extension of Transfer of Data.—W&M: The authorization for requirements pertaining to the IRS/SSA/HCFA data match would be extended through September 30, 1998.

E&C: The requirement for employers to respond to carriers would be extended through September 30, 1998.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.—W&M: The Medicare secondary payer requirements for disabled beneficiaries would be extended for three additional years through September 30, 1998.

E&C: Similar to W&M provision.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.—W&M: The Medicare secondary payer requirements for beneficiaries with end stage renal disease (ESRD) would be extended for three additional years through September 30, 1998.

E&C: Similar to W&M provision.

(d) Medicare Secondary Payer Reforms.—

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.—W&M: The Administrator of HCFA would be required to mail questionnaires to individuals, before such individuals become entitled to benefits under Part A or enroll in Part B, to determine whether the individual is covered under a primary plan. In addition, the provision would clarify that payments would not be denied for covered services solely on the grounds that a beneficiary's questionnaire fails to note the existence of other health plan coverage.

Providers and suppliers would be required to complete information on claim forms regarding potential coverage under other plans.

Civil monetary penalties would be established for an entity that knowingly, willfully and repeatedly fails to complete a claim form with accurate information.

Contractors would be required to submit a report to the Secretary annually regarding steps taken to recover mistaken payments. The Secretary would be required to evaluate the performance of contractors in identifying cases in which Medicare is secondary payer.

The provision would clarify the Secretary's authority to charge interest if payment is not received within 60 days after notice is given.

The definition of a non complying plan would be clarified to include a plan that refuses to refund amounts to HCFA demanded through the Medicare secondary payer provisions.

E&C: Similar provisions.

(2) Application to Members of Religious Orders.—W&M: The provision, effective as if included in OBRA 89 would clarify that the Medicare secondary payer provisions do not apply to secondary payer situations identified after October 1, 1989 for services provided prior to such date to members of religious orders who are considered "deemed employees" because of an election of Social Security coverage.

E&C: Identical Provision.

(3) Uniform Rules for Size of Employer.—W&M: For purposes of determining the application of Medicare secondary payer provisions to employer group health plans, aggregation rules as defined in the Internal Revenue Code would be used to determine size of employer.

E&C: The provision would expand the Medicare secondary payer provisions to apply to employers with 20 or more employees. Employers, multiemployers, or multiple employer group health plans of 20 or more would be required to comply with secondary payer rules for all Medicare beneficiaries.

(4) Permanent Application to Disabled Active Individuals.—W&M: No provision.

E&C: The provision for the disabled would be modified to tie directly to employment status consistent with the provision that applies to aged beneficiaries. The provision would be made permanent.

Senate Amendment

(a) Extension of Transfer of Data.—Similar to W&M provision.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.—Identical to W&M provision.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.—The provision would extend the requirement that Medicare be secondary payer to specified group health plans for beneficiaries who are entitled to Medicare solely on the basis of end stage renal disease for 24 months until September 30, 1998. This would apply with respect to items and services furnished after the third calendar month beginning after enactment.

(d) Medicare Secondary Payer Reform.—

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.—No provision.

(2) Application to Members of Religious Orders.—Identical to W&M provision.

(3) Uniform Rules for Size of Employer.—Similar to the W&M provision concerning use of aggregation rules to determine size of employer. Similar to the E&C provision concerning uniform application of Medicare secondary payer provisions to employers with 20 or more employees.

(4) Permanent Application to Disabled Active Individuals.—Identical to E&C provision.

Conference Agreement

(a) Extension of Transfer of Data.—The conference agreement includes the House provision.

(b) Extension of Medicare Secondary Payer for Disabled Beneficiaries.—The conference agreement includes the Senate amendment.

(c) Extension of 18-Month Rule for ESRD Beneficiaries.—The conference agreement includes the House provision.

(d) Medicare Secondary Payer Reform.—

(1) Improved Identification and Enforcement of Medicare Secondary Payer Situations.—The conference agreement does not include the House provision.

(2) Application to Members of Religious Orders.—The conference agreement includes the Senate amendment.

(3) Uniform Rules for Size of Employer.—The conference agreement includes the Senate amendment to clarify employer aggregation rules, with an amendment to maintain current law thresholds applied to employers with respect to disabled and ESRD beneficiaries.

(4) Permanent Application to Disabled Active Individuals.—The conference agreement includes the House provision clarifying the definition of active employee for disabled beneficiaries to conform with the definition for working aged beneficiaries. A disabled beneficiary would be considered an active employee if covered under an employer plan by virtue of the individuals current employment status.

4. Expansion of Medicare Ban on Self-Referrals (Secs. 13521 and 5031 of the House bill; sec. 7451 of Senate amendment)

Present Law

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities.

House Bill

W&M: The Medicare ban would apply to all payers for designated health services. No payment could be made under Medicare, another Federal health care program or a State health care program for which a claim was presented in violation of the ban. No individual, third party payer, or other entity would be liable for payment of a claim for designated services in violation of the ban. Sanctions provisions would be extended to all payers.

E&C: The provision would apply Medicare rules to Medicaid.

Senate Amendment

Similar to E&C provision.

Conference Agreement

The conference agreement includes the House E&C provision.

5. Extension of Self-Referral Ban to Additional Services (Secs. 13522 and 5074(a) of the House bill; sec. 7304(a) of the Senate amendment)

Present Law

Physicians (or immediate family members of such physicians) with a financial relationship with clinical laboratories are prohibited from referring Medicare patients to those entities

House Bill

W&M: The provision expands current law to cover the following designated health services: (1) physical and occupational therapy services; (2) radiology services (including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services); (3) radiation therapy services; (4) durable medical equipment; (5) parenteral and enteral nutrition equipment and supplies; (6) prosthetic devices and orthotics and prosthetics; (7) outpatient prescription drugs; (8) home infusion therapy services; (9) home dialysis; (10) home health services; (11) ambulance services; (12) inpatient and outpatient hospital services; (13) comprehensive outpatient rehabilitation facility services; (14) contact lenses; (15) eyeglasses; and (16) hearing aids.

E&C: The provision expands current law to cover the following designated health services: (1) physical or occupational therapy

services; (2) radiology or other diagnostic services; (3) radiation therapy services; (4) the furnishing of durable medical equipment; (5) the furnishing of parenteral and enteral nutritional nutrients, supplies, and equipment; (6) home health services; and (7) home infusion therapy services.

Senate Amendment

The provision would expand the prohibition on referring patients to services in which a physician has an ownership or investment interest to include the following services: (1) physical or occupational therapy; (2) radiology or other diagnostic services; (3) radiation therapy; (4) the furnishing of durable medical equipment; (5) the furnishing of parenteral and enteral nutrition equipment or supplies; (6) the furnishing of prosthetics, orthotics, and prosthetic devices; and (7) home health services.

Conference Agreement

The conference agreement includes the House E&C provision with an amendment. Under the agreement, the following services are included as designated health services: (1) clinical laboratory services; (2) physical therapy services; (3) occupational therapy services; (4) radiology or other diagnostic services; (5) radiation therapy services; (6) durable medical equipment; (7) parenteral and enteral nutrients, equipment, and supplies; (8) prosthetics, orthotics, and prosthetic devices; (9) home health services; (10) outpatient prescription drugs; and (11) inpatient and outpatient hospital services.

6. Exceptions For Both Ownership and Compensation Arrangements (Secs. 13523 and 5074(b) and (e) of the House bill; sec. 7304(b) and (e) of Senate amendment)

Present Law

(a) In-Office Ancillary Services.—There are a series of general exceptions to both the ownership and compensation provisions, including: (1) physicians' services provided by or under the personal supervision of a physician or another physician in the same group practice; and (2) in-office ancillary services. In-office ancillary services are defined as services furnished by the physician himself, another physician in the same group practice, or employees of the physician or the physician's group practice.

To be exempted from the referral ban, the services must be provided in a building in which the physician or other member of the group practice provides services unrelated to laboratory services, or in a central building set up by the group to perform ancillary services for its members. The services must be billed by the physician performing or supervising the services or by that physician's group, or by an entity owned by the physician or the physician's group practice. In addition, the ownership or compensation interests in such in-office ancillary services must meet other requirements that the Secretary may impose by regulation as needed to protect against patient fraud and abuse.

(b) Rural Provider Exception.—In addition to the general exceptions, the law includes specific exceptions from just the ownership prohibitions and specific exceptions from just the compensation provisions. The law includes an exception under the ownership prohibition for rural providers. Proposed implementing regulations contain provisions directed at preventing possible abuses of this exception.

(c) Shared Facility Laboratory Services.—Current law does not contain an exception for shared laboratory facilities.

House Bill

(a) In-Office Ancillary Services.—W&M: The exception for in-office ancillary services would apply to all designated health services other than durable medical equipment, parenteral and enteral nutrition equipment and supplies and ambulance services. Ancillary services provided by a group practice with multiple office locations would be exempted from the prohibition on referrals.

E&C: Similar to W&M except that the in-office ancillary exception would apply to all designated health services. In addition, the provision would delete the employment requirement from the in-office ancillary exception and add a direct supervision requirement.

(b) Rural Provider Exception.—W&M: Ownership and compensation arrangements relating to the provision of services in rural areas (as defined for purposes of Medicare's hospital prospective payment system) would be exempt from the ban on referrals if substantially all of the services furnished by the entity are furnished to individuals who reside in such a rural area.

E&C: Similar to W&M provision except requires all of the services provided to Medicare beneficiaries are provided to those in rural areas.

(c) Shared Facility Laboratory Services.—W&M: No provision.

E&C: The provision adds an exception for shared facility laboratory services that are furnished: (i) personally by the referring physician who is a shared facility physician, by an individual supervised by such physician, or by another shared facility physician and employed under the arrangement; (ii) by a shared facility in a building which the referring physician furnishes services unrelated to shared lab services; and (iii) to a patient of a shared facility physician. The services must be billed by the referring physician or by an entity wholly owned by the physician. The exception only applies if the facility and the arrangement were in effect as of June 26, 1992. The GAO would be required to study such arrangements and report to Congress by January 1, 1995.

Senate Amendment

(a) In-Office Ancillary Services.—Similar to W&M, except that the provision would delete the employment requirement from the in-office ancillary exception and add a direct supervision requirement.

(b) Rural Provider Exception.—Similar to W&M, except does not specify that entity must be in the rural area.

(c) Shared Facility Laboratory Services.—No provision.

Conference Agreement

(a) In-Office Ancillary Services.—The conference agreement includes the Senate amendment with an amendment. The provision would apply to all designated health services except durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies.

The conference agreement includes an exception for clinical laboratory services provided by a group practice with multiple office locations. For all other designated health services the exception for group practices applies only if the services are provided in a centralized location. The conferees expect that the Secretary will publish regulations specifying such other terms and conditions under which group practices may qualify for a group practice exception to the general prohibition on referrals to an entity with which the referring physician has a financial relationship.

The conferees intend that the requirement for direct supervision by a physician would be met if the lab is in a physician's office which is personally supervised by a lab director, or a physician, even if the physician is not always on site.

The conference agreement modifies the existing general exception for prepaid plans by including federally qualified health maintenance organizations (as defined in section 1310(d) of the Public Health Service Act) in the list of entities meeting the definition.

(b) Rural Provider Exception.—The conference agreement includes the Senate provision with an amendment. The provision modifies the current ownership or investment exception to apply to designated health services furnished in a rural area (as defined for purposes of PPS) by an entity if substantially all the designated health services furnished by such entity are furnished to individuals residing in the rural area.

(c) Shared Facility Laboratory Services.—The conference agreement does not include the House E&C provision.

7. Exceptions Related Only to Ownership or Investment (Secs. 13524 and 5074(h) of the House bill; sec. 7304(g) of Senate amendment)

Present Law

There is a specific exception for ownership in publicly-traded securities which are listed for trading on the New York Stock Exchange or American Stock Exchange or operated by the National Association of Securities Dealers. This exception applies only if a corporation had total assets exceeding $100 million at the end of the corporation's most recent fiscal year.

House Bill

W&M: The current standard for asset determination under the publicly-traded securities exception would be modified to require that a corporation have stockholder equity in excess of $100 million.

E&C: The current standard for asset determination under the publicly-traded securities exception would be modified to require that a corporation have stockholder equity in excess of $75 million.

Senate Amendment

Similar to E&C provision.

Conference Agreement

The conference agreement includes the House E&C provision with an amendment. Under the agreement, ownership of investment securities which may be purchased on terms generally available to the public is not considered to be an ownership or investment interest, provided the following conditions are met. The securities are: (i) listed on the New York Stock Exchange, the American Stock Exchange, or regional exchange in which quotations are published on a daily basis, or (ii) foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or (iii) traded under an automated inter-dealer quotation system operated by the National Association of Securities Dealers. Further, the securities must be in a corporation that had at the end of the most recent fiscal year, or on average during the three previous fiscal years, stockholder equity exceeding $75 million. The exception also applies to ownership of shares in a regulated investment company provided the company has assets meeting similar requirements.

8. Exceptions Related Only to Compensation Arrangements (Secs. 13525 and 5074(c) and (d) of the House bill; sec. 7304(c) of Senate amendment)

Present Law

(a) Rental of Office Space.—The law includes specific exceptions for the rental of

office space. There must be a written agreement, signed by the parties, for the rental or lease of the space which: (1) specifies the space covered by the agreement; (2) provides for a term of rental or lease of at least one year; (3) provides for payment on a periodic basis of an amount consistent with fair market value; (4) provides for an amount of aggregate payments that does not vary directly or indirectly based on the volume or value of any referrals between the parties; and (5) would be considered to be commercially reasonable even if no referrals were made between the two parties.

(b) Rental of Equipment.—There is no exception for the rental of equipment.

(c) Employment Arrangements With Hospitals.—There is a specific exception for employment arrangements between hospitals and physicians.

(d) Personal Service Arrangements.—There are a series of exceptions for other service arrangements, including: (1) services as a medical director; (2) services to an individual receiving hospice care; (3) services furnished to a nonprofit blood center; and (4) administrative services.

(e) Services Under Arrangements.—Some group practices operate full-service laboratories and contract with hospitals and other providers to furnish clinical laboratory services to hospital and other provider patients "under arrangements" with such entities. Medicare requires that the hospital or other provider bill for such services. These "under arrangements" services are not protected under the general exception for in-office ancillary services.

(f) Physician Recruitment.—There is a specific exception in the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate.

(g) Isolated Transactions.—There is a specific exception in the case of an isolated financial transaction, such as a one-time sale of property.

(h) Payments by a Physician.—No provision.

House Bill

(a) Rental of Office Space.—W&M: The exception for the rental of office space would be clarified to apply for the use of premises if: (i) the lease is set out in writing, signed by the parties and specifies the premises covered by the lease; (ii) the aggregate space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purpose of the rental and is used exclusively by the lessee when being used by the lessee; (iii) the term of the lease is at least one year; (iv) the aggregate rental charges are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the two parties; (v) the lease would be commercially reasonable even if no referrals were made between the parties; (vi) the lease covers all of the premises leased between the parties for the period of the lease; and (vii) the compensation arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

E&C: Identical to W&M provision, except deletes the word aggregate in subparagraph (iv) and deletes "does not exceed that which" in paragraph (ii).

(b) Rental of Equipment.—W&M: An exception for the leasing of equipment would be added. The requirements for the lease of equipment are the same as those applicable to the lease of premises, except that items (ii), (iv) and (vi) above relate to the equipment rented or leased (rather than the aggregate space or premises).

E&C: Identical to W&M provision except deletes the word aggregate in subparagraph (iv) and deletes "does not exceed that which" in paragraph (ii).

(c) Employment Arrangements With Hospitals.—W&M: The exception for employment and service arrangements with hospitals would be broadened to include any amounts paid by any employer (including providers other than hospitals) to a physician (or immediate family member) with a bona fide employment relationship for the provision of services. The provision would also modify the standards to allow a physician to be paid shares of overall profits or a productivity bonus based on services performed personally by the physician or family member, if the amount of the remuneration is not determined in a manner that takes into account directly the volume or value of any referrals by a referring physician. The standards for the exception relating to employment and service arrangements between physicians and hospitals under current law also would apply to this broader provision.

E&C: Identical to W&M provision.

(d) Personal Service Arrangements.—W&M: The provision would replace the current language with an exception for payments from an entity under a personal service arrangement if: (i) the arrangement is set out in writing, specifies the services covered by the arrangement, and is signed by the parties; (ii) the arrangement covers all of the services to be provided by the physician or family member to the entity; (iii) the term of the arrangement is for not less than one year; (iv) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement; (v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referral or business generated between the parties; (vi) the services performed under the arrangement do not involve the counseling or promotion of a business arrangement or other activity that violates any State or Federal law; and (vii) the arrangement meets such other requirements as the Secretary may impose to protect against program or patient abuse.

E&C: Identical to W&M provision except that the provision (i) retains the current law exception for "other service arrangements," (ii) eliminates the reference to physician or family member in item (ii), and (iii) eliminates reference to directly or indirectly in item (v). In addition, the provision provides an exception for payments for pathology services of a group practice.

(e) Services Under Arrangements.—W&M: An exception would be provided for health services provided by a group practice billed in the name of a hospital if the arrangement is pursuant to the provision of inpatient hospital services and if the arrangement began prior to December 19, 1989, and meets standards similar to those provided for payments for health services of a group practice.

E&C: Similar to W&M provision, except amends definition of group practice rather than adding a new exception.

(f) Physician Recruitment.—W&M: The standards in the current exception relating to physician recruitment would be expanded to include the requirement that the arrangement be set out in writing and signed by the parties, and that it specify the benefits provided by the hospital, the terms under which the benefits are to be provided, and the obligations of the parties.

E&C: No provision.

(g) Isolated Transaction.—W&M: The exception would be clarified to refer to a one-time financial transaction, such as a one-time sale of property or practice.

E&C: No provision.

(h) Payments by a Physician.—W&M: An exception would be provided for payments by a physician to an entity as compensation for an item or service, if the item or service is furnished at a price that is consistent with the fair market value.

An exception would be provided for payments by a physician to a clinical laboratory in exchange for the provision of clinical laboratory services.

E&C: Identical to W&M provision.

Senate Amendment

(a) Rental of Office Space.—Identical to E&C provision except deletes the word aggregate in subparagraph (ii). In addition, the provision adds the following language to subparagraph (ii) "except that the lessee may make payments for the use of space consisting of common areas, if such payments do not exceed the lessee's pro rata share of expenses for such space, based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas."

(b) Rental of Equipment.—Identical to E&C provision.

(c) Employment Arrangements with Hospitals.—Similar to W&M provision, except: (i) refers to employment relationship; and (ii) revises exception to only allow payment of a productivity bonus based on services performed personally by the physician or immediate family member of the physician.

(d) Personal Service Arrangements.—Similar to E&C provision except does not include exception for pathology services of a group practice.

(e) Services Under Arrangements.—Identical to W&M provision.

(f) Physician Recruitment.—No provision.

(g) Isolated Transaction.—No provision.

(h) Payments by a Physician.—Identical to W&M provision, except specifies that clinical lab tests are diagnostic.

Conference Agreement

(a) Rental of Office Space.—The conference agreement includes the Senate amendment with an amendment striking item (vi) and modifying item (ii) to add the phrase "does not exceed that which" to the reasonable and necessary limitation.

(b) Rental of Equipment.—The conference agreement includes the Senate amendment with an amendment striking item (vi) and modifying item (ii) to add the phrase "does not exceed that which" to the reasonable and necessary limitation.

The conferees intend that charges for space and equipment leases may be based on daily, monthly, or other time-based rates, or rates based on units of service furnished, so long as the amount of the time-based or units of service rates does not fluctuate during the contract period based on the volume or value of referrals between the parties to the lease or arrangement.

(c) Employment Arrangements with Hospitals.—The conference agreement includes the Senate amendment.

(d) Personal Service Arrangements.—The conference agreement includes the Senate amendment with an amendment. It (1) does not retain the current law exception for

other service arrangements; and (2) does not strike reference to physician or family member in item ii.

The conferees intend that this exception would apply to payments made by a nonprofit Medical Foundation under a contract with physicians to provide health care services and which conducts medical research. The requirement that the compensation be paid in advance is not intended to prohibit arrangements where entities pay physicians on a per service basis, as long as other requirements are satisfied.

The conference agreement adds an exception for physician incentive plans. A physician incentive plan is defined as a compensation arrangement between an entity 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 entity. To be eligible for an exception, the compensation may be determined in a manner (through a capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties provided the plan meets specified requirements. No specific payment may be made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided to an enrollee of the entity. If the plan places the physician or physician group at substantial financial risk (as determined by the Secretary using rules developed for Medicare risk sharing contracts) it must comply with any requirements the Secretary may impose pursuant to that section. Further, the organization must provide the Secretary, on request, with access to descriptive information regarding the plan in order to permit the Secretary to determine whether the plan is in compliance with the requirements.

(e) Services Under Arrangements.—The conference agreement includes the House W&M provision with clarifying language specifying that with respect to designated health services provided under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement.

(f) Physician Recruitment.—The conference agreement does not include the House W&M provision.

(g) Isolated Transactions.—The conference agreement includes the House W&M provision with an amendment. Under the provision, the current exception would be clarified to refer to a one-time sale of a practice as well as property.

(h) Payments by a Physician.—The conference agreement includes the House provision.

9. Civil Money Penalties (Sec. 13526 of the House bill)

Present Law

The law provides for civil monetary penalties and exclusion from the Medicare program for any person that presents or causes to be presented a bill or claim for a service in violation of the self-referral ban.

House Bill

W&M: The provision would clarify that a physician who makes a prohibited referral would also be subject to a civil monetary penalty.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House W&M provision.

10. Requirements for Group Practices (Secs. 13527 and 5074(d) of the House bill; sec. 7304(d) of Senate amendment)

Present Law

(a) Definition of a Group Practice.—The law contains a definition of group practice for purposes of the self-referral provision. Under this definition, a group practice is defined as a group of two or more physicians legally organized as partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association in which: (1) each physician group member furnishes substantially the full range of his or her services through the joint use of office space, facilities, equipment, and personnel; (2) substantially all of the services of the physician group members are furnished through the group and billed in the name of the group, with billing receipts treated as receipts of the group; (3) the practice cost expenses and income generated by group members are distributed in accordance with predetermined methodologies; and (4) any additional standards established by the Secretary are met.

The definition of group practice does not specifically address the issue of part-time or independent contractor arrangements. Many group practices, particularly those in smaller communities, arrange for specialists, usually from other communities, to provide services for the group on a part-time basis, usually as independent contractors. Many of these specialists are either already members of another group practice, have their own practice, or have similar contractual arrangements with several group practices.

(b) Faculty Practice Plans.—Faculty practice plans operated by a hospital fall under the definition of group practice only for those services provided within the faculty practice plan.

House Bill

(a) Definition of a Group Practice.—W&M: The current standards used to define a group practice would be expanded. No physician who is a member of the group may receive compensation based on the volume or value of referrals by the physician except that: (i) a physician can be paid shares of overall profits of the group as long as the share is not determined in any manner which is directly related to the volume or value of referrals by that physician; and (ii) a physician can be paid a productivity bonus based on services personally performed or personally supervised by a physician or by another physician in the group so long as the bonus is not determined in any manner which is directly related to the volume or value of referrals by that physician. The group may have no less than, on average, five physicians for each office location, except where there is only a single office for the entire group practice. Members of the group would be required to personally conduct no less than 75 percent of the physician-patient encounters of the group practice.

For purposes of the standard, the term "office location" would be defined as an office where physician services are offered to patients. However, locations consisting solely of diagnostic facilities, nursing homes, treatment facilities (such as physical or occupational therapy centers), or administrative services affiliated with the group practice would not be included in the definition of office location. Any office location which is physically located immediately adjacent to another office location shall be treated as the same office location. Offices located in a rural area (outside MSAs) are not included as an office location as long as at least 85 percent of the physician services at those locations are provided to individuals who reside in such rural areas.

Groups would also be required to bill under a billing number assigned to the group.

E&C: The provision includes a billing provision similar to W&M provision.

(b) Faculty Practice Plans.—W&M: The definition of a faculty practice plan would be expanded to include faculty of an institution of higher learning or a medical school.

E&C: Identical to W&M provision.

Senate Amendment

(a) Definition of Group Practice.—Similar to W&M provision except: (i) clarifies that compensation received cannot be based directly or indirectly on the volume or value of referrals; and (ii) provides that groups of less than fifteen physicians would be allowed to have up to three office locations.

(b) Faculty Practice Plans.—Identical to W&M provision.

Conference Agreement

(a) Definition of Group Practice.—The conference agreement includes the House W&M provision except that the agreement does not specify the number of physicians for each office location nor define office location.

(b) Faculty Practice Plans.—The conference agreement includes the House W&M provision.

11. Preemption of State Law (Secs. 13528 of the House bill)

Present Law

No provision.

House Bill

W&M: The provision would provide that the Federal law would not preempt State laws that were more restrictive.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference provision does not include the House W&M provision.The Conferees intend that Federal law not preempt State laws that are more restrictive.

12. Miscellaneous Provisions (Secs. 13529 and 5074(c) and (g) of the House bill; sec. 7304(f) of Senate amendment)

Present Law

(a) Financial Relationship Specified.—A financial relationship is defined as including an ownership or investment interest in the entity or a compensation arrangement between the physician (or immediate family member) and the entity.

(b) Minor Remuneration.—The term "compensation arrangement" is defined as any arrangement involving any remuneration between a physician (or immediate family member) and an entity. The term remuneration includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(c) Referring Physician.—A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, if such services are furnished by (or under the supervision of) such pathologist pursuant to a consultation requested by another physician does not constitute a "referral."

House Bill

(a) Financial Relationship Specified.—W&M: The definition of financial relationship would be modified to include explicitly that an interest in an entity (i.e., holding company) that holds an investment or ownership interest in another entity is a financial relationship for purposes of the referral prohibition.

E&C: No provision.

(b) Minor Remuneration.—W&M: An exception would be provided for certain minor remuneration, including: (i) the forgiveness of amounts for inaccurate or mistakenly performed tests or procedures, correction of minor billing errors; or (ii) the provision of items, devices, or supplies used solely to collect, transport, process, or store specimens or to communicate test results.

E&C: Similar to W&M provision, except strikes current law definition of remuneration.

(c) Referring Physician.—W&M: The provision would clarify that a request by a radiologist for diagnostic radiology services and a radiation oncologist for radiation therapy would not constitute a "referral" by a "referring physician."

E&C: Identical to W&M provision.

Senate Amendment

(a) Financial Relationship Specified.—No provision.

(b) Minor Remuneration.—Identical to W&M provision.

(c) Referring Physician.—Identical to W&M provision.

Conference Agreement

(a) Financial Relationship Specified.—The conference agreement includes the House W&M provision.

(b) Minor Remuneration.—The conference agreement includes the House W&M provision with an amendment. Included within the definition of remuneration are payments made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee-for-service basis, for the furnishing of health services by that physician to an individual covered by a policy with the insurer or self-insured plan. In order to meet the definition, the following conditions must be met. The services may not be furnished and the payment may not be made pursuant to a contract or other arrangement between the insurer or the plan and the physician. The payment is made to the physician on behalf of the covered individual and would otherwise be made directly to the individual. The amount of the payment must be set in advance, not exceed fair market value, and not be determined in a manner that takes into account directly or indirectly the volume or value of any referrals. Further, the payment must meet such other requirements as the Secretary may impose by regulation to protect against patient or program abuse.

(c) Referring Physician.—The conference agreement includes the Senate amendment.

13. Effective Dates (Secs. 13530 and 5074(j) of the House bill; sec. 7304(i) of Senate amendment)

Present Law

No provision.

House Bill

W&M: The provisions would generally apply to referrals made on or after January 1, 1992, except expansions to additional services and additional payers would apply to referrals made on or after December 31, 1994. The following provisions apply to referrals made on or after December 31, 1994: (a) Section 13523(b) rural provider exception; (b) Section 13524(a) relating to publicly traded securities; (c) Section 13525(a) relating to the exception for office rental; (d) Section 13525(c)(1) relating to exception for personal services arrangements; (e) Section 13525(d) relating to physician recruitment; (f) Section 13526 relating to civil money penalty; (g) Section 13527 relating to requirement for group practices (other than that relating to faculty practice plans), (h) Section 12528 relating to nonpreemption; and (i) Section 13529(a) relating to indirect financial relationships.

E&C: Subsection (a) of section 5074 (extension to designated health services) would be effective December 31, 1994. All other subsections other than subsection (a) would be effective January 1, 1992. Section 5131 (Medicaid) applies to items and services furnished on or after October 1, 1993.

Senate Amendment

The provision would apply to referrals made on or after January 1, 1992, except that extension to additional designated health services would apply to physician referrals made after December 31, 1994. Extension to Medicaid (Section 7451) would be effective October 1, 1993.

Conference Agreement

The conference agreement includes the House W&M provision with an amendment. Under the agreement, the self-referral provisions apply to referrals for clinical lab services made on or after January 1, 1992. The provisions apply to referrals for other designated health services made on or after December 31, 1994. The provisions relating to physician incentive plans and additional requirements for group practice plans do not apply to referrals made before December 31, 1994. The following new subsections of Section 1877 do not apply to referrals made before December 31, 1994 (but the previous law continues to apply): (a)(2)—indirect financial relationship; (b)(2)(B)—billing numbers; (c)—publicly traded securities; (d)(2)—rural provider exception; and (e)(1)(A) exception for office rental.

14. Immunosuppressive Drug Therapy (Sec. 13552 of House bill)

Present Law

Medicare currently pays for immunosuppressive drug therapy for Medicare beneficiaries who have received organ transplants for one year following the date of the transplant procedure.

House Bill

W&M: Medicare coverage of immunosuppressive drug therapy would be extended as follows. Effective January 1, 1994, coverage would be extended to an 18-month period. Effective January 1, 1995, coverage would be extended to a 24-month period. Effective January 1, 1996, coverage would be extended to a 30-month period. Effective January 1, 1998, coverage would be extended to a 36-month period.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision with an amendment to delay the phase-in of extended coverage. Effective January 1, 1995, coverage will be extended to an 18-month period. Effective January 1, 1996, coverage will be extended to a 24-month period. Effective January 1, 1997, coverage will be extended to a 30-month period. Effective January 1, 1998, coverage will be extended to a 36-month period.

15. Reduction in Payments for Erythropoietin (Sec. 13553 and 5075 of House bill; sec. 7305 of Senate amendment)

Present Law

Medicare is the principal purchaser of erythropoietin (EPO), an anti-anemia drug given to end-stage renal disease (ESRD) beneficiaries with a specified level of anemia. Payment for the drug is made as an add-on to the composite rate paid to facilities for dialysis treatment. Payments to facilities are made in increments of 1,000 unit doses, rounded to the nearest 100 units, with a maximum payment of $11 per 1,000 units.

For ESRD beneficiaries who are not treated through dialysis facilities, payment is made to physicians for drug costs in a variety of ways.

House Bill

W&M: Effective for services furnished on or after January 1, 1994, Medicare payments for EPO would be reduced by $1.00 per 1,000 units. The provision would not alter payments for EPO provided in a physician's office.

E&C: Identical provision.

Senate Amendment

Identical provision.

Conference Agreement

The conference agreement includes the Senate amendment with an amendment to permit all dialysis patients to self-administer EPO.

16. Qualified Medicare Beneficiary Outreach (Secs. 13554 and 5078 of House bill)

Present Law

The Medicare Catastrophic Coverage Act of 1988 required States to pay Medicare premiums, deductibles and coinsurance for "Qualified Medicare Beneficiaries" (QMBs). QMBs are those Medicare beneficiaries whose family incomes are below 100 percent of the Federal poverty level and whose assets are no more than twice the amount allowed under SSI.

OBRA 90 accelerated the phase-in schedule for QMB coverage, and required States to pay premiums for QMBs with incomes up to 110 percent of poverty by January 1, 1993, and to 120 percent of poverty by January 1, 1995. Less than half of eligible beneficiaries are currently participating in the QMB program.

House Bill

W&M: The Secretary would be required to establish and implement a method for obtaining information from newly eligible Medicare beneficiaries that may be used to determine eligibility for benefits under the QMB program.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Extension of Social Health Maintenance Organization Demonstrations (SHMOs) (Secs. 13555 and 5079 of House bill)

Present Law

The Deficit Reduction Act of 1984 required the Secretary to grant three-year waivers for demonstrations of social health maintenance organizations (SHMOs). These demonstrations provide integrated health and long-term care services on a prepaid capitated basis. OBRA 87 required the Secretary to extend the waivers for SHMOs through September 30, 1992. OBRA 90 extended the waivers through December 31, 1995 and required the Secretary to add up to four additional sites. It also authorized $3.5 million for technical assistance and evaluation.

House Bill

W&M: The SHMO demonstrations would be extended for an additional 2 years, and the Secretary could not impose a limit of less than 12,000 beneficiaries per site. In addition,

one of the SHMO demonstration sites would be permitted to enroll Medicare end-stage renal disease (ESRD) beneficiaries.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

18. Hospice Notification to Home Health Beneficiaries (Secs. 13559 and 5081 of House bill)

Present Law

Medicare beneficiaries who are certified as terminally ill by a physician may elect to receive hospice benefits in lieu of other Medicare covered services. Home health agencies are required to meet Medicare conditions of participation in order to receive reimbursement for treatment of Medicare beneficiaries.

House Bill

W&M: Home health agencies would be required to inform beneficiaries of the hospice benefit under Medicare, if a Medicare participating hospice is located in the geographic area or it is common medical practice to refer patients to hospices out of the area. As a condition of participation in Medicare, home health agencies would be required to provide the information in advance of the patient's coming under care of the agency. This provision would apply to services furnished on or after the first day of the first month beginning more than one year after the date of enactment.

E&C: Identical provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Interest Payments (Secs. 13557 and 5068 of the House bill)

Present Law

The Social Security Act requires the payment of interest if payment is not made within 24 days of receipt of a clean claim for payment, and within 17 days in the case of a clean claim from a participating physician.

House Bill

W&M: Interest payments would be made on clean claims if payment is not made within 30 days of receipt for fiscal year 1993.

E&C: The provision would provide for a maximum of 27 calendar days for the payment of clean paper claims and prohibits any interest payment for claims during any period for which no payment may be issued, mailed or otherwise transmitted.

Senate Amendment

No provision.

Conference Agreement

The conference agreement establishes new standards for payment of Medicare claims. Effective with claims received on or after October 1, 1993, no payment shall be made for claims submitted electronically within 13 days after receipt, and for all other claims within 26 days after receipt. Contractors would be required to pay 95 percent of clean claims within 30 calendar days for claims received in the 12-month period beginning October 1, 1993, and any succeeding 12-month period. Interest payments would be made on clean claims if payment is not made within 30 days of receipt .

20. Peer Review Organizations (Secs. 13558 and 5080 of House bill)

Present Law

(a) Peer Review Organizations.—OBRA 90 required Peer Review Organizations (PROs) to provide notice to State licensing entities when a physician is found to have furnished services in violation of Section 1154(a) of the Social Security Act. This subsection includes requirements that PROs review the quality of medical care and determine whether certain services are covered by Medicare. As drafted, OBRA 90 requires PROs to notify State boards in the case of a variety of administrative findings, as well as in the case of a problem regarding quality of care.

(b) Repeal of PRO Precertification Requirement.—Under current law, PROs are required to precertify selected surgical procedures.

House Bill

(a) Peer Review Organizations.—W&M: The requirement that PROs notify State boards regarding administrative matters would be eliminated, but PROs would continue to be required to notify them in cases of unnecessary or poor quality care. In addition, drafting errors in OBRA 90 would be corrected.

E&C: Identical provision.

(b) Repeal of PRO precertification requirement.—W&M: The requirement that PROs precertify selected surgical procedures would be repealed.

E&C: Identical provision.

Senate Amendment

(a) Peer Review Organizations.—No provision.

(b) Repeal of PRO precertification requirement.—No provision.

Conference Agreement

(a) Peer Review Organizations.—The conference agreement does not include the House provision.

(b) Repeal of PRO precertification requirement.—The conference agreement does not include the House provision.

21. Health Maintenance Organizations (Secs. 13559 and 5082 of House bill)

Present Law

OBRA 90 required the Secretary to submit a provision to the Congress by January 1, 1992, providing for a more accurate method for HMOs paid on a risk basis. The Secretary was required to publish a proposed rule by March 1, 1992. The Comptroller General was required to review and report to the Congress by May 1, 1992, on recommendations to modify the proposed methodology. OBRA 90 also contained a number of minor and technical drafting errors.

House Bill

W&M: The Secretary would be required to revise the payment methodology for HMOs for contract years beginning with 1994 to take into account variation in costs associated with beneficiaries for whom Medicare is the secondary payer. The Secretary would be further required to submit a proposal to the Congress by October 1, 1993, that provides for revisions to the payment methodology for contract years beginning with 1995. In proposing the revisions, the Secretary would be required to consider (1) the difference in costs associated with beneficiaries with different health status and (2) the effects of using alternative geographic classifications. The Comptroller General would be required to report to the Congress on the proposed revisions no later than three months after the Secretary's proposal was submitted. The provision also includes technical corrections to OBRA 90.

E&C: Similar provision, except that the Secretary's proposal for revisions in the payment methodology would be due January 1, 1995, and would apply for contract years beginning with 1996.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include either House provision.

22. Medicare Administration Budget Process (Sec. 13560 of House bill)

Present Law

The Balanced Budget and Emergency Deficit Control Act of 1985 provides for certain adjustments to the discretionary spending limits provided in the Act. There are no adjustments relating to the discretionary spending under the Medicare program.

House Bill

W&M: The Balanced Budget and Emergency Deficit Control Act of 1985 would be amended to provide that to the extent that appropriations are enacted that provide budget authority above a base level of spending in fiscal year 1992 of $1.526 billion, the appropriate discretionary spending limits would be adjusted to accommodate additional budget authority in fiscal years 1994 and 1995. The adjustments would be cumulative and would equal $198 million in fiscal year 1994, and $220 million in fiscal year 1995.

E&C: No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

23. Medicare Hospital Agreements with Organ Procurement Organizations (Sec. 5076 of the House bill)

Present Law

Current law provides for Medicare payment of organ procurement costs incurred by designated organ procurement organizations (OPOs). OPOs are required to have agreements with hospitals to facilitate the identification of organ donors and to retrieve donated organs. Hospitals are required to notify OPOs of any potential organ donors.

House Bill

W&M: No provision.

E&C: The provision would require hospitals to enter into agreements with the OPO designated by the Secretary for the geographic area in which the hospital is located.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

24. Extension of Waiver for Watts Health Foundation (Sec. 5077 of the House bill)

Present Law

The Watts Health Foundation has a waiver under Medicare from the requirement that no more than half of its enrollees can be Medicare or Medicaid beneficiaries. This waiver expires December 31, 1994.

House Bill

W&M: No provision.

E&C: The provision would extend for two years the waiver under the Medicare program for the Watts Health Foundation.

Senate Amendment

No provision.

Conference Agreement

The conference agreement includes the House provision.

25. Other Provisions Relating to Parts A and B of the Medicare Program (Secs. 13561 and 5083 of the House bill)

Present Law

(a) Survey and Certification Requirements.—The Secretary is prohibited from imposing user fees on facilities for determining compliance with any requirement of Medicare. Current law could be interpreted to mean that user fees imposed pursuant to the Clinical Laboratory Improvement Act (CLIA) are prohibited. In addition, there are minor drafting errors regarding the survey and certification process.

(b) Other Technical Amendments.—No provision.

House Bill

(a) Survey and Certification Requirements.—W&M: The provision would clarify that user fees imposed under the Clinical Laboratory Improvement Act are not subject to the general ban on user fees.

Minor and technical errors relating to a home dialysis demonstration program authorized under OBRA 90 and Medicare secondary payer requirements in OBRA 90 would be corrected.

E&C: Identical provisions.

(b) Other Technical Amendments.—A number of minor technical amendments relating to Parts A and B of the Medicare program would be made. In addition, the provision would correct minor and technical errors in Sections 4201 through 4207 of OBRA 90.

E&C: Identical provisions.

Senate Amendment

(a) Survey and Certification Requirements.—No provision.

(b) Other Technical Amendments.—No provision.

Conference Agreement

(a) Survey and Certification Requirements.—The conference agreement does not include the House provision.

(b) Other Technical Amendments.—The conference agreement does not include the House provision.

26. Standards for Medicare Supplemental Insurance Policies (Secs. 13571 and 5091 of the House bill)

Present Law

(a) Preventing Duplication.—The OBRA 90 amendments strengthen prohibitions against the sale of duplicative coverage to Medicare beneficiaries. The sale of a Medigap policy to an individual already covered under a Medigap policy is prohibited, as is, in general, the sale of a Medigap policy to a Medicaid beneficiary. Insurers are required to obtain written information from applicants regarding existing health insurance coverage.

The language also appears to prohibit the sale of any health benefits that duplicate any health coverage (including Medicare) to which a Medicare beneficiary is entitled.

(b) Loss Ratios and Refund of Premiums.—The OBRA 90 amendments increased the minimum loss ratio standard for individual Medigap insurance policies from 60 percent to 65 percent. The standard is 75 percent for group policies. Policy issuers are required to provide a refund or credit against future premiums if needed to meet the loss ratio requirements.

(c) Pre-existing Condition Limitations.—The OBRA 90 amendments prohibit medical underwriting and certain other practices with respect to Medicare supplemental insurance policies for which an individual age 65 or older applies during the six month period beginning with the first month during which the individual is first enrolled for benefits under part B.

(d) Other Miscellaneous and Technical Corrections.—The conference report to accompany OBRA 90 states the intent of the conferees that the National Association of Insurance Commissioners, in promulgating changes to the Model Medigap Regulations to conform with Federal requirements, would delete from section 12(C) all that follows "unless", which is an exception to limitations on certain sales commissions. The OBRA 90 amendments also include a number of minor and technical drafting errors.

House Bill

(a) Preventing Duplication.—W&M: This provision would continue the current law prohibition on the sale of duplicative health insurance policies subject to the conditions described in the following paragraph. The provision would clarify that it is unlawful to sell or issue to an individual entitled to benefits under Part A or enrolled under Part B: (i) a health insurance policy with knowledge that such policy duplicates health benefits to which such an individual is otherwise entitled under Medicare or Medicaid; (ii) a Medigap policy with knowledge that the individual is entitled to benefits under another Medigap policy; and, (iii) a health insurance policy, other than a Medigap policy, with knowledge that such policy duplicates health benefits to which the individual is otherwise entitled.

Penalties would not apply, however, to the sale or issuance of a policy or plan that duplicates health benefits under Medicare or Medicaid or a policy or plan that duplicates health benefits to which the individual is otherwise entitled if, under the policy or plan, all benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual. In addition, for the penalty to be waived in the case of the sale or issuance of a policy or plan that duplicates benefits under Medicare or Medicaid, the application for the policy must include a statement, prominently displayed, disclosing the extent to which benefits payable under the policy or plan duplicate Medicare benefits.

Policies that would be subject to the disclosure requirement include, but are not limited to: specific disease policies, hospital confinement indemnity policies, long term care policies, policies that provide fixed indemnity benefits for nursing home care, nursing services in the home or for home care, and policies that provide fixed indemnity benefits for any medical or surgical service or treatment.

The new provisions pertaining to non-duplication would not alter in any way the current law prohibition on the sale of a Medigap policy to a Medicaid beneficiary.

E&C: Identical provision.

(b) Loss Ratios and Refund of Premiums.—W&M: The provision would clarify that the OBRA 90 loss ratio standard would apply to policies sold or renewed after the effective date of the provision. With respect to a refund or credit for policies issued prior to the effective date of the provision, the calculation would be based on aggregate benefits provided and premiums collected for all policies issued by an insurer in a state and based only on aggregate benefits provided and premiums collected under the policies after the effective date. Other minor and technical drafting errors would be corrected.

E&C: Identical provision.

(c) Pre-existing Condition Limitations.—W&M: The provision would clarify the intent of OBRA 90 that, in the case of individuals enrolled in part B prior to age 65, Medigap insurers are required to offer coverage, regardless of medical history, for a six-month period when the individual reaches age 65. The provision would also clarify that insurers are prohibited from discriminating in the price of policies for such an individual, based upon the medical or health status of the policyholder.

E&C: Identical provision.

(d) Other Miscellaneous and Technical Corrections.—The effective dates for various provisions would be modified. Other minor and technical drafting errors would be corrected.

E&C: Identical provision.

Senate Amendment

(a) Preventing Duplication.—No provision.

(b) Loss Ratios and Refund of Premiums.—No provision.

(c) Pre-existing Condition Limitations.—No provision.

(d) Other Miscellaneous and Technical Corrections.—No provision.

Conference Agreement

(a) Preventing Duplication.—The conference agreement does not include the House provision.

(b) Loss Ratios and Refund of Premiums.—The conference agreement does not include the House provision.

(c) Pre-existing Condition Limitations.—The conference agreement does not include the House provision.

(d) Other Miscellaneous and Technical Corrections.—The conference agreement does not include the House provision.

CHAPTER 4

AMENDMENTS RELATING TO THE PART B PREMIUM

1. Part B Premium (Secs. 13481 and 5051 of the House bill; sec. 7251 of the Senate amendment)

Present Law

From 1984 through 1990 the Part B premium was set to cover 25 percent of program costs for aged beneficiaries. The remaining 75 percent was covered by general revenues. OBRA 90 established the monthly Part B premium in statute through 1995 to cover 25 percent of program costs as follows: $29.90 in 1991, $31.80 in 1992, $36.60 in 1993, $41.10 in 1994 and $46.10 in 1995. In 1996, the method for calculating the premium will revert to the formula used prior to 1984, so that the Part B premium increases will be limited by the percentage by which cash benefits were increased in the previous year under the COLA provisions of the Social Security program.

A special provision applies to low-income persons who have their premiums deducted from their Social Security checks. If the Social Security COLA is less than the premium increase, the premium increase otherwise applicable is reduced to prevent a reduction in the individual's Social Security check.

House Bill

W&M: The Part B premium would cover 25 percent of program costs in 1996 and 1997. In subsequent years, the Part B premium would increase by the percentage by which cash benefits are increased under the COLA provisions of the Social Security program.

E&C: Identical provision.

Senate Amendment

Similar provision, except extends the 25 percent policy for three years—1996–1998.

Conference Agreement

The conference agreement includes the Senate amendment.

CHAPTER 5

MEDICARE AND MEDICAID COVERAGE DATA BANK

Present Law

No Medicare and Medicaid Coverage Data Bank exists under present law. OBRA 89 authorized the establishment of a database to identify working Medicare beneficiaries and their spouses to improve identification of cases in which Medicare is secondary payer to other third party payers.

House Bill

W&M: No provision.

E&C: The House bill directs the Secretary of Health and Human Services to establish and operate a Health Coverage Clearinghouse for the purpose of identifying indemnity insurers, service benefit plans, group health plans under the Employee Retirement Income Security Act of 1974, as amended (ERISA), health maintenance organizations, and other third parties that may be liable for payment for services provided to Medicaid, Medicare, or Indian Health Service beneficiaries (or individuals receiving services funded under the Maternal and Child Health Block Grant). The House bill directs the Administrator of the Health Care Financing Administration and State agencies to request information from the clearinghouse concerning the employment and group health coverage of a beneficiary, the beneficiary's spouse, or, if the beneficiary is a dependent child, the beneficiary's parents. The House bill requires IRS and the Social Security Administration to provide taxpayer identity information on these individuals. The House bill sets forth procedures under which programs may obtain this information from the clearinghouse as well as procedures for the maintenance of a data bank by the clearinghouse. The House bill also directs employers to provide information relating to coverage of individuals under the employer's group health plan to the clearinghouse and provides a civil monetary penalty for willful and repeated failure to comply. The provision is effective on April 1, 1995. Employers are not required to provide information to the clearinghouse after September 30, 1998.

Senate Amendment

Section 7904 of the Senate amendment directs the Secretary of Health and Human Services to establish and operate a clearinghouse to increase information available to Medicare and Medicaid on third-party health insurance coverage available to program beneficiaries. Section 7904 of the Senate amendment requires employers to include limited health insurance information on each Form W-2 given to an employee, as well as on each copy that is provided to the IRS. The Senate amendment specifically requires employers to indicate on each Form W-2 whether an employee obtained (or could have obtained) coverage under a group health plan offered by the employer, as well as the type of plan coverage (single or family) that was chosen by the employee (if any.) These requirements are made a part of the Internal Revenue Code.

The clearinghouse is given access to the following information from every Form W-2 that is filed with the IRS: the name and taxpayer identification number of every employee; the name, address, and employer identification number of every employee's employer; and the health plan information described above. In addition, the IRS is required (upon request) to disclose to the clearinghouse a taxpayer's filing status and identify information as to whether the taxpayer was married for a specified year, and, if so, the name and taxpayer identification number of the spouse.

This information is available to appropriate Federal program administrators through the clearinghouse. The clearinghouse is to maintain a data bank that matches the tax return information with the lists of health program beneficiaries. The clearinghouse also is authorized to assist these programs in collecting amounts due from insurers and is to maintain information obtained through computer matches and contacts with employers. Employers who fail to provide information on health insurance coverage are subject to civil monetary penalties. The provision is effective April 1, 1995.

Section 12101 of the Senate amendment is generally the same as the House bill, except that the beneficiaries affected differ and the list of agencies eligible to receive the information is expanded.

Conference Agreement

The conference agreement establishes a Medicare and Medicaid Coverage Data Bank within the Department of Health and Human Services. The Secretary is required to establish the Data Bank for the purposes of identifying and collecting from third parties responsible for payment of health care items and services furnished to Medicare beneficiaries, and assisting in the collection of, or collecting, amounts due from liable third parties to reimburse costs incurred by any State plan under the Medicaid program.

Employers are required to report certain information to the Data Bank concerning employee health coverage on an annual basis for years beginning with calendar year 1994 and ending in calendar year 1997. The information, reported will include: the name and taxpayer identification number (TIN) of the electing individual; the type of group health plan coverage (single or family) elected; the name, address, and identifying number of the group health plan elected by the employee; the name and TIN of each other individual (e.g., spouses and dependents) covered under the group health plan; the period during which such coverage is elected; and the name, address, and TIN of the employer.

All employers required to file a Form W-2, with employees that elect coverage under a group health plan, will report health coverage information to the Data Bank at the same time as the filing of Form W-2 required under section 6051(d) of the Internal Revenue Code of 1986. The first filing will occur on February 28, 1995. The conferees expect the Secretary to minimize the burden of this reporting requirement and coordinate, to the maximum extent possible, with the format and filing procedures established for the Form W-2.

The Data Bank will maintain health insurance information on individuals covered under employer group health plans, as required under this section, as well as certain information to verify the employment status of Medicare beneficiaries and their spouses pursuant to section 6103(l)(12) of the Internal Revenue Code of 1986. The Secretary is authorized to disclose information provided to the Data Bank by employers to State Medicaid agencies, employers, and group health plans solely for carrying out the purposes of the Data Bank. Information that the Data Bank receives pursuant to section 6103(l)(12) can only be disclosed in the manner provided in section 6103.

The Secretary is required to maintain a system of safeguards against unauthorized disclosure of Data Bank information that are similar to those provided under sections 6103(a) and (p) of the Internal Revenue Code of 1986 regarding the confidentiality and recordkeeping procedures required with respect to tax return information, including penalties as prescribed under Section 7213 (a) of such Code. The conferees intend that in establishing such procedures, the Secretary is authorized to require any party receiving Data Bank information to agree to ensure the confidentiality of this information.

Employers failing to report the required information to the Data Bank generally will be subject to penalties similar to those imposed under the Internal Revenue Code for failure to supply information returns. Such penalties may be abated if the failure to file is due to reasonable cause; penalties may be increased if the failure is willful.

The Secretary is authorized, at the request of the administrator of any State agency administering the Medicaid program, to collect or assist in the collection of amounts due from liable third parties to reimburse costs incurred by such program or plan for health care items or services. States are required to request and use information from the Data Bank, when cost effective, and to pay the required fee for the provision of information. The fee for providing collection services may be computed as a percentage of the amount collected and may be retained by the Secretary from the total amount collected.

SUBCHAPTER B

MEDICAID PROVISIONS

Part I—Services

Personal Care Services (Section 13601).—Repeals current law mandate for coverage of personal care services. Allows States to cover personal care services furnished outside the home, effective October 1, 1994.

Drug Rebate Program Modifications (Section 13602).—Permits States to operate prescription drug formularies meeting certain requirements. Removes current law prohibition on the imposition of prior authorization controls with respect to new drugs during the first 6 months following FDA approval. Repeals the weighted average manufacturer price (WAMP) inflation formula for calculating the additional rebate under current law. Effective October 1, 1993. The conference agreement does not contain a specific administrative or judicial appeal requirement. The conferees intend to preserve any appeal rights that are available to beneficiaries and providers (including drug manufacturers) under State and Federal law.

Optional Coverage of TB-Related Services (Section 13603).—Allows States to cover prescribed drugs, directly observed therapy, and other ambulatory services for low-income individuals infected with tuberculosis. Effective January 1, 1994. The House bill would have provided coverage for persons who "test positively" for TB infection. Because of concern about both false positive and false negative test results, the Conferees modified the House provision to include all low-income persons who are "infected with" TB rather than relying on these test results. The conferees have further specified that TB-related services include confirmatory tests for the infection. The conferees are aware that traditional TB tests and diagnostic methods are of questionable value, particularly among persons with low immune function. Because of the seriousness of the emerging TB epidemic, the conferees intend that eligibility be interpreted as broadly as possible in this area in order to allow the maximum number of TB-infected persons to receive services.

Bona Fide Emergency Services for Undocumented Aliens (Section 13604).—Clarifies that emergency services for which Federal Medicaid matching funds are available with respect to illegal aliens under current law do

not include care and services related to organ transplant procedures. Effective for services furnished on or after date of enactment.

Coverage of Nurse Midwife Services (Section 13605).—Expands the scope of nurse midwife services required under current law to include services that midwives are authorized to perform under State law that are outside the maternity cycle. Effective October 1, 1993.

Treatment of Certain Clinics as FOHCs (Section 13606).—Designates entities treated as comprehensive Federally funded health centers as of January 1, 1990, as Federally qualified health centers for purposes of Medicaid. Effective July 1, 1993.

Part II—Eligibility

Transfers of Assets; Treatment of Certain Trusts (Section 13611).—Provides for a delay in Medicaid eligibility for institutionalized individuals (or their spouses) who dispose of assets for less than fair market value on or after a specified look-back date (36 months prior to either the date of application for benefits or the date of institutionalization, whichever is later). The number of months of delay in eligibility is equal to the total, cumulative uncompensated value of all assets transferred or after the look-back date, divided by the average monthly cost to a private patient of nursing facilities in the State. The period of delay begins with the first month during which the assets were disposed of. Penalties are not applied to transfers to spouses, transfers to minor or disabled children, or transfers to trusts solely for the benefit of disabled individuals under 65. Effective with respect to assets disposed of on or after enactment.

Sets forth rules under which funds and other assets of an individual placed in trust by or on behalf of an individual (or the individual's spouse) are treated, for purposes of Medicaid eligibility, as resources available to the individual, and under which payments from the trust are to be considered assets disposed of by the individual. Specifies that, for purposes of applying transfer of assets prohibitions, the look-back period with respect to trusts in 60 months. Provides exceptions for trusts containing the assets of a disabled individual under 65, specified income trusts in certain States, and "pooled" trusts for disabled individuals. Requires States to establish procedures for waiving the application of these rules in cases of undue hardship. Effective with respect to trusts established on or after the date of enactment.

The Conference agreement does not include section 7422(c) of the Senate amendment relating to financial screening by nursing facilities. The conferees have been informed that a point of order could be raised in the Senate, under the so-called "Byrd rule" (section 313 of the Congressional Budget Act of 1974) to the substance of this provision if included in the conference agreement. In order to avoid such a possible point of order, and because the conferees believe that the provision does nothing more than restate authority the Secretary has under current law, the provision has not been included. This provision would have made explicit a prohibition on discrimination in admission to nursing facilities through the use of financial screening. The conferees believe that the existing provisions of titles XVIII and XIX gives broad authority to the Secretary to implement such a prohibition to the degree necessary to protect applicants' rights to receive freely, or apply for, Medicare and Medicaid benefits. Absent some limit on financial screening, the purpose of the existing statutory protections would be circumvented because nursing home could effectively condition admission on financial information which indicates whether and when individuals are likely to receive or apply for Medicare or Medicaid benefits. Since this practice clearly violates these existing statutory rights, the Secretary may restrict financial screening in order to properly administer the existing statutory provisions assuring those rights.

Medicaid Estate Recoveries (Section 13612).—Requires States to recover the costs of nursing facility and other long-term care services furnished to Medicaid beneficiaries from the estate of such beneficiaries. Further requires States to establish hardship procedures for waiver of recovery in cases where undue hardship procedures for waiver of recovery in cases where undue hardship would result. At the option of the State, the estate against such recovery is sought may include any real or personal property or other assets in which the beneficiary had any legal title or interest at the time of death, including the home. Different estate recovery provisions apply to certain individuals who purchase specified long-term care insurance policies in designated States. Effective October 1, 1993.

Part III—Payments

Assuring Proper Payments to Disproportionate Share Hospitals (Section 13621).—Prohibits designation of a hospital as a disproportionate share hospital for purposes of Medicaid reimbursement unless the hospital has a Medicaid inpatient utilization rate of at least one percent. Limits disproportionate share hospital (DSH) payment adjustments to no more than the costs of providing inpatient and outpatient services to Medicaid and uninsured patients, less payments received from Medicaid (other than DSH payment adjustments) and uninsured patients. Applies to public hospitals in State fiscal years beginning in 1994. Provides for transition rules for high-volume public DSH hospitals (meeting a high volume test or with a Medicaid inpatient utilization rate of one standard deviation above the mean for the State) during the State fiscal year beginning in 1994. During this transition year, a hospital may receive DSH payments in an amount up to 200 percent of costs of providing services to Medicaid and uninsured patients (net of non-DSH Medicaid revenues), so long as the Governor certifies to the Secretary that the payments in excess of 100 percent of the costs are used for health services. Applies to private hospitals in State fiscal years beginning in 1995, subject to such modifications in the manner in which the payment limitations are applied as the Secretary considers appropriate.

Liability of Third Parties to Pay for Care and Services (Section 13622).—Requires States to enact laws prohibiting insurers (including group health plans under ERISA, service benefit plans, and HMOs) from taking Medicaid status into account in enrollment or payment for benefits, and to enact laws giving the State rights to payments by liable third parties. Effective October 1, 1993.

Medicaid Child Support Enforcement Improvements (Section 13623).—Requires States to have in effect specified laws to ensure the compliance of insurers and employers in carrying out a court or administrative order for medical child support. Effective April 1, 1994.

Application of Medicare Rules Limiting Certain Physician Referrals (Section 13624).—Applies the Medicare rules regarding limitations on physician ownership and referrals (set forth in section 13562) to the Medicaid program. Effective December 1994.

State Medicaid Fraud Control (Section 13625).—Requires States to operate effective Medicaid fraud control units, meeting requirements established by the Secretary, unless the State demonstrates that effective operation of a unit would not be cost-effective and that, in the absence of a unit, beneficiaries will be protected from abuse and neglect. Effective January 1, 1995.

Part V—Miscellaneous

Increased Federal Payments to Puerto Rico and Other Territories (Section 13641).—Provides for increases in current law limits on Federal matching payments for Medicaid programs in Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa. Effective in fiscal year 1994. In subsequent years, the new limits are adjusted for inflation.

Extension of Moratorium on Treatment of Certain Facilities as Institutions for Mental Diseases (Section 13642).—Extends through December 31, 1995, the classification of certain facilities as institutions for mental diseases (IMDs) for purposes of Medicaid reimbursement. Effective upon enactment.

Extension of Certain Demonstration Projects (Section 13643).—Extends funding periods for demonstration projects authorized under OBRA 89 concerning low-income pregnant women, and projects authorized under OBRA 90 concerning low-income families, and makes funds designated for these demonstrations available until expended. Applies spousal impoverishment eligibility rules to the On Lok waiver demonstration program. Effective upon enactment.

Extension of Period of Applicability of Enrollment Mix Requirement to Certain Health Maintenance Organizations Providing Services Under Dayton Area Health Plan (Section 13644).—Extends through January 31, 1995, the current waiver of the enrollment mix requirement with respect to the Dayton Area Health Plan. Effective upon enactment.

CHILD WELFARE SERVICES, FOSTER CARE AND ADOPTION ASSISTANCE

1. Funding for Family Preservation and Family Support Services (including Services to Foster and Adoptive Families) (Sec. 13211 of House bill)

Present Law

The child welfare services program under title IV–B of the Social Security Act authorizes 75 percent Federal matching grants to States for child welfare services. These funds may be used: (1) to protect and promote the welfare of children; (2) to prevent or remedy, or assist in the solution of problems that may result in, the neglect, abuse, exploitation or delinquency of children; (3) to prevent the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (4) to restore children to their families by the provision of services to the child and the family; (5) to place children in adoptive homes if restoration is not possible or appropriate; and (6) to assure adequate foster care when children cannot return home or be placed for adoption.

The authorization level for the title IV–B program is $325 million per fiscal year. Funds are distributed to the States and outlying areas on the basis of their under-age-21 population and per capita income. The Secretary may, where appropriate, make payments directly to an Indian tribal organization. For

fiscal year 1993, appropriations for the program total $295 million.

Title IV–B does not include a specific reserve for services designed to strengthen and preserve families, although States have the flexibility to use their title IV–B child welfare services funds for such services.

House Bill

(a) Authorization of Appropriations.—The House bill would amend title IV–B to establish capped entitlement funding for grants to States to provide family preservation and family support services. The authorization level for the capped entitlement would equal $60 million for fiscal year 1994; $135 million for fiscal year 1995; $240 million for fiscal Year 1996; $360 million for fiscal year 1997; and $600 million for fiscal year 1998. Funds allotted for a fiscal year would have to be expended in the fiscal year or in the succeeding fiscal year.

(b) Use of Funds.—States would use the funds to develop and establish, or to expand, and to operate a program of family preservation services and community-based family support services.

The term "family support services" means community-based services to promote the well-being of children and families designed to increase the strength and stability of families (including foster, adoptive and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development, including:

(i) services designed to improve parenting skills;

(ii) respite care of children to provide temporary relief for parents and other caregivers;

(iii) structured activities involving parents and children to strengthen the parent-child relationship;

(iv) drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(v) information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(vi) early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

The term "family preservation services" means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including:

(i) service programs designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption, with a legal guardian, or, where appropriate with respect to a child, in some other planned, permanent living arrangement;

(ii) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

(iii) service programs designed to provide follow-up care to families to whom a child has been returned following a foster care placement;

(iv) respite care of children to provide temporary relief for parents and other caregivers (such as foster parents); and

(v) services designed to improve parenting skills.

(c) Allotment of Funds.—One percent of the amount appropriated would be reserved for expenditure by the Secretary for evaluation, research, training, and technical assistance.

For a four-year period beginning with fiscal year 1995, specific amounts would be reserved for grants for assessments of State courts (see item 3 below).

One percent would be reserved for allotment to tribal organizations of Indian tribes that have submitted a plan (which need not meet any State plan requirement specified below that the Secretary determines is inappropriate with respect to the tribe) and whose allotment would be greater than $10,000. Tribal allotments would be made based on the number of children in the tribe relative to the number of children in all tribes with approved plans, as determined by the Secretary on the basis of the most current and reliable information available.

The allotment to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands and American Samoa would be determined according to the formula in effect under present law. Remaining funds would be distributed to States according to a formula, based on the State's share of children in all States receiving food stamp benefits.

(d) Matching Rate.—States would be entitled to payments equal to their allotments, for use in paying not more than 75 percent of the costs of activities under the approved State plan. The remaining 25 percent of costs must be paid with funds from non-Federal sources.

(e) State Plan Requirements.—To be eligible to receive its share of entitlement funds for a fiscal year, a State must have an approved plan, developed jointly by the Secretary and the State agency, after consultation with appropriate public and nonprofit private agencies and community-based organizations. For fiscal year 1994, however, a State that has not completed development of its plan may receive up to $1 million for plan development, plus any remaining portion of its allotment to provide services to children and families, so long as it has submitted an appropriate application to the Secretary. The State would have to expend its allotment for fiscal year 1994 in fiscal year 1994.

The State plan must:

(i) provide that the State child welfare agency will administer or supervise the administration of the program;

(ii) set forth (and periodically update) program goals for each five-year period under the plan, and the methods to be used in measuring progress toward the goals; contain commitments to perform interim and final progress reviews and, on the basis of the final review, to prepare a final report and to develop goals for the next five-year period;

(iii) provide for coordination, to the extent feasible and appropriate, with other Federal or Federally-assisted programs serving the same populations;

(iv) provide assurances that not less than 90 percent of expenditures will be used for services for children and families, and that significant portions of the 90 percent will be expended for family preservation services and for community-based family support services;

(v) provide that by the beginning of the sixth fiscal year during which the plan is in effect, programs under the plan will be available on a statewide basis, to the extent feasible and appropriate;

(vi) provide assurances that the State will annually prepare a description of the service programs to be made available in the following fiscal year, the populations that will be served, and the geographic areas in the State in which the services will be available. The description must be furnished to the Secretary, and made available to the public, when the initial plan is submitted and, in succeeding fiscal years, by the end of the third quarter of the preceding fiscal year;

(vii) provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of the plan;

(viii) provide assurances that Federal funds provided under this amendment will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the same purposes, and that the State will furnish reports as required demonstrating the State's compliance with this provision; and

(ix) provide that the State will furnish reports and participate in evaluations as required by the Secretary.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified as follows: (1) the authorization level for the capped entitlement equals $60 million for fiscal year 1994, $150 million for fiscal year 1995, $225 million for fiscal year 1996, $240 million for fiscal year 1997, and $255 million for fiscal year 1998; (2) reserves $2 million for fiscal year 1994, and $6 million for each of fiscal years 1995 through 1998, for evaluation, research, training and technical assistance, including the evaluation of State programs regardless of whether federally assisted; (3) clarifies that the new entitlement funds may be expended only for programs of community-based family support and family preservation services; (4) clarifies that the Secretary would not have to approve an unawardable plan of an Indian tribe; (5) clarifies that, for fiscal year 1994, funds for plan development must come from the State's allotment; (6) excludes the State plan requirement regarding statewideness; (7) would allow States to spend the fiscal year 1994 allotment by the end of fiscal year 1995; and (8) includes several technical amendments.

In addition, under the conference agreement, the definition of "family support services" excludes the illustrative list of activities that may be undertaken. However, the conferees intend that the term "family support services" include the following community-based services:

(1) services, including in-home visits, parent support groups, and other programs, designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition;

(2) respite care of children to provide temporary relief for parents and other caregivers;

(3) structured activities involving parents and children to strengthen the parent-child relationship;

(4) drop-in centers to afford families opportunities for informal interaction with other families and with program staff;

(5) information and referral services to afford families access to other community services, including child care, health care, nutrition programs, adult education and literacy programs, and counseling and mentoring services; and

(6) early developmental screening of children to assess the needs of such children, and assistance to families in securing specific services to meet these needs.

2. Evaluations; Reports (Sec. 13211 of House bill)

Present Law

Section 426 of title IV–B authorizes funds for research, training and demonstration projects, including grants to: (a) public and non-profit institutions of higher learning and child welfare agencies for research or demonstration projects in the field of child welfare that are of regional or national significance and for special projects to demonstrate new methods that will advance child welfare; (b) State and local child welfare agencies for research to encourage experimental and special types of child welfare services; and (c) institutions of higher learning to train personnel for work in the child welfare field.

House Bill

The provision would require the Secretary to evaluate the effectiveness of the family support and family preservation services authorized by the amendment in accordance with criteria developed by the Secretary. In developing the criteria, the Secretary must consult with appropriate parties, such as State child welfare agencies, persons administering child and family services programs for private, nonprofit organizations with an interest in child welfare, and other persons with recognized expertise in the evaluation of child and family services programs or related programs. The Secretary would have to coordinate these evaluations, to the extent feasible, with evaluations by the States of the effectiveness of their programs. The Secretary would have to report evaluation findings to the Congress by December 31, 1997.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to clarify that the Secretary may evaluate family support and family preservation programs that are not funded under title IV–B, and to exclude the statutory requirement that the Secretary issue a single report on the evaluations.

The conferees intend that the Secretary will provide the Committee on Ways and Means and the Committee on Finance with interim evaluation findings by December 31, 1996, and final findings by December 31, 1997.

3. Grants to State Courts to Assess and Improve Handling of Proceedings Related to Foster Care and Adoption (Sec. 13212 of House bill)

Present Law

No provision.

House Bill

Of amounts reserved (as described in item 1(c) above) a sum of $5 million for fiscal year 1995, and $10 million for each of fiscal years 1996 through 1998, would be used for a four-year program of grants to the highest State courts involved in proceedings relating to foster care and adoption. The grants would enable the courts to conduct assessments of the role, responsibilities and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts) to determine the advisability or appropriateness of foster care placement, to determine whether to terminate parental rights, and to legally recognize the adoption of a child; and to implement changes deemed necessary by the assessments.

The assessments would have to identify the requirements imposed on State courts, with respect to these proceedings, addressing separately:

(a) rules, standards and criteria imposed under State laws (including laws implementing parts B and E of title IV, laws relating to child abuse and neglect, or any other laws on related matters) applicable to decisions concerning the placement of a child, the parent-child relationship, or other matters of child welfare, including determinations: (i) whether to remove a child from or return a child to its home, (ii) whether to place a child in foster care or to continue a foster care placement, (iii) whether to terminate parental rights, (iv) whether to place a child for adoption or in another permanent arrangement, and (v) whether to set aside or to make final an adoption, and;

(b) procedures and rules, imposed by law or adopted voluntarily by the court system, addressing matters such as choice between administrative and judicial proceedings; timetables for proceedings; procedural safeguards for parents, guardians, and children; and general rules for conduct of the proceeding.

The assessments would also have to: (i) evaluate the performance of the court system in implementing these requirements by assessing the extent of conformity of State court rules and practices with the recommendations of national organizations concerned with the permanent placement of children; (ii) assess the extent to which particular requirements imposed on State courts facilitate or impede achievement of title IV–B and IV–E program goals, or impose significant burdens on the courts; and (iii) make specific recommendations for improvement (including recommendations for changes in State or Federal laws, regulations or policies; changes in procedures and practices of the courts or of State child welfare and foster care agencies; additional education or training of court or agency personnel; collection and dissemination of additional data or information; or increases in manpower, reductions in numbers of case reviews, or other changes needed to enable the courts to manage their caseloads).

In order to be eligible for a grant, a highest State court must submit to the Secretary an application containing a timetable, budget and methodology for conducting the assessment; certification by the State child welfare agency and foster care citizen review board (if any) that they had an opportunity for review and comment; assurances that grant funds not needed for the assessment will be used to implement recommended changes, and that grant funds will not supplant other State or local funds used for similar purposes; a commitment to furnish to the Secretary interim and final reports; and such other information as the Secretary requires.

Each court with an approved application would be allotted an amount, for each of fiscal years 1995 through 1998, equal to the sum of: (1) $75,000 for fiscal year 1995, and $85,000 for each of the three succeeding fiscal years, plus (2) a share of the remaining funds reserved for this purpose based on the State's share of individuals under age 21.

Courts could use grant funds without providing local matching in fiscal year 1995, but would have to provide 25 percent State or local matching of grant funds for the three remaining years.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill regarding the reserve amount for grants to State courts, the allotment of funds to courts with approved applications, and the use of grant funds.

Under the conference agreement, the grants would enable courts to: (1) conduct assessments, in accordance with requirements published by the Secretary, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings that: (a) implement parts B and E of title IV; (b) determine the advisability or appropriateness of foster care placement; (c) determine whether to terminate parental rights; (d) determine whether to approve the adoption or other permanent placement of a child; and (2) implement changes deemed necessary as a result of the assessments.

In order to be eligible for a grant, a court must submit an application to the Secretary at such time, in such form and including such information and commitments as the Secretary requires.

The conferees intend that each assessment:

(1) identify the requirements imposed on State courts with respect to the proceedings listed above, addressing separately: (a) rules, standards, and criteria imposed pursuant to State laws implementing parts B and E of title IV of the Social Security Act and State laws designed to achieve safe, timely, and permanent placements for abused and neglected children, to be applied in the court proceedings; and (b) rules and procedures, established by or under State law or adopted by the State court system on its own initiative, with respect to the conduct of the proceedings, that address matters such as: (i) whether a proceeding should be judicial or administrative, (ii) timetables for proceedings, (iii) procedural safeguards of the rights of parents (including foster and adoptive parents), guardians, and children, such as provisions for legal representation of parents and children and for guardians ad litem; and (iv) provisions concerning the admissibility of evidence and the opportunity to present witnesses;

(2) evaluate the performance of the State courts in implementing the requirements identified under paragraph (1) by assessing: (a) the extent to which particular practices or procedures have been successful in facilitating compliance with such requirements; (b) the frequency of failures to comply with any such requirements, and patterns with respect to the circumstances of and factors contributing to the failures; (c) the frequency and severity of judicial delays; (d) whether there are limitations in available court time inhibiting the presentation of evidence and the making of arguments; (e) the extent to which parties and attorneys actually call witnesses, introduce evidence, and make pertinent legal arguments in connection with the requirements of parts B and E of title IV of the Social Security Act; (f) the extent to which caseload size and resource limitations affect judicial performance in relation to issues identified in (b), (c), (d), and (e); and (g) how often parents and children have legal representation and the adequacy of such representation;

(3) determine the extent to which the rules and practices identified under paragraph (1) or (2) are in accord with the recommended

standards of national organizations concerned with the permanent placement of foster children;

(4) determine, from the standpoint of the State courts, the extent to which particular requirements under paragraph (1): (a) are facilitating or impeding achievement of the purposes of parts B and E, including the goal of appropriate permanent placement for each child, and (b) are imposing significant administrative burdens on the State court system; and

(5) make specific recommendations for improvement, based on the conclusions reached as a result of activities described in paragraphs (1) through (4), including recommendations for: (a) changes in State and Federal laws, regulations or policies; (b) changes in procedures and practices of the State courts or of the State agencies administering foster care, adoption, child welfare and child protective services programs; (c) additional education or training of State court judges, or of personnel of the judicial system or of the State agencies described in (b); (d) improvements in the selection, compensation, and training of court-appointed legal representatives of parents and children; (e) collection or dissemination of additional data or information for purposes of increasing the understanding of personnel of State courts and State agencies of matters relating to case review proceedings in general, or to specific case review proceedings; and (f) increases in manpower, improvements in judicial caseflow management, reductions in the number of case reviews, or other changes needed to enable the State courts to better manage their caseloads with respect to case review proceedings.

The conferees intend that the application contain: (a) a timetable for conducting and completing the assessment; (b) a budget for the assessment; (c) a description of the methods to be used to select State courts for inclusion in, and to conduct, the assessment; (d) certifications that the head of the State agency administering the State program under part E, and the State foster care citizen review board or State organization of review boards (if any), have had an opportunity to review and comment on a draft of the application before its submission, and a copy of such comments; (e) a description of the process to be used by the court to consult with the entities referred to in (d) in conducting the assessment; (f) a commitment that, to the extent funds provided are not necessary to complete the assessment, the court will use the funds to implement, to the extent feasible, recommendations made under (5) above; (g) a commitment that funds will not be used to supplant State or local funds which would otherwise be used for similar purposes; (h) a commitment to furnish the Secretary an interim report following the end of the second year of assessment activities and a final report following the completion of the assessment; and (i) any other information the Secretary may require.

4. Protections for Foster Children (Sec. 13213 of House bill)

Present Law

In order to receive its share of the title IV-B allocation in excess of $141 million, each State is required under section 427(a) of title IV-B to conduct an inventory of children in foster care; and to implement and operate, to the satisfaction of the Secretary, a tracking system for children in foster care, a case review system for children in foster care, and a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

Further, under section 427(b), if the appropriations for the title IV-B program equal $325 million for two consecutive years, a State does not receive its title IV-B allotment in excess of its share of the 1979 funding level unless it has met all the section 427 requirements outlined above, and in addition, has implemented a preplacement preventive services program designed to help children remain with their families. Finally, States that have elected to provide Federally-supplemented foster care payments for voluntarily-placed foster children are required to implement all section 427 protections, including the preplacement preventive services program.

House Bill

Beginning for fiscal year 1995, the provision would repeal section 427 of title IV-B and require that the State plan for basic title IV-B funds provide for the foster care protections currently outlined in section 427.

In addition, within 12 months after enactment, States would be required to review State laws and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including laws and procedures providing for legal representation of such children), and, within 24 months after enactment, to enact and implement such laws and procedures as the State determines necessary to enable permanent decisions to be made expeditiously regarding the placement of such children.

Also, funds withheld or recovered from a State based on its failure to comply substantially with these protections could not be reallotted among other States.

Statutory language is included stating that the amendments shall not be construed to permit any State to interrupt the provision of the foster care protections described in section 427 (as in effect on the effective date of the amendments).

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. State Plan Requirement Regarding the Indian Child Welfare Act (Sec. 13214 of House bill)

Present Law

The Indian Child Welfare Act (P.L. 95-608) includes a number of State requirements relating to the foster care or adoptive placement, or termination of parental rights, of Indian children. There is currently no statutory link between the Indian Child Welfare Act and the child welfare services programs under the Social Security Act.

House Bill

A State plan for title IV-B must contain a description, developed after consultation with tribal organizations in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Child Welfare Traineeships (Sec. 13215 of House bill)

Present Law

Title IV-B authorizes such sums as may be necessary to enable the Secretary to make grants to public or private nonprofit institutions of higher education for training personnel for work in the field of child welfare.

House Bill

The Secretary could award grants to institutions of higher learning for child welfare traineeships with stipends only where the grant application provides assurances that:

(a) students given stipends would have to agree to participate in training at a child welfare agency and either to serve in a public or private child welfare agency for a period equal to the period of training, or to repay the cost (or an appropriately pro-rated part) of the stipend, plus interest and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary). Exceptions to repayment may be prescribed by the Secretary in regulations;

(b) the institution would enter into agreements with child welfare agencies for on-site training of stipend recipients, accept applications from individuals already employed in the field of child welfare services, and track, for a period of three years after completion of a course of study, the employment record of each former student.

Effective Date

Would apply to grants awarded on or after April 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

7. Changes to Reimbursement Policy under Title IV-E (Sec. 13216-13217 of House bill)

Present Law

(a) Dissolved adoptions.—Under title IV-E, the Federal government reimburses States for foster care maintenance payments made on behalf of children from AFDC-eligible families. A child on whose behalf title IV-E adoption assistance payments are made (and whose adoption has been legally finalized by a judicial decree of adoption), but whose adoption is subsequently set aside by the court and who returns to foster care, is often not eligible for title IV-E foster care maintenance and adoption assistance payments, because the income or resources of the adoptive family have made the child ineligible.

(b) Time frame for hearing on voluntary placements.—No payment may be made under title IV-E to reimburse a State for foster care maintenance payments in the case of any child who was removed from the home as a result of a voluntary placement agreement and has remained in the placement for more than 180 days, unless there has been a judicial determination within the first 180 days of the placement to the effect that the placement is in the best interests of the child.

House Bill

(a) Dissolved adoptions.—The provision would permit States to make foster care maintenance payments under title IV-E on behalf of a child: (i) with respect to whom such payments were previously made, (ii) whose adoption has been set aside by a court, (iii) who meets certain eligibility requirements under title IV-E (i.e., the child was removed from the home pursuant to a voluntary placement agreement or judicial determination; the child is under the responsibility of the State; and the child has been

placed into foster care as a result of a voluntary placement agreement or judicial determination; and (iv) does not meet specified AFDC eligibility requirements, but would meet the requirements if the child were in the same financial and other circumstances the child was in the last time the child was determined eligible, and the adoption were treated as having never occurred.

(b) Time frame for hearing on voluntary placements.—If a judicial determination is made after the first 180 days of placement, permits Federal reimbursement for foster care maintenance payments beginning 180 days after the date that such judicial determination is finally made.

Effective Date

(a) The provision would apply to payments in fiscal years beginning on or after October 1, 1995.

(b) The provision would apply to foster care maintenance payments made in fiscal year 1996 and thereafter, on behalf of children placed in foster care on or after October 1, 1995.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provisions in the House bill.

8. Study of Reasonable Efforts (Sec. 13218 of House bill)

Present Law

In order for a State to be eligible for title IV–E funding, the State plan must specify that, in each case, reasonable efforts will be made prior to the placement of a child in foster care to prevent the need for foster care and make it possible for the child to return home (sec. 471(a)(15)). The statute also provides that for each child entering foster care after October 1, 1983, a judicial determination must be made that there were reasonable efforts to prevent placement in foster care (sec. 472(a)(1)).

House Bill

The provision would require the Secretary to conduct a study of the ways in which States implement the "reasonable efforts" requirement of sec. 471(a)(15). The Secretary's study would have to give particular attention to:

(a) a State's standards used to determine what steps to take, and whether and for how long to continue efforts — (1) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home; and (2) to return a child home rather than seek some other planned, permanent placement; and

(b) the responses of the courts to the State actions described in (a) above, including whether such responses facilitate or impede State agencies' achievement of the objectives of the reasonable efforts requirement.

The Secretary would have to submit a report to Congress within 18 months of enactment, with such recommendations as the Secretary finds appropriate, based on the results of the study. The report must describe State practices found effective in achieving the objectives of the reasonable efforts requirement, and if appropriate, must set forth model standards for consideration by the States.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

The conferees strongly urge the Secretary to conduct a study of State implementation of the reasonable efforts requirements, as outlined in the House bill, and to submit a report to Congress within 18 months of enactment with recommendations. In addition, the conferees urge the Secretary to convene an advisory group to provide recommendations to the Secretary on the implementation of the "reasonable efforts" requirements. The advisory group should include representatives of the following types of organizations and agencies: (1) private, nonprofit organizations with an interest in child welfare; (2) agencies of States and their political subdivisions responsible for child protective services, foster care services, or adoption services; and (3) judicial bodies of States and their political subdivisions responsible for adjudicating issues of family law.

9. Enhanced Match for Automated Data Systems (Sec. 13219 of House bill)

Present Law

Section 479 of title IV–E provides for the implementation of a foster care and adoption data collection system. The data collection system is required to provide national information with respect to foster and adoptive children.

House Bill

Would provide for 90 percent matching of State expenditures for planning, design, development or installation of statewide mechanized data collection and information retrieval systems (including 90 percent of the full amount of expenditures for hardware components). To qualify for matching, systems would have to comply with regulations concerning collection of data relating to adoption and foster care; to the extent practicable, be compatible with other State data collection systems relating to child neglect and abuse and to eligibility for AFDC; and be determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs under title IV–E and title IV–B.

Would provide 50 percent matching of State expenditures for operation of the systems. Expenditures for the systems would be considered administrative expenditures under the State's title IV–E plan, regardless of whether the systems are used in part to collect data on children ineligible for title IV–E benefits.

Effective Date

The 90 percent match would be in effect for fiscal years 1994 through 1996; the rate would be 50 percent thereafter.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to provide for a 75 percent enhanced matching rate, rather than a 90 percent rate.

10. Periodic Reevaluation of Foster Care Maintenance Payments (Sec. 13220 of House bill)

Present Law

Each State establishes its own foster care maintenance payment levels. Under current title IV–E law, as part of the State plan requirements, States must review periodically their foster care maintenance and adoption assistance payments.

House Bill

The bill amends title IV–E to require that States review their foster care maintenance payment and adoption assistance levels at least every three years to assure their continuing appropriateness, and report the results of the review to the Secretary and the public in such form and manner as the Secretary may by regulation require.

At a minimum, the report must include: (i) a statement of the manner in which the foster care maintenance payment level is determined, including information on how the payment level compares to the actual cost of foster care; (ii) information regarding the basic payment level and whether this level includes an amount to cover the cost of clothing, and whether such payment level varies by the type of care or the special needs or age of the child, and, if so, the payment levels for each special needs, care or age category. States that do not pay a differential rate for children who are HIV-positive or have AIDS, or children who are drug-addicted or have complications due to drug or alcohol exposure, or have other severe special needs, must state the reasons for this decision. In addition, the report must include information on any limitations imposed by the State on adoption assistance payment levels.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

11. Case Review System Requirements (Secs. 13221 and 13222 of House bill)

Present Law

In order to receive certain incentive funds under title IV–B, States are required to implement and operate, in addition to other activities, a case review system for each child receiving foster care under the supervision of the State. Section 475 of title IV–E defines "case review system" to mean a procedure for assuring that: (a) each child has a case plan meeting certain specified requirements; (b) the status of each child is reviewed at least once every six months by a court or by administrative review; and (c) each child in foster care is guaranteed a dispositional hearing in a family or juvenile court or another court of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than 18 months after the original placement in foster care (and periodically thereafter during a continuation of foster care).

The dispositional hearing determines: (a) the future status of the child, including but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should be continued in foster care on a permanent or long-term basis; and (b) for a child who is age 16 or older, the services needed to assist the child to make the transition to independent living.

House Bill

(a) Dispositional hearing.—The initial dispositional hearing would continue to have to take place no later than 18 months after the original placement in foster care, but subsequent hearings would have to take place at least every 12 months thereafter (rather than "periodically").

(b) Health care plans for foster children.—Each child's case plan would have to include a record that the foster care provider was advised (where appropriate) of the child's eligibility for early and periodic screening, diagnostic, and treatment services.

The Committee report includes language requesting that the Secretary review the efficiency and performance of State foster care programs that rely on citizen review panels or citizen participation in State administrative reviews, and compare such State programs to other State programs. The Secretary also is requested to examine impediments to additional States adopting citizen participation in foster care reviews, and possible incentives for further State implementation of such citizen participation. The Secretary's report should be completed within 12 months after the date of enactment.

Effective Date

(a) Upon enactment.

(b) The amendment would apply to case plans established or reviewed on or after January 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provisions in the House bill.

The conferees request the Secretary to conduct a review of State programs that include citizen review panels or citizen participation in State administrative reviews, and contrast their performance in meeting the goals of the Act with States that do not involve citizens in the review process. Beyond the comparison of overall performance, the Secretary's assessment should address, at a minimum, the nature of citizen involvement in reviews in different States, the structural relationships of citizen boards to both agencies and courts, the role review boards play in assisting States' compliance with the periodic and dispositional review requirements in P.L. 96-272, the data maintained by citizen review boards, the annual reports generated as a result of administrative reviews, and the continuity in personnel and case planning review boards offer for families and children who come before them. The Secretary should also report on impediments to additional States implementing citizen review panels or other citizen participation programs in foster care reviews, and possible Federal incentives for State implementation of such systems. The Secretary should report to the Congress within 18 months of enactment.

12. Amendments to the Independent Living Program (Sec. 13223 of House bill)

Present Law

The independent living program is a Federal-State entitlement program designed to help ease the transition of foster children age 16 and older to independent living. States may include children who are not receiving title IV-E foster care benefits in the program, and may also allow children who have left foster care, up to age 21, to participate.

The AFDC resource test applies to a foster child on whose behalf the State is claiming reimbursement under the title IV-E foster care maintenance payments program. Should such a child accumulate assets above those allowed under the AFDC test while on foster care: (1) the child may become ineligible to participate in the independent living program, if the State in which the child resides allows only title IV-E eligible foster children to participate; and (2) the child may lose Medicaid benefits, since foster children receiving State-only benefits are not categorically eligible for Medicaid and generally must meet a resource test.

Youths who leave foster care and apply for or receive AFDC benefits are subject to the same rules regarding income and resources as other AFDC applicants and recipients.

The authorization for the independent living program expired at the end of fiscal year 1992. The entitlement ceiling in fiscal year 1992 was $70 million.

House Bill

(a) Treatment of assets of youth participating in independent living program.—Effective beginning fiscal year 1996, with respect to a child who is receiving assistance under an independent living program, reasonable amounts (as determined by the State) of the assets of the child which would otherwise be regarded as resources for purposes of determining eligibility for programs under title IV may be disregarded for the purpose of allowing the child to establish a household, pursue further education, or otherwise complete the transition to independent living.

(b) Permanent extension of program.—The authorization for the independent living program would be made permanent, effective October 1, 1992, at $70 million per year.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill modifying the treatment of assets of youths participating in independent living programs. The conference agreement follows the House bill with respect to the permanent extension of the independent living program.

13. Elimination of Foster Care Ceiling and Transfer Authority (Sec. 13224 of House bill)

Present Law

The foster care ceilings and the authority to transfer foster care funds to child welfare services expired September 30, 1992.

Prior to the expiration, the law imposed mandatory State-by-State ceilings on foster care funds if the Federal appropriation for child welfare services reached a specified trigger level, most recently $325 million. In the absence of a mandatory foster care ceiling, States could elect to operate under a voluntary ceiling. A State could use one of several methods to calculate the most favorable ceiling. The mandatory ceiling did not go into effect after 1981.

Under a voluntary ceiling, a State could transfer a portion of its unused foster care funds to its child welfare services program. However, the amount transferred, together with the State's IV-B allocation, could not exceed what the State would have received if the child welfare services funding had triggered the ceiling. It is estimated that the amount transferred by States equaled less than $1 million for fiscal year 1991, and no funds were transferred for fiscal year 1992.

House Bill

Repeals the ceiling and transfer provisions.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

14. Training of Agency Staff and Foster and Adoptive Parents (Sec. 13225 of House bill)

Present Law

Prior law provided that States were entitled under the title IV-E program to a payment equal to 75 percent of expenditures for the training of personnel employed or preparing for employment by the State or local child welfare agency, and for the training of foster and adoptive parents. This enhanced Federal match expired at the end of fiscal year 1992.

House Bill

The authorization for Federal reimbursement at 75 percent would be extended permanently.

Effective Date

Effective retroactive to October 1, 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective October 1, 1993.

15. On-Site Reviews and Audits of State Claims for Foster Care and Adoption Assistance (Sec. 13226 of House bill)

Present Law

Section 471(a)(13) requires, as a component of State plans under title IV-E, that States arrange for periodic and independent audits of their activities under titles IV-B and IV-E, to be conducted at least once every three years. The Secretary may disallow expenditures for Federal reimbursement under title IV-E as a result of several review procedures, including audits conducted pursuant to section 471(a)(13). Disallowances may result from audits conducted by the Inspector General, regional office reviews of quarterly expenditure reports submitted by States as part of the claims reimbursement process, or Federal financial reviews.

Title IV-E financial reviews are conducted retrospectively, after conclusion of the fiscal year. However, States are not generally reviewed annually, and States may be reviewed for more than one fiscal year at a time.

States may appeal disallowances to the Departmental Appeals Board.

House Bill

The provision would require the Secretary to:

(a) publish regulations to be used in on-site reviews and audits of State title IV-E programs, which must specify the criteria to be used to determine the appropriateness of expenditures identified in sampled case files, the criteria to be used to determine the appropriateness of expenditures for child placement services and administration, and types of erroneous expenditures which will be disregarded for purposes of determining the appropriateness of payments (including erroneous payments resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided by the Secretary to the State); and

(b) after consultation with State and local agencies, furnish State agencies a written description of the procedures and methodologies to be used in on-site reviews and audits, which must specify the methods and procedures to be used to select a sample of case files for review or audit, the procedures to be used in reviewing or auditing sampled case files to determine erroneous expenditures, the procedures to be used to review or audit State expenditures for child placement services and plan administration, and the methodology to be used to extrapolate from review or audit findings to all expenditures.

The Secretary could not use, in a review or audit of State expenditures during a fiscal year, any criteria, methodology, or procedure, unless published in a final regulation or furnished to the State in writing (as applicable) not later than three months before the beginning of that fiscal year.

Effective Date

The amendment made by this section would be effective with respect to State programs in fiscal years beginning on or after October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees understand that the Secretary already has the necessary authority to publish the regulations required by the House provision and urge the Secretary to use that authority to carry out the purpose of the House provision.

16. Reviews of State Conformity with State Plan Requirements (Sec. 13227 of House bill)

Present Law

(a) Title IV-B.—Section 427 of title IV-B contains certain protections for foster children with which States must comply to be eligible to receive incentive funds (see item A.4 above). The Department of Health and Human Services (HHS) has developed a review system to determine State compliance with these protections.

States self-certify their compliance with section 427 requirements, and are then reviewed by HHS to determine actual compliance. To verify compliance with section 427, HHS conducts a two-stage review. The first stage is an administrative review to determine whether States have developed policies and procedures necessary to implement section 427 protections for all children in foster care under the responsibility of the State. The second stage is a case record survey to determine if these policies are being implemented throughout the State.

An initial review is conducted for the first year in which the State self-certifies its eligibility. The case record survey in the initial review must confirm that section 427 protections are provided for at least 66 percent of the children in foster care. If a State meets the initial review requirements, a subsequent review is conducted for the following fiscal year, which must find that section 427 protections are provided for at least 80 percent of the children. States which meet the subsequent review will be reviewed for the third fiscal year following the fiscal year for which the subsequent review was conducted. This triennial review must find section 427 protections are being provided for at least 90 percent of the children in foster care. If a State does not meet the requirements for any year under review, the review is conducted each succeeding fiscal year until eligibility is established for title IV-B incentive funds, or until the State withdraws its self-certification.

(b) Title IV-E.—Section 471(a)(13) of title IV-E requires, as a component of State plans under title IV-E, that States arrange for periodic and independent audits of their activities under titles IV-B and IV-E, to be conducted at least once every three years. In addition, section 471(b) allows the Secretary of HHS to withhold or reduce payments to States upon finding that a State plan no longer complies with State plan requirements, or, in the State's administration of the plan, there is substantial failure to comply with its provisions. The Secretary must first provide reasonable notice and opportunity for a hearing.

House Bill

The provision would bar the Secretary from imposing financial penalties on States for failures of State programs under titles IV-B and IV-E to conform to provisions of the State plan and to applicable State plan requirements under Federal statutes and regulations, except under final regulations published in accordance with this amendment after consultation with the State agencies administering those programs.

The regulations would have to:

(a) specify the review timetable, which would have to require annual reviews of each State program in the first two years of program operation and within one year following any review finding a State not to be in substantial compliance; and could permit less frequent reviews of State programs found in substantial compliance, but would permit the Secretary to reinstate a more frequent review schedule based on any information indicating problems with compliance;

(b) specify the plan requirements subject to review, and the criteria for measuring compliance with such requirements and whether there is a substantial failure to comply;

(c) specify the method to be used to determine the financial penalty to be imposed for failure to comply, under which: (i) no penalty could be imposed unless the program fails substantially to comply, (ii) no penalty could be imposed for a failure resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary, and (iii) the penalty would be related to the extent of noncompliance;

(d) require the Secretary, with respect to any State found to have failed substantially to comply with plan requirements, (i) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the noncompliance, (ii) to make technical assistance available to the State to the extent necessary to enable the State to develop and implement the corrective action plan, (iii) to suspend the imposition of any penalty while the corrective action plan is in effect, and (iv) to forgive any penalty if the noncompliance is ended by successful completion of the corrective action plan.

The regulations must: (i) require the Secretary to give notice to a State not later than 10 days after the determination of noncompliance, stating the basis for the determination and the amount of the financial penalty (if any) imposed on the State, (ii) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days of receipt of the notice (or, if later, after failure to continue or to complete a corrective action plan), and (iii) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, by appeal to the appropriate Federal district court within 60 days after receiving notice of the Board's decision.

Statutory language is added stating that the provision could not be construed to prevent the Secretary, in the interim before the effective date of the final regulations, from conducting compliance reviews of State programs for the purpose of providing information and technical assistance to States on corrective actions needed in order to comply with applicable requirements.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

17. Repeal of Annual Report on Voluntary Placement (Sec. 13228 of House bill)

Present Law

The Secretary is required to report annually to Congress on the number of children placed in foster care pursuant to voluntary placement agreements, and the reasons for such placements, together with a description of the extent to which such placements have contributed to the achievement of the objectives of title I of the Adoption Assistance Act of 1980, including recommendations on the continuation of the authority for voluntary placements.

House Bill

The provision would repeal the requirement for the annual report on voluntary placements.

Effective Date

Upon enactment

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

18. Demonstration Projects (Sec. 13229 of House bill)

Present Law

No similar provision.

House Bill

The provision would authorize the Secretary to permit up to 10 States to conduct demonstration projects which she finds likely to promote the objectives of titles IV-B or IV-E. The Secretary could waive State compliance with any requirement of titles IV-B and IV-E, which, if applied, would prevent the State from carrying out the demonstration or from effectively achieving the purpose of the demonstration, except the Secretary could not waive: (i) the foster care child protections of title IV-B, (ii) the requirement for the reporting of data on adoption and foster care (section 479), and (iii) any provision of title IV-E which, if waived, would impair the entitlement of any qualified child or family to benefits under title IV-E.

For purposes of Federal payments, expenditures under an approved demonstration could be treated, at State option, as expenditures under title IV-B or under title IV-E.

Demonstrations would be limited to five years. A State seeking to conduct a demonstration project must submit an application to the Secretary, in the form the Secretary requires, which includes:

(a) a description of the proposed project, the geographic area in which the project would be conducted, the children or families to be served, and the services to be provided (which must provide, where appropriate, for random assignment of children and families to groups served under the demonstration and to control groups);

(b) a statement of the period during which the project would be conducted;

(c) a discussion of the benefits that are expected from the project;

(d) an estimate of the costs or savings of the project;

(e) a statement of current program requirements for which waivers would be needed to permit conduct of the demonstration;

(f) a description of the proposed evaluation design; and

(g) such additional information as the Secretary may require.

The State must obtain an evaluation by an independent contractor of the effectiveness of the demonstration project, using an evaluation design approved by the Secretary

which provides for: (i) comparison of methods of service delivery under the demonstration, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management; (ii) comparison of outcomes for children and families (and groups of children and families) under the demonstration, and such outcomes under the State plan or plans, for purposes of assessing the effectiveness of the demonstration in achieving its goals; and (iii) any other information that the Secretary requires. The State must provide interim and final evaluation reports to the Secretary at such times and in such manner as the Secretary may require.

The Secretary could not authorize a State to conduct a demonstration unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the demonstration over its approved term (or some portion thereof or other period the Secretary may find appropriate) will not exceed the amount of such funds that would be spent under the State programs under part B and E of title IV in the State if the demonstration were not conducted.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

19. Placement Accountability (Sec. 13230 of House bill)

Present Law

Title IV-E does not require the States to implement any specialized reviews or procedures in the case of children who are placed in foster care outside the State.

Under title IV-E, States are required to provide for the development of a case plan for each child receiving foster care maintenance payments, which must meet certain requirements.

House Bill

The case plan for a child placed in a foster family home or child care institution a substantial distance from his home, or in a different State, would have to include a declaration of the reasons why the placement is in the best interests of the child. Also, in the case of a child placed in foster care in a different State, the case plan for the child must require that, at least every 6 months, an agency caseworker of either State visit the child in the foster home or institution, and submit a report on the visit to the State agency of the child's home State. In addition, the dispositional hearing (see item I.A.11.) for a child placed in foster care in a different State must determine whether the out-of-State placement continues to be appropriate and in the best interests of the child.

The statutorily-mandated data collection system relating to adoption and foster care (section 479(b)(2) of title IV-E) must provide information on the number and characteristics of children placed in foster care outside the State.

Effective Date

October 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees urge the Secretary to ensure that information on children placed in foster care outside the State is provided through the foster care and adoption data collection system of section 479 of title IV-E.

20. Payments of State Claims for Foster Care and Adoption Assistance (Sec. 13231 of House bill)

Present Law

No provision. However, Federal regulations provide a timetable for the treatment of State claims for foster care and adoption assistance, and other programs.

House Bill

The provision would codify the regulations. Title IV-E would provide that upon receipt of a State claim for expenditures, the Secretary must within 60 days allow, disallow, or defer the claim. Within 15 days after a decision to defer a claim, the Secretary must notify the State of the reasons for the deferral action and of the additional information which the Secretary believes is necessary to determine the allowability of the claim. Within 90 days after receiving all information (in readily reviewable form) necessary to determine the allowability of the claim, the Secretary must either: (1) disallow the claim, if able to complete the review and make a determination that the claim is not allowable, or (2) in any other case, allow the claim subject, as necessary, to later disallowance upon completion of the review, and subject, in any case, to later disallowance on the basis of findings of an audit or financial management review.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

21. Moratorium on Collection of Disallowances (Sec. 13232 of House bill)

Present Law

No provision.

House Bill

The provision would prohibit the Secretary: (1) before October 1, 1994, from reducing any payment to, withholding any payments from, or seeking any payments from any State, under titles IV-B or IV-E, by reason of a determination made in connection with a review of State compliance with the title IV-B (section 427) foster care protections for any fiscal year before fiscal year 1995; and (2) from reducing any payments to, withholding any payments from, or seeking any repayments from any State, under title IV-E, by reason of a determination made in connection with a Federal title IV-E financial review or an audit conducted by the Inspector General.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to provide that the moratorium on the collection of disallowances under title IV-E resulting from a financial review or an audit conducted by the Inspector General would end on October 1, 1994.

22. Border Region Child Welfare Worker Training Demonstration (Sec. 13233 of House bill)

Present Law

No provision.

House Bill

The provision would authorize training demonstrations in States along the United States-Mexico border (Texas, New Mexico, Arizona and California) for the delivery of culturally sensitive and bilingual child welfare services to residents of the border region of the States. The Secretary would have to make grants to up to 5 institutions of higher learning. One demonstration program would have to provide training to deliver services to historically unserved or underserved populations in an urban center with a high concentration of such populations.

The term historically unserved or underserved populations would include: (1) socially and economically disadvantaged populations; (2) persons with limited English proficiency; (3) urban populations exhibiting a high incidence of child neglect, abuse or abandonment; (4) homeless persons; (5) persons who are, or are in danger of becoming, infected with human immunodeficiency virus; and (6) alcohol and drug abusers.

In order to receive approval by the Secretary, an application would have to (i) demonstrate that the institution has a history of, or plan for, training students to deliver culturally-sensitive and bilingual child welfare services in a border county; (ii) provide assurances that the institution will develop and implement, in consultation with the child welfare agency of the State in which the applicant is located, a curriculum in the field of child welfare services that is sensitive to the culture of the areas of the United States that border on Mexico (or, for the urban center demonstration, the historically unserved or underserved populations of the urban center) and that includes training for identification of health problems of children and their families and of child abuse and neglect; and (iii) provide assurances that each individual who receives a stipend will enter into an agreement with the institution of higher learning under which the recipient agrees to be employed for a number of years equivalent to the period of the traineeship in a public or private nonprofit family assistance agency that provides services directly to residents of the border county in which the agency is located (or, for the urban center demonstration, the urban center in which the agency is located). In the event a recipient fails to comply, the recipient would have to repay all or part of the amount of the stipend, plus interest, and if applicable, reasonable collection fees.

Each institution that conducts a demonstration would have to develop and carry out a plan for evaluating the effects of the training provided under the project, and would have to submit a report on the evaluation.

A border county is defined as a county that is on the Mexico border and a county that borders on a county on the border.

The term urban center is defined to mean an area in a metropolitan statistical area, as designated by the Director of the Office of Management and Budget, which has a high incidence of individuals in historically unserved or underserved populations who are in need of social services, as determined by the Secretary using the most recent and best available information.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees

encourage the Secretary to conduct border region demonstration projects under section 426 of title IV-B of the Social Security Act, under which grants are made for research, training and demonstration projects in the field of child welfare.

23. Effect of Failure to Carry Out State Plan (Suter v. Artist M.) (Sec. 13234 of House bill)

Present Law

The "State plan" titles of the Social Security Act include Aid to Families with Dependent Children (AFDC) (Title IV-A), Child Welfare Services (Title IV-B), Child Support and Establishment of Paternity (Title IV-D), Foster Care and Adoption Assistance (Title IV-E), Job Opportunities and Basic Skills Training (JOBS) (Title IV-F), and Medicaid (Title XIX). Under these titles, as a precondition of funding, each participating State is required to develop a written "State plan" that meets certain statutory requirements in order to be approved by the Secretary of the Department of Health and Human Services (HHS).

The Adoption Assistance and Child Welfare Act of 1980 amended the Social Security Act to require States to provide in their title IV-E plans that, in the case of each child, reasonable efforts will be made (a) prior to the placement of the child in foster care, to prevent or eliminate the need for removal of the child from his home, and (b) to make it possible for the child to return to his home (Sec. 471(a)(15)).

On March 15, 1992, the U.S. Supreme Court held in Suter v. Artist M., that the "reasonable efforts" clause does not confer a federally-enforceable right on its beneficiaries, nor does it create an implied cause of action on their behalf. In rendering its opinion, the Court also stated that although section 471(a) does place a requirement on the States, that requirement "only goes so far as to ensure that the States have a plan approved by the Secretary which contains the 16 listed features."

House Bill

The provision would amend title XI of the Social Security Act by adding a new section that reads as follows:

"In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action."

The committee report states: "The intent of the provision is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M., while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause of title IV-E does not provide a basis for a private right of action. The Committee does not believe that Suter v. Artist M. would be applied to the unemployment compensation program."

Effective Date

The amendment would apply to actions pending on the date of enactment and to actions brought on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees note their strong support for the provision in the House bill. The provision's exclusion from the conference agreement should not be read by any court as a statement by Congress on the merits of the provision.

CHILD SUPPORT ENFORCEMENT

1. State Paternity Establishment Programs (Sec. 13241 of House bill; sec. 7602 of Senate amendment)

Present Law

The Child Support Enforcement Program was enacted as part of the Social Security Act in 1975. The States operate their own programs within Federal law and regulations. The Federal Government pays for 66 percent of the administrative costs. States are responsible for establishing paternity, locating absent parents, establishing child support orders, and enforcing child support. The Federal role includes monitoring and evaluating State programs, providing technical assistance, and in certain instances, helping States locate absent parents and collect child support payments. The Internal Revenue Service (IRS) collects some child support in arrears by offsetting income tax refunds otherwise due to taxpaying obligors.

Paternity Establishment Performance Standards.—A State shall be found in compliance with Federal law if its paternity establishment percentage for fiscal years beginning on or after October 1, 1991 is at least: (a) 50 percent; (b) the paternity establishment percentage of the State for fiscal year 1988, increased by 3 percentage points for each year after fiscal year 1989 and ending before the fiscal year for which the standard is to apply; or (c) the paternity establishment percentage determined with respect to all States for the fiscal year.

The term "paternity establishment percentage" for a State for a given fiscal year is the percent obtained by dividing the number of children in the State who are born out of wedlock, are receiving cash benefits or Title IV-D child support enforcement services, and for whom paternity has been established by the number of children who are born out of wedlock and are receiving cash benefits or IV-D child support services.

House Bill

Paternity Establishment Performance Standards.—A new paternity establishment standard would require that a State's paternity establishment percentage be based on the most recent data available which are found by the Secretary to be reliable, and must: (1) be 75 percent; or (2) have increased by 3 percentage points over the previous fiscal year for a State with a percentage between 50 and 75 percent, or by 6 percentage points over the previous fiscal year for a State with a percentage below 50 percent.

Additional Requirements.—The provision would require each State to have in effect laws requiring the use of additional procedures:

(1) for a simple civil process for voluntarily acknowledging paternity under which the State must explain the rights and responsibilities of acknowledging paternity and afford due process safeguards. Procedures must include. (A) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child; and (B) the inclusion of signature lines on applications for official birth certificates which, once signed by the father, and the mother, constitute a voluntary acknowledgment of paternity;

(2) under which the voluntary acknowledgment of paternity in the manner described in (1)(B) above creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity;

(3) under which the voluntary acknowledgment of paternity in the manner described in (1)(B) must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity;

(4) which provide that any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and if no objection is made the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(5) which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child; and

(6) which require default orders in paternity cases upon a showing that process has been served on the defendant and whatever additional showing may be required by State law.

(7) which require States to have expedited processes for paternity establishment in contested cases and to require that a State give full faith and credit to determinations of paternity made by other States.

The State plan requirements are further amended by requiring States to have in effect procedures under which, in the administration of any law involving the issuance, reissuance, or amendment of a birth certificate, the State must require each parent to furnish the social security number (SSN) to assist in identifying the parents of the child, unless the State (in accordance with regulations prescribed by the Secretary) finds good cause for not requiring the furnishing of the number. The SSN could not appear on the birth certificate, and the use of the SSN is restricted to child support purposes, unless the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of the number.

Effective Date

The provision would be effective on: (1) October 1, 1993, or (2) if later, upon enactment by the State legislature of all laws required by the provision, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after enactment of this bill.

Senate Amendment

Same as House bill, except does not require that the voluntary acknowledgment be "in the manner described in (1)(B)," does not require that the voluntary acknowledgment be "in the manner described in (1)(B)," and does not require State procedures to acquire social security numbers in conjunction with issuing birth certificates.

Effective Date

Same as House bill.

Conference Agreement

The conference agreement follows the Senate amendment, with technical changes in

the paternity establishment percentage definition and standards.

2. Enforcement of Health Insurance Support (Sec. 13242 of House bill; sec. 7432 of Senate amendment)

Present Law

Public Law 98-378, the Child Support Enforcement Amendments of 1984, required the Secretary of Health and Human Services to issue regulations to require State agencies to petition to include medical support as part of any child support order whenever health care coverage is available to the noncustodial parent at a reasonable cost. The regulations were required to provide for improved information exchange between State child support enforcement agencies and the Medicaid agencies with respect to the availability of health insurance coverage.

Title XIX of the Social Security Act requires State Medicaid plans to provide that, as a condition of eligibility for Medicaid, an individual must assign to the State any rights to medical support that has been ordered by a court or administrative order. The individual is also required to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for medical services, unless the State Medicaid agency determines that the individual has good cause for refusing to do so.

House Bill

The provision would amend title IV-D of the Social Security Act to require the State to have in effect laws requiring health insurers:

(1) to disregard an individual's eligibility for Medicaid benefits in determining eligibility for and coverage under the insurer's policy;

(2) to treat all State Medicaid programs as subrograted to Medicaid recipients' rights under health insurance policies in cases where an individual has assigned medical support rights to the States; and to treat State Medicaid agencies (when acting as agents or subrogees of applicants or beneficiaries) no differently from any other applicant, beneficiary, agent, or subrogee with respect to deadlines for filing claims or any other matters;

(3) not to bar coverage of a child under a parent's health insurance on grounds that the child does not reside with the parent or was born out of wedlock;

(4) where a parent is required by court or administrative order to provide health insurance coverage for a child, require insurers, without regard to otherwise applicable enrollment season restrictions, (A) to permit that parent to enroll in family coverage (if otherwise eligible and not already so enrolled) and to enroll the child, and (B) if that parent fails to apply, to enroll the child under that parent's family coverage upon application by the child's other parent or by the State Medicaid or child support enforcement agency; and

(5) to process and pay claims for medical care of such child submitted by the custodial parent, the service provider, or the State Medicaid agency, without the approval of the noncustodial parent.

State laws would be required to require employers to: (1) upon notice of a court or administrative order for such coverage, and upon application by the employee, (or, where the employee fails to apply, by the other parent, or the State Medicaid or child support enforcement agency), to permit enrollment at any time, under employer-sponsored group health coverage, of any employee's child who is the subject of such an order; (2) to permit disenrollment only upon receipt of satisfactory, written evidence that the order is no longer in effect or that alternative insurance coverage will take effect immediately; and (3) to withhold any employee share of premiums from the employee's pay.

State laws would be required to require the State child support agency to garnish employment income of, and to withhold amounts from State tax refunds to, any person who: (1) is required by court or administrative order to provide coverage of the costs of medical services to a Medicaid-eligible individual; (2) has received third-party payment for such costs; and (3) has not used such payments to reimburse, as appropriate, either the individual or the provider for such costs. Such garnishment or withholding would be permitted to the extent necessary to reimburse the Medicaid agency for expenditures for such costs, but claims for child support would take priority over claims for such medical costs.

Effective Date

Calendar quarters beginning on or after April 1, 1994, except in the case of a State that the Secretary determines requires State legislation in order for the program to need the additional requirements imposed by these provisions. The exception would expire the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Senate Amendment

The provision amends title XIX as follows: Each State is required to have laws that:

(1) prohibit an insurer from denying enrollment of a child under the health insurance coverage of the child's parent on the grounds that the child was born out of wedlock, is not claimed as a dependent on the parent's Federal income tax return, or does not reside with the parent or in the insurer's service area;

(2) require an insurer and an employer doing business in the State, in any case in which a parent is required by court or administrative order to provide health coverage for a child and the child is otherwise eligible for family health coverage through the insurer, (a) to permit the parent, without regard to any enrollment season restrictions, to enroll such child under such family coverage; (b) if the parent fails to provide health insurance coverage for a child, to enroll the child upon application by the child's other parent or the State child support or Medicaid agency; and (c) with respect to employers, not to disenroll (or eliminate coverage of) the child unless there is satisfactory written evidence that the order is no longer in effect, or the child is or will be enrolled in comparable health coverage through another insurer that will take effect not later than the effective date of the disenrollment;

(3) require an employer doing business in the State, in the case of health insurance coverage offered through employment and providing coverage for a child pursuant to a court or administrative order, to withhold from the employee's compensation the employee's share of premiums for health insurance, and to pay that share to the insurer. The Secretary of Health and Human Services may provide by regulation for such exceptions to this requirement (and other requirements described above that apply to employers) as the Secretary determines necessary to ensure compliance with an order, or with the limits on withholding that are specified in section 303(b) of the Consumer Credit Protection Act;

(4) prohibit an insurer from imposing requirements upon a State agency, which is acting as an agent or assignee of an individual eligible for medical assistance and covered by the insurer, that are different from requirements applicable to an agent or assignee of any other individual;

(5) require an insurer, in the case of a child who has coverage through the insurer of a noncustodial parent, (a) to provide the custodial parent with the information necessary for the child to obtain benefits; (b) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and (c) to make payment on claims directly to the custodial parent, the provider, or the State agency; and

(6) permit the State Medicaid agency to garnish the wages, salary, or other employment income of, and to withhold State tax refunds to, any person who (a) is required by court or administrative order to provide health insurance coverage to an individual eligible for Medicaid, (b) has received payment from a third party for the costs of medical services to that individual, and (c) has not reimbursed either the individual or the provider. The amount subject to garnishment or withholding would be the amount required to reimburse the State agency for expenditures for costs of medical services provided under the Medicaid program. However, claims for current or past-due child support shall take priority over any claims for the costs of medical services.

Effective Date

April 1, 1994, or, if the Secretary determines that State legislation is needed, the State plan shall not be regarded as failing to comply with the requirements of title IV-D because it has not met 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 enactment. In the case of a State that has a two-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

Conference Agreement

The conference agreement is described in the Medicaid section because it amends Title XIX instead of Title IV of the Social Security Act.

3. Reports to Credit Bureaus on Persons Delinquent in Child Support Payments (Sec. 13243 of House bill)

Present Law

The Child Support Enforcement Amendments of 1984 required State child support enforcement agencies to provide information regarding the amount of overdue support owed by an obligor residing in the State to any consumer reporting agency, as defined under the Fair Credit Reporting Act, upon the request of that agency, if the arrearage exceeds $1,000. If the amount of overdue support is less than $1,000, the State may choose whether or not to report the delinquency.

The information may not be made available to the consumer reporting agency until notice of the proposed action has been sent to the obligor, the obligor has been given a reasonable opportunity to contest the accuracy of the information and all procedural due process requirements of the State have

been fulfilled. Also, a fee, not to exceed the cost of furnishing the information, may be imposed on the requesting agency by the State.

The Ted Weiss Child Support Enforcement Act of 1992 amended the Fair Credit Reporting Act to require consumer reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by State or local child support enforcement agencies which predates the report by no more than seven years

House Bill

The provision would require State child support enforcement agencies to report periodically the names of obligors who are at least 2 months delinquent in the payment of support and the amount of the delinquency to consumer reporting agencies. The present law requirement that the amount of the delinquency must exceed $1,000, and the requirement for notice and due process, would be retained. The provision relating to payment of a fee by the credit reporting agencies would be repealed.

Information could not be made available to a consumer reporting agency if: (1) the State determined that the consumer reporting agency lacked capacity to make systematic and timely use of the information; and (2) it did not furnish evidence satisfactory to the State that it conforms to the definition of a "consumer reporting agency" under Federal law.

Effective Date

October 1, 1994, except if the Secretary determines that a State is unable to comply with the provision. Such State would be exempt from compliance until the State establishes an automated data processing and information retrieval system or October 1, 1995, whichever occurs earlier.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

SUPPLEMENTAL SECURITY INCOME

1. Fee for Federal Administration of State Supplementary Payments (Sec. 13251 of House bill)

Present Law

The Social Security Administration administers the State supplementation of Supplemental Security Income (SSI) benefits in 27 States and the District of Columbia. No fee is charged for this service.

States have the option to supplement the Federal SSI benefit standard. All but nine States and jurisdictions provide State supplementation. Those that do not are: Arkansas, Georgia, Kansas, Mississippi, North Dakota, Northern Mariana Islands, Tennessee, Texas, and West Virginia. States may elect to administer their supplementary payments themselves or may contract with the Social Security Administration for Federal administration. Since the SSI program began in 1974, six States have shifted from Federal to State administration of their optional State supplementation program.

In addition, all States must supplement SSI benefits paid to beneficiaries if their current level of payment would be less than beneficiaries received under State programs prior to establishment of the SSI program in 1974.

House Bill

The Social Security Administration would be required to charge States fees for the Federal cost of administering State supplemental SSI payments. The fee would apply to both optional and mandatory supplementary payments. The fee would be: (1) $1.67 for each monthly supplementary payment for fiscal year 1994; (2) $3.33 for each monthly supplementary payment for fiscal year 1995; and (3) $5.00 for each monthly supplementary payment for fiscal year 1996. The fee for subsequent fiscal years would be $5.00 or such amount as the Secretary determines is appropriate, taking into consideration the complexity of the State's supplementary payment program.

Further, the Secretary would be required to charge fees for additional services requested by States that are beyond the level customarily provided for administration of the State's supplementary payment program.

Effective Date

The provision would be effective for supplementary payments made in months beginning after September 1993.

Senate Amendment

Same as House bill, except the fees begin in fiscal year 1995 rather than in 1994.

Conference Agreement

The conference agreement follows the House bill with technical modifications.

2. Exclusion of State Relocation Assistance from Countable Income under the SSI Program (Sec. 13252 of House bill)

Present Law

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 excludes from income and resources any relocation assistance provided under the Act to individuals receiving Federal assistance, including SSI. Relocation assistance is paid when individuals are required to move by the Government. For example, the Government might need their land for a public building or highway or they might need to move because toxic wastes were discovered on the site. Under Public Law 101-508, comparable State or local relocation assistance was excluded from countable income under SSI and also from resources for no more than 9 months, for the three-year period ending May 1, 1994.

House Bill

The provision would make permanent the exclusion of State and local relocation assistance from countable income under the SSI program.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, modified to also provide for exclusion from countable resources.

3. Prevention of Adverse Effects on Eligibility for, and Amount of, SSI Benefits when Spouse or Parent of Beneficiary is Absent from the Household Due to Active Military Service (Sec. 13253 of House bill)

Present Law

If the parent or spouse of family members who receive Supplemental Security Income (SSI) payments resides in the household and then is required to be absent from the household because of an active military duty assignment, this absence can cause the family members to lose benefits or eligibility for SSI. This is because absence from the household causes more of the income of the absent member to be attributed to those receiving SSI in the household. Also, if the military duty assignment involves armed conflict, the service member may receive hazardous duty pay. This additional income, if sent back to the household, can also reduce the SSI payments or cause ineligibility of family members.

House Bill

The provision would require that a spouse or parent who is absent from an SSI household solely because of a military assignment on active duty be deemed to be still living in the household. Certain hazardous duty pay would be excluded from countable income under the SSI program.

Effective Date

The first day of the second month that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

4. Eligibility for Children of Armed Forces Personnel Residing Outside the United States Other Than in Foreign Countries (Sec. 13254 of House bill)

Present Law

SSI benefits are generally continued for children who are U.S. citizens and who accompany their parents on U.S. military assignments to foreign countries. Benefits do not continue if the parents are stationed in Puerto Rico or in the territories or possessions of the United States.

House Bill

The provision would continue SSI benefits to children who are U.S. citizens if they received SSI benefits in the United States and then accompany their parents on U.S. military assignment to Puerto Rico or territories or possessions of the United States.

Effective Date

The first day of the second month that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

5. Definition of Disability for Children under Age 18 Applied to All Individuals under Age 18 (Sec. 13255 of House bill)

Present Law

Present law provides a definition of disability applicable to children. Under this definition, a child's physical or mental impairments are evaluated according to criteria that have been developed especially for children. The SSI program defines a child as someone who is neither married nor the head of a household, and who is:

(1) under age 18, or (2) under age 22 and a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful work. As a result, the special evaluation criteria developed to evaluate childhood disabilities may not be used for some SSI applicants who are under age 18.

House Bill

The provision would extend the SSI childhood definition of disability to any person under age 18.

Effective Date

Applies to determinations made on or after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Valuation of Certain In-kind Support and Maintenance When There is a Cost of Living Adjustment in SSI Benefits (Sec. 13256 of House bill)

Present Law

A person who lives in the household of another person and receives in-kind support and maintenance from the householder must have his or her Federal SSI benefit reduced by one-third of the Federal benefit. Regulations provide for a "presumed maximum value" for measuring in-kind support and maintenance for a person who lives in his or her own household and receives in-kind support and maintenance, or lives in another person's household and receives food or shelter, but not both. This "presumed maximum value" is one-third of the Federal SSI benefit plus $20 per month (the amount of the unearned income exclusion from countable income).

Under the 2-month retrospective accounting principle that generally governs SSI benefit calculations, SSI benefits are determined after looking at the income in the second preceding month. In this system, an individual's countable income in the second month before the current month is used to determine the SSI benefit for the current month (e.g., January's SSI benefit is based on income received in November).

As a result of this use of retrospective accounting, the presumed value of in-kind support is not increased at the time an annual cost-of-living adjustment (COLA) to SSI benefits takes effect. Each time SSI benefits are increased by a COLA, SSI benefits for January and February are calculated using the increased value, but the reduction in benefits for receipt of support and maintenance in-kind is made on the lower pre-COLA November and December Federal SSI benefit. A 2-month lag occurs between the receipt of the COLA and the adjustment for increased value of in-kind support. A beneficiary will receive a COLA in January and February. Then in March, when the post-COLA Federal SSI benefit is used for valuing the reduction for in-kind support and maintenance, SSI benefits will drop.

House Bill

This provision would require that the current month's Federal benefit amount be used in determining the value of in-kind support and maintenance in calculating the current month's Federal benefit to be paid. This would eliminate the unintended benefit increase for January and February following a COLA and the offsetting reduction for March.

Effective Date

Applies to benefits paid for months after calendar year 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill. The provision applies to benefits paid for months after the calendar year 1994.

7. Exclusion of Certain Income Received by Indians from Interests Held in Trust (Sec. 13257 of House bill)

Present Law

Income received by Indians from tribally-owned trust lands is exempt from consideration under Federal welfare programs, such as AFDC and Supplemental Security Income (SSI). This income is distributed on a per capita basis to tribal members, but the land is owned by the tribe as a whole and managed for the tribe's benefit by the Bureau of Indian Affairs.

Individually-owned trust or restricted Indian lands are excluded from resources in applying the resource test under AFDC and SSI. However, income derived from leases on individually-owned trust or restricted Indian lands and paid to an individual is included in countable income when determining eligibility and benefit amounts for these cash welfare programs.

House Bill

The provision exempts the first $2,000 per year of income received by an individual derived from leases on individually-owned trust or restricted Indian lands in determining eligibility and benefit levels under the AFDC and SSI programs.

Effective Date

January 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, effective January 1, 1994.

AID TO FAMILIES WITH DEPENDENT CHILDREN

1. Limit Federal Funding Match to 50 Percent for State Administrative Costs (Sec. 13261 of House bill; sec. 7601 of Senate amendment)

Present Law

In general, the Federal Government provides 50 percent reimbursement for State administrative expenses under the aid to families with dependent children (AFDC) program. Enhanced Federal reimbursement is available, however, for three categories of expenses:

(a) Expenditures related to the verification of the immigration status of aliens.—Under the Social Security Act, States must require and determine, as a condition of an individual's eligibility, that the individual is either a citizen, or an alien lawfully admitted for permanent residence or otherwise residing permanently in the U.S. under color of law. If an individual is not a citizen, the State must verify the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system. State expenditures for the costs of implementing and operating the system are fully reimbursed by the Federal government.

(b) Expenditures related to information management.—Under the AFDC program, States may establish and operate a statewide management information system, in accordance with an initial and annually updated advance planning document approved by the Secretary. State expenditures relating to the planning, design, development and installation of the system are reimbursed by the Federal government at a rate equal to 90 percent.

(c) Expenditures related to fraud control.—Under the AFDC program, States may establish and operate a fraud control program in accordance with certain statutory guidelines. In general, under the program, certain penalties (in the form of benefit reductions) apply for a specified period in cases where an individual is found to have intentionally committed fraud for the purpose of maintaining his family's eligibility for benefits or securing increases in the amount of aid. State expenditures relating to the costs of carrying out the fraud control program, including costs related to investigation, prosecution, and administrative hearing of fraudulent cases, and collection, are reimbursed by the Federal government at a rate equal to 75 percent.

House Bill

The provision would reduce the Federal matching rates for each of these three categories of expenditures to 50 percent.

In addition, the provision would make the State verification of the individual's immigration status with the Immigration and Naturalization Service (INS), through an immigration status verification system, optional.

Effective Date

The provision would be effective April 1, 1994, except that the Secretary may delay applicability to a qualified State until the first calendar quarter that begins after the close of the first regular session of the State legislature that begins after the date of enactment. The Secretary shall establish what the term "qualified State" means and apply it uniformly, including whether the State legislature meets biennially and does not have a regular session scheduled in calendar year 1994.

Senate Amendment

Same as House bill except for technical difference; there is also no provision making the verification of an individual's immigration status optional with the States.

Effective Date

The provision would be effective April 1, 1994. In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendment would be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment.

Conference Agreement

The conference agreement follows the Senate amendment.

2. Delay in Effective Date of AFDC–UP Participation Rate Requirements (Sec. 13262 of House bill)

Present Law

In general, the Family Support Act of 1988 included a provision that requires States to require at least one parent in an AFDC–UP family (a family eligible for AFDC due to the unemployment of the principal earner in the family) to participate in any of certain specified work activities at least 16 hours a week, if either parent is not exempt from participation.

The requirement is not effective until fiscal year 1994. States will be considered to have met this requirement for a fiscal year if the following average monthly percentages of AFDC–UP families in the State participate in work activities: 40 percent for fiscal year 1994; 50 percent for fiscal year 1995; 60 percent for fiscal year 1996; and 75 percent for fiscal year 1997 and 1998. HHS regulations provide that the Federal matching rate to a State for the JOBS program will be reduced to 50 percent if the State does not satisfy the participation rate requirement for the prior year. (Non-administrative JOBS expenditures are generally matched by the Federal government at the Medicaid rate, with a minimum Federal match of 60 percent).

The Secretary may waive any penalty if she finds that (1) the State has made a good faith effort to meet the requirement but has been unable to do so because of economic conditions in the State (including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited), or

because of rapid and substantial increases in the caseload that cannot reasonably be planned for, and (2) the State has submitted a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years.

House Bill

The provision would delay by one year Federal requirements regarding AFDC-UP participation rates. States will be considered to have met the requirement for a fiscal year if the following average monthly percentages of AFDC-UP families in the State participate in work activities: 40 percent for fiscal year 1995; 50 percent for fiscal year 1996; 60 percent for fiscal year 1997; and 75 percent for fiscal years 1998 and 1999.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. Report to Congress on Performance Standards in the JOBS Program (Sec. 13263 of House bill)

Present Law

Section 487 of the Social Security Act requires the Secretary, not later than 3 years after the effective date of the Family Support Act of 1988, to develop performance standards for the Job Opportunities and Basic Skills (JOBS) program and to submit her recommendations for performance standards to appropriate committees of Congress. The recommendations must include recommendations with respect to specific measurements of outcomes, may not be based solely on levels of activity or participation, and must take into account what States reasonably can be expected to achieve.

House Bill

The provision would delay the required date for recommendations by one year. Also, the Secretary would be required to develop criteria for the performance standards, rather than performance standards.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Measurement and Reporting of the Degree to Which Families Depend on Income from Welfare (Sec. 13264 of House bill)

Present Law

National and State information on AFDC receipt and the characteristics and financial circumstances of AFDC recipients is compiled annually by the Department of Health and Human Services (DHHS), using data from the National Integrated Quality Control Review System (NIQCS).

House Bill

The provision would require the Secretary of Health and Human Services, in consultation with the Secretary of Agriculture, to develop (1) measures of the rate at which, and the degree to which, families depend on income from welfare programs; and the duration of welfare participation; and (2) predictors of welfare receipt. Not later than 2 years after the date of enactment, the Secretaries of HHS and Agriculture would be required to submit an interim report with conclusions to designated committees of Congress.

A temporary Advisory Board on Welfare Participation would be created, composed of 12 Members with equal numbers appointed by the House of Representatives, the Senate and the President. The Board would be composed of experts in the field of welfare research and statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues. The Board will provide advice and recommendations to the Secretary on the development of the measures described above, and on the development and presentation of the annual report on welfare participation.

The provision would require the Secretary to prepare an annual report on welfare participation, that provides information on the measures described above, trends in the measures, predictors of welfare participation, the causes of welfare participation, patterns of multiple program participation, and such other information as the Secretary deems relevant; and such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce (1) the rate at which, and the degree to which, families depend on income from welfare programs; and (2) the duration of welfare participation. The report shall include analysis of families and individuals receiving assistance under means-tested programs, including AFDC, food stamps, SSI, and State or local general assistance. The first report would be due no later than 3 years after the date of enactment.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. New Hope Demonstration Project (Sec. 13265 of House bill)

Present Law

No provision.

House Bill

The provision would allow the Secretary to provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin. A qualified program is defined as a program operated by the New Hope Project, Inc., a private not-for-profit corporation in Milwaukee, which offers low-income residents employment, wage supplements, child care, health care, and counseling and training for job retention or advancement.

The provision would require the Secretary to make payments for no more than 20 quarters, in an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program, in the absence of the program, for cash assistance and child care under Title IV-A, and for administrative expenses for these programs. Expenses of the program relating to evaluation would qualify for 50 percent Federal matching.

The operator of the program must provide in the application that the following conditions will be met: (1) the operator will implement an evaluation plan designed to provide reliable information on the impact and implementation of the program, that will include adequately sized groups of participants and control groups assigned at random; (2) the operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting specified requirements; (3) the operator will specify a methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount; and (4) the operator will issue an interim and final report on the results of the evaluation of the program at such times as required by the Secretary.

Effective Date

The provision would take effect on the first day of the first calendar quarter that begins after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Delay in AFDC-UP Mandate for Outlying Jurisdictions (Sec. 13266 of House bill)

Present Law

The Family Support Act of 1988 included a requirement that any State AFDC plan make AFDC available to needy dependent children of unemployed parents (for at least 6 out of 12 months). The amendment was effective for the States on October 1, 1990, and for Puerto Rico, Guam, the Virgin Islands and American Samoa on October 1, 1992. (American Samoa, however, does not participate in the AFDC program.) Unlike States, these outlying areas are subject to limitations on payments for AFDC and related programs.

House Bill

This provision would delay the requirement for implementation of the Unemployed Parent program in Puerto Rico, Guam, the Virgin Islands, and American Samoa until such time as the limitations on Federal matching payments to these jurisdictions for purposes of making AFDC maintenance payments are repealed.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

7. Declaration of Citizen and Alien Status (Sec. 13267 of House bill; sec. 7601 of Senate amendment)

Present Law

Section 1137(d) of the Social Security Act specifies that States must require, as a condition of eligibility for the AFDC, Medicaid, unemployment compensation, and food stamp programs, a declaration in writing by each adult individual (or, in the case of a child, by another individual on the child's behalf), stating whether the individual is a citizen or national of the U.S., and if not, that the individual is in a satisfactory immigration status. Under AFDC policy, a newborn child may not be eligible until a declaration has been signed.

Legislation enacted in 1990 overrode the provision of sec. 1137 with respect to the food stamp program. Under that legislation, one adult member of the food stamp household is required to sign, under penalty of perjury, a written declaration as to the citizenship or satisfactory immigration status of all household members, and by regulation, a declaration for newborn children is allowed no later than the next redetermination of eligibility.

House Bill

With respect to the AFDC program, this provision would allow one adult member of a family or household to sign a declaration, under penalty of perjury, on behalf of other adults in the household. In addition, in the case of a newborn child, it would permit an adult to sign a declaration on behalf of the child no later than the date of the next redetermination of the eligibility of the family or household.

Effective Date

The provision would become effective with respect to benefits provided on or after October 1, 1993.

Senate Amendment

Same as House bill, except applies to all programs listed under section 1137(d).

Effective Date

Upon enactment.

Conference Agreement

No provision.

8. Increase in Disregard of Stepparent Income (Sec. 13268 of House bill)

Present Law

Effective in July 1963, Federal law required the AFDC agency to disregard "reasonable" work expenses when counting the earned income of AFDC applicants and recipients. The 1981 Omnibus Budget Reconciliation Act (Public Law 97-35) replaced the reasonable work expense deduction with a standard work expense disregard of $75 monthly. In 1981, Congress required that a portion of the income of the stepparent of an AFDC applicant or recipient, even in States that did not hold all stepparents to be financially responsible for stepchildren, must be deemed available to the stepchild; and it then extended the $75 disregard to stepparent earnings. In 1988, effective October 1, 1989, the standard work expense disregard was increased from $75 to $90 per month for AFDC applicants and recipients, but not for stepparents living with AFDC-eligible children.

House Bill

This provision would increase the earnings disregard for stepparents to $90 monthly. This amount of earnings would not be counted in determining the eligibility and benefit amounts of AFDC applicants and recipients.

Effective Date

October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

9. Extension of New York State Child Assistance Program (Sec. 13269 of House bill)

Present Law

New York State currently operates a Child Assistance Program (CAP) demonstration under Federal waiver authority enacted under the Omnibus Budget Reconciliation Act of 1987. The demonstration is testing an alternative to AFDC for families with child support orders and monthly earnings. The five year waiver is effective through March 31, 1994.

House Bill

The provision would extend the CAP demonstration project for an additional five years, to April 1, 1999.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

10. Early Childhood Development Projects (Sec. 13270 of House bill)

Present Law

The Family Support Act of 1988 authorized up to 10 demonstration projects to test and evaluate the effect of early childhood development programs on families receiving AFDC and participating in Job Opportunities and Basic Skills Training (JOBS), and authorized $6 million for each of fiscal years 1990, 1991, and 1992 for these and two other categories of projects. No funds were appropriated for the early childhood development projects for fiscal years 1990 through 1993.

House Bill

The provision would extend the authorization for early childhood development projects through fiscal year 1998. It authorizes to be appropriated for these projects up to $3 million for each of fiscal years 1994 through 1998.

Effective Date

Date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill. The conferees encourage the Secretary to conduct early childhood demonstration projects under section 1110 of the Social Security Act, which funds social services and income maintenance research.

11. State Option to Condition AFDC Payments on Child Immunization

Present Law

No provision.

House Bill

No provision.

Senate Amendment

States would have the option of providing that if a family receiving AFDC includes a child under age 6 who has not received appropriate immunizations (as determined by the State), the State will take actions to encourage timely immunization including, but not limited to, reducing the total benefits received by the family by all or a portion of the benefits allocable to the parent or guardian of the child.

The State would have the option of either placing all or a portion of the amount in an account; until the family demonstrates to the State that the child has been appropriately immunized, or using all or a portion of the amount to provide services to the family intended to ensure that the child receives appropriate immunizations.

The Secretary of HHS would be required to provide for the establishment of programs intended to ensure the appropriate immunization of children to be operated in a State; that elects to take actions to encourage the timely immunization of children. The Secretary would pay each State conducting a program an amount equal to the State's Federal percentage (as determined under sec. 403(a) of the Social Security Act) of the expenditures incurred by the State in conducting the program. In conducting programs, the Secretary could pay no State more than $250,000 in any year for expenses incurred under title IV and sec. 1903 of the Social Security Act.

Effective Date

Upon date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

UNEMPLOYMENT INSURANCE

1. Short Time Compensation (Sec. 13271 of House bill)

Present Law

All funds withdrawn from the unemployment trust fund of a State must be used solely in payment of unemployment compensation, exclusive of administrative expenses and refunds of erroneously paid sums except: (1) certain authorized disability payments; (2) certain "Reed Act" expenses; (3) authorized health insurance costs; (4) repayments of overpayments; and (5) short-time compensation.

Short-time compensation is a plan under which an employer, faced with the need for layoffs because of reduced workload, might spread the hours of work required to produce a given product, avoiding layoffs by reducing the number of regularly scheduled hours of work for all employees in an establishment or work unit. Unemployment benefits are payable to workers for hours of work lost as a fraction of the weekly benefit amount. For example, workers laid off for one day per week would receive one-fifth of their weekly benefit amounts. Duration is often limited. For example, California and New York limit duration to 20 weeks.

States with short-time compensation programs are: Arizona, Arkansas, California, Florida, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Missouri, New York, Oregon, Rhode Island, Texas, Vermont, and Washington. Connecticut authorized a pilot program, but had not issued regulations on it as of the beginning of 1993.

Public Law 102-318, the Unemployment Compensation Amendments of 1992, explicitly authorized the use of unemployment trust funds for payment of short-time compensation. Although this law defined short-time compensation, it did not define short-time compensation in the Federal Unemployment Tax Act for the purposes of approving State laws and withdrawing funds from the unemployment trust fund to pay short-time compensation. The Solicitor of the U.S. Department of Labor has concluded that this puts States with short-time compensation programs at risk of being out of compliance with Federal law because existing State laws might not comply with the vague language in the Federal Unemployment Tax Act now.

House Bill

The provision would amend the Federal Unemployment Tax Act to define explicitly a short-time compensation program.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. Unemployment Trust Fund Transfers (Sec. 13272 of House bill)

Present Law

Title IX of the Social Security Act allocates Federal unemployment tax revenue into three accounts of the unemployment trust fund: (1) the Employment Security Administration Account (ESAA); (2) the Extended Unemployment Compensation Account (EUCA); and (3) the Federal Unemployment Account (FUA).

House Bill

The provision would strike language that was inadvertently included in the Emergency Unemployment Compensation Act, as amended. The language would have allocated funding that was not adopted in conference committee and therefore, is not needed.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. Advisory Council on Unemployment Compensation (Sec. 13273 of House bill)

Present Law

The Emergency Unemployment Compensation Act of 1991 authorized a quadrennial advisory council on unemployment compensation to examine the purpose, goals, and functioning of the unemployment compensation system, and to make recommendations for improvement. Its first report is due by February 1, 1994.

House Bill

The provision would delay the Council's report for one year to February 1, 1995.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Emergency Unemployment Compensation (Sec. 13274 of House bill)

Present Law

Under the Emergency Unemployment Act, as amended by the Unemployment Compensation Amendments of 1992, Public Law 102-318 (H.R. 5260), the Emergency Unemployment Compensation program was intended to phase down when the national unemployment rate for two consecutive months fell below 7 percent. The number of weeks of benefits was intended to drop from the current 20 or 26 weeks to 10 or 15 weeks if the national unemployment rate were below 7 percent for two consecutive months. Further, if the national unemployment rate fell below 6.8 percent for two consecutive months, it was intended that the number of weeks of benefits available would fall to 7 or 13 weeks.

Under the Department of Labor's interpretation of the statute, the number of weeks of benefits would be reduced if the "average" rate of national unemployment for a 2-month period falls below 7 percent.

House Bill

The provision would amend the phase-down trigger language to reflect the intent of the conferees on H.R. 5260 so that the program would phase down as the national unemployment rate falls during two consecutive months.

Effective Date

Effective as if included in the amendments made by section 101 (b) of the Unemployment Compensation Amendments of 1992.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

5. Increase in Amount of Federal Reimbursement for Extended Benefits (Sec. 13275 of House bill)

Present Law

The Federal matching rate under the Extended Benefits program is 50 percent.

House Bill

The provision would increase the Federal matching rate to 75 percent.

Effective Date

Weeks beginning after October 2, 1993. In the case of any State legislature which has not been in session for at least 30 calendar days between the date of enactment and October 1, 1993, the provision would not be a State law requirement before 30 calendar days after the first day on which its legislature is in session on or after October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

6. Repeal of Special Eligibility Requirements for Extended Benefits (Sec. 13275 of House bill)

Present Law

Public Law 102-318, the Unemployment Compensation Amendments of 1992, suspended certain Extended Benefits (EB) suitable work, job search, and re-employment requirements until January 1, 1995. During the suspension, States may apply the same requirements they use in their regular State programs.

Under the suspended requirements of the Extended Benefits program (EB), benefits may not be paid to an individual in any week of unemployment if: (a) he fails to accept an offer of "suitable work" or he fails to apply for suitable work to which he was referred by the State agency; or (b) he fails to actively seek work, unless: (1) he was issued a summons to appear for jury duty before any court of the United States or any State, or (2) he was hospitalized for treatment of any emergency or a life-threatening condition if such exemptions apply to claimants of regular State benefits and the State chooses to apply them to claimants of EB.

If a claimant is ineligible because of either (a) or (b) above, the claimant is disqualified for the week following the week in which the violation occurred and for each subsequent week until he has been employed for at least 4 weeks and earned at least 4 times his weekly benefit amount.

The term "suitable work" means any work within the claimant's capabilities, except that if the individual furnishes evidence that his prospects for obtaining work in his customary occupation within a reasonably short time period are good, the definition of "suitable work" conforms to State law.

EB may not be denied to a claimant for a failure to apply for or accept a suitable job if: (a) the gross pay does not exceed the claimant's weekly benefit amount plus any supplemental benefits payable to him; (b) the position was not offered in writing and was not listed with the State employment service; (c) such failure would not result in a denial of regular State benefits as long as other conditions of the EB program are met; or (d) the job pays wages less than the higher of; (1) the Federal minimum wage, or (2) the applicable State or local minimum wage.

The claimant is treated as actively seeking work if: (a) he has engaged in a systematic and sustained effort to obtain work; and (b) he provides tangible evidence to the State agency that he has engaged in such effort.

The State must provide for referring applicants for EB to any suitable work to which these provisions apply.

No provision of State law which terminates a disqualification of a claimant for regular State benefits because of voluntarily leaving a job, being discharged for misconduct, or refusing suitable work applies to the EB program unless such termination is based on subsequent employment.

House Bill

The provision would repeal the currently suspended eligibility requirements.

Effective Date

Weeks beginning on or after October 2, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

7. Two-Year Extension of Federal Unemployment Surtax (Sec. 13276 of House bill)

Present Law

The Federal unemployment tax of 0.8 percent is paid by employers on the first $7,000 paid annually to each employee. Of the 0.8 percent tax rate, 0.6 percentage point is permanent and 0.2 percentage point is scheduled to expire at the end of 1996.

House Bill

The 0.2 percent surtax would be extended for two years, through 1998.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill.

8. Disclosure of Information to Railroad Retirement Board (Sec. 13277 of House bill)

Present Law

The Railroad Retirement Board (RRB) has access to returns and return information regarding taxes imposed under the Railroad Retirement Tax Act for purposes of the administration of the Railroad Retirement Act (RRA), but it is not authorized to receive returns and return information filed under the Railroad Repayment Tax provisions. (The Railroad Unemployment Repayment Tax was imposed to repay loans from the Railroad Retirement Account obtained by the Railroad Unemployment Insurance Account.) In addition, there is no specific authority to disclose RRA information for purposes of the administration of the Railroad Unemployment Insurance Act (RUIA).

House Bill

The provision would amend the Internal Revenue Code to enable the RRB to obtain Railroad Unemployment Tax information.

Effective Date

Upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

SOCIAL SERVICES BLOCK GRANT

1. Targeted Federal Assistance for Social Services

Present Law

Under title XX of the Social Security Act, States are entitled to receive social services

block grant funds. Title XX is a capped entitlement, with an entitlement ceiling of $2.8 billion per fiscal year. The share for each State is based on its relative share of the national population.

States may use the block grant funds for a wide range of social services, directed at five goals: (1) achieving or maintaining economic self-support to prevent, reduce or eliminate dependency; (2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; (3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; (4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and (5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

According to State preexpenditure reports, which describe the intended use of block grant funds, in fiscal year 1992 States funded such services as: substance abuse services; residential care and treatment; education and training; employment; transportation; health-related services; prevention and intervention services; and social support services (such as recreation, camping, family development and physical activities).

House Bill

No provision.

Senate Amendment

No provision.

Conference Agreement

The conference agreement makes $1 billion available under Title XX to the Secretary for grants to States for social services. Each State is entitled to grants for each qualified empowerment zone and each qualified enterprise community in the State.

An empowerment zone or enterprise community is qualified if it has been designated a zone or community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 and if its strategic plan (required in an application for designation under the Internal Revenue Code) is qualified.

A qualified plan is a plan that: (a) includes a detailed description of the activities proposed for the area that are to be funded with the grant; (b) contains a commitment that the amounts provided will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of the grant; (c) to the extent a State does not use the funds on certain program options (see below), explains the reasons why not; and (d) was developed in cooperation with the local government or governments with jurisdiction over the zone or community.

With respect to each empowerment zone, the Secretary will make one grant to each State in which the zone lies, on the date of its designation, and a second grant on the first day of the first fiscal year that begins after the designation. With respect to each enterprise community, the Secretary will make one grant to each State in which the community lies, on the date of its designation.

The amount of each grant to a State for an empowerment zone will equal $50 million if the zone is designated in an urban area and $20 million if the zone is designated in a rural area (multiplied by the proportion of the population of the urban or rural zone that resides in the State).

The amount of each grant to a State for an enterprise community will equal 1/95 of $280 million, multiplied by the proportion of the population of the community that resides in the State.

A State must use the grant funds: (a) for social services directed at three goals: (i) achieving or maintaining economic self-support to prevent, reduce or eliminate dependency; (ii) achieving or maintaining self-sufficiency, including reduction or prevention of dependency; or (iii) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families; (b) in accordance with the strategic plan for the zone or community; and (c) on activities that benefit residents of the zone or community.

The following are among the program options available to the States:

(1) in order to prevent and remedy the neglect and abuse of children, a State may use the grant funds to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

The conferees intend that such programs provide, directly or in collaboration with other community-based programs, pregnant women and mothers, and their children, a wide array of services based on their need for services, such as: referral and linkages to obstetric and pediatric medical care; addiction and substance abuse education, counseling and treatment; parenting skills counseling and education with an emphasis on infant and child development; access to schools and child care; job counseling and training, transitional housing assistance; transportation; post-program follow-up services and activities; and referral and linkages to other services.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use the grant funds to make grants to, or enter into contracts with: (a) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in the construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and (b) nonprofit organizations and community or junior colleges, for the purpose of enabling them to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

The conferees intend that, to the extent possible, programs under (2)(a) use public funds to match private investment, by entities located in the zone, in projects to rehabilitate public infrastructure that will benefit the community.

(3) A State may use grant funds to make grants to, or enter into contracts with, nonprofit community-based organizations to enable them to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use grant funds to: (a) fund services designed to promote community and economic development, such as skills training, job counseling, transportation services, housing counseling, financial management and business counseling; (b) assist in emergency and transitional shelter for disadvantaged families and individuals; or (c) support programs that promote home ownership, education or other routes to economic independence for low income families and individuals.

The conferees intend that funds may be used for transportation services that improve access by zone residents to areas of high job growth that are not located in the zone. For example, funds may be used to supplement job training and placement programs with transportation services in the form of van service operated by a public or private job program; to provide transportation counseling to supplement job counseling; and to provide a direct subsidy of transportation expenses.

TECHNICAL PROVISIONS

1. Corrections Related to the Income Security and Human Resource Provisions of the Omnibus Budget Reconciliation Act of 1990 (Sec. 13281 of House bill)

Present Law

No provision.

House Bill

The provision would correct references and punctuation in various SSI and AFDC provisions, eliminate conflicting provisions concerning the reporting date of the National Commission on Children, and correct and simplify language concerning special sequestration rules for JOBS funds.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

2. Corrections Related to the Human Resource and Income Security Provisions of the Omnibus Budget Reconciliation Act of 1989 (Sec. 13282 of House bill)

Present Law

No provision.

House Bill

The provision would correct a word and spacing in AFDC quality control and adoption assistance legislative language, and a reference concerning foster care and adoption assistance.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

3. Elimination of Obsolete Provisions Relating to Treatment of the Earned Income Tax Credit (Sec. 13283 of House bill)

Present Law

No provision.

House Bill

The provision would eliminate provisions in SSI law about treatment of EITC made obsolete by OBRA 1990, which specifies that SSI (and AFDC, Medicaid, and food stamps) are to disregard EITC as income.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

4. Redesignation of Certain Provisions (Sec. 13284 of House bill)

Present Law

No provision.

House Bill

The provision would redesignate two subparagraphs of the Social Security Act concerning when face-to-face interviews at field offices must be granted.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the provision in the House bill.

OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE PROGRAM

1. Clarification of Statutory Requirement for Public Telephone Access to Local Social Security Offices (Sec. 13001 of House bill)

Present Law

The Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508), requires SSA to: (a) maintain telephone access to local offices at the level generally available as of September 30, 1989, and (b) relist the numbers of affected offices in local telephone directories. P.L. 101-508 also required the General Accounting Office to report to Congress on the level of public telephone access to local offices following enactment of these requirements.

In September 1991, the GAO reported that SSA had generally complied with the requirement that it relist local office telephone numbers. It also reported that general inquiry lines to the offices to which the provisions of P.L. 101-508 apply had decreased by 30 percent, or 766 lines, below the level that existed on September 30, 1989.

House Bill

The provision would add the following sentence to the current statutory requirement that SSA maintain public access to its local offices at the level generally available on September 30, 1989: "In carrying out the requirements of the preceding sentence, the Secretary shall reestablish and maintain in service the same number of telephone lines to each such local office which were in place as of such date, including telephone sets for connections to such lines."

In addition, the General Accounting Office would be required to make an independent determination of the number of telephone lines to each SSA local office which are in place 90 days after enactment and to report its findings to the House Committee on Ways and Means and the Senate Committee on Finance no later than 150 days after enactment.

SSA would be required to maintain its toll-free service at a level at least equal to that in effect on the date of enactment.

Effective Date

The provision relating to local telephone access would be effective 90 days after enactment. The provision relating to toll-free service would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

2. Increase in Social Security Exclusion for Election Workers (Sec. 13002 of the House bill)

Present Law

Election workers who earn less than $100 per year are subject to three Social Security exclusions: (a) at the option of a State, they may be excluded from the State's voluntary coverage agreement with the Secretary of Health and Human Services (HHS); (b) they are excluded from the requirement that State and local workers hired after March 31, 1986, pay the hospital insurance portion of the Social Security tax (1.45 percent); and (c) they are excluded from the requirement in the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) that State and local workers who are neither covered by a State or local retirement system nor by a voluntary agreement pay the full Social Security tax (7.65 percent).

House Bill

These three exclusions would be modified to apply to election workers with annual earnings of up to $1,000, rather than the current $100; and the new exempt amount would be indexed for increases in wages in the economy.

Effective Date

The provision would apply to service performed on or after January 1, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

3. Use of Social Security Numbers for Jury Selection (Sec. 13003 of House bill)

Present Law

The Privacy Act of 1974 prohibits States from requiring individuals to provide Social Security numbers for identification purposes unless the State was doing so prior to January 1, 1975, or the State is specifically permitted to do so under Federal law. The Social Security Act currently authorizes States to use the Social Security number in administration of any tax, general public assistance and driver's license or motor vehicle registration law within its jurisdiction. Other Federal statutes authorize the State use of the Social Security number for other purposes.

Currently, courts utilize jury source lists within their jurisdiction to select jurors. Source lists (most commonly made up of lists of licensed drivers and registered voters) are usually computer tapes merged by the courts to form one pool—or master list—from which jurors are selected.

States which are permitted under current law to collect Social Security numbers for purposes such as driver's licenses and voter registration are not allowed to use those Social Security numbers for other purposes such as refining jury selection master lists to identify and eliminate duplicate names, unless the court was using the Social Security number for that purpose before the Privacy Act took effect.

Current law likewise prevents State and Federal Courts from using the Social Security number to run the merged list against computerized lists of convicted felons in order to eliminate these individuals from jury pools.

House Bill

States and Federal District Courts would be permitted to use Social Security numbers which have already been collected for purposes permitted under current law to eliminate duplicate names and names of convicted felons from jury source lists. Any Federal law enacted prior to enactment of this provision which is inconsistent with the above policy would be null, void, and of no effect.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

4. Authority for Optional Social Security Coverage of Police Officers and Firefighters under a Retirement System (Sec. 13004 of House bill)

Present Law

In general, employees of State and local governments who participate in a public retirement system can be brought under Social Security by means of voluntary agreements entered into by the States with the Secretary of Health and Human Services.

However, the State option to obtain Social Security coverage for police officers and firefighters who are under a public retirement system applies only in 24 States that are named in the Social Security Act. (An additional option applies with respect to firefighters only: any State may obtain coverage for them if the governor certifies that it would improve the overall benefit protection of firefighters in the coverage group and a referendum is held among the group under authorization of the State). The Act also provides that, in the 24 named States, Social Security coverage can be obtained only after a State-sponsored referendum.

House Bill

The provision would extend to all States the option to provide police officers and firefighters who participate in a public retirement system with Social Security coverage under their voluntary agreements with the Secretary of HHS. The existing requirement for a referendum held under the authority of the State would continue to apply.

Effective Date

The provision would apply with respect to State requests made after enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

5. Limited Exemption from SECA for American Ministers Working and Resident in Canada (Sec. 13005 of House bill)

Present Law

Section 233(c)(1) of the Social Security Act authorizes the President to enter into "totalization agreements" with foreign countries to coordinate entitlement to Social Security benefits in the U.S. with pension benefits in those foreign countries. The law requires that international agreements concluded pursuant to that section provide for the elimination of dual coverage of work under the Social Security systems of the United States and another country.

Article V(7) of the totalization agreement between the United States and Canada provides that individuals considered self-employed by the United States who are American citizens but are residents of Canada are covered only under the Canadian Pension Plan.

Under the Social Security Act, an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order is generally considered self-employed for Social Security payroll tax purposes and subject to SECA taxes.

The Canadian social insurance program treats ministers as employees of the church rather than self-employed.

Prior to the 1984 totalization agreement with Canada, duly ordained and licensed ministers who were American citizens but residents of Canada were required to pay

SECA taxes to the United States and Social Security taxes to Canada.

In some cases, ministers who were American citizens but residents of Canada failed to file tax returns or pay SECA tax believing that they were not required to do so because they were paying into the Canadian Pension Plan as residents of Canada. The Internal Revenue Service has assessed taxes and penalties against those ministers who failed to file a return and pay the required taxes prior to the 1984 agreement.

House Bill

The provision would exempt ministers who failed to pay SECA taxes in the United States on earnings from services performed in Canada before the 1984 totalization agreement between the United States and Canada went into effect, and who were required to pay social insurance taxes in Canada on such earnings, from the payment of such taxes or related penalties, owed to the United States.

In addition, the provision provides that the ministers' Social Security earnings records would not be credited for years in which the SECA tax was not paid.

Effective Date

The provision would be effective for individuals who meet the requirements of the statute and who file a certificate with the Internal Revenue Service within six months after the IRS issues regulations implementing this provision. The certificate shall be effective for taxable years 1979 through 1984.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

6. Totalization Benefits and the Windfall Elimination Provision (Sec. 13006 of House bill)

Present Law

The President is authorized to enter into "totalization agreements" with foreign countries. If an individual has worked under Social Security systems in both the U.S. and a foreign country with which the U.S. has an agreement, but has not worked long enough to qualify for a benefit, a totalization agreement allows the individual's coverage under both systems to be combined, or "totalized," in order for one country (or both) to pay a benefit. Benefits paid under a totalization agreement are generally prorated to take account of the fact that the person did not work for an entire career under the system that is paying benefits.

The windfall elimination provision (WEP) is applied to the computation of Social Security benefits for workers who are eligible for both Social Security and a pension from work not covered by Social Security. Under the WEP, a different benefit formula yielding a lower amount is used to calculate the worker's Social Security benefit.

With respect to individuals who have worked under Social Security systems in both the United States and a foreign country with which the United States has a totalization agreement, the WEP applies: 1) in the computation of some U.S. totalization benefits, and 2) in the computation of regular U.S. Social Security benefits if the individual receives a foreign totalization benefit.

House Bill

The provision would disregard the windfall elimination provision in computing any U.S. totalization benefit, and in computing the amount of a regular U.S. benefit of an individual who (1) receives a foreign totalization benefit based in part on U.S. employment and (2) does not receive any other pension which is based on noncovered employment.

Effective Date

The provision would be effective with respect to benefits payable for months after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

7. Exclusion of Military Reservists from Application of the Government Pension Offset and the Windfall Elimination Provision (Sec. 13007 of House bill)

Present Law

The Government Pension Offset (GPO) and the Windfall Elimination Provision (WEP) are intended to reduce Social Security benefits payable to an individual who qualifies for both a Social Security benefit and a pension based on employment not covered by Social Security.

The WEP reduces a worker's Social Security retirement or disability benefit in cases where the worker is receiving both a Social Security benefit and a pension based on employment not covered by Social Security. The WEP is designed to eliminate the windfall resulting from the weighted Social Security benefit formula which is intended to replace a higher proportion of wages for low-earning workers than for high-earning workers.

Active military service became covered under Social Security in 1957. Inactive duty by reservists (such as weekend drills) became covered under Social Security in 1988. A pension based on either type of service (active or inactive), if performed before 1957, does not trigger the WEP. The only military pension which triggers the WEP is a pension based on inactive duty after 1956 and before 1988.

Under the GPO, spouse's and widow(er)'s benefits received by an individual based on his or her spouse's Social Security-covered work are reduced by two-thirds of the amount of any government pension to which the individual is entitled based on his or her own work in a government job not covered under Social Security.

In general, an individual is exempt from the GPO if the last day of his or her work in a government job was covered by Social Security. Thus, reservists who retired from military service before 1988 may be subject to the GPO depending on whether the last day of their duty status happened to be covered (active duty, such as two-week training duty) and therefore exempt from the GPO or not covered (inactive duty) and therefore subject to the GPO.

House Bill

An individual's receipt of a pension based wholly on service performed as a member of a uniformed service, whether on active or inactive duty and whether performed prior to 1988 or not, would not trigger application of the GPO and WEP to the individual's Social Security benefits.

Effective Date

The provision would be effective with respect to benefits payable for months after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

8. Repeal of Facility-of-Payment Provision (Sec. 13008 of House bill)

Present Law

As a general rule, when an individual receiving benefits as the dependent of a worker has a deduction in his or her benefits—for example, due to his or her own earnings above the earnings test exempt amount—and the Maximum Family Benefit rule applies, the withheld benefits are redistributed and paid to the other dependents. (The Maximum Family Benefit, or MFB, is a limit on the total amount of benefits which can be paid on a worker's record to the worker and his or her dependents).

However, if all of the dependents are living in the same household, the affected individual's benefit check is not actually withheld; instead, the individual receives a notice from the Social Security Administration accompanying the benefit check. This notice explains that the beneficiary is subject to a benefit deduction and should not actually receive the benefit check. However, the benefit is being paid with the understanding that it is for the use and benefit of the other dependent beneficiaries. This procedure is known as the facility-of-payment provision.

In cases where all of the dependent beneficiaries are not residing in the same household, the facility-of-payment provision does not apply and the withheld benefits are redistributed and paid directly to the remaining dependents.

House Bill

The facility-of-payment provision would be repealed. As result, a beneficiary who is subject to a deduction would have his or her benefits withheld, and the withheld amount would be redistributed and paid directly to the other dependents.

Effective Date

The provision would be effective for benefits for months after December, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

9. Application of Subsequent Entitlement Guarantee to Maximum Family Benefits (Sec. 13009 of House bill)

Present Law

A guarantee is provided for workers who receive disability benefits, then stop receiving disability benefits, and subsequently become reentitled to benefits due to death, retirement or disability. This "subsequent entitlement guarantee" provides that the basic benefit amount (the Primary Insurance Amount, or PIA) of a worker who becomes reentitled to benefits or dies (thereby entitling his or her survivors) cannot be less than the PIA in effect in the last month of the worker's prior entitlement to disability benefits.

Due to a drafting error in the 1977 Social Security Amendments, when this guarantee was created, the guarantee does not extend to the Maximum Family Benefit (MFB) payable on the worker's record, which is determined based upon the PIA. (The MFB is a limit on the total amount of benefits which may be paid on a worker's record to the worker and his or her dependents.) As a result, the MFB which is payable when the worker becomes reentitled to benefits or dies may be less than the MFB payable in the last month of the worker's prior entitlement to disability benefits.

House Bill

The provision would make a conforming change in the Maximum Family Benefit, so

that the guaranteed PIA would be the basis for calculating the guaranteed MFB.

Effective Date

The provision would be effective for the MFB of workers who become reentitled to benefits or die (after previously having been entitled) after October, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

10. Disclosure of Social Security Administration Information for Epidemiological Research (Sec. 13010 of House bill)

Present Law

Current law prohibits Federal agencies from releasing personal information contained in an individual file without the written consent of the individual.

Prior to the 1989 Supreme Court decision United States Department of Justice v. Reporters Committee for Freedom of the Press (Reporters Committee), the Social Security Administration (SSA) would permit disclosure of personally identifiable information to epidemiological researchers believing that it was permitted to do so under the Freedom of Information Act (FOIA). Disclosure of personal information is permitted under FOIA when the public interest served by the disclosure outweighs the privacy interest served by withholding the information.

In the Reporters Committee decision, the Supreme Court restricted disclosures of personally identifiable information under FOIA, ruling that disclosure of personal information serves the public interest only when the requested information gives the public insight into the Federal government's performance of its statutory duties.

As a result of the Reporters Committee decision, SSA has discontinued the practice of disclosing information from its files to epidemiological researchers.

Epidemiological research examines specific risk factors (such as exposure to chemical agents or specific medical treatments) that may cause disease by measuring the effect of these factors on a known population. For example, medical researchers may need to know which members of a research population have died or in which state they died (in order to follow-up on the cause of death). The information is usually requested by private researchers and colleges and universities conducting research on behalf of private entities.

House Bill

The provision would require SSA, under certain circumstances, to disclose limited personally identifiable information for epidemiological research purposes only, and it would permit the Secretary of the Treasury to provide such information to SSA for purposes of complying with such requirement.

Under the provision, SSA would be required to comply with requests for information showing whether an individual is alive or deceased. However, the requestor would be required to meet two conditions:

(1) the information would be used for epidemiological or similar research which the Secretary determined showed a reasonable promise of contributing to a national health interest; and

(2) the requestor agrees to reimburse the Secretary for providing such information and agree to comply with limitations on safeguarding and rerelease or redisclosure of such information, as specified by the Secretary.

The Secretary of the Treasury would be permitted to provide such information to SSA for purposes of complying with such a requirement.

Effective Date

The provision would apply to requests for information made after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

11. Prohibition of Misuse of Symbols, Emblems or Names Related to the Social Security Administration, Health Care Financing Administration and the Department of Health and Human Services (Sec. 13011 of House bill)

Present Law

In 1988, Congress enacted a provision prohibiting the use of words, letters, symbols and emblems of the Social Security Administration (SSA) and the Health Care Financing Administration (HCFA) in a manner that the user knows or should know would convey the false impression that such an item was approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration or the Department of Health and Human Services, or that the user has some connection with, or authorization from, these agencies.

The law permits the Secretary of Health and Human Services (HHS) to impose civil monetary penalties not to exceed $5,000 per violation or, in the case of a broadcast or telecast, $25,000 per violation. The total amount of penalties which may be imposed is limited to $100,000 per year.

Amounts collected by the Secretary are deposited as miscellaneous receipts of the Treasury of the United States.

House Bill

The provision would amend current law to:

(a) eliminate the annual cap on penalties;

(b) also prohibit the use of words and letters of the Department of Health and Human Services, Supplemental Security Income Program, or Medicaid, and the symbols or emblems of the Department of Health and Human Services;

(c) define a "violation," with regard to mailings, as each individual piece of mail in a mass mailing;

(d) further prohibit the use of the names, letters or emblems of SSA, HCFA, or HHS in a manner that reasonably could be interpreted to convey a relationship with these agencies;

(e) exempt from the prohibition the use by any State agency or instrumentality of State, or political subdivision of any words, letters, symbols, or emblems which identify an agency or instrumentality of the State or political subdivision;

(f) repeal the present law requirement that the Department of Health and Human Services obtain a formal declination from the Department of Justice (DOJ) before pursuing a civil monetary penalty case under this provision;

(g) provide that penalties collected by the Secretary for violations of this provision would be deposited in the Old-Age and Survivors Insurance Trust Fund;

(h) stipulate that no person may reproduce, reprint, or distribute for a fee any form, application, or other publication of the Social Security Administration unless such person has obtained specific written authorization for such activity in accordance with regulations prescribed by the Secretary.

(i) provide that any determination of whether there is a violation of this provision shall be made without regard to a disclaimer; and

(j) require the HHS Secretary to report annually to the Congress detailing the number of complaints of deceptive practices received by SSA, the number of cases in which SSA sent a notice of violation of this section to an individual requesting that the individual cease misleading activities, the number of cases referred by SSA to the HHS Inspector General (IG), the number of investigations undertaken by the HHS IG, the number of civil monetary penalties formally assessed by the HHS IG in a demand letter, the total amount of civil monetary penalties assessed during the year, the total amount of civil monetary penalties deposited in the OASI trust fund during the year, and the number of hearings requested pursuant to this provision and their disposition.

(k) clarify that the provisions in section 1140 would continue to be enforced by the Office of the Inspector General of the Department of Health and Human Services.

Effective Date

The provision would apply to violations occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

12. Increase in Penalties for Unauthorized Disclosure of Social Security Information (Sec. 13012 of House bill)

Present Law

Each year, the Social Security Administration (SSA) receives and maintains earnings information, including the names and addresses of employers, on over 130 million working Americans in its computer system. Employers are required to file annually with the Social Security Administration copies of their workers' W-2 statements. The statements contain the worker's Social Security numbers and the amount of wages the workers received during the year. In addition, each SSA file contains an individual's birth certificate information, such as date of birth, father's name and mother's maiden name. For those receiving Social Security benefits, the file contains a current address and monthly benefit amounts.

The Social Security Act includes provisions which prohibit the unauthorized disclosure of information contained in Social Security Administration files. The Act provides that any person who violates these provisions and makes an unauthorized disclosure can be found guilty of a misdemeanor and, upon conviction, punished by a fine not exceeding $1,000 or by imprisonment not exceeding one year, or both.

House Bill

The provision stipulates that unauthorized disclosure of information and fraudulent attempts to obtain personal information under the Social Security Act would be a felony. Each occurrence of a violation would be punishable by a fine not exceeding $10,000 or by imprisonment not exceeding five years, or both.

Effective Date

The provision would apply to violations occurring after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

13. Simplification of Employment Taxes on Domestic Services (Sec. 13013 of House bill)

Present Law

Individuals who hire domestic employees such as baby-sitters, housekeepers, and yard workers are required to withhold and pay employment taxes when the worker's wages exceed certain thresholds. (Individuals who hire independent contractors to provide domestic services are excluded from these requirements.) For Social Security, the wage threshold is $50 per quarter; for Federal unemployment insurance, it is $1,000 per quarter. When the $50 threshold is reached, the employer must file a quarterly report (form 942) with the Internal Revenue Service, submitting with it the required Social Security tax for both the employer and the employee. The employer must also provide the employee and the Social Security Administration with a Wage and Tax Statement (form W–2) at the end of the year. When the $1,000 unemployment insurance wage threshold is reached in any calendar quarter, the employer must file a report (form 940) with the IRS at the end of the year, submitting the required tax.

In addition, employers of domestic workers must: notify employees who may be eligible for the earned income tax credit of the existence of this credit; withhold income tax if the employee requests it and the employer agrees; file and pay State unemployment insurance tax in each quarter in which the State unemployment insurance wage threshold (equal to the $1,000 Federal threshold is 45 States) is reached; and, in some States, report wages paid to domestic employees to the State for purposes of State income tax.

House Bill

The provision would:

Change the threshold for withholding and paying Social Security taxes on domestic workers from $50 per quarter to $1,800 annually in 1994 and index it thereafter for increases in average wages in the economy;

Adjust the Social Security tax threshold retroactively for increases in average wages in the economy since 1950 and annualize the threshold retroactively. No underpayment of taxes (or any penalty or interest with respect to such underpayment) which is covered by this provision for the years 1951 through 1993 shall be assessed (or, if assessed, shall be collected), effective on or after the date of enactment. No tax refunds would be provided;

Require individuals who employ only domestic workers to report on a calendar-year basis any Social Security or Federal unemployment tax obligations for wages paid to these workers and authorize the Secretary of the Treasury to revise Federal form 1040 to enable such employers to report both taxes on their own Federal income tax returns;

Include domestic employers' Social Security and Federal unemployment taxes in estimated tax provisions, thereby enabling these employers to satisfy their tax obligations through regular estimated tax payments or increased tax withholding from their own wages;

Authorize the Secretary of the Treasury to enter into agreements with States to collect State unemployment taxes in the manner described above; and

Require the Secretary of the Treasury to provide to domestic employers a comprehensive package of informational materials, including all requirements of Federal law and a notification that they may also be subject to State unemployment insurance and workers compensation laws.

Effective Date

The provision would generally apply to remuneration paid in calendar years beginning after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

14. Increase in Authorized Period for Extension of Time to File Annual Earnings Report (Sec. 13014 of House bill)

Present Law

In general, individuals under age 70 who receive Social Security retirement or survivors benefits must file an annual report of their earnings with the Social Security Administration for any taxable year in which their earnings or wages exceed the annual exempt amount of earnings under the Social Security earnings test. These reports are due to be filed by the same date as Federal income tax returns, the fifteenth day of the fourth month after the close of the taxable year (normally April 15). Individuals may be granted a reasonable extension of time for filing an earnings report if there is a valid reason for delay, but not more than 3 months. An extension of time for filing an income tax return may be granted for up to 4 months.

House Bill

The time for which an extension could be granted for filing an earnings report would be increased to 4 months.

Effective Date

The provision would be effective with respect to reports of earnings for taxable years ending on or after December 31, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

15. Reallocation of a Portion of the Old-Age and Survivors' Insurance Payroll Tax to the Disability Insurance Trust Fund (Sec. 13015 of House bill)

Present Law

Employees and employers each pay a tax of 7.65 percent on earnings up to a specified ceiling. Of the 7.65 percent, 1.45 percent is allocated to the Hospital Insurance Trust Fund, 5.6 percent is allocated to the Old-Age and Survivors Insurance Trust Fund, and 0.6 percent is allocated to the Disability Insurance Trust Fund. The 15.3 percent tax on net earnings from self-employment is similarly allocated to the HI Trust Fund (2.90 percent), the OASI Trust Fund (11.2 percent) and the DI Trust Fund (1.2 percent). As a result of the 1983 Social Security Amendments (P.L. 98–21), 0.71 percent will be allocated to the DI Trust Fund beginning in the year 2000.

In its 1993 report to Congress, the Social Security Board of Trustees determined that, under its intermediate economic assumptions, the DI Trust Fund will be depleted during 1995.

House Bill

The provision would allocate an additional 0.275 percent of the employer and employee Social Security payroll tax rate, each, and 0.55 of the self-employment tax rate from the OASI Trust Fund to the DI Trust Fund, effective for 1993 and future years. The combined OASDHI tax rate of 7.65 percent would remain unchanged.

In addition, the Secretary of Health and Human Services would be required to conduct a comprehensive study of the reasons for rising costs in the DI program. The study would determine the relative importance of: (a) increased numbers of applications for benefits, (b) higher rates of benefit allowances, and (c) decreased rates of benefit terminations in increasing DI program costs. It would also identify, to the extent possible, underlying social, economic, demographic, programmatic, or other trends responsible for changes in DI applications, allowances, and terminations. No later than December 31, 1995, the Secretary would be required to issue a report to the House Committee on Ways and Means and the Senate Committee on Finance summarizing the results of the study and, if appropriate, making legislative recommendations.

Effective Date

The provision would apply to wages paid after December 31, 1992, and to self-employment income for taxable years beginning after this date.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

16. Extension of Disability Insurance Program Demonstration Project Authority (Sec. 13016 of House bill)

Present Law

Section 505(a) of the Social Security Disability Insurance Amendments (P.L. 96–265), as extended by the Omnibus Budget Reconciliation Act of 1989 (P.L. 101–239) and the Omnibus Budget Reconciliation Act of 1990 (P.L. 102–508), authorizes the Secretary of Health and Human Services to waive compliance with the benefit requirements of titles II and XVIII for purposes of conducting work incentive demonstration projects to encourage disabled beneficiaries to return to work. The authority to waive compliance applies to projects initiated prior to June 10, 1993. A final report is due no later than Oct. 1, 1993.

House Bill

The Secretary's authority to initiate disability work incentive demonstration projects that waive compliance with benefit provisions (as provided in P.L. 96–265) would be extended through June 9, 1996.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

17. Technical Corrections (Sec. 13017 of House bill)

Present Law

The Social Security Act contains a number of typographical errors, erroneous references, circular cross references, inconsistent margination, incorrect punctuation, and references to outdated versions of the Internal Revenue Code.

House Bill

The provision would correct those technical errors.

Effective Date

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

18. Cross-Matching of Social Security Account Numbers and Employer Identification Numbers Maintained by the Department of Agriculture (Sec. 13018 of House bill)

Present Law

Under current law, the Department of Agriculture is allowed to collect and maintain a list of the names, Social Security numbers and employer identification numbers of the owners and officers of retail grocery stores which redeem food stamps. The list is used only to keep track of grocery store operators who have been sanctioned for violations under the Food Stamp Act.

House Bill

The provision would permit the Secretary of Agriculture to share the list of names and identifying numbers with other Federal agencies which otherwise have access to Social Security account numbers for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 or for investigating violations of other Federal laws, or enforcement of such laws. The Secretary of Agriculture must restrict access to Social Security account numbers obtained pursuant to this provisions to officers and employees of the United States whose duties or responsibilities require access for such purposes.

Effective Date

The provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

19. Prohibition of Misuse of Symbols, Emblems, or Names Related to the Department of the Treasury and the Internal Revenue Service (Sec. 13019 of House bill)

Present Law

There is no provision in present law prohibiting the use of titles, symbols, emblems, and names of the Department of the Treasury (and its subsidiary agencies) in connection with advertisements, mailings, solicitations, or other business activities.

House Bill

The provision would prohibit the use in advertisements, solicitations, and other business activities of words, abbreviations, titles, letters, symbols, or emblems associated with the Department of the Treasury (and services, bureaus, offices or subdivisions of the Department, including the Internal Revenue Service) in a manner which could reasonably be interpreted as conveying a connection with or approval by the Department of the Treasury.

The bill would establish a civil penalty of not more than $5,000 per violation (or not more than $25,000 in the case of a broadcast or telecast). In addition, the bill would establish a criminal penalty of not more than $10,000 (or not more than $50,000 in the case of a broadcast or telecast) or imprisonment of not more than one year, or both, in any case in which the prohibition is knowingly violated. Any determination of whether there is a violation would be made without regard to the use of a disclaimer of affiliation with the Federal Government. The Secretary of the Treasury would be required to provide to the Committee on Ways and Means and the Committee on Finance, no later than May 1, 1995, a report on enforcement activities relating to the implementation of the provision.

Effective Date

The provisions would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement does not include the House provision.

SUBCHAPTER D—CUSTOMS AND TRADE PROVISIONS

PART I—EXTENSION OF CUSTOMS USER FEE, GSP, AND TRADE ADJUSTMENT ASSISTANCE PROGRAMS

Extension of Authority to Levy Customs User Fees (Sec. 13602 of House bill; sec. 7701 of Senate amendment; sec. 13801 of conference agreement)

Present Law

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) (19 U.S.C. 58c) authorizes the U.S. Customs Service to collect user fees for services the agency provides to the traveling and importing public. A statutory schedule of flat rate fees is imposed for the processing of air and sea passengers, commercial vessels, barges, rail cars, trucks, dutiable mail packages and customs brokers permits ("COBRA fees"). Fees collected reimburse appropriations for the costs incurred by Customs in providing inspectional overtime and excess preclearance costs. Also, expenditures are authorized from surplus revenues in excess of $30 million to add new positions and acquire equipment to enhance services provided to the payers of the fees.

Customs also collects a 0.19 percent ad valorem merchandise processing fee (MPF) on the value of formally entered imported commercial cargo, subject to a $21 minimum and $400 maximum fee. In addition, a $2, $5, or $8 entry fee is charged for processing informal entries valued below $1,250. Certain products and countries are exempt from the fee; the MPF for Canadian goods will be eliminated as of January 1, 1994, and currently is 20 percent of the rate applicable to goods from other sources.

Receipts from the MPF are deposited into a "Customs User Fee Account" within the general fund and, subject to authorization and appropriation, offset Customs costs incurred in commercial operations. User fee collections are scored as receipts which offset direct spending.

All user fee authority expires September 30, 1995.

House Bill

Section 13602 of H.R. 2264 as passed by the House amends section 13031(j)(3) of the COBRA to extend all customs user fee authority (both COBRA fees and MPF) for three additional fiscal years through fiscal year 1998.

Senate Amendment

Section 7701 of the Senate amendment is identical to the House bill.

Conference Agreement

Section 13801 of the conference agreement retains the provisions in the House bill and Senate amendment.

Generalized System of Preferences (sec. 13603 of House bill; sec. 13802 of conference agreement)

Present Law

Title V of the Trade Act of 1974, as amended, authorizes the President to grant preferential duty-free treatment (Generalized System of Preferences) on imports of eligible articles from designated beneficiary developing countries, subject to certain conditions and limitations. Section 502(b) includes the "Union of Soviet Socialist Republics", and thus its successor independent republics, on a specific list of countries which the President is prohibited from designating as eligible for beneficiary country status under the GSP program.

Section 505(a) of the Trade Act of 1974 provides that no duty-free treatment under Title V shall remain in effect after July 4, 1993.

House Bill

Section 13603(a) of H.R. 2264 as passed by the House amends section 502(b) of the Trade Act of 1974 to remove the "Union of Soviet Socialist Republics" from the statutory list of countries prohibited from designation for beneficiary status under the GSP program.

Section 13603(b) amends section 505(a) of the Trade Act of 1974 to authorize a 15-month extension of GSP duty-free treatment through September 30, 1994. It also provides that, notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, the entry (including withdrawal from warehouse for consumption) of any article made after July 4, 1993, and before date of enactment of the extension to which GSP duty-free treatment would have applied shall be liquidated or reliquidated as free of duty and the Secretary of the Treasury shall refund any duty paid, upon proper request filed with the appropriate customs officer within 180 days after the date of enactment.

Senate Amendment

No provision.

Conference Agreement

Section 13802 of the conference agreement follows the House bill.

Extension of Trade Adjustment Assistance Program (sec. 13604 of House bill; sec. 7702 of Senate amendment; sec. 13803 of conference agreement)

Present Law

Title II of the Trade Act of 1974 authorizes the Trade Adjustment Assistance (TAA) programs for workers and firms certified by the Secretary of Labor and the Secretary of Commerce, respectively, as adversely affected by increased imports. Eligible workers are entitled to weekly cash payments, training and other employment services, and job search and relocation allowances, subject to specific qualifying requirements and limitations. Certified firms are eligible for technical assistance to prepare and implement economic adjustment plans, or for industry-wide assistance, subject to certain conditions.

Section 245 of the Trade Act of 1974 authorizes appropriations to the Department of Labor of such sums as may be necessary for the TAA program for workers through fiscal year 1993.

Section 256(b) of the Trade Act of 1974 authorizes appropriations to the Secretary of Commerce of such sums as may be necessary to remain available until expended for the TAA program for firms through fiscal year 1993.

Section 285(b) of the Trade Act of 1974 provides that no assistance, vouchers, allowances or other payments may be provided under the TAA program for workers, and that no technical assistance may be provided under the TAA program for firms, after September 30, 1993.

House Bill

Section 13604(a) of H.R. 2264 as passed by the House amends section 285(b) of the Trade Act of 1974 to extend the termination date

for the TAA program for workers for three years through September 30, 1996. Section 13604(b) amends section 245 of the Trade Act of 1974 to authorize appropriations of such sums as may be necessary for the worker TAA program for fiscal years 1994, 1995, and 1996.

Senate Amendment

Section 7702(a) of the Senate amendment amends section 285(b) of the Trade Act of 1974 to extend the termination dates for the provisions of assistance for both the worker and the firm TAA programs for five years through September 30, 1998. Section 7702(b) amends sections 245 and 256(b) of the Trade Act of 1974 to authorize appropriations for the worker and firm TAA programs for fiscal years 1994, 1995, 1996, 1997, and 1998.

Conference Agreement

Section 13803 of the conference agreement follows the Senate amendment with an amendment to section 236(a)(2)(A) of the Trade Act of 1974 reducing the total amount of payments that may be made for training under section 236(a)(1) in fiscal year 1997 from a maximum of $80,000,000 to a maximum of $70,000,000.

Customs and Trade Agency Authorizations for Fiscal Years 1994 and 1995 (sec. 13601 of House bill)

Present Law

Section 330(e)(2) of the Tariff Act of 1930, as amended, authorizes two-year appropriations for the U.S. International Trade Commission (ITC). The most recent authorization (section 101 of the Customs and Trade Act of 1990, Public Law 101–382) was $44,052,000 for fiscal year 1992. The total appropriation to the ITC for fiscal year 1993 (Public Law 102–395) is $44,852,000, of which an amount not to exceed $2,500 is available to be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

The Customs Procedural Reform and Simplification Act of 1978 (Public Law 95–110) provides for a two-year authorization of appropriations for the U.S. Customs Service. The Omnibus Budget Reconciliation Act of 1986 (Public Law 99–509) requires that the salaries and expenses portion of the Customs Service authorization specify separate amounts for noncommercial and commercial operations. The most recent authorization (section 101 of the Customs and Trade Act of 1990, Public Law 101–382) was $542,091,000 for noncommercial operations and $705,793,000 for commercial operations in fiscal year 1992, and $150,199,000 was authorized for the Air Interdiction Program. The total budget authority under the Treasury Appropriation Act (Public Law 102–393) for fiscal year 1993 is $1,328,694,000 for Customs Service salaries and expenses and $132,416,000 for the Air Interdiction Program.

Section 141(g)(1) of the Trade Act of 1974, as amended, authorizes two-year appropriations to carry out the functions of the Office of the U.S. Trade Representative (USTR). The most recent authorization (section 103 of the Customs and Trade Act of 1990, Public Law 101–382)) was $21,077,000 for fiscal year 1992. The appropriation to the USTR for fiscal year 1993 (Public Law 102–395) is $19,992,000, of which not to exceed $98,000 is available for official reception and entertainment expenses and not to exceed $2,500,000 shall remain available until expended, plus a supplemental appropriation of $500,000 (Public Law 103–50).

House Bill

Section 13601(a) of H.R. 2264 as passed by the House amends section 330(e)(2) of the Tariff Act of 1930 to provide an authorization of appropriations for the ITC of $45,416,000 for fiscal year 1994 and $45,974,000 for fiscal year 1995. Of these amounts, not more than $2,500 per fiscal year may be used for reception and entertainment expenses, subject to the approval of the Chairman of the Commission.

Section 13601(b) amends section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for the U.S. Customs Service not to exceed $540,783,000 in fiscal year 1994 and $527,000,000 in fiscal year 1995 for salaries and expenses incurred in noncommercial operations, and not less than $771,036,000 in fiscal year 1994 and $748,000,000 in fiscal year 1995 for salaries and expenses incurred in commercial operations. The authorization for operation and maintenance of the Air and Marine Interdiction Program is $95,156,000 in fiscal year 1994 and $128,000,000 in fiscal year 1995.

Section 13601(c) amends section 141(g)(1) of the Trade Act of 1974 to provide a two-year authorization of appropriations to the USTR of $20,143,000 in fiscal year 1994 and $20,419,000 in fiscal year 1995. Of these amounts, not to exceed $98,000 may be used for entertainment and representation expenses and not to exceed $2,500,000 shall remain available until expended.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment, with the understanding that the Senate intends to consider these provisions in separate legislation as soon as possible.

Extension of Uruguay Round Trade Agreement Negotiation and Proclamation Authority and of "Fast Track" Procedures to Implementing Legislation (sec. 13605 of House bill)

Present Law

Section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries and to proclaim tariff modifications (subject to limitations) he determines to be required or appropriate to carry out such agreements. Section 1102(b) of the Act authorizes the President, before June 1, 1993, to enter into trade agreements with foreign countries to reduce, eliminate, prohibit, or limit nontariff barriers.

Section 1103(a)(1) of the 1988 Act provides that agreements entered into under section 1102(b) shall enter into force only if the President notifies the House and Senate at least 90 calendar days in advance of his intention to enter into the agreement (for purposes of consultations required with committees of jurisdiction under subsection (c)) and, after entering into the agreement, the President submits to the House and Senate a copy of the final legal text, a draft implementing bill and statement of any proposed administrative action, and supporting information, and the implementing bill is enacted into law. Section 1103(b) provides that the "fast track" procedures under section 151 of the Trade Act of 1974 apply to implementing bills submitted with respect to trade agreements entered into before June 1, 1991 (extended until June 1, 1993, through operation of provisions of section 1103(b)). Under these procedures, implementing (revenue) bills, upon submission by the President and introduction on the same day by the leadership of the House and Senate, are subject to a maximum 90-legislative day period for Congressional consideration (60 days in the House), without amendment.

Section 135(e) of the Trade Act of 1974, as amended, requires the Advisory Committee for Trade Policy and Negotiations and appropriate private sector policy, functional or sectoral advisory committees to report to the President, the Congress, and the USTR on each trade agreement entered into under section 1102 of the 1988 Act not later than the date the President notifies the Congress of his intention to enter into the agreement.

House Bill

Section 13605 of H.R. 2264 as passed by the House amends section 1102 of the Omnibus Trade and Competitiveness Act of 1988 by adding a new subsection (e) that—

(1) Authorizes the President to enter into trade agreements under sections 1102(a) and (b) after May 31, 1993, and *before April 16, 1994*, resulting from the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade (GATT), if these negotiations have not resulted in agreements by May 31, 1993;

(2) Provides that no proclamation under section 1102(a) to carry out provisions of an Uruguay Round trade agreement regarding tariffs may take effect before enactment of legislation that implements the provisions of the agreement on nontariff barriers;

(3) Requires the President to provide the House and Senate under section 1103(a)(1)(A) of the Act at least 120 days advance notice of his intention to enter into the trade agreement, but *not later than December 15, 1993;* and extends the application of "fast track" procedures to implementing bills submitted with respect to such an agreement entered into *before April 16, 1994;* and

(4) Requires the reports by private sector advisory committees under section 135 of the Trade Act of 1974 not later than 30 days after the President notifies the Congress, but before January 15, 1994.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment. Public Law 103–49, enacted on July 2, 1993, contains identical provisions.

Repeal of East-West Trade Statistics Monitoring System (sec. 13606 of House bill)

Present Law

Section 410 of the Trade Act of 1974, as amended (19 U.S.C. 2440) established the East-West Trade Statistics Monitoring System. It requires the U.S. International Trade Commission to monitor U.S. imports from, and exports to, nonmarket economy countries. Such data must be published and transmitted to Congress each quarter.

House Bill

Section 13606 of H.R. 2264 as passed by the House repeals section 410 of the Trade Act of 1974.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment, with the understanding that the Senate intends to consider this provision in separate legislation as soon as possible.

PART II—CUSTOMS OFFICER PAY REFORM

Overtime and Premium Pay for Customs Officers (sec. 13701 of House bill; sec. 13811 of conference agreement)

Present Law

Customs inspectors are compensated with overtime pay for work performed outside the

statutorily-defined work week (i.e., Monday through Saturday, 8:00 a.m. through 5:00 p.m.). Overtime pay is paid at a rate of two times basic pay, with any amount of work conducted during a 2-hour period treated as 4 hours pay (2 hour minimum at a rate of two times basic pay).

Customs inspectors who are required to work after their normal duty (callback), between 5:00 p.m. and 9:00 p.m., are paid overtime beginning at 5:00 p.m. and for hours actually worked, at a rate of two times basic pay. Customs inspectors who are required to work after their normal duty (callback), between 9:00 p.m. and 6:00 a.m., are paid for 8 hours (4 minimum hours at a rate of two times basic pay), plus hours actually worked of at least 4 hours (2 minimum hours at a rate of two times basic pay), for a total of 12 hours pay for any time worked.

There is no separate provision in present law to compensate Customs inspectors for a second commute due to callback.

Customs inspectors are compensated with overtime pay for work performed at night and on Sundays and holidays, plus certain minimum hour credits, at a rate of two times basic pay. At night (after 5:00 p.m. and before 8:00 a.m.), Customs inspectors are compensated with 4 hours pay (2 hours minimum at a rate of two times basic pay) for any time worked. On Sundays, Customs inspectors are compensated with 16 hours pay (8 hours minimum at a rate of two time basic pay) for any time worked. On holidays, Customs inspectors are compensated with 16 hours pay (as on a Sunday) plus basic pay for any time worked.

Customs inspectors may receive up to $25,000 in overtime pay, annually.

Customs Canine Enforcement Officers are provided overtime compensation in the same manner as other Federal employees under the Federal Employee Pay Act (FEPA).

House Bill

Customs officers would be defined as any individual performing those functions specified by regulation by the Secretary of the Treasury for a Customs inspector or canine enforcement officer.

Customs officers would be compensated with overtime pay for work performed in excess of a 40-hour week or 8-hour day, at a rate of two times basic pay, for actual time worked.

Customs officers who must return to their place of work (callback) beyond their normal duty, where the work begins more than 1 hour after their duty ends or before their next duty begins, would be paid 4 hours pay (2 minimum hours at a rate of two times basic pay), plus hours actually worked beyond 2 hours (at a rate of two times basic pay).

In addition to callback pay, Customs officers would be paid 3 hours (at the basic pay rate) as compensation for travel time. Compensation is not payable if the work does not begin within 16 hours of the last assignment, or if it starts within 2 hours of the next assignment.

Customs officers would be provided additional compensation (15 percent of basic pay) where a majority of the work is performed at night (between 3:00 p.m. and midnight) and additional compensation (20 percent of basic pay) where a majority of the work is performed at night (between 11:00 p.m. and 8:00 a.m.), where the night work is performed during their regular work week. Customs officers who work between 7:30 p.m. and 3:30 a.m. would receive additional compensation in the amount of 15 percent of basic pay for the period from 7:30 p.m. to 11:30 p.m. and 20 percent of basic pay for the period from 11:30 p.m. to 3:30 a.m.

Customs officers would be provided additional compensation (at a rate of time and one-half basic pay) for work performed on Sunday, where the Sunday work was performed during their regular work week.

Customs officers would be provided additional compensation (at a rate of two times basic pay) for work on a holiday.

The newly-created premium pay for work performed at night, on a Sunday, and on a holiday, and compensation received for any second commute would be subject to the annual $25,000 overtime pay limitation. Also, the annual overtime pay limitation would be made a part of the same law that controls payment of inspectional overtime.

The Secretary of the Treasury would be authorized to promulgate regulations to insure that callback assignments are commensurate with the overtime compensation authorized for such work and to prevent the disproportionate assignment of overtime work to Customs officers near retirement. This provision would be effective on October 1, 1993.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with clarification that the Secretary of the Treasury would be required to promulgate regulations to prevent abuses in the areas of callbacks and retirement benefits. The conferees understand that the Secretary already has the authority to promulgate regulations otherwise implementing this Section. The conference agreement also delays the effective date to January 1, 1994.

With respect to the provision that includes premium pay within the $25,000 annual cap on overtime pay, it is not the intention of the conferees in any way to diminish unfairly the retirement benefits of those Customs officers required to work in the evenings or at night. Although such Customs officers would earn premium pay for such work, the amount of overtime pay (which would count toward retirement benefits) they could earn may be correspondingly reduced. It is the conferees intention to monitor closely the operation of this provision, and to revisit this issue if it appears that Customs officers required to work evenings and nights are being disadvantaged with respect to their retirement benefits.

Additional Benefits for Customs Officers (sec. 13812 of conference agreement)

Treatment of Certain Pay for Retirement Purposes (sec. 13704 of House bill; sec. 13812(a) of conference agreement)

Present Law

Customs inspector overtime pay is not treated as compensation for Federal retirement benefit purposes when calculating employee retirement annuities.

House Bill

Overtime pay would be included when calculating retirement annuities for Customs officers, up to an amount equal to 50 percent of the overtime pay cap. Fifty percent of the current overtime pay cap is $12,500. This provision would be effective upon enactment.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a technical amendment melding this provision into a single section regarding additional benefits for Customs officers. No substantive changes are intended.

Foreign Language Proficiency Awards (sec. 13702 of House bill; sec. 13812(b) of conference agreement)

Present Law

There is no provision in present law authorizing Foreign Language Proficiency Awards for Customs inspectors.

House Bill

The Secretary of the Treasury would be authorized to pay up to 5 percent of basic pay to any Customs officer who possesses and makes substantial use of one or more foreign languages in the performance of official duties.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a technical amendment to provide, in section 13813 of the conference agreement, that these awards would be paid from the Customs COBRA User Fee Account, rather than be subject to appropriations. The conference agreement also clarifies that the provisions are effective on January 1, 1994.

Reimbursements from the Customs User Fee Account (sec. 13703 of House bill; sec. 13813 of conference agreement)

Present Law

User fees are authorized to be collected on various conveyances and air passengers (the "COBRA" User Fees) and are paid into a dedicated Customs User Fee Account. The fees are used to pay the costs of inspectional overtime, preclearance operations, additional officers, and equipment. The Customs COBRA User Fee Account is not subject to annual authorization and appropriation. Spending for inspectional overtime and preclearance operations is not subject to Office of Management and Budget apportionment authority. Spending for existing premium pay is funded from the Salaries and Expenses appropriations.

House Bill

The Secretary of the Treasury would be authorized to use the Customs COBRA User Fee Account, in addition to present law purposes, for a portion of Customs officer premium pay and for Customs retirement-fund contributions for Customs officer overtime pay. The Customs COBRA User Fee Account would continue to be available without the annual authorization and appropriation process. However, it would be subject to Office of Management and Budget apportionment.

Funds in the Customs COBRA User Fee Account would only be used to pay that portion of premium pay not currently authorized under FEPA. The portion of premium pay that would be authorized under current law and currently paid from the annual appropriated salaries and expenses account would continue to be paid from that account. Only the difference between the newly-created premium pay authorized by this bill and the premium pay currently authorized by FEPA would be paid from the COBRA User Fee Account.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the House bill, with a modification to provide for the reimbursement from the COBRA User Fee Account of Foreign Language Proficiency Awards, after payments for all other purposes other than payments for the hiring of full-time inspectors.

With respect to OMB apportionment of the Customs COBRA User Fee Account, it is not the intention of the conferees that this provision interfere with Customs' ability to allocate resources and effectively serve the travel and trade communities. The conferees intend to monitor closely the implementation of this provision to ensure that the apportionment authority does not impair Customs' ability to accomplish its drug enforcement and facilitation missions.

The conferees believe that the user fee structure used to finance inspectional services may have become ineffective, inefficient, and inequitable. Accordingly, the conferees intend that the Secretary of the Treasury, as part of the President's fiscal year 1995 budget request, submit recommendations for improvements to the user fee laws used to finance inspectional services. This report should address, at a minimum: (1) whether all activities relating to air passenger processing should be consolidated under the Customs COBRA User Fee Account; (2) whether the Customs COBRA User Fee Account should be subject to the authorization and appropriation process, and; (3) whether the Secretary should have the authority to adjust periodically the COBRA User Fee in a way similar to that currently authorized for the merchandise processing fee. The conferees also intend that the Secretary submit to the Committee on Ways and Means and the Committee on Finance, at the end of each fiscal year, an accounting for all Customs COBRA User Fee Account expenditures. Finally, the conferees intend that, within one year of the date of enactment, the Comptroller General review the effectiveness, efficiency, and fairness of the user fees used to finance inspectional services and report to the Committee on Ways and Means and the Committee on Finance.

Reports (sec. 13705 of House bill)

Present Law

The Secretary of the Treasury is required to report annually to the Congress on expenditures for additional officers and additional equipment from the Customs COBRA User Fee Account.

House Bill

The Secretary of the Treasury would be required, at the end of each fiscal year, to report to the Committee on Ways and Means and the Committee on Finance on Customs COBRA User Fee Account expenditures including overtime expenditures and de minimis callback assignments. The Secretary also would be required to submit proposals for improvements to the user fee laws used to finance inspectional services. The Comptroller General would be required, within one year after date of enactment, to review user fees used to finance inspectional services and identify additional cost savings.

Senate Amendment

No provision.

Conference Agreement

The conference agreement follows the Senate amendment.

CHAPTER 3

FOOD STAMP PROGRAM

Short title (H. 1301)

The *House Bill* provides that the bill may be cited as the "Mickey Leland Childhood Hunger Relief Act".

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

References to Act (H. 1302)

The *House Bill* provides that references in the bill to "the Act" are references to the Food Stamp Act of 1977.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

Maximum benefit level (H. 1311)

The *House Bill* provides that food stamp benefits will be based on 104% of the thrifty food plan beginning in fiscal year 1994.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Helping low-income high school students (H. 1312)

The *House Bill* excludes the income of elementary and secondary school students 21 years of age or under for the purpose of calculating eligibility and benefit levels for the Food Stamp Program.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

Families with high shelter expenses (H. 1313)

The *House Bill* removes the shelter deduction cap for households that do not contain elderly or disabled members effective October 1, 1994. In the interim, it increases shelter deduction caps for fiscal year 1994; the cap for households in the contiguous 48 states is increased to $214.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provisions with an amendment establishing interim caps until January 1, 1997, at which time the cap will be removed.

In administering the shelter deduction, the managers expect the Secretary will fully implement existing law, including the amendments included in the 1985 Farm Bill, except to the extent that they have been changed by subsequent legislation. The 1985 amendments on households receiving energy assistance, which reflect the results of debate and votes on the floor of both houses, were accurately explained in the narrative accompanying the U.S. Department of Agriculture's 1986 and 1987 *Federal Register* rule-makings on these issues. The managers believe that the 1985 amendments establish a rule that should be relatively simple for states to administer. The Department should not establish or enforce a policy that imposes administrative burdens on the states or dilutes the benefits of any energy assistance, whatever the source, except as specifically authorized by the 1985 amendments and not precluded by subsequent legislation.

Resource exclusion for earned income tax credits (H. 1314)

The *House Bill* excludes earned income tax credits received by households from consideration as resources for one year following their receipt.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision. The requirement of continuous participation in this section is not intended to deny the exclusion to households that temporarily leave the program for a short time for administrative reasons, such as a deadline being missed at recertification or a monthly reporting sanction, but who continue otherwise to meet the Food Stamp Program's income and resource eligibility criteria.

Homeless families in transitional housing (H. 1315)

The *House Bill* excludes from food stamp income the full amount of vendor payments for transitional housing for homeless households.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

Households benefiting from general assistance vendor payments (H. 1316)

The *House Bill* includes only GA vendor payments provided for housing expenses, but excluding energy or utility-cost assistance, as income for determining food stamp eligibility and benefit levels.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

Continuing benefits to eligible households (H. 1317)

The *House Bill* provides that eligible households reapplying or recertified during the first month following the end of their prior certification period will receive full benefits for the first month of their certification period.

The *Senate Amendment* contains no comparable provisions.

The *Conference Substitute* adopts the *House* provision.

Improving the nutritional status of children in Puerto Rico (H. 1318)

The *House Bill* provides that for fiscal year 1994 the block grant funding for Puerto Rico is increased from $1.091 billion to $1.111 billion, and for fiscal year 1995 it is increased from $1.133 billion to $1.158 billion.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment to increase the funding for the Puerto Rico block grant to $1.096 billion for fiscal year 1994 and to $1.143 billion for fiscal year 1995.

Income exclusion for education assistance (H. 1321)

The *House Bill* requires that all education assistance be excluded from consideration as income for purposes of determining Food Stamp program eligibility and allotment levels.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Child support payments to non-household members (H. 1322)

The *House Bill* excludes from consideration as income for purposes of determining Food Stamp Program eligibility and allotment levels any child support payments a household member makes to support a child outside of the household, if the payments are a legal obligation.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment changing the treatment of these child support payments from an exclusion to a deduction. This provision is effective beginning September 1, 1994, and states must implement it no later than October 1, 1995.

This provision authorizes the Secretary to promulgate rules establishing a system to determine the amount of the deduction to be provided to absent parents for their child support payments. This authority is intended to allow the Secretary to minimize burdens on State agencies and households alike. For example, states could be permitted to base a household's deduction for a certification period on the average amount it paid in the prior certification period (with appropriate adjustments for any changes in

the order) rather than having to keep track throughout a certification period of how much the absent parent actually pays each month. The managers do not intend for this procedure to deny a household a deduction for any child support actually paid, but rather the intention is to give states the option to use consistent budgeting procedures that would minimize the number of changes they would be required to make. State agencies correctly following such procedures would not be charged with quality control errors if the amount of child support that a household paid increased or decreased as long as the state agency adjusted the household's allotment prospectively at its next recertification.

Child support exclusion (H. 1323)

The *House Bill* excludes from consideration as household income in determining Food Stamp Program eligibility and allotment levels the first $50 a month received for child support. The requirement for states to reimburse the Federal government is deleted by the amendment.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Improving access to employment and training activities (H. 1324)

The *House Bill* raises the current dependent care deduction, allowed in computing household income for purposes of determining program eligibility and benefit levels to $200 a month for children under age 2 and $175 a month for other dependents.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

The *House Bill* raises dependent care reimbursements to the applicable local market rate as determined using procedures consistent with those used for employment and training programs in the Aid to Families with Dependent Children (AFDC) program, but no less than the cap on the dependent care deduction ($200 for children under 2 years old and $175 for other dependents).

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

The *House Bill* clarifies that State agencies may reimburse any work-related, non-dependent care costs for Food Stamp Program employment and training program participants that they reimburse for AFDC's Job Opportunities and Basic Skills Training Program. It further stipulates that State agencies can set the reimbursement limit for work-related, non-dependent care costs at any level, but not less than $25 a month.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provisions.

The *House Bill* makes a conforming change to raise the amounts of E&T dependent care and other work-related reimbursements made by State agencies to recipients for which State agencies will be reimbursed (at the normal fifty percent rate) by USDA.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment making it applicable only to dependent care reimbursements.

The managers believe that the dependent care deduction and dependent care reimbursement provisions should be implemented in ways that will minimize administrative burdens on State agencies. For example, when a child reaches his or her second birthday before the end of a certification period, the State agency should not be required to reduce the ceiling on the allowable dependent care costs until the household's next regularly scheduled recertification.

Vehicles needed to seek and continue employment and for household transportation (H. 1325)

The *House Bill* raises the vehicle fair market value threshold to $5,500 for fiscal year 1994 and then requires that the $5,500 threshold be adjusted, beginning October 1, 1994, and on each October 1 thereafter, to reflect changes in the Consumer Price Index.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment *raising the vehicle fair market value* threshold from $4,500 to $4,550 beginning September 1, 1994, to $4,600 beginning October 1, 1995, and then requiring that the threshold be adjusted, using for purposes of calculation a base of $5,000, beginning on October 1, 1996, and on each October 1, thereafter, to reflect changes in the Consumer Price Index. The managers understand, based on estimates of the Congressional Budget Office, that using this method, the threshold for fiscal year 1997 will be $5,150.

Vehicles necessary to carry fuel or water (H. 1326)

The *House Bill* excludes from financial resources, for purposes of determining Food Stamp Program eligibility, a vehicle that is used by a household to transport fuel for heating or water when that fuel or water is the primary source for the household.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision. The managers expect that households without heating fuel or water piped into their homes will receive the benefit of this exclusion without having to meet any additional tests concerning the nature, capabilities, or other uses of the vehicle.

Demonstration projects testing resource accumulation. (H. 1327)

The *House Bill* authorizes the Secretary to conduct demonstration projects allowing households already receiving food stamp benefits to accumulate up to $10,000 in resources and remain eligible for program participation. Separate accounts would have to be established and designated for a specific goal that could provide self-sufficiency. Such goals would be limited to improving the education, training, or employability of household members, buying a house for the household's use, changing the household's residence, or making major household repairs.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment to mandate that the Secretary conduct the project.

Simplifying the household definition for households with children and others (H. 1331)

The *House Bill* requires that parents and their children 21 years of age or younger (who are not themselves parents living with their children or married living with their spouses) who live together, children under the age of 18 who live with and are under the parental control of a person other than their parent (with the exception of foster children) together with that person, and spouses who live together would continue to be treated as a group of individuals who customarily purchase and prepare meals together even if they do not do so.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision. This provision clearly prohibits minor children under the parental control of adult household members from establishing separate households. The managers intend for this limitation to prevent young children from being treated as separate households when they are in the care of adults whether or not legal adoption has taken place. It is not intended to discourage friends and relatives from taking in children who might otherwise have to be placed through the foster care system. The managers understand that State agencies have reported few problems with the policy on verification of household status that the Secretary adopted in implementing the Food Stamp Act of 1977 and has maintained ever since. The managers expect this policy to be continued.

Eligibility of children of parents participating in drug or alcohol treatment programs (H. 1332)

The *House Bill* provides Food Stamp Program eligibility to children living with their program-eligible parents in a drug or alcohol rehabilitation center.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision.

Resources of households with disabled members (H. 1333)

The *House Bill* increases the resource limit for determining Food Stamp Program eligibility from $2,000 to $3,000 for any household containing a disabled member.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Ensuring adequate funding for the Food Stamp Program (H. 1334)

The *House Bill* requires that the USDA monthly report on whether supplemental appropriations will be needed to operate the Food Stamp Program be made quarterly. It also authorizes a reduction in food stamp benefits and notification to the States if the Secretary determines that Food Stamp Program funding is insufficient.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Use and disclosure of information provided by retail food stores and wholesale food concerns (H. 1341)

The *House Bill* permits disclosure of information provided by retail food stores and wholesale food concerns, including sales and food stamp redemption information, to State and Federal law enforcement and investigative agencies for the purposes of administering or enforcing the Food Stamp Act or other Federal or State laws.

The *House Bill* also establishes penalties to be imposed against those who publish, divulge, or disclose to any extent not authorized by Federal law any of the information obtained pursuant to this amendment.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Additional means of claims collection (H. 1342)

The *House Bill* permits information obtained from former food stamp recipients to be provided to Federal agencies for purposes of collecting coupon overissuances arising from household errors through offset of Federal tax or pay.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment deleting the reference to Federal tax.

The *House Bill* authorizes collection of these types of claims by offset of Federal pay and clarifies the authority to collect these types of claims by offset of Federal tax.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment deleting the reference to Federal tax.

The managers feel strongly that this provision should be implemented in a manner that protects federal employees and any other affected individual from stigma, ridicule, or invasion of privacy because he or she is a current or former food stamp recipient who is having a claim recovered in this manner. The managers intend that this procedure only be employed to collect claims that have been determined valid after the household member has received specific notice of the basis and calculation of the claim and the action contemplated and has had opportunity to respond.

Demonstration projects testing activities directed at street trafficking in food stamps (H. 1343)

The *House Bill* authorizes the Secretary to use up to $4 million of demonstration project funds provided in advance in appropriations Acts to conduct demonstration projects in fiscal year 1994 in which State or local food stamp agencies can test new ideas for working with State or local law enforcement agencies to investigate and prosecute street food stamp trafficking.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Clarification of categorical eligibility (H. 1351)

The *House Bill* adds to the exceptions for categorical eligibility for the Food Stamp Program those households disqualified from the program for failure to comply with the requirements of a food stamp workfare program.

The *House Bill* also removes the reference to title II of the Social Security Act in section 5(j).

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision.

Technical amendments related to electronic benefit transfer (H. 1352)

The *House Bill* includes references to the access devices used for electronic benefits transfer (EBT) in provisions concerning disqualifications of individuals for intentional program violations and imposition of civil money penalties against or disqualification of retail food stores for trafficking.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision. The managers are very much aware of the benefits to recipients, retailers, and program administrators of electronic benefits transfer systems. The Secretary is strongly urged by the managers to encourage States to develop and establish such delivery systems. The standards for the approval of such a system should include determining on a prospective basis the cost effectiveness of the system to ensure that the operational cost of the system, including the pro rata cost of capital expenditures and other reasonable start-up costs and considering any credit for government savings attributed to reduced benefit loss and other government savings or benefits derived from substituting an EBT system for a coupon-based system, does not exceed the operational cost of issuance systems in use prior to the implementation of the on-line EBT system.

Disqualification of recipients for trading firearms, ammunition, explosives, or controlled substances for food stamps (H. 1353)

The *House Bill* requires a one year disqualification from Food Stamp Program eligibility of food stamp recipients on the first occasion of a finding of their trading controlled substances for food coupons, and permanent disqualification on the second such finding. This amendment also requires permanent disqualification from Food Stamp Program eligibility on a finding of trading of firearms, ammunition, or explosives for food coupons.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* Provision with an amendment to clarify that any finding of trading coupons for firearms, ammunition, explosives, or controlled substances should be made by a Federal, State, or local court, and not a State hearing officer.

Increased cap for civil money penalty for trafficking in food stamps (H. 1354)

The *House Bill* removes the $40,000 cap on civil money penalties that can be imposed during a two year period on a retailer for food stamp trafficking. The provisions of current law limiting to $20,000 per violation the amount of a civil money penalty that may be imposed on a retailer for trafficking is unchanged by the House provision.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment deleting the House provision, striking the words "during a two year period" from current law, and establishing that the civil money penalty may not exceed $40,000 for all violations (NOT each violation) occurring during a single investigation. The managers agree that any civil money penalty imposed in lieu of disqualification will be applied on a store by store basis.

Increased cap for civil money penalty for selling firearms, ammunition, explosives, or controlled substances for food stamps (H. 1355)

The *House Bill* removes the $40,000 cap on civil money penalties that can be imposed on retailers for selling firearms, ammunition, explosives, or controlled substances for food stamps. The provisions of current law limiting to $20,000 per violation the amount of a civil money penalty that may be imposed on a retailer for these offenses is unchanged by the House provision.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment deleting the House provision, striking the words "during a two year period" from current law, and establishing that the civil money penalty may not exceed $40,000 for all violations (NOT each violation) occurring during a single investigation. The managers agree that any civil money penalty imposed in lieu of disqualification will be applied on a store by store basis.

This provision, and other program integrity provisions in the bill, expand upon the previous efforts of Congress to maintain strict vigilance against fraud and abuse in the Program. An earlier effort in a similar vein was the provision of the 1990 Farm Bill authorizing the Secretary to require authorized retail food stores to apply for reauthorization to continue participating in the Program. The managers note that the 1990 amendment authorized the Secretary to promulgate regulations, which would provide an opportunity for public notice and comment, before any reauthorization efforts take place.

The managers believe that reauthorization is a potentially important tool in maintaining the integrity of the Program, but they also believe that serious misunderstandings might result if the Secretary were to proceed without first promulgating rules. In particular, some stores might inadvertently submit incorrect, misleading, or otherwise unreliable information to the Secretary if they are asked to complete forms that are not completely clear or that omit important information about the program's eligibility requirements.

For example, the application form sent to retail stores before the end of the previous Administration to reauthorize all the stores omitted critical information regarding which foods were "staple foods." The official notice with the form thus could have misled stores.

This is very important since staple food sales have to equal or exceed 50 percent of total food sales in order for the store to participate.

If foods that should have been considered as staple foods were omitted from consideration as staple foods then the store could have incorrectly reported that its staple food sales did not equal or exceed 50 percent of all food sales.

For example, staple foods are defined in the USDA form to include "fresh produce (fruit and vegetables)". Stores could have been mislead into thinking that frozen vegetables were not staple foods. They clearly are staple foods.

In the list of staple foods provided by the USDA beans and potatoes are omitted. Beans and potatoes are clearly staple foods.

Pasta is omitted. Is pasta a staple food? If a store guesses wrong it could be thrown off the food stamp program.

This demonstrates the need for advance public comment regarding the entire process including the content of the retailer application form. This process should not continue until regulations are issued and made final pursuant to notice and comment rulemaking.

Modifying the food stamp quality control system (H. 1356)

The *House Bill* requires the use of an annual national average and a sliding scale to determine the level of penalty, beginning with the penalties to be assessed for fiscal year 1992. Penalties are to be assessed for error rates in excess of the national average combined error rate (overpayments, payments to ineligible households, and underpayments) announced for each fiscal year. Under this provision, sanctions will be adjusted to reflect how far above the national average tolerance level a state's combined error rate is. In addition the *House bill* extends to 120 days the grace period of 60 days (or 90 days at the discretion of the Secretary) immediately following the implementation date of a change to regulations affecting program eligibility or benefits determinations within which a State will be held harmless for errors made in implementing the change.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* adopts the *House* provision with an amendment to streamline the appeals process for quality control claims. The determination to waive all or

part of a State agency's quality control liability will be made by an administrative law judge if the administrative law judge determines that the State agency had good cause for failure to meet its error rate goal. In addition, to promote prompt resolution of these claims, State agencies will be assessed interest on outstanding liabilities if the administrative appeals process takes more than one year to resolve these claims. The *Conference Substitute* retains the provision that judicial review of the final determination of the administrative law judge will be a review of the administrative record created before the administrative law judge.

The *House Bill* directs the Office of Technology Assessment to undertake a study of measurement error in the food stamp quality control system and report with recommendations to the appropriate Congressional committees no later than 12 months after enactment of this subtitle. This section also directs the Secretary to conduct a study of major causal factors which contribute to the payment error rate. The Secretary shall also conduct controlled experiments to determine the degree of uniformity in quality control error rate measurements. The Secretary must report with recommendations to the appropriate Congressional committees no later than 2 years from the date of enactment of this subtitle.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* deletes the *House* provision. However, the managers understand that the U.S. Department of Agriculture intends to form a task force to study the statistical validity of the quality control system. To assist in that effort, the managers intend to request that the Office of Technology Assessment undertake the study that would have been required by the House bill. The managers also strongly urge the Secretary of Agriculture to conduct the study that would have been required by the House bill, and recommend that the Secretary consider conducting the controlled experiments that would have been required by the House bill.

Uniform reimbursement rates (H. 1361; S. 1301)

The *House Bill* reduces the enhanced funding level for State automatic data processing costs to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. It reduces the enhanced federal funding level for State food stamp fraud investigations to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996. Finally, the *House Bill* reduces the federal funding for State agency use of the Systematic Alien Verification for Entitlement program to 70 percent on July 1, 1994, to 60 percent on July 1, 1995, and to 50 percent on July 1, 1996.

The *Senate Amendment* reduces enhanced funding to 50% with respect to calendar quarters beginning on or after April 1, 1994.

The *Conference Substitute* adopts the *Senate* provision.

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

The *Senate Amendment* provides that the Secretary may delay the effective date of this section for a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, where there is no mechanism in that State for appropriating the additional funds that would be required before the next regular legislative session.

The *Conference Substitute* adopts the *Senate* provision.

The *Conference Substitute* adds a section requiring that the Secretary of Treasury pay to the Secretary of Agriculture specified amounts for fiscal years 1994 through 1996 for the purchase, processing and distribution of additional commodities. Two states shall be selected by the Secretary of Agriculture to test the acceptability by, ease of storage and preparation by, and impact on low-income participants in the Emergency Food Assistance Program of more nutritious foods.

Implementation and effective dates (H. 1371)

The *House Bill* provides that sections 1312, 1315, 1316, 1317, 1322, 1323, 1326, 1331, 1333, and 1353 will become effective and be implemented on July 1, 1994. The quality control reforms of section 1356(a) (1) and (3) are effective October 1, 1991. The provisions of section 1356(a)(2) are effective and must be implemented beginning on October 1, 1992. Other provisions of the bill will become effective and must be implemented on October 1, 1993.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* accommodates new section numbering consistent with changes in the bill and provides that section 1351 shall take effect on October 1, 1991, except subsection (c)(2) shall take effect on October 1, 1992. Section 1361 shall be effective with respect to calendar quarters beginning on or after April 1, 1994, and the Secretary is authorized to delay implementation for certain states with legislatures that meet biennially. Sections 1311, 1313, 1314, 1315, 1316, 1322, 1324, 1331, 1332, and 1351 shall take effect on September 1, 1994. Section 1321 shall take effect on September 1, 1994; state agencies shall implement section 1321 not earlier than September 1, 1994, and not later than October 1, 1996. Section 1312(b)(2) shall take effect on January 1, 1997. Except as otherwise provided in the subtitle, all other sections shall take effect and be implemented beginning on October 1, 1993.

The managers anticipate that these provisions will be implemented in the normal manner in that beginning on the effective date states will be required to apply several of the new rules for new applicants and for participants only at recertification.

The managers believe that several of these provisions amending the Food Stamp Act have the potential to have a significant and beneficial impact on many low-income households not now participating in the Food Stamp Program. The managers expect the Secretary to engage in meaningful outreach activities to inform low-income populations about these changes. In addition, the 1990 Farm Bill authorized funding for outreach grants to state and local entities. The managers expect the Secretary to make funding for these projects a high priority in the Department's budget deliberations.

CHAPTER 4

TIMBER SALES

Timber Receipts—Forest Service

The *House Bill* contains no comparable provision.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* provides for a new payment calculation for fiscal years 1994 through 2003 for payments to counties in the States of Washington, Oregon, and California in which National Forests are situated and which are affected by decisions related to the Northern Spotted Owl.

Notwithstanding the provisions of the Act of May 23, 1908, payments to counties for fiscal years 1994 through 1998 will be an amount based on the new payment calculation (an applicable percentage times the average annual payment made to each State for each county pursuant to the Act of May 23, 1908 during the five year period of fiscal years 1986 through 1990).

In fiscal years 1999 through 2003, such payments will be the greater of an amount based on the new payment calculation or the amount calculated under the provisions of the Act of May 23, 1908.

The applicable percentage for fiscal years 1994 through 2003 will be as follows:

Fiscal Year:	*Applicable percentage*
1994	85
1995	82
1996	79
1997	76
1998	73
1999	70
2000	67
2001	64
2002	61
2003	58

Timber Sale Receipts—Bureau of Land Management.

The *House Bill* contains no comparable provision.

The *Senate Amendment* contains no comparable provision.

The *Conference Substitute* provides a new payment calculation for fiscal years 1994 through 2003 for counties sharing Bureau of Land Management timber sale receipts.

Notwithstanding the provisions of the Act of August 28, 1937 providing for a fifty percent share of the revenues paid to counties in the States of Oregon and California, and notwithstanding the provisions of the Act of May 24, 1939 requiring payments to counties, payments to each such county for fiscal years 1994 through 1998 will be based on a new payment calculation (equal to the applicable percentage times the average of the revenues to each such county during the five-year period of fiscal years 1986 through 1990).

In fiscal years 1999 through 2003, such payments will be the greater of the amount based on the new payment calculation or the amount calculated under the provisions of the Act of August 28, 1937 and the Act of May 24, 1939.

The applicable percentage for fiscal years 1994 through 2003 will be as follows:

Fiscal year:	*Applicable Percentage*
1994	85
1995	82
1996	79
1997	76
1998	73
1999	70
2000	67
2001	64
2002	61
2003	58

TITLE XIV—BUDGET PROCESS PROVISIONS

Note that the House recedes to the Senate on all material related to the executive and

congressional budge process. The House conferees agreed to recede based on their understanding that inclusion of that material would make the entire conference report subject to a point of order in the Senate under section 306 of the Congressional Budget Act of 1974 and thereby endanger final enactment of the reconciliation bill. Therefore, the conferees' decisions should not be considered as necessarily judging the relative merits of the Senate and House positions.

DISCRETIONARY SPENDING LIMITS, THE PAY-AS-YOU-GO REQUIREMENT, AND RELATED PROCEDURES

Summary

Subtitles A and B of Title XV (Budget Process) of the House-passed bill amend the Balanced Budget and Emergency Deficit Control Act of 1985, more commonly known as the Gramm-Rudman-Hollings (GRH) Act, and the Congressional Budget Act (CBA) of 1974. The purpose of the amendments is to extend the discretionary spending limits and pay-as-you-go (PAYGO) requirement, both enforced by sequestration, through fiscal year 1998, and to make other changes in the budget process. Subtitle A, called the Budget Enforcement Act (BEA) of 1993, revises the procedures under the Gramm-Rudman-Hollings Act for enforcement of the discretionary spending limits and the pay-as-you-go requirement. Subtitle B revises and extends the discretionary spending limits in the Congressional Budget Act of 1974 (and makes other changes in the congressional budget process, which this joint statement discusses below).

Title XIV (Enforcement Procedures) of the Senate amendment extends the discretionary spending limits and the pay-as-you-go requirement through fiscal year 1998, and makes minor modifications in the procedures for enforcing them, by amending the Congressional Budget Act and the Gramm-Rudman-Hollings Act

In conference, the House recedes to the Senate. As noted, both the House and the Senate extend the discretionary caps and the pay-as-you-go requirement through 1998. Both chambers consider this extension to be important for enforcing the overall budget and economic plan. Thus, the conference disposition of title XV, subtitle A, of the House bill and title XIV of the Senate bill is consistent with the intent of both chambers.

Background

Congress enacted the Gramm-Rudman-Hollings Act (Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038-1101 (1985)) in late 1985, following a period of prolonged deadlock over budgetary policies, to provide a strong incentive for the President and Congress to reduce the deficit each year through the regular legislative process. The Gramm-Rudman-Hollings Act established a declining series of deficit targets (referred to as "maximum deficit amounts") leading to a balanced budget in fiscal year 1991. The Act enforced the deficit targets by the sequestration process, under which automatic, across-the-board spending reductions would occur if the projected deficit exceeded the deficit targets.

Two years later, after the Supreme Court ruled the sequestration triggering mechanism in the Gramm-Rudman-Hollings Act unconstitutional in Synar v. Bowsher, 478 U.S. 714 (1986), Congress amended the Act (by the Balanced Budget and Emergency Deficit Control Act of 1987, Pub. L. No. 100-119, tit. I, 101 Stat. 754, 754-784 (1987)), extending the goal of a balanced budget to fiscal year 1993 and placing responsibility for the automatic triggering of sequestration in the hands of the Director of the Office of Management and Budget (OMB).

Congress fundamentally revised the sequestration process with the Budget Enforcement Act (BEA) of 1990 (title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, tit. XIII, 104 Stat. 1388, 1388-573 to -630 (Nov. 5, 1990) (codified as amended in scattered sections of 2 U.S.C. and at 15 U.S.C. §1022 (Supp. II 1990)). First, the Act extended the process through fiscal year 1995 (although the budget was not required, nor expected, to be balanced by that time). Second, the Act made the deficit targets adjustable for changes in economic conditions and other factors. Third, the Act established adjustable discretionary spending limits to control the growth of annual appropriations and instituted a pay-as-you-go (PAYGO) requirement to ensure that legislative changes in mandatory spending and revenue levels do not increase the deficit in the net. The act also made these latter two procedures (in effect through fiscal year 1995) enforceable by sequestration. Congress intended that the appropriations caps and the pay-as-you-go requirement would control subsequent legislation, so that Congress and the President would not undo the deficit reduction that the 1990 budget summit agreement accomplished. Congress has the same purpose for extending the appropriations caps and the pay-as-you-go requirement in this Act—to prevent future legislation from undoing the spending cuts and revenue increases agreed to in the budget resolution and the other titles of this Act, the Omnibus Budget Reconciliation Act (OBRA) of 1993.

The Congressional Budget Act of 1974 is linked to the procedures under the Gramm-Rudman-Hollings Act in various ways. In particular, the Congress Budget Act of 1974 sets forth the deficit targets and discretionary spending limits used for purposes of sequestration.

1. DEFINITIONS (SECTION 250 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

Section 250 of the Gramm-Rudman-Hollings Act provides 21 definitions and treatments that underlie the other sections of the Act. Included are "budget authority," "outlays," "deficit," "sequester," "beach," "baseline," "discretionary appropriation," and "deposit insurance," among others.

House Bill

The House bill includes many wording changes. (In the following description, all references are to the paragraph numbers in the House bill unless noted.)

In section 250(b)(1), the bill deletes a provision that includes the Health Insurance (HI) Trust Fund (Medicare Part A) in the budget for purposes of Gramm-Rudman-Hollings. That provision is also deleted in the existing section 257(b)(3). Instead, a single provision treating HI as on-budget for all purposes of Gramm-Rudman-Hollings is included in the new section 250(b)(20). A similar general rule is incorporated into the Congressional Budget Act by an amendment made in subtitle B to section 403 of that Act.

In section 250(b)(2) and many places throughout the bill, any reference to "budgetary resources" is changed to a reference to "budget authority." This simplification is made possible by a change in the definition of budget authority, in the Congressional Budget Act, made by subtitle B.

In section 250(b)(3) the term "breach" is modified by deleting obsolete references to "categories." The bill also codifies existing practice, that the measurement of enacted appropriations follows rules specified in section 257, the baseline. (Those rules themselves are also clarified, especially regarding part-year appropriations.)

The existing section 250(b)(4), defining "category," is deleted as obsolete.

In section 250(b)(6), defining "discretionary," and in section 250(b)(7), defining "direct spending," scorekeeping rule #3 is codified. This scorekeeping rule has been Gramm-Rudman-Hollings practice since 1990 and congressional practice since the Congressional Budget Act was enacted, if not before. Under scorekeeping rule #3, if the Appropriations Committee writes substantive legislation that would otherwise be considered direct spending, the effect is charged against the discretionary caps. Vice versa if an authorizing committee writes provisions that would otherwise be considered discretionary appropriations. The purpose is to maximize Committee accountability.

When this scorekeeping rule is invoked, OMB later reclassifies the amount of "otherwise direct spending" placed on the discretionary scorecard (or the amount of discretionary spending placed on the pay-as-you-go scorecard), using the authority to reclassify under section 251(b)(1). Thus, for example, if an appropriations Act includes a direct spending increase, initially the Appropriations Committee is held accountable by having the increase entered on the discretionary scorecard, but ultimately it is held accountable by having the discretionary caps lowered by the amount of the increase.

In section 250(b)(8) which replaces (b)(18), the bill envisions a new list of mandatory and discretionary appropriations to be included in the Statement of Managers. It should be noted that even with no changes in definitions or interpretations, the existing list needs updating (and can be updated without a change in statute) simply to reflect the many new accounts, changes in account names, or changes in account numbers made since 1990, especially as a result of the reform of credit accounting.

In section 250(b)(9), which defines "current" economic and technical assumptions to be those consistent with the President's budget submission, the bill allows correction of pure errors in the statement of economic and technical assumptions, if the corrections are submitted in the mid-session review. It should be noted that the existing interpretation of Gramm-Rudman-Hollings is that pure errors can and should be corrected.

In section 250(b)(10), which defines "real economic growth," the bill changes the measurement from Gross National product (GNP) to Gross Domestic Product (GDP), a similar concept of annual economic activity that is now the standard used by the government and economics profession.

In section 250(b)(14), which defines "outyear," the bill defines that term to mean each fiscal year after the budget year through 1998 for purposes of enforcing discretionary funding. But the term is defined to cover fiscal years through 2002 for pay-as-you-go purposes. This is explained more fully in the discussion of 5-year rolling enforcement under the House provisions for section 252.

The existing section 250(b)(17), dealing with pay-as-you-go scoring of legislation at the end of the 101st Congress, is deleted as obsolete.

In section 250(b)(18), defining and setting forth composite outlay rates, the definition is simplified by dropping as obsolete the separate rates for the international and domestic categories. Previously outlay rates were

used to compute the spendout of the "Special Budget Authority Allowance" for those two categories, both to calculate an upward cap adjustment and a decrease in the available "Special Outlay Allowance" by the same amount. In the bill, the use of a composite outlay rate applies only to the simplified calculation of an inflation adjustment; the Special Budget Authority Allowance is dispensed with, and the Special Outlay Allowance is handled in other ways.

In section 250(b)(19), the definition of "asset sale" is limited to non-loan assets since credit reform accounting now handles loan asset sales. This codifies the existing treatment.

Senate Amendment

The Senate amendment makes no changes to section 250 of the Gramm-Rudman-Hollings Act.

Conference Agreement

The House recedes.

2. DISCRETIONARY SPENDING LIMITS (SECTION 251 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 established discretionary spending limits for fiscal years 1991 through 1995 in section 601(a)(2) of the Congressional Budget Act of 1974. The limits on discretionary budget authority and discretionary outlays are used for spending control under section 251 of the Gramm-Rudman-Hollings Act and are enforceable by the sequestration process. The Budget Enforcement Act of 1990 divides total discretionary spending into three categories—defense, international, and domestic—for fiscal years 1991 through 1993. For fiscal years 1994 and 1995, the limits apply to total discretionary budget authority and total discretionary outlays.

Additionally, section 601(b) of the Congressional Budget Act of 1974 creates a point of order in the Senate against the consideration of any budget resolution or appropriations bill that violates the discretionary spending limits.

Section 251 of the Gramm-Rudman-Hollings Act sets forth a detailed procedure for the periodic, automatic adjustment of the discretionary spending limits. Adjustments are made for various factors, including (among others) changes in accounting concepts and inflation, quota increases for the International Monetary Fund, funding increases for the compliance initiative of the Internal Revenue Service, and emergency spending if so designated by the President and Congress.

Section 251 also provides: (1) that a within-session sequester may occur prior to July 1 during a fiscal year, but after that date the amount of the breach is dealt with in the subsequent fiscal year; and (2) that sequestration reductions must be applied uniformly (at the account and, if appropriate, activity level).

House Bill

The House bill continues the use of adjustable discretionary limits ("caps"). They initially are set forth in a new section 601 of the Congressional Budget Act of 1974, and cover the period 1994–1998. The current limits for fiscal years 1994 and 1995 are revised and new limits are established for fiscal years 1996 through 1998 (see table below). Those limits are consistent with the fiscal year 1994 budget resolution, H. Con. Res. 64 (103d Congress), adopted by the House on March 31, 1993, and by the Senate on April 1. As is the case under current law, separate limits are established each year for total discretionary budget authority and outlays.

Consistent with the budget resolution, the bill reduces the current budget authority limits for fiscal years 1994 and 1995 by almost $27 billion. It sets the outlay limits equal to those stated in OMB's most recent preview report plus the outlays flowing from the existing "Special Budget Authority Allowance" (section 251(b)(2)(E)(i) and (ii) of current law, as made applicable to fiscal years 1994 and 1995 under the last sentence of the current section 253(g)(1)(B)). This allows the deletion, as obsolete, of those provisions.

Current law, the House bill, and the Senate amendment have the same outlay limits for fiscal years 1994 and 1995. In the table below, the current and Senate outlay limits appear lower than those in the House bill only because they do not yet reflect the outlays from the "Special Budget Authority Allowance," an adjustment that will be made at the end of the session. The House bill and Senate amendment have the same budget authority and outlay limits for fiscal years 1996–1998.

Unlike the current process (in which adjustments are made in the limits when the President submits his budget and when the OMB Director issues a final sequestration report for the year), the bill allows adjustments to be made whenever appropriate. Further, all references to adjustments for fiscal years 1991–1993 are dropped as obsolete.

A "discretionary scorecard" is added by the bill. The scorecard captures the multiyear effects of individual appropriation Acts (as well as any sequester that occurs), listed by fiscal year. This provision codifies existing practice, and allows a clearer explanation of scorekeeping and enforcement under section 251.

In subtitle B, the bill remains with modifications (in a new section 602) the former section 606(d)(2) of the Congressional Budget Act. That section of the Congressional Budget Act reflects the fact that some adjustments to the discretionary limits are contingent upon enactment of appropriations for specific purposes. Those adjustments have the effect of "holding harmless" for some or all of those specific appropriations. In Congress, the analogous way to "hold harmless" is to not score those costs, which is what the existing section 606(d)(2) provides. The new section 602 simply conforms that approach to subtitle A.

In specific, the House bill provides for the following:

In section 251(b)(1), adjustments are required for changes in accounting concepts, as in current section 251(b)(1)(A). The purpose of this provision of current law is to ensure that discretionary programs are neither unfairly squeezed or given an inappropriate windfall. This is accomplished by adjusting the limits upward or downward to the extent that a change in what is scored as "discretionary" is just a deficit-neutral accounting change. Such a change can occur when, for example, accounting concepts are altered by the scorekeepers. The House bill makes clear that a change in accounting concepts also includes changes in scorekeeping conventions, classifications, and definitions.

An accounting change can also occur when a new law has the effect of changing the way an existing budgetary transaction should be scored, even under current accounting concepts. For example, a new law might make an existing discretionary program mandatory, or vice versa. But it is not always obvious whether such a law is establishing a new program or, in effect, reclassifying an existing one. Therefore, if (for example) Congress intends to convert an existing discretionary program to mandatory, it should provide legislative history that the new law is intended as a "change in budget classifications" under section 251(b)(1). If so, the limits are changed by the baseline amount of that program (as it existed before the bill), and savings or costs are entered on the pay-as-you-go scorecard only to the extent that they are decreased or increased by the bill. If not (i.e. if the intent is to create a new program that does not replace an existing program), the limits are not changed. Scorekeepers should give weight to Congressional intent in judging whether a reclassification has occurred.

Treatments of reclassifications are addressed in the scorekeeping rules, in part to explain the discretionary and pay-as-you-go rules that scorekeepers should follow when faced with a law that has the effect of reclassifying an existing budgetary transaction, and in part to cover the period after the enactment of the law that will generate the reclassification. The latter is needed because, under existing law, reclassifications cannot generate cap adjustments until the next session's "preview report." One purpose of the House bill is to allow cap adjustments during the immediate session.

In section 251(b)(2), the bill provides for increases or decreases to the limits if actual inflation differs from inflation as projected at the time of the fiscal year 1994 budget resolution. This is the same approach taken by current law in section 251(b)(1)(B). The bill simplifies the calculation by allowing the budget authority limit to be adjusted directly to reflect any observed change in inflation, and the outlay limit to be changed by the average composite spend out of the budget authority change. (Current law required making a baseline projection using two different sets of inflators, and treating the resulting budget authority and outlay differences as the amount by which the limits should be changed.)

The House bill also resolves the question, under current law, of whether a change in inflation applies to the entire amount of the limits or just to the "non-pay" amount; under the House bill, changes in inflation apply to the entire amount of the limits.

Finally, the bill establishes benchmark levels of "expected inflation" for the fiscal year 1996–98 cycles consistent with levels for the GDP fixed-weight deflator assumed in the fiscal year 1994 budget resolution. It also rebases the expected fiscal year 1993 benchmark (which will produce the inflation adjustment occurring with the fiscal year 1995 Budget) at the level assumed in that budget resolution.

The current section 251(b)(1)(C), allowing adjustments if OMB changes is estimates of the amount of subsidy budget authority needed to finance a given volume of direct or guaranteed loans, is deleted. Those adjustments have proven very complex, and have had very little effect on the total levels of the limits.

The current section 251(b)(2)(B), providing adjustments if appropriations were enacted in 1990 or 1991 forgiving any part of Egypt or Poland's debt to the US, is deleted as obsolete.

In section 251(b)(3), the bill provides an adjustment to the budget authority limit if a "replenishment" of the International Monetary Fund quota is enacted in an appropriation Act. This extends through 1998 a similar provision of current law, section 251(b)(2)(C). Thee are no outlays associated with such an appropriation, and many analysts do not consider it to be budget authority; it is akin to an equal-value exchange of lines of credit.

Such replenishments occur periodically, and one might be called for by fiscal year 1998.

In section 251(b)(4), the bill retains the current adjustment to the limits that occurs if appropriations for the IRS compliance initiative are above the levels in CBO's 1990 baseline. Under section 251(b)(2)(A) of current law and in the House and Senate bills, this provision applies through fiscal year 1995. The House bill simplifies the text by dropping portions relating to years already completed.

In section 251(b)(5), the bill provides a new adjustment for the net costs of the advance appropriations made in section 601 of Public Law 102–391. OMB has estimated those costs at zero, so the limits would not actually be adjusted under this provision. However, as described previously, Congress would be held harmless for CBO's higher estimate of the costs by the operation of section 602 of the Congressional Budget Act, as provided in subtitle B of the bill. The purpose of this approach is to minimize CBO–OMB scoring differences. While such estimating differences are inevitable, this is the only specific budget authority and outlay difference already on the books (because the advance appropriations were enacted last session); therefore, that estimating difference is resolved by this bill.

In section 251(b)(6), the bill provides a new adjustment to the extent that the costs of renewing expiring multiyear subsidized housing contracts or providing replacement contracts when units are lost due to "prepayments" differs from current estimates. This adjustment reflects the bitter experience Congress has had with estimates of expiring housing contracts. When such contracts expire or are prepaid, they must be renewed or the stock of subsidized housing decreases—renters are evicted. The existing baseline, the 1994 budget resolution, and the limits in the bill all include the currently estimated costs of those renewals in each fiscal year. But given the poor quality of past estimates, this bill provides an adjustment if the estimates prove wrong again.

A number of features should be noted. First, the adjustment might be up or down. Second, the adjustment is limited to changes in costs solely for renewals/prepayments. There would be no adjustment triggered by an increase or decrease in funding for subsidized housing generally, or for an appropriation that could be used for this or some other purpose. Likewise, if a later law transferred or reprogrammed any extra funding to another purpose, the limits would be adjusted down. In other words, the amount of expiring units, though quite hard to estimate in advance, is ultimately a matter of fact, not of Congressional policy—Congress cannot create extra costs simply by choosing to increase the appropriation.

In section 13560, (contained in title XIII of the house bill), a new adjustment for fiscal year 1994 and 1995 is created to cover appropriation increases for medicare administrative costs related to enforcement. The purpose is to reduce erroneous or fraudulent payments. This provision was also included last session in H.R. 11, a bill vetoed by President Bush. This provision is similar to the IRS adjustment in that it is made only if appropriations bills fund this activity above the existing baseline level, is limited to the amount of the increase, and is further limited to not more than an amount specified in the provision.

In section 251(b)(7), current law is repeated; it provides that the limits are adjusted for any appropriation that is designated as an emergency by the President and Congress. Congress must designate by statute, and the President may independently designate some or all of the amount Congress designates. When funds are designated as an emergency, the limits are increased by the amount so designated; when funds previously designated as emergency are rescinded, the limits are decreased. Current law is modified only by dropping an obsolete provision relating to Operation Desert Shield, and by requiring presidential designations to be made in writing.

As discussed above, the bill deletes the current section 251(b)(2)(E)(i) and (ii), the "Special Budget Authority Allowance."

In section 251(b)(8)(A), which is akin to the current section 251(b)(2)(E)(iii), a budget authority estimating margin is provided, extending through fiscal year 1998. The estimating margin is set at no more than one-tenth of one percent of the amount of the budget authority limit for each fiscal years 1994–1998. The intent of the provision is to provide a margin if OMB's estimates of indefinite budget authority are higher than CBO's.

In section 251(b)(8)(B), which is akin to the current section 251(b)(2)(F), an outlay estimating margin is provided, extending through fiscal year 1998. Under current law, the outlay estimating margin for fiscal years 1994 and 1995 equals $6.5 billion less the amount of outlays flowing from the "Special Budget Authority Allowance." In the bill, current law is extended through 1998; calculation of the subtraction associated with the "Special Budget Authority Allowance" is likewise extended through fiscal year 1998 (as though it had applied through that year and had not been repealed); and the total amount of the outlay estimating margin is further limited to no more than one percent of the outlay limit for each fiscal years 1994–1998. As with the budget authority margin, the intent of the provision is to provide a margin if OMB's estimates of outlays are higher than CBO's.

In section 251(c)(1), the bill establishes a "scorecard" for discretionary amounts, as discussed above. While this is a new provision in law, it confirms to OMB's existing practice. OMB is allowed to correct erroneous entries to the scorecard; as noted, this codifies current interpretations. The scorekeeping related to the scorecard is derived from the current section 251(a)(7), with the language simplified and clarified without any change in its effect.

In section 251(c)(2), the bill provides for "lookback" enforcement of supplemental appropriations enacted after June 30—so late in the fiscal year that a sequestration might be infeasible. The effect of this provision is the same as section 251(a)(5) of current law, which penalizes breaches caused by a post-June supplemental by lowering the next year's limits. The bill accomplishes the same result by putting the post-June costs on the next year's scorecard. It is easier to conform Congressional scorekeeping to the approach in the bill than to conform budget resolution allocations to the current approach (since that could require reducing the allocations already made in a budget resolution). The bill also clarifies the treatment of any fiscal year 1993 "lookback breach"—current law requires the reduction of "that category" for the next year; the phrase is ambiguous in that the meaning of "category" changes between fiscal years 1993 and 1994.

In section 251(d) of the bill, sequestration is provided as the remedy in the event a discretionary limit is breached. This provision mirrors the current section 251(a)(1)–(4), except that a *de minimis* is provided—no sequestration is needed if a budget authority or outlay breach would otherwise require a budget authority sequestration of less than $50 million.

In section 251(d)(2), which sets forth the calculation of the percentage sequestration, the bill clarifies the treatment of offseting collections credited to discretionary appropriations; they are subject to discretionary sequestration, not pay-as-you-go sequestration. Current law is ambiguous.

In section 251(d)(3), which allows the President to exempt some or all military personnel from sequestration, the language is simplified with no change in effect.

In section 251(e), which is akin to the current section 251(a)(6), a "within session" sequestration is provided for if a pre-July supplemental causes a breach. The language is simplified with no change in effect.

Senate Amendment

Section 12(a) of the concurrent resolution on the budget adopted in April of 1993 provides that "[t]he Senate declares that it is essential to . . . extend the system of discretionary spending limits set forth in section 601 of the Congressional Budget Act of 1974." H. Con. Res. 64, 103d Cong., 1st Sess. §12(a)(2), 139 CONG. REC. H1747, H1753 (daily ed. Mar. 31, 1993) (adopted). Section 12(b) set forth those limits for fiscal years 1996 through 1998 and created a point of order in the Senate to enforce them. *See id.* §12(b).

In furtherance of the budget resolution, section 14002 of the Senate amendment continues the use of adjustable discretionary spending limits through fiscal year 1998. Unlike the House bill, the Senate amendment retains the current limits for fiscal years 1994 and 1995 without charge and establishes new limits for fiscal years 1996 through 1998. (See table below.) Section 14002 provides that the discretionary spending limits for fiscal years 1996 through 1998 are those set forth in section 12(b)(1) of the budget resolution, which the House also used. As is the case for fiscal years 1994 and 1995 under current law, the Senate amendment establishes separate limits each year for total discretionary budget authority and total discretionary outlays.

The Senate amendment retains, with minor technical and conforming changes, the current law's procedures for periodically adjusting the discretionary spending limits.

Conference Agreement

The conference agreement contains the Senate language.

The table below sets forth the proposed discretionary spending limits in the House bill, the Senate amendment, and the conference agreement.

DISCRETIONARY SPENDING LIMITS: FISCAL YEARS 1994–98

[In billions of dollars]

	Fiscal year—				
	1994	1995	1996	1997	1998
Current law[1]:					
Budget authority	509.920	517.398	.....	.....	.....
Outlays	537.254	538.952	.....	.....	.....
House bill:					
Budget authority	500.964	506.287	519.142	528.079	530.639
Outlays	538.688	541.137	547.263	547.346	547.870
Senate amendment:					
Budget authority	509.920	517.398	519.142	528.079	530.639
Outlays	537.254	538.952	547.263	547.346	547.870
Conference agreement:					
Budget authority	509.920	517.398	519.142	528.079	530.639
Outlays	537.254	538.952	547.263	547.346	547.870

[1] Discretionary spending limits under current law are the "preview report discretionary limits" in the "Budget of the U.S. Government, fiscal year 1994, 135 (1993)". Current law provides, and the Senate amendment retains, a "special budget authority allowance" through fiscal year 1995 that will increase the limits on budget authority and outlays for those years when the end-of-session sequestration reports are prepared. Including that adjustment as currently estimated, the outlay limits for 1994 and 1995 are the same in current law, the House bill, and the Senate amendment.

3. PAY-AS-YOU-GO (PAYGO) REQUIREMENT (SECTION 252 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 established a pay-as-you-go (PAYGO) requirement for fiscal years 1991 through 1995 in section 252 of the Gramm-Rudman-Hollings Act. Under pay-as-you-go, direct (mandatory) spending and revenue legislation may not increase the deficit for these fiscal years. Sequestration enforces this requirement, if necessary, applying to selected direct spending programs. A sequester does not alter revenues, nor does it affect such direct spending programs as Social Security, net interest, Federal retirement, most veterans' benefits, low-income entitlements, and regular unemployment benefits. The pay-as-you-go process does not require any offsetting action when the spending increase or revenue decrease is due to the operation of existing law, such as greater-than-forecast increase in the number of persons participating in an entitlement program.

Spending for Social Security benefits and Federal deposit insurance commitments in effect at the time the Budget Enforcement Act of 1990 was enacted (whether from current law or new legislation), as well as emergency direct spending and revenue legislation (if so designated by the President and by Congress in statute), is exempted completely from pay-as-you-go accounting and enforcement.

The budgetary effects of direct spending and revenue legislation are tracked over the full five years of the process using pay-as-you-go scorecard. Although it covers five fiscal years, pay-as-you-go is enforced one year at a time. In determining whether a pay-as-you-go sequester for a fiscal year is necessary, the pay-as-you-go deficit calculations must take into account enacted legislation affecting both that and the preceding fiscal year.

House Bill

The House bill amends section 252 of the Gramm-Rudman-Hollings Act, extending the pay-as-you-go process for legislation enacted through fiscal year 1998 (including the effects of such legislation through fiscal year 2002). The bill retains the basic elements of the existing process, consolidating and clarifying some existing provisions, rebasing the pay-as-you-go scorecard to zero, and adding two new features. The pay-as-you-go process continues to involve the sequestration of selected direct spending programs if there is a net increase for a fiscal year due to the enactment of direct spending and revenue legislation.

A significant feature of the House bill is that the pay-as-you-go scorecard is created anew and applies only to bills enacted *after* this reconciliation bill. In other words, the pay-as-you-go scorecard is rebased to zero. Rebasing has the effect of wiping out the surplus shown by OMB on the current pay-as-you-go scorecard, and of excluding all the additional deficit reduction from the scorecard as well. Put most simply, rebasing the pay-as-you-go scorecard *guarantees* that the net entitlement cuts and tax increases included in this reconciliation bill are 100% dedicated to deficit reduction. Any later attempt to spend those savings is illegal, and will create a completely offsetting sequestration.

Rebasing was a goal of the 1994 budget resolution, H. Con. Res. 64: section 11, a Sense of the House provision, and section 12(c), a new Senate point of order, both addressed this issue. As stated in the House report on the budget resolution, "the intent is that later legislation not undo the deficit reduction this budget resolution calls for." Following through, rebasing guarantees that later legislation not undo the deficit reduction this reconciliation bill achieves. This provision reinforces the effect of the 1994 budget resolution, which provided no room for future deficit increasing legislation.

The first new feature of the bill is the establishment of a pay-as-you-go scorecard and "five-year rolling enforcement." The scorecard captures amounts for the budget year and the ensuing four fiscal years. For example, under the "fixed" approach established by the Budget Enforcement Act of 1990, a measure enacted for fiscal year 1995 would be scored only for that one year, since pay-as-you-go expires after 1995 under current law. Under the Senate amendment, a measure enacted for fiscal year 1995 is scored through fiscal year 1998, since the Act is extended through that year. Under the House bill, the same measure would be scored for five years, fiscal years 1995–1999. Thus, the pay-as-you-go scorecard established by the House bill will include amounts through fiscal year 2002. A pay-as-you-go sequester could occur during fiscal years 1999 through 2002, based on pay-as-you-go legislation enacted in fiscal year 1998 and earlier years. In sessions after that for budget year 1998, no new entries would be made on the scorecard. The intent of the House bill is to provide a greater incentive for new pay-as-you-go legislation, in net, to conform to the norm of deficit neutrality.

The second new features is a *de minimis* rule, comparable to the one for discretionary spending, that sets aside the requirement for a sequester if the violation is less than $50 million.

In specific, the House bill provides for the following:

In section 252(a)(1), a pay-as-you-go scorecard is established, as noted. While this is new to the statute, it is current OMB practice. OMB is allowed to correct erroneous entries to the scorecard; as noted, this codifies current interpretations. The scorekeeping related to the scorecard is derived from the current section 252(d), with the language simplified and clarified without any change in its effect. The bill clarifies that costs or savings are measured relative to baseline.

The bill also codifies and clarifies what to do if expiring direct spending programs or taxes, assumed to be extended, actually expire (SEE section 257(b)). The budgetary effects of a Congressional decision to allow such an expiration should be entered on the scorecard, and at the end of session in which the provision expires.

The bill also codifies the current treatment of debt service; only the costs or savings of a direct spending or revenue bill count, not the effect that the costs or savings will have on the government's interest payments.

The bill also codifies a scorekeeping convention for legislation that has incidental effects on the intragovernmental receipts of Federal retirement trust funds. Excluding those incidental effects is current practice. Under this rule, only the retirement effects of retirement legislation are entered on the pay-as-you-go scorecard; if the effects on intergovernmental receipts were scored, the result could be that a bill cutting retirement benefits would be shown as increasing the deficit, and vice versa.

Legislative provisions whose *purpose* is to alter agency payments to retirement trust funds are not "incidental" and so are not covered by this rule. If Congress desires to hold the appropriations process harmless for such an alteration in required agency payments, the legislative provisions should be identified by Congress as a change in accounting concepts, so that the discretionary caps would be automatically adjusted.

In section 252(a)(2) of the bill, 5-year rolling scorekeeping through 2002 is established, as discussed above.

In section 252(a)(3) of the bill, the "lookback" feature of current law is simplified and corrected. Lookback was included in the Budget Enforcement Act of 1990 amendments because it was considered infeasible to administer within-session sequestrations each time a pay-as-you-go bill increasing the current-year deficit was enacted. Under lookback, such current-year effects were instead controlled by adding them to the budget-year effects; the sum is enforced when the end-of-session sequestration report is made. But through a drafting error in Budget Enforcement Act of 1990, lookback not only counts (in the budget year) the current-year effects of current-year legislation, but also the current-year effects of *prior* legislation. The House bill corrects the error.

In section 252(a)(4), current law is repeated; it provides that the scorecard exclude any costs/savings provision of a direct spending or revenue law that is designated as an emergency by the President and Congress. Congress must designate by statute, and the President may independently designate. Current law is modified only by requiring presidential designations to be made in writing.

In section 252(b)(1), akin to the current section 252(a), sequestration is provided if Congress ends a session with a net deficit increase on the scorecard for the budget year. As noted, a $50 million *de minimis* is provided by the House bill.

In section 252(b)(2), the sequestration calculation and process is set forth; the provisions are akin to the current section 252(b). The bill clarifies the current treatment of the three so-called "Automatic Spending Increase" (ASI) programs; the maximum reduction is made if any sequestration is needed. The bill also moves sequestration of the guaranteed student loan program from step 2 (where it is covered by a special rule) to step 3 (where it is sequestered across-the-board, as needed). The same treatment is provided for the new direct student loan program.

In section 252(b)(3), the bill simplifies accounting and prevents over-sequestering. The sequestration of some programs provides savings (or in rare cases, costs) in the first outyear. Under current law, those extra savings are not counted toward meeting a budget-year overage. This results in a higher sequestration percentage, and necessitates putting the outyear sequestration savings on the next year of the pay-as-you-go scorecard. An exception is made for CCC, for which about half of the savings occur in the first outyear; those savings *are* counted toward offsetting a budget-year overage, and are *not* placed as a credit on the pay-as-you-go scorecard. The House bill simplifies the Act by adopting the CCC model across the board, thus preventing over-sequestration and eliminating any need to make extra entries on the scorecard.

Senate Amendment

Section 12(a) of the concurrent resolution on the budget adopted in April of 1993 provides:

(a) PURPOSE.—The Senate declares that it is essential to—

(1) ensure compliance with the deficit reduction goals embodied in this resolution;

* * *

(3) extend the pay-as-you-go enforcement system;

(4) prohibit the consideration of direct spending or receipts legislation that would decrease the pay-as-you-go surplus that the reconciliation bill pursuant to section 7 of this resolution will create under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. * * *

H. Con. Res. 64, 103d Cong., 1st Sess. §12(a), 139 Cong. Rec. H1747, H1758 (daily ed. Mar. 31, 1993) (adopted).

The Senate amendment amends section 252 of the Gramm-Rudman-Hollings Act, extending the pay-as-you-go process for legislation enacted through fiscal year 1998. The pay-as-you-go scorecard ends with fiscal year 1998; the effects of enacted direct spending and revenue legislation in fiscal year 1999 and beyond are not taken into account. Additionally, the Senate amendment requires that the yearly pay-as-you-go balances be adjusted for deficit reduction achieved by the Omnibus Budget Reconciliation Act of 1993.

Section 12(c) of the budget resolution establishes a new point of order in the Senate that supplements the pay-as-you-go process under the Gramm-Rudman-Hollings Act. The point of order bars consideration of any legislation affecting direct spending or revenues (with certain exceptions) that would increase the deficit above the levels for fiscal years 1994 through 1998 set in the budget resolution for fiscal year 1994. The point of order also applies to any such increases in deficit levels for fiscal years 1999 through 2003. While this new prohibition applies to individual pay-as-you-go measures as they are considered, the pay-as-you-go requirement under the Gramm-Rudman-Hollings Act, in contrast, is applied at the end of a session to all pay-as-you-go measures enacted into law.

Conference Agreement

The conference agreement contains the Senate language.

4. DEFICIT TARGETS OR "MAXIMUM DEFICIT AMOUNTS" (SECTION 253 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

The Budget Enforcement Act of 1990 revised the deficit targets (maximum deficit amounts). The Act revised the deficit targets for fiscal years 1991 through 1993 and established new targets for fiscal years 1994 and 1995 (the targets for fiscal years 1991 through 1995 were set forth in section 601(a)(1) of the Congressional Budget Act of 1974). The sequestration procedures for enforcing the deficit targets are set forth in section 253 of the Gramm-Rudman-Hollings Act. Section 253 also provides for the periodic adjustment of the deficit targets.

The deficit targets were required to be adjusted for fiscal years 1992 and 1993, and are adjustable at the President's option for fiscal years 1994 and 1995. The President has chosen to make the 1994 adjustment, and will decide whether or not to adjust the fiscal year 1995 targets next year. Whenever a deficit target is adjusted, it is set at the level consistent with the discretionary spending limits and the pay-as-you-go requirement. Therefore, when adjusted, the deficit target provides no constraint beyond the appropriations caps and pay-as-you-go requirement, so no deficit sequester can occur.

Section 605 of the Congressional Budget Act of 1974 establishes a point of order in the Senate against the consideration of any measure that would cause the deficit target for the coming fiscal year to be exceeded. Section 606, in subsections (b) and (c), prohibits the consideration in the House and Senate of a budget resolution recommending a deficit in excess of the applicable deficit target.

House Bill

The House bill retains the procedures in section 253 of the Gramm-Rudman-Hollings Act for enforcing the deficit targets through fiscal year 1995. It also retains the feature in current law which allows the President to adjust the deficit targets again when he submits his budget for fiscal year 1995 early next year. The only amendments to section 253 are conforming; the intent is that section 253 remain in effect through 1995.

Senate Amendment

The Senate amendment contains no such changes.

Conference agreement

The conference agreement contains no such changes.

5. SEQUESTRATION REPORTS AND ORDERS (SECTION 254 OF GRAMM-RUDMAN-HOLLINGS)

Current Law

Under the Gramm-Rudman-Hollings Act, as amended, there are several basic requirements for sequestration reports and orders set out in section 254: (1) sequestration is triggered by a report from the OMB Director; (2) the OMB Director must issue a preview sequestration report with the President's budget submission, an update sequestration report by August 20, and a final sequestration report 15 days after the end of a session; (3) if a sequester is required, the President must issue a sequestration order, on the same day that the final OMB sequestration report is issued, that conforms strictly with the report; (4) the CBO Director must also issue such reports, five days before the OMB Director's reports are issued, and OMB must explain its differences with CBO; and (5) the contents of sequestration reports are prescribed in the Act.

In addition, the OMB Director must use for each sequestration report issued for a fiscal year the same economic and technical assumptions that underlie the President's most recent budget submission.

House Bill

The House bill retains the basic requirements for sequestration reports and orders set forth in section 254, with two changes: (1) the elimination of the update sequestration reports, currently required to be issued by OMB and CBO in August of each year; and (2) the weekly issuance by the OMB Director of reports on the discretionary and pay-as-you-go scorecards, beginning the second Wednesday in September.

Specific provisions include:

In section 254(a) and (c), the bill deletes the January 21 date for the President to announce his decision on adjusting the maximum deficit amount. For fiscal year 1994, that provision has been executed; for fiscal year 1995, the President's decision comes with his budget submission.

In section 254(b)(2) and (3), sequestration reports are required to include bill scoring to date, which is current OMB practice.

In section 254(e), a new requirement for bill cost reports is set forth, replacing similar requirements in the current section 251(a)(7) and section 252(d).

In section 254(f), a new requirement for weekly scorecard reports, starting the second week in September, is created, as noted. This is current OMB practice.

Also as noted, the current section 254(f), the annual update report, is deleted; it is made unnecessary by the scorecard reports.

Senate Amendment

The Senate amendment contains no such changes.

Conference Agreement

The conference agreement contains no such changes.

6. OTHER MATTERS

Current Law

The Gramm-Rudman-Hollings Act, as amended, contains additional sections that relate to the sequestration process.

Section 255 lists programs and activities that are exempt from sequestration.

Section 256 provides exceptions, limitations, and special rules that determine the manner in which sequestration is applied to certain programs and activities.

Section 257 prescribes the methodology for constructing baseline estimates for purposes of measuring appropriations bills and comparing direct spending and revenue bills to the baseline.

Section 258 and 259A–C contain certain "fast-track procedures" dealing with suspension of budget enforcement procedures in the event of war or low economic growth (section 258); the modification of a presidential

sequestration order (section 258A); presidential authority to propose modifications in a sequester of defense programs, projects, and activities (section 258B); and a special reconciliation process (in the Senate only) for responding to an anticipated or actual sequester (section 258C).

Section 274 of the Gramm-Rudman-Hollings Act provides for expedited judicial review of cases involving the operation of the Act and establishes a "fallback procedure" for triggering sequestration through the legislative process.

Section 275 provides effective dates and expiration dates for sections of the Gramm-Rudman-Hollings Act.

House Bill

The House bill makes technical and conforming changes in the following sections of the Gramm-Rudman-Hollings Act: 255, 256, 257, 258, and 258A–C.

The list of exempt programs and activities in section 255 is recodified to bring it up to date. Specifically:

In section 255, the lists of accounts or activities exempt from sequestration are repeated with technical changes. Many accounts have had name changes and/or account number changes since 1990. Some accounts have expired. The bill also codifies exemptions that are freestanding provisions of law (conservation reserve; vaccine compensation). But there are *no* changes in what is exempt.[1]

In section 255(g)(1)(A), the bill exempts credit liquidating and financing accounts: financing accounts because they are non-budgetary; liquidating accounts because they pay only for prior legal obligations of the government, which are exempt under the current section 255(g)(2). As a result of this single listing, credit accounts are no longer listed under section 255(g)(2).

The bill deletes as unnecessary the current section 255(f), exempting the base amounts of Automatic Spending Increase programs from sequestration. The base amounts of the ASI programs are still exempt, and only the increase is subject to sequestration.

In the new section 255(f) created by the bill, the current optional exemption for military personnel is set forth. This corrects an error of current law, which contains two subsection (h)'s. The language also removes an obsolete reference to a "snapshot date."

In section 5181 of the House bill (contained in title V), section 2161 of the Public Health Service Act contains an exemption from sequestration for the new National Childhood Immunization Trust Fund.

The bill also makes corrections or clarifications to section 256 of the Gramm-Rudman-Hollings Act, which provides special rules for sequestration. Specifically:

In section 256(a), "budget-year sequestration," the 1st sentence clarifies existing practice—that a sequestration shall start with the date of the presidential order and apply to a program for the remainder of the fiscal year, unless the Act specifies otherwise. This makes unnecessary the current section 256(1)(4).

The second sentence is a conforming amendment. It takes the idea of crediting outyear effects to the sequestration (as explained in the discussion of section 252) and (1) treats section 253 sequestration the same way for purpose of calculating sequestration percentages, and (2) credits section 252 sequestrations against the maximum deficit amount the same way to prevent inadvertent section 253 sequestrations when the maximum deficit amount has been fully adjusted.

The current section 256(b), relating to the sequestration of the guaranteed student loan program, is deleted, for the reasons explained above under section 252. A new section 252(l) sets forth the mechanism for providing across-the-board sequestration of the that program and the new direct student loan program. Sequestration is accomplished by raising the origination fees by an amount that reduces loan costs by the standard sequestration percentage applicable to all direct spending programs in the "across-the-board" category. This may be the most logical way to sequester from those programs even in the absence of a special rule.

In section 256(e), the bill deletes obsolete provision applicable to fiscal year 1986.

In section 256(h)(4), the bill deletes a double listing of Office of Thrift Supervision and the no longer extant REFCORP.

In section 256(j), the special rule for CCC sequestration, the bill deletes as redundant the current paragraph (5)—CCC is not an Automatic Spending Increase program (only those specifically listed under section 256(b) are), and so is not subject to a double reduction. The bill inserts a new paragraph (5), which simply incorporates existing sequestration rules for the diary program, found in the Agricultural Act of 1949, into the text of the Budget Enforcement Act.

In section 256(k), the special rule for sequestration of the AFDC JOBS program, the bill makes a purely technical correction to the formula allocation by state of AFDC amounts that should apply *after* the program is cut by the full amount of a sequestration.

The bill clarifies existing rules relating to the computation of a baseline.

For discretionary programs, the baseline follows historical practice in assuming inflation adjustments until an appropriation for the fiscal year is enacted. There are three separate reasons for the baseline to reflect inflation rather than the discretionary limits imposed by section 251. (1) A "capped" baseline contains only a discretionary aggregate—it has no programmatic detail. There are a number of legal requirements in this Act (for example, the requirement to adjust the discretionary limits by the baseline amount of a program when there is a change in accounting classifications) that can only occur with a baseline that has account-level detail. (2) The lack of programmatic detail in a "capped" baseline makes it impossible to analyze discretionary policy except in aggregate; it is for this reason that CBO's annual listing of budget reduction options analyzes each option relative to the inflated baseline. (3) The spending limits imposed by section 251 require cutbacks in real (inflation-adjusted) resources. Such cutbacks might have many different results: project cancellations, reductions in Federal military or civilian personnel levels, base closings, reductions in the number of research grants, delays in maintenance schedules, etc. It is useful to the public to show the numerical extent of such cutbacks, and the individuals who are directly affected will certainly feel them as cutbacks.

The bill makes specific changes in the language of section 257:

In section 257(a) and (b)(1), the baseline modified to include the extension of "discretionary regulations" without assumed change.[2] This has been CBO's baseline practice, and was also the Gramm-Rudman-Hollings requirement before the amendments made Budget Enforcement Act of 1990. By assuming that discretionary regulations continue unchanged (as opposed to OMB's current approach of assuming future changes consistent with administration policy), congressional prerogatives in establishing policy are not made subservient to those of the administration.

In section 257(b)(2)(A), the bill makes two changes. First, it switches from $50 million in outlays to $50 million in gross budget authority the threshold that a direct spending program must atain before the baseline should assume its continuation past its scheduled expiration date. Second, the bill clarifies how to project a direct spending program is that assumed to continue after its scheduled expiration: where the program is driven by substantive provisions of authorizing law, assume that the program continues as in effect just before its expiration.[3] Expiring programs funded by backdoor definite budget authority have that budget authority inflated as though it were discretionary.

In section 257(b)(2)(A), the bill clarifies the intent of existing law: that the percent increase in veterans compensation is assumed to be the same percent as the automatic increase in veterans pensions. This does not mean that the veterans compensation baseline follows other aspects of pension law such as rounding down.

The current section 257(b)(3) relating to the treatment of Health Insurance Trust Fund, is deleted. See the discussion under section 250(b)(1) and (20).

In section 257(b)(3) the bill establishes a cutoff date after which the baseline will no longer assume the extension of certain expiring law. This codifies and makes explicit the existing implicit treatment if Congress allows a program or tax to expire.

In section 257(c), covering the projection of discretionary programs, the wording change recognizes that all spending is either direct spending or discretionary—there is no third type.

In section 257(c)(2), concerning the projection of expiring housing contracts, the bill that expiring contracts include prepayments as well (because prepayments are simply a form of expiration; the contracts expire because the budget authority runs out rather than because a time limit is reached.)

In section 257(c)(3), the bill includes OSADI administrative expenses in the special baseline rule that allows caseload changes to be taken into account; this inclusion reflects OMB's treatment of these costs as part of the Gramm-Rudman-Hollings system.

The bill deletes the current section 257(c)(4), providing for pay annualization and an offset to absorption. The reference to absorption is dropped since OMB and CBO agree it is not a meaningful concept in the absence of routine "pay supps." Annualization is covered automatically by the wording in the new section 257(c)(4) whereby inflation covers *average* rates of pay for a fiscal year.

---

[1] The thrift savings fund is not deleted from the list; rather, it is retained for redundancy even though the exemption is unnecessary because the Gramm-Rudman-Hollings Act does not apply to non-budgetary transactions. The bill also contains an erroneous deletion of interest payments to the Farm Credit System, Financial Assistance Corporation (FAC) from the list, and fails to include FAC, now an on-budget account, on the list.

[2] A "discretionary regulation" is issued pursuant to a law that grants the executive branch discretion in setting some rate, date, or other feature that would affect the amount of costs or savings under a plan.

[3] In case of CCC, which reverts to older, very general authority, existing practice is to assume that authority would be used in the same manner as the just expired law.

In section 257(c)(4), the bill conforms the inflator for civilian and military personnel to the pay rate increases required by existing law. It also changes the reference for non-pay inflation from GNP to GDP.

In section 257(c)(5), the bill codifies the existing treatment of annualizing part-year budget-year appropriations, not just part-year current-year appropriations. This prevents any disjunction between the amount sequestered (which is based on a full-year scoring under section 251(d)(4)) and the amount scored, which follows baseline rules.

In section 257(c)(5), the bill allows the scoring of permissive transfers to be updated for those accomplished by the submission of the midsession review. But this change does not override the Gramm-Rudman-Hollings requirement to use budget technical assumptions of prior-year outlays in scoring bills; it applies only in the very unlikely case in which Congress adjourns without enacting even a temporary continuing appropriation to cover a set of accounts. It also applies to unofficial baseline projections made after the midsession review.

In section 257(e), the bill rewrites the treatment of asset sales to conform to existing practice: asset sales count for the budget (they are not a "means of financing"), but the proceeds of asset sales newly enacted in a session don't count in that session as negative spending, so can't be used to meet targets or cover other spending.

The bill also makes technical corrections to the "fast-track" procedures provided in section 258 and section 258A–C. Specifically:

The bill repeals the first of the two section 258's. It was intended to have been repealed by Budget Enforcement Act of 1990, and was replaced in Budget Enforcement Act of 1990 by section 258A.

In section 258A, B, and C, the bill conforms cross-references.

In the second of the two section 258's, the bill clarifies that the 1st sentence of section 258(a)(4) applies only to the Senate, as intended.

In section 258C, a conforming amendment makes this fast-track procedure triggered by receipt of a scorecard report rather than the deleted update report.

The House bill revises section 274 to make conforming amendments that should have been made in Budget Enforcement Act of 1990. Further, the fallback procedure, which was written in Gramm-Rudman-Hollings I in anticipation that it might be ruled unconstitutional (as it was), is deleted.

Finally, the House bill retains the current expiration date for section 253, extends the expiration date for sections 251, 257, and 258B to the end of fiscal year 1998, and extends the expiration date for sections 250, 252, 254, 255, 256, 258, 258A, and 258C to the end of fiscal year 2002.

In section 275, the bill provides that any part of the Act that touches pay-as-you-go sequestration is extended to 2002. The remaining parts are extended to 1998 (but this does not supersede provisions within various sections specifying a shorter application, such as the cap adjustment for IRS funding).

In section 15111(b), effective dates are set forth. The provisions of the bill are effective immediately, but they alter procedures or otherwise make changes with respect to reports, orders, calculations, etc. first applicable to fiscal year 1994. For fiscal year 1993, the current Gramm-Rudman-Hollings is deemed to remain in place.

Senate Amendment

The Senate amendment extends the expiration date of sections 250 through 258C (except for section 253, which pertains to the enforcement of the deficit targets) from the end of fiscal year 1995 to the end of fiscal year 1998.

Conference Agreement

The conference agreement contains the Senate language.

THE CONGRESSIONAL BUDGET PROCESS

Subtitle B of Title XV (Budget Process) of the House-passed bill amends the Congressional Budget Act (CBA) of 1974 (P.L. 93-344, as amended) and related Standing Rules of the House of Representatives to make various changes in the congressional budget process. (In addition, Subtitle B extends the discretionary spending limits in the CBA of 1974, which are used for purposes of sequestration under the Gramm-Rudman-Hollings Act, through fiscal year 1998; these changes are discussed elsewhere).

Title XIV (Enforcement Procedures) of the Senate amendment amends the CBA of 1974 only the purpose of extending certain procedures in Title VI of that Act (including the discretionary spending limits).

The conference agreement includes the Senate language. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

1. BUDGET RESOLUTION COVERAGE AND ENFORCEMENT

Current Law

The Budget Enforcement Act of 1990 put in place temporary provisions in Title VI of the Budget Act to make the congressional budget process fit with the sequestration scheme that was also a part of the 1990 Budget Enforcement Act. These provisions were only temporary since Congress was venturing into new procedural territory and needed to see how the changes would play out. Titles III (Congressional Budget Process) and VI of the CBA of 1974 establish the requirements for the coverage and enforcement of the budget resolution. Each year, Congress adopts a concurrent resolution on the budget setting forth levels of spending, revenues, the deficit, and the public debt that reflect broad congressional budget policies and priorities. In general, budgetary legislation first effective in a fiscal year may not be considered until the budget resolution for that year has been adopted, with different exceptions specified for the House and Senate—including an exception in the House for regular appropriations measures considered after May 15.

The budget resolution is enforced principally through two means: (1) points of order under the CBA of 1974, which may be raised against legislation in violation of budget resolution levels or other CBA requirements, and (2) reconciliation instructions to House and Senate committees to bring existing spending revenue, and debt limit laws within their jurisdiction into conformity with budget resolution levels.

In particular, procedures under Section 302 and Section 311 of the CBA of 1974 (and under Section 602 for fiscal years 1991 through 1995 (see below) are prominent in the enforcement of budget resolution spending levels by points of order, especially with respect to the consideration of annual appropriations measures.

Under Section 302, once the budget resolution is adopted, all committees with spending jurisdiction receive an allocation of spending under the resolution for programs within their jurisdiction. (In the House, allocations are made for new budget authority, entitlement authority and outlays; in the Senate, allocations are made for new budget authority and outlays.) Committees then are required to subdivide amounts allocated to them among their subcommittees or by program. The Appropriations Committees must subdivide by subcommittee. In general, the House or Senate may not consider spending legislation for a fiscal year that would cause any committee subdivision of spending for that year to be exceeded. Outlay subdivisions are not enforced by point of order in the House.

Under section 311, the House and Senate may not consider spending or revenue measures that would cause the aggregate levels of spending and revenues in the budget resolution to be violated. An exception is provided in the House for instances in which the spending measure would not cause the pertinent committee's allocation of new discretionary budget authority or new entitlement authority to be exceeded. Section 311 also provides a procedure only in the Senate for the enforcement of spending and revenue levels for Social Security.

Title VI of the CBA of 1974, enacted as part of the Budget Enforcement Act (BEA) of 1990, sets forth temporary requirements for budget resolution coverage and enforcement for fiscal years 1991 through 1995. Budget resolutions and committee allocations are required to cover five fiscal years (rather than three fiscal years, as required under permanent law). Enforcement procedures under Section 302 are superseded through fiscal year 1995 by temporary requirements established in Section 602, including requirements that: (1) direct spending legislation is subject to a point of order if it breaches a spending allocation in the budget year or over the 5-year period covered by the allocation; (2) only the Appropriations Committees must make subdivisions of spending of amounts allocated to them under the budget resolution; and (3) if Congress has not adopted a budget resolution by April 15, the House Budget Committee must make an allocation of spending to the House Appropriations Committee consistent with the discretionary spending limits. Title VI also provides 1-year and 5-year enforcement of revenue legislation.

Under Section 310 of the CBA of 1974, reconciliation instructions in a budget resolution typically are used to reduce mandatory spending (particularly entitlements) and increase revenues, thereby reducing the deficit. Under Section 310(g), provisions making any change in Social Security may not be included in reconciliation legislation. (Provisions relating to the timing of action on reconciliation measures are discussed in Section 4 below.)

With respect to other elements included in a budget resolution, Section 710 of the Social Security Act requires that the receipts and disbursements of the Hospital Insurance Trust Fund be placed off budget, beginning in 1993. However, section 606 of the CBA of 1974 requires that a budget resolution not exceed the maximum deficit amount as determined under section 601(a)(1). The receipts and disbursements of the Hospital Insurance Trust Fund (HI) must be included in deficit calculations, notwithstanding any other provision of law, for purposes of determining the maximum deficit amount under section 601(a)(1). So, for the last several years, the budget resolution has included a separate display of the receipts and disbursements of the Hospital Insurance Trust Fund—and two separate deficit amounts, one including and one excluding the HI amounts—in order to comply with the requirement to place HI off-

budget and the requirement not to exceed the maximum deficit amount including HI. Further, the CBA of 1974 requires that credit amounts (new direct loan obligations and new primary loan guarantee commitments) be provided on a functional basis—even though the Federal Credit Reform Act of 1990 (incorporated into the CBA of 1974 as a new Title V) rendered these amounts less relevant or significant.

House Bill

In light of Congress' experience since 1990 with the Budget Enforcement Act, the House bill proposes changes that: make 5-year budget resolutions and 1-year/5-year enforcement permanent; focus points of order on the deficit impact of legislation; reduce the need for technical waivers to the congressional budget process; and rewrite points of order so that they apply only to the language that is actually before the House when it considers a bill.

Under the House bill, various changes are made in permanent provisions of the CBA of 1974, and the temporary provisions of the Act (except for the ones dealing with the discretionary spending limits) either are revised and made permanent, or are repealed. The term "budget authority" is redefined so that all types of spending including grants, loans, and entitlements compete on a level playing field. The term "direct spending" is defined so that salary and basic pay are more properly controlled as discretionary items.

The procedures for making and enforcing spending allocations to committees (in Sections 302 and 602) and for enforcing aggregate spending and revenue levels (in Section 311) are revised. In essence, the old enforcement system is replaced by an expanded enforcement procedure that focuses on committee responsibility and deficit impact.

The House bill modifies procedures for enforcing committee allocations and subdivisions in a new Section 302, which applies solely to the House and Senate Appropriations Committees, and a new Section 311, which applies to committees with jurisdiction over direct (mandatory) spending and revenues. Both provisions clarify the way points of order are applied. Under this proposal, points of order would only apply to the language that is actually before the House when it considers a bill.

Under the new Section 302, the Committees on Appropriations would receive an allocation of spending (for new budget authority and outlays), which they then would subdivide among their subcommittees. Appropriations legislation that would cause an allocation *or* subdivision of *new budget authority* to be exceeded would be out of order. The prohibition does not apply to current-year supplemental appropriations measures as long as the total allocation to the Committee is not exceeded. Outlay allocations would not be enforced in either chamber.

Under the new Section 311, committees other than the Appropriations Committees would be allocated a "deficit impact number" (or "surplus impact number") for the first fiscal year and the total for all fiscal years covered by the budget resolution. The deficit impact number (or surplus impact number) reflects the change in the deficit (or surplus) assumed under the budget resolution for direct spending or revenue legislation within a committee's jurisdiction. Legislation increasing the deficit (or lowering the surplus) in any fiscal year covered by the budget resolution that also produces a higher deficit (or lower surplus) than the committee's first-year or five-year impact number would be out of order.

Certain changes also are made by the House bill with respect to the reconciliation process under Section 310. First, spending directives may cover only direct spending, affirming the current practice that reconciliation is not applied to discretionary appropriations. Second, the current prohibition against making changes in Social Security in reconciliation legislation is changed to a prohibition against reducing Social Security benefits. Third, reconciliation instructions can either direct separate targets for revenues and spending changes or a combined deficit reduction amount. Under current law, a committee "complies" with its instructions so long as it does not exceed or fall below the separate revenue and spending targets by more than 20%. Under the House proposal, there is no wiggle room.

In addition, the following temporary requirements in Title VI are retained and made permanent: (1) that budget resolutions cover five fiscal years; and (2) that the House Budget Committee make an allocation of spending to the House Appropriations Committee consistent with the discretionary spending limits if the budget resolution is not adopted by April 30 (the House bill also retains the current law deadline of April 15 for adoption of the budget resolution).

The House bill modifies the prohibition under Section 303 against considering legislation for a fiscal year before the budget resolution for that year is adopted. Under the proposed procedure, any spending or revenue legislation first effective in the *last* fiscal year covered by the most recently agreed to budget resolution or in any subsequent fiscal year is out of order (*i.e.*, the fifth year covered by the budget resolution and subsequent fiscal years). No exceptions are specified.

Finally, the House bill also makes changes in the required and optional elements of the budget resolution. It clarifies a requirement that the budget resolution include the receipts and disbursements of the Old Age Survivors and Disability Insurance (OASDI) trust funds solely for the purpose of Senate points of order. It specifies that the receipts and disbursements of the Hospital Insurance trust fund shall be included in the budget resolution. It also deletes the requirement that budget resolutions include direct loan and loan guaranty amounts; this requirement is no longer necessary in light of the credit reform provisions in Title V and the new definition of budget authority. Finally, the bill deletes the deferred enrollment procedure from the list of optional budget resolution elements.

Senate Amendment

The Senate amendment, in Section 14002(3)(B), extends all of the temporary enforcement procedures in Title VI and the CBA of 1974 through the end of fiscal year 1998 without change.

The conferees note that in the context of the other changes made by the conference agreement, the extension of section 601(b)(1) will codify a point of order in the Senate identical in effect to that created by section 12(b)(2) of the concurrent resolution adopted in April of 1993. (H.Con.Res. 64, 103rd Cong., 1st Sess., section 12(b)(2), 139 Cong. Rec. H1747, H1753 (daily ed. Mar. 31, 1993) (adopted)).

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

2. TIMING OF CONGRESSIONAL BUDGET ACTION

Current Law

The timetable in Section 300 provides that the House of Representatives should complete action on all of the regular appropriations bills for the coming fiscal year by June 30. (Section 300 also provides that the House Appropriations Committee should report all of the regular appropriations bills for the coming fiscal year by June 10.) In furtherance of this objective, Section 309 of the Act prohibits the House of Representatives from considering a resolution that provides for an adjournment of more than three days in July until it has passed all of the regular appropriations bills for the coming fiscal year.

The timetable in Section 300 also provides that the House of Representatives should complete action on any required reconciliation legislation for the coming fiscal year by June 15. Section 310(f) of the Act prohibits the House of Representatives from considering a resolution that provides for an adjournment of more than three days in July until it has passed the required reconciliation legislation.

Section 402 of the Act, as originally framed in 1974, required that authorizing measures for a fiscal year be reported by May 15 preceding the fiscal year; this requirement was repealed (and the original language of section 402 was replaced with an unrelated provision) by the GRH Act of 1985.

House Bill

The House bill retains the June 30 deadline in Section 300 of the CBA of 1974 for the completion of House action on the regular appropriations bills for the coming fiscal year and changes the deadline for completed House action on required reconcilation measures from June 15 of June 30. Further, the House bill repeals the prohibitions against House consideration of a July adjournment resolution if either of these conditions have not been met. In Section 309, the current language dealing with the prohibition against adjournment in July is replaced by language that encourages (but does not require) the reporting of pertinent authorizing measure by May 15.

Senate Amendment

The Senate amendment contains no such changes.

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

3. OTHER CHANGES IN THE CONGRESSIONAL BUDGET ACT OF 1974 AND RELATED HOUSE RULES

Current Law

Title IV of the CBA of 1974 contains provisions that control "backdoor spending" (borrowing, contract, and entitlement authority) and new credit authority (in Sections 401 and 402, respectively), require the Congressional Budget Office to prepare cost estimates for legislation and the General Accounting Office to study on a continuing basis permanent forms of spending (in Sections 403 and 405, respectively), require that certain previously off-budget entities be included in the budget (in Section 406), and establish in the House a Member User Group to study budgetary scorekeeping rules and practices (in Section 407). (Section 404 amended House and Senate rules with regard to the jurisdiction of the Appropriations Committees.)

Title V, referred to as the Federal Credit Reform Act of 1990, establishes procedures for accounting for credit transactions on a

subsidy basis and requiring subsidy costs to be appropriated annually for most credit programs.

Title VII amended the Legislative Reorganization Acts of 1946 and 1970 (in Sections 701 and 702) to provide for continuing program review and evaluation by House and Senate committees and by the Comptroller General and (in Section 703) required the House and Senate Budget Committees to engage in continuing study of budget process reform proposals. Section 701 was executed upon enactment in 1974, Section 702 was repealed by Public Law 97-278 (96 *Stat.* 1082), which revised and codified Title 31 (Money and Finance) of the *United States Code*, and Section 703 remains in effect.

Title VIII amended the Legislative Reorganization Act of 1970 (in Section 801) to provide for the establishment and standardization of information systems for fiscal and budgetary control and set up a consultative procedure for changes in functional categories of the budget (in Section 802). Both sections were repealed by Public Law 97-278 (96 *Stat.* 1082).

House Bill

The House bill amends Title IV of the CBA of 1974 by: (1) revising Section 401 and making it apply only to borrowing and contract authority (entitlement authority is controlled under the House bill be revised procedures in Title III); (2) making technical changes in Section 402; (3) redesignating Sections 403 and 406 as Sections 202(f)(5) and 403, respectively; and (4) repealing Sections 405 and 407.

The House bill makes largely technical changes to Title V dealing with credit budgeting.

The House bill amends Title VII by repealing Sections 701 and 702 and redesignating Section 703 as Section 701.

The House bill creates a new Title VIII (Social Security Protection), redesignating Sections 13301(a) (which deals with the off-budget status of Social Security) and 13302 (which deals with a point of order in the House maintaining the Social Security trust fund balances) of the BEA of 1990 as Sections 801 and 802, respectively.

Additionally, the House bill also makes certain technical changes in the House rules and adds a new Clause 7 to House Rule XI. Clause 7 permits a committee, by majority vote, to invoke a requirement of deficit-neutrality for amendments to direct spending or revenue legislation under consideration in that committee. Clause 7 is similar in effect to a requirement in Section 310(d) of the CBA of 1974 pertaining to floor amendments offered to reconciliation measures.

Senate Amendment

The Senate amendment contains no such changes.

Conference Agreement

The House recedes to the Senate. The House conferees believe that the recommended changes in the House proposal are useful and important and therefore intend to pursue these changes in another forum.

DEFICIT REDUCTION TRUST FUND PROVISION

Current Law

Current law includes no analogous provision.

House Bill

The House bill creates the Deficit Reduction Trust Fund, an account to identify the reduced outlays and increased receipts achieved through reconciliation. Under the requirements of reconciliation and the terms of the Trust Fund, the legislative savings could not be spent and are solely reserved for deficit reduction. The Deficit Reduction Trust Fund would provide a quantitative display of the level of deficit reduction achieved through the adoption of the President's policies in reconciliation.

The Trust Fund would operate in the following manner: 1) an amount equal to the net deficit reduction estimated to result from reconciliation is transferred to the Trust Fund within 10 days of enactment; 2) amounts in the Trust Fund are unavailable for appropriation, obligation, transfer or expenditure, and may only be used to pay off maturing public debt obligations; 3) amounts in the Trust Fund are excluded from Pay-As-You-Go budget enforcement and cannot finance new spending or tax reductions; and 4) the President's budget request is required to include a separate statement of funds held by the Trust Fund.

Senate Amendment

The Senate adopted no analogous provisions.

Conference Agreement

The conference agreement does not include the House provisions. The House conferees agreed to recede to the Senate, based on their understanding that inclusion of the Deficit Reduction Trust Fund would make the entire conference report subject to a point of order in the Senate and thereby endanger final enactment of the reconciliation bill, and based on their further understanding that President Clinton has agreed to establish a Deficit Reduction Trust Fund by Executive Order.

ENTITLEMENT REVIEW

Current Law

Current law includes no analogous provision for monitoring and budgeting federal expenditures for entitlement and mandatory programs.

House Bill

Federal spending for entitlements and other mandatory programs represent, along with interest on the national debt, the fastest growing area of federal spending. The Congressional Budget Office projects outlays for entitlement and mandatory programs to increase by 6.4% per year (FY 1993-98). However, Congress is acutely aware that entitlement programs represent important commitments to the public in vital areas such as health, income security and economic stability.

Growth in entitlement spending has resulted in large part from the explosion in health care costs throughout society. National spending on health care currently represents more than 14% of the nation's total economic output and is projected to rise to 18% of Gross Domestic Product by the year 2000 if corrective action is not taken. Through its various programs, the federal government pays approximately 25% of the nation's health care costs, primarily through the medicare and medicaid entitlement programs. The social security, medicare and medicaid programs represent nearly 70% of all entitlement spending.

The House is concerned with our ability to project, monitor and pay for rising health care costs within the federal budget. Federal spending for entitlements and other mandatory programs is expected to total approximately $770 billion in 1993, representing one-half of federal outlays and more than 12% of our nation's Gross Domestic Product.

The House, acknowledging the acute budgetary pressure placed on the federal government through rising health care costs, created an entitlement review process requiring the following action on the part of the President:

(1) Following enactment of reconciliation, the Office of Management and Budget sets targets for the total level of entitlement spending levels expected to result from enactment of reconciliation.

(2) The targets would be adjusted annually for:

(a) Increases in the number of beneficiaries for direct spending programs in which the number of beneficiaries is a variable in determining costs (e.g., Social Security, Medicare, Medicaid, Food Stamps, Unemployment Compensation, Federal Civilian/Military Retirement and Veterans' Pensions/Compensation).

(b) Subsequently enacted legislation increasing or decreasing revenues and legislation designated as an "emergency" measure under the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) The President's budget must include annual review of actual and projected costs for direct spending and revenues (FY 1994-97). the report shall include: total outlays for direct spending programs and projections for the following five fiscal years; the basis of any variance from the targets, including permissible adjustments; and information regarding major categories of fiscal receipts, including any variance between projected and actual receipts.

(4) If actual outlays for direct spending programs for the prior fiscal year or projected outlays for the current fiscal year or budget year exceed the targets, the President is required to propose measures to address any overage, either through spending cuts, revenue increases or outlay target increases. However, no proposal is required if projected outlays exceed the targets by ½% estimating margin of error or less.

(5) The President and Congress should "seriously consider" all other proposals (outlay target/revenue increases, discretionary cuts or non-means tested program cuts) prior to considering reductions for means-tested programs.

The entitlement review also requires the following action on the part of Congress:

(1) If the President identifies an overage and recommends legislation to recoup or eliminate it, the budget resolution must incorporate a title to address the overage through reconciliation. The reconciliation directive can reflect any combination of spending cuts or revenue increases, but must achieve legislative savings equal to or greater than the amount recommended by the President (up to the amount of the overage).

(2) If the budget resolution recommends recouping less than the full overage, the House Budget Committee must report a House resolution directing that the outlay target shall be increased by the amount which is not offset.

(3) If the House resolution requires raising the outlay targets, the House must vote directly on the issue by a separate vote on the House resolution. If the House rejects raising the target, the budget resolution may not be considered as reported.

(4) Points of order are created: (a) The House cannot consider the budget resolution conference report unless the overage has been fully addressed, either by increasing the target or reporting reconciliation instructions to eliminate the overage or both; (b) No appropriations bills may be considered unless a budget resolution complying with this act has been adopted for the current fiscal year. However, this point of order may be

waived by vote or resolution for all appropriations bills for the fiscal year.

Senate Bill

The Senate bill adopts no analogous provisions.

Conference Agreement

The conference agreement does not include the House entitlement review provisions. The House conferees agreed to recede to the Senate, based on their understanding that inclusion of the entitlement review provisions would make the entire conference report subject to a point of order in the Senate and thereby endanger final enactment of the reconciliation bill, and based on their further understanding that President Clinton has agreed to establish by Executive Order a mechanism for monitoring entitlement outlays and making recommendations to address overages.

From the Committee on the Budget, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

MARTIN OLAV SABO,
RICHARD GEPHARDT,

As additional conferees from the Committee on the Budget, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

CHARLIE STENHOLM,
EARL POMEROY,
DALE E. KILDEE,

As additional conferees from the Committee on the Budget, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

LOUISE SLAUGHTER,
ALAN MOLLOHAN,
BART GORDON,

As additional conferees from the Committee on the Budget, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

BARNEY FRANK,
LUCIEN E. BLACKWELL,
LYNN C. WOOLSEY,
RICK LAZIO,

As additional conferees from the Committee on the Budget, for consideration of title IV and sections 5117, 13233, 13263, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

DALE E. KILDEE,
DAVID E. PRICE,
BARBARA B. KENNELLY,

As additional conferees from the Committee on the Budget, for consideration of sections 5000–187, 13234, 13242, 13264, 13400–571, and 14411 of the House bill, and sections 7000–501, 7601(c), 7801, 7802(b) and (c), 7904, 7951, 12101–02, and 12321 of the Senate amendment, and modifications committed to conference:

TONY BEILENSON,
LOUISE SLAUGHTER,
HARRY JOHNSTON,

As additional conferees from the Committee on the Budget, for consideration of sections 5200–44, 5301, and 9006–07 of the House bill, and sections 4001–11 and 6001 of the Senate amendment, and modifications committed to conference:

JOHN BRYANT,
WILLIAM J. COYNE,
JERRY F. COSTELLO,

As additional conferees from the Committee on the Budget, for consideration of title VII and that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7) and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, and section 5187(b) of the House bill, and title XI, section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, sections 12045(7), 12047(a), and 12105 of the Senate amendment, and modifications committed to conference:

MICHAEL A. ANDREWS,
ALAN MOLLOHAN,
LYNN C. WOOLSEY,

As additional conferees from the Committee on the Budget, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

BARBARA B. KENNELY,
JERRY F. COSTELLO,
PATSY T. MINK,

As additional conferees from the Committee on the Budget, for consideration of title IX and sections 1402, 5301, and 11002 of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

JOHN BRYANT,
PATSY T. MINK,
LUCIEN E. BLACKWELL,

As additional conferees from the Committee on the Budget, for consideration of titles VI and X and sections 13702 and 13704 of the House bill, and title IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

HOWARD L. BERMAN,
MICHAEL A. ANDREWS,
BART GORDON,

Provided, that for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, Mr. Pomeroy is appointed in lieu of Mr. Berman; Messrs, Cox and Smith of Michigan are appointed in lieu of Messrs. Kolbe and Miller of Florida.

EARL POMEROY,

As additional conferees from the Committee on the Budget, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

BOB WISE,
JERRY F. COSTELLO,
HOWARD L. BERMAN,

As additional conferees from the Committee on the Budget, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901(b) and (c) of the Senate amendment, and modifications committed to conference:

DAVID E. PRICE,
WILLIAM J. COYNE,
HARRY JOHNSTON,

As additional conferees from the Committee on the Budget, for consideration of sections 4032, 4033(3), 8002, 9004, 11001, 12004(b), 13001–20, 13201–84, 13601–02, and 13604–705 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7433, 7601–03, 7701–02, 7901(a) and (c), 7902–03, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, 12055, 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

WILLIAM J. COYNE,
TONY BEILENSON,

As additional conferees from the Committee on the Budget, for consideration of title XV and XVI, section 1405(c) of the House bill, those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, section 4029, those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, 9008, and 13560 of the House bill, and title XIV, that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

CHARLIE STENHOLM,
BOB WISE,
BARNEY FRANK,

As additional conferees from the Committee on Agriculture, for consideration of title I and section 9005(a)–(c) and (f) of the House bill, and title I and sections 5001, 5002(a), (b), and (d), and 5003 of the Senate amendment, and modifications committed to conference:

KIKA DE LA GARZA,
CHARLIE ROSE,
DAN GLICKMAN,
HAROLD L. VOLKMER,
TIMOTHY J. PENNY,

As additional conferees from the Committee on Armed Services, for consideration of title II and section 12009 of the House bill, and title II and section 13003 of the Senate amendment, and modifications committed to conference:

RONALD V. DELLUMS,
G.V. MONTGOMERY,
PAT SCHROEDER,
EARL HUTTO,
IKE SKELTON,

Provided, for consideration of section 12009 of the House bill, and section 13003 of the Senate amendment, Mr. McCurdy is appointed in lieu of Mr. Montgomery, and Mr. Hunter is appointed in lieu of Mr. Stump.

DAVE MCCURDY,

As additional conferees from the Committee on Banking, Finance and Urban Affairs, for consideration of title III of the House bill, and title III (except section 3003(b)) of the Senate amendment, and modifications committed to conference:

HENRY B. GONZALEZ,
STEVE NEAL,
JOHN J. LAFALCE,
BRUCE F. VENTO,
CHARLES SCHUMER,
JAMES A. LEACH,
MARGE ROUKEMA,

As additional conferees from the Committee on Education and Labor, for consideration of title IV and sections 5117, 13233, 13263–64, 13270, 13420, and 14402(d) of the House bill, and sections 7904, 12001–50, 12061, 12071, 12101, and 12301–02 of the Senate amendment, and modifications committed to conference:

WILLIAM D. FORD,
WILLIAM L. CLAY,
GEORGE MILLER,
AUSTIN J. MURPHY,
PAT WILLIAMS,

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

WILLIAM F. GOODLING,
THOMAS E. PETRI,
(Except for sections 5117, 13233, 13263, 13264, 13270, and 13420, of the House bill and sections 7904 and 12101 of the Senate amendment)

Solely for purposes of sections 4201–4203 of the House bill and sections 12301 and 12302 of the Senate amendment:

MARGE ROUKEMA,

As additional conferees from the Committee on Energy and Commerce, for consideration of [communications] sections 5200–44 of the House bill, and sections 4001–11 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
EDWARD J. MARKEY,
BILLY TAUZIN,
THOMAS J. MANTON,
LYNN SCHENK,
CARLOS J. MOORHEAD,
JACK FIELDS,
MICHAEL G. OXLEY,

As additional conferees from the Committee on Energy and Commerce, for consideration of [health] sections 5000–5091, 5100–87, 13010 (a) and (c), 13413(e), 13234, 13242, 13264, 13431–13571, and 14411 of the House bill, and sections 1105(b), 7000, 7201–7501, 7601(c), 7801, 7802 (b) and (c), 7904, 7951, 12101–12205, and 12321 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
HENRY A. WAXMAN,
RON WYDEN,
EDOLPHUS TOWNS,
JIM SLATTERY,

As additional conferees from the Committee on Energy and Commerce, for consideration of [energy] sections 5301 and 9006–07 of the House bill, and section 6001 of the Senate amendment, and modifications committed to conference:

JOHN D. DINGELL,
PHILIP R. SHARP,
CRAIG A. WASHINGTON,
MIKE KREIDLER,
AL SWIFT,
CARLOS J. MOORHEAD,
MIKE BILIRAKIS,
JOE BARTON,

As additional conferees from the Committee on Foreign Affairs, for consideration of title VI and sections 10001 and 10002 of the House bill, and title IX of the Senate amendment, and modifications committed to conference:

LEE H. HAMILTON,
HOWARD L. BERMAN,
ENI FALEOMAVAEGA,
M.G. MARTINEZ,
ROBERT E. ANDREWS,
BENJAMIN A. GILMAN,
OLYMPIA SNOWE,
HENRY J. HYDE,

As additional conferees from the Committee on Government Operations, for consideration of section 1405(c) of the House bill, and that portion of section 1201 which adds a new section 305(c)(4) to the Rural Electrification Act, of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
GLENN ENGLISH,
COLLINS C. PETERSON,
TOM BARRETT,
CRAIG A. WASHINGTON,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 4002 which add new sections 453(a)(3) and 456(a)(2) to the Higher Education Act of 1965, and sections 4029 and 13560 of the House bill, and those portions of section 12011 which add new sections 453(a)(4) and 456(a)(2) to the Higher Education Act of 1965, of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
CARDISS COLLINS,
EDOLPHUS TOWNS,
HENRY A. WAXMAN,
JOHN M. SPRATT, Jr.,

As additional conferees from the Committee on Government Operations, for consideration of those portions of section 5181 which add new sections 2158(b)(3)(B) and 2161(b) to the Public Health Service Act, of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
JOHN M. SPRATT, Jr.,
MIKE SYNAR,
DONALD M. PAYNE,

As additional conferees from the Committee on Government Operations, for consideration of section 9008 of the House bill, and modifications committed to conference:

JOHN CONYERS, Jr.,
CARDISS COLLINS,
JOHN M. SPRATT, Jr.,
MIKE SYNAR,
CRAIG A. WASHINGTON,

As additional conferees from the Committee on Government Operations, for consideration of title XVI and sections 15001–111, 15206, and 15301 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

JOHN CONYERS, Jr.,
JOHN M. SPRATT, Jr.,
HENRY A. WAXMAN,
CARDISS COLLINS,
MIKE SYNAR,

As additional conferees from the Committee on the Judiciary, for consideration of title VII of the House bill, and title XI and section 12047(a) of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
WILLIAM J. HUGHES,
DON EDWARDS,
JOHN CONYERS, Jr.,
MIKE SYNAR,
CARLOS J. MOORHEAD,
HOWARD COBLE,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of that portion of section 4002 which adds a new section 455(j) to the Higher Education Act of 1965, section 4025(7), and that portion of section 5203 which adds a new section 309(j)(8) to the Communications Act of 1934, of the House bill, and section 4008(c), that portion of section 12011 which adds a new section 455(j) to the Higher Education Act of 1965, and section 12045(7) of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN CONYERS, Jr.,
MIKE SYNAR,
PAT SCHROEDER,
HOWARD L. BERMAN,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on the Judiciary, for consideration of section 5187(b) of the House bill, and section 12105 of the Senate amendment, and modifications committed to conference:

JACK BROOKS,
JOHN BRYANT,
DAN GLICKMAN,
BARNEY FRANK,
HOWARD L. BERMAN,
GEORGE W. GEKAS,
JIM RAMSTAD,
HAMILTON FISH, Jr.,

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title VIII and section 9004 of the House bill, and section 4051 of the Senate amendment, and modifications committed to conference:

GERRY E. STUDDS,
BILLY TAUZIN,
WILLIAM O. LIPINSKI,
SOLOMON P. ORTIZ,
THOMAS J. MANTON,
JACK FIELDS,

Provided, for consideration of title VIII of the House bill, and section 4051 of the Senate amendment, Mr. Inhofe is appointed: for consideration of section 9004 of the House bill, Mr. Saxton is appointed.

JAMES M. INHOFE,
JIM SAXTON,

As additional conferees from the Committee on Natural Resources, for consideration of title IX and sections 1402, 5301, and 11002, of the House bill, and titles V and VI and section 1503 of the Senate amendment, and modifications committed to conference:

GEORGE MILLER,
BRUCE F. VENTO,
RON DE LUGO,
RICHARD LEHMAN,
BILL RICHARDSON,

As additional conferees from the Committee on Post Office and Civil Service, for consideration of title X and sections 13702 and 13704 of the House bill, and titles IX and X and sections 12103–04 of the Senate amendment, and modifications committed to conference:

WILLIAM L. CLAY,
PAT SCHROEDER,
FRANK MCCLOSKEY,
ELEANOR H. NORTON,
BARBARA-ROSE COLLINS,
CONSTANCE MORELLA,

As additional conferees from the Committee on Public Works and Transportation, for consideration of title XI and sections 8002 and 9005(a) of the House bill, and sections 5002(a) and 6002 of the Senate amendment, and modifications committed to conference:

NORMAN Y. MINETA,
JIM OBERSTAR,
DOUGLAS APPLEGATE,
NICK J. RAHALL II,
ROBERT A BORSKI,
BUD SHUSTER,
BILL CLINGER,
SHERWOOD L. BOEHLERT,

As additional conferees from the Committee on Rules, for consideration of title XVI and sections 13560, 13605, and 15201–15212 of the House bill, and title XIV of the Senate amendment, and modifications committed to conference:

JOHN MOAKLEY,
BUTLER DERRICK,
TONY BEILENSON,
MARTIN FROST,
DAVID BONIOR,

As additional conferees from the Committee on Veterans' Affairs, for consideration of title XII of the House bill, and title XIII (except section 13008(b)) and section 7901 (b) and (c) of the Senate amendment, and modifications committed to conference:

G.V. MONTGOMERY,
LANE EVANS,
J. ROY ROWLAND,
JIM SLATTERY,
GEORGE E. SANGMEISTER,
BOB STUMP,

As additional conferees from the Committee on Ways and Means, for consideration of title XIV (except sections 14402(d) and 14411) and section 13603 of the House bill, and title VIII of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13001–20 of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
ANDREW JACOBS, Jr.,

As additional conferees from the Committee on Ways and Means, for consideration of sections 13201–84 of the House bill, and sections 7601–03 and 7802 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
HAROLD FORD,

As additional conferees from the Committee on Ways and Means, for consideration of title XVI of the House bill, and modifications committed to conference:

DAN ROSTENKOWSKI,
PETE STARK,

As additional conferees from the Committee on Ways and Means, for consideration of sections 4032, 4033(3), 5000–91, 5117, those portions of section 5181 which add new sections 2161 and 2173(b) to the Public Health Service Act, sections 5181(b), 8002, 9004, 11001, 12004(b), 13400–571, 13601–02, 13604–705, 14402(d), 14411, and 15301 of the House bill, and sections 1106, 1403, 1504, 3003(b), 7000–305, 7433, 7701–02, 7901(a) and (c), 7902–04, 7950–54, that portion of section 12011 which adds a new section 457 to the Higher Education Act of 1965, sections 12055, 12101–02, that portion of section 12202 which adds a new section 2148(b) to the Public Health Service Act, sections 12203(d), 12025, 13008(b), 15001, and 15002 of the Senate amendment, and modifications committed to conference:

DAN ROSTENKOWSKI,
SAM GIBBONS,
J.J. PICKLE,
CHARLES B. RANGEL,
PETE STARK,

Managers on the Part of the House.

From the Committee on Agriculture, Nutrition, and Forestry:

PATRICK J. LEAHY,

From the Committee on Banking, Housing, and Urban Affairs:

DON RIEGLE,
PAUL SARBANES,

From the Committee on the Budget:

JIM SASSER,
ERNEST F. HOLLINGS,
J. BENNETT JOHNSTON,

From the Committee on Commerce, Science, and Transportation:

ERNEST F. HOLLINGS,
DANIEL K. INOUYE,
JOHN BREAUX,

From the Committee on Energy and Natural Resources:

J. BENNETT JOHNSTON,
DALE BUMPERS,
WENDELL FORD,

From the Committee on Environment and Pubic Works:

MAX BAUCUS,
DANIEL PATRICK MOYNIHAN,

From the Committee on Finance:

DANIEL PATRICK MOYNIHAN,
MAX BAUCUS,
BILL BRADLEY,
GEORGE J. MITCHELL,
DAVID PRYOR,
DON RIEGLE,
JOHN D. ROCKEFELLER IV,

From the Committee on Foreign Relations:

CLAIBORNE PELL,
JOHN F. KERRY,

From the Committee on Governmental Affairs:

JOHN GLENN,
CARL LEVIN,
DAVID PRYOR,

From the Committee on the Judiciary:

DENNIS DECONCINI,

From the Committee on Labor and Human Resources:

EDWARD M. KENNEDY,
CLAIBORNE PELL,
CHRISTOPHER J. DODD,
PAUL SIMON,
TOM HARKIN,
BARBARA A. MIKULSKI,
JEFF BINGAMAN,
PAUL WELLSTONE,
HARRIS WOFFORD,

From the Committee on Veterans' Affairs:

JAY ROCKEFELLER,
DENNIS DECONCINI,

Managers on the Part of the Senate.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 501

Mr. FROST. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of the bill, H.R. 501.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from Texas?

There was no objection.

REQUEST TO MAKE IN ORDER ON TOMORROW OR ANY DAY THEREAFTER CONSIDERATION OF CONFERENCE REPORT ON H.R. 2493, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1994

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that notwithstanding the provisions of clause 2 of rule XXVIII, that it be in order at any time on Thursday, August 5, 1993, or any day thereafter, to consider the conference report, amendments in disagreement, and motions to dispose of amendments in disagreement, to the bill (H.R. 2493) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs, for the fiscal year ending September 30, 1994, and for other purposes, and that the conference report, amendments in disagreement, and motions printed in the joint explanatory statement of the committee of conference to dispose of amendments in disagreement be considered as read when called up for consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

Mr. WALKER. Mr. Speaker, reserving the right to object, I had talked just a moment ago to the chairman of the subcommittee on this. There is a slight glitch that has developed that the gentleman from Pennsylvania [Mr. MCDADE] is trying to work out with the gentleman from Kentucky [Mr. NATCHER] at the moment.

We would prefer that this request be withheld for the moment until that could be worked out. We know there is agreement to go ahead with it, but we do have a glitch at the moment.

Mr. GEPHARDT. Mr. Speaker, I withdraw my request.

The SPEAKER pro tempore. The request is withdrawn.

□ 1910

SMALL BUSINESS GUARANTEED CREDIT ENHANCEMENT ACT OF 1993

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent that the Committee on Small Business be discharged from further consideration of the Senate bill (S. 1274) to reduce the subsidy cost for the Guaranteed Business Loan Program of the Small Business Administration, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore (Mr. MCNULTY). Is there objection to the request of the gentleman from New York?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1274

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Guaranteed Credit Enhancement Act of 1993".

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

Sec. 1. Short title; table of contents.
Sec. 2. General authorizations for fiscal years 1993 and 1994.
Sec. 3. Extension of State limitation on interest rates.
Sec. 4. Guaranteed business loan program amendments.
Sec. 5. Interest rate for Preferred Lenders Program.
Sec. 6. Microloan program amendments.
Sec. 7. Small Business Development Center Program.
Sec. 8. Regulations.
Sec. 9. White House Conference on Small Business.
Sec. 10. National Women's Business Council.

SEC. 2. GENERAL AUTHORIZATIONS FOR FISCAL YEARS 1993 AND 1994.

(a) FINANCINGS FOR FISCAL YEAR 1993.—Section 20(g)(2) of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) by striking "$7,030,000,000" and inserting "$8,455,000,000";

(2) in subparagraph (A), by striking "$6,200,000,000" and inserting "$7,500,000,000"; and

(3) in subparagraph (C), by striking "$775,000,000" and inserting "$900,000,000".

(b) FINANCINGS FOR FISCAL YEAR 1994.—Section 20(i)(2) of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) by striking "$8,083,000,000" and inserting "$9,258,000,000";

(2) in subparagraph (A), by striking "$7,200,000,000" and inserting "$8,000,000,000"; and

(3) in subparagraph (C), by striking "$825,000,000" and inserting "$1,200,000,000".

(c) REDESIGNATIONS.—Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (l), as added by section 405(3) of the Small Business Credit and Business Opportunity Enhancement Act of 1992—

(A) by striking "(l) There" and inserting "(2) There", and indenting appropriately; and

(B) by striking "subsection (k)" and inserting "paragraph (1)";

(2) by redesignating subsection (k), as added by section 405(3) of the Small Business Credit and Business Opportunity Enhancement Act of 1992, as subsection (l);

(3) in subsection (n)—

(A) by striking "(n) There" and inserting "(2) There", and indenting appropriately; and

(B) by striking "subsection (m)" and inserting "paragraph (1)";

(4) by redesignating subsection (o) as subsection (n); and

(5) in subsection (p)—

(A) by striking "(p) There" and inserting "(2) There", and indenting appropriately; and

(B) by striking "subsection (o)" and inserting "paragraph (1)".

SEC. 3. EXTENSION OF STATE LIMITATION ON INTEREST RATES.

Section 112(c) of the Small Business Administration Reauthorization and Amendments Act of 1988 (Public Law 100-590 102 Stat. 2996) is amended—

(1) by striking paragraph (2); and

(2) by striking "(1) IN GENERAL.—".

SEC. 4. GUARANTEED BUSINESS LOAN PROGRAM AMENDMENTS.

(a) ADDITIONAL GUARANTEE FEES.—

(1) IN GENERAL.—Section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) is amended—

(A) by inserting "(A)" after "(18)"; and

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

"(B) In addition to fees collected under subparagraph (A), the Administration shall collect an excess premium fee from the participating lending institution in any case in which the sale price of the guaranteed portion of a loan made under this section and sold on the secondary market exceeds 110 percent of the face value of the guaranteed portion of the loan. Such fee shall be equal to 50 percent of that portion of the sale price that is in excess of 110 percent of the face value of the guaranteed portion of the loan. Such fee may not be charged to the borrower.".

(2) SUNSET.—The amendments made by paragraph (1) shall remain in effect until September 30, 1996.

(b) GUARANTEE PERCENTAGES.—

(1) IN GENERAL.—Subparagraph (B) of section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended to read as follows:

"(B) subject to the limitation in paragraph (3)—

"(i) not less than 70 percent nor more than 85 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is less than 10 years, except that the participation by the Administration may be reduced below 70 percent upon request of the participating lender;

"(ii) not less than 70 percent nor more than 75 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is not less than 10 years, except that the participation by the Administration may be reduced below 70 percent upon request of the participating lender; and

"(iii) not less than 85 percent of the financing outstanding at the time of disbursement, if such financing is a loan under paragraph (16).".

(2) ADDITIONAL AMENDMENTS.—Section 7(a)(2) of the Small Business Act (15 U.S.C. 636(a)(2)) is amended—

(A) in the second sentence, by striking "guaranteed to less than 85 percent" and inserting "guaranteed to less than the specified percentages"; and

(B) in the third sentence, by striking "80 percent" and inserting "75 percent".

(c) ANNUAL GUARANTEE FEE; PENALTY.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end the following new paragraph:

"(22)(A) For loans guaranteed under this subsection, the Administrator is authorized to collect, either directly or through a fiscal and transfer agent, an annual fee on each loan that is equal to ¼ of 1 percent of the declining principal balance of the loan.

"(B) The Administrator is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty fee on late payments of the fee authorized under subparagraph (A).".

SEC. 5. INTEREST RATE FOR PREFERRED LENDERS PROGRAM.

Section 7(a)(2) of the Small Business Act (15 U.S.C. 7(a)(2)) is amended by inserting after the third sentence, the following: "The maximum interest rate for a loan under the Preferred Lenders Program shall not exceed the maximum interest rate applicable to other loan guarantee programs under section 7(a), as established by the Administrator.".

SEC. 6. MICROLOAN PROGRAM AMENDMENTS.

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)(B)(iii), by striking "$15,000" and inserting "$25,000";

(2) in paragraph (4)(C)(ii), by inserting "to defray costs associated with loan fund administration and" before "to provide";

(3) in paragraph (5)(A), by striking "6 grants" and inserting "12 grants";

(4) by amending paragraph (9)(A) to read as follows:

"(A) IN GENERAL.—The Administration may provide, directly or through an organization described in subparagraph (B), technical assistance for participants and potential participants in the Microloan Demonstration Program to give such participants and potential participants such knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs."; and

(5) in paragraph (9)(B)—

(A) by striking "3 percent" and inserting "7 percent"; and

(B) by inserting "and nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing" after "microlending organizations".

SEC. 7. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

Section 223(b) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (15 U.S.C. 631 note) is amended by striking "Such proposed regulations shall not be published in the Federal Register.".

SEC. 8. REGULATIONS.

Not later than 60 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this Act.

SEC. 9. WHITE HOUSE CONFERENCE ON SMALL BUSINESS.

(a) DATES OF CONFERENCES.—Section 2 of the White House Conference on Small Business Authorization Act (15 U.S.C. 631 note) is amended—

(1) by striking "January 1, 1994" and inserting "May 1, 1995";

(2) by striking "April 1, 1994" and inserting "December 31, 1995"; and

(3) by striking "December 1, 1992" and inserting "March 1, 1994".

(b) APPOINTMENT OF COMMISSIONERS.—Section 5(a) of the White House Conference on Small Business Authorization Act (15 U.S.C. 631 note) is amended by striking "The President" and inserting "Not later than 30 days after the date of enactment of the Small Business Guaranteed Credit Enhancement Act of 1993, the President".

SEC. 10. NATIONAL WOMEN'S BUSINESS COUNCIL.

(a) MEMBERSHIP.—

(1) NEW MEMBERS.—Section 403 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended in subsection (a)—

(A) by striking "nine" and inserting "eleven";

(B) in paragraph (1), by inserting ", the Secretary of Labor (or such Secretary's deputy)," after "(or such Secretary's deputy)";

(C) in paragraph (2), by striking "and" at the end;

(D) in paragraph (3), by striking the period at the end and inserting "; and"; and

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

"(4) one member shall be appointed by the President.".

(2) APPOINTMENT DATE.—The first appointment required under section 403(a)(4) of the Women's Business Ownership Act of 1988 (as added by paragraph (1)(E)) shall be made not later than 90 days after the date of enactment of this Act.

(3) TERMS OF CURRENT MEMBERS.—Any member appointed under paragraph (2) or (3) of section 403(a) of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) and serving prior to the date of enactment of this Act shall continue to serve until the expiration of the term for which the member was appointed.

(4) CONFORMING AMENDMENTS.—Section 403(b) of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended—

(A) in paragraph (1), by striking "section (a)(2) and (3)" and inserting "paragraphs (2), (3), and (4) of subsection (a)";

(B) in paragraph (2)(C), by striking "subsection (a)(2) and (3)" and inserting "paragraphs (2), (3), and (4) of subsection (a)"; and

(C) in paragraph (2)(F)—

(i) by striking "(1) Two" and inserting "(i) Three"; and

(ii) by striking "(2) A majority" and inserting "(ii) A majority".

(5) DELETION OF OBSOLETE REFERENCES.—Section 404 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended by striking "rate of basic pay payable for GS-18 of the General Schedule" each place it appears and inserting "rate of pay payable for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code".

(b) AUTHORIZATION.—Section 407 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 407. AUTHORIZATION.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $500,000 for fiscal year 1994; and

"(2) $500,000 for fiscal year 1995.

"(b) LIMITATION ON AUTHORITY.—New spending authority or authority to enter into contracts as authorized in this Act shall

be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

"(c) SUNSET.—This section shall cease to be effective on November 30, 1995.".

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. LA FALCE

Mr. LAFALCE. Mr. Speaker, I offer an amendment in the nature of a substitute.

The Clerk read as follows:

Amendment in the nature of a substitute offered by Mr. LAFALCE: Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Business Guaranteed Credit Enhancement Act of 1993".

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

Sec. 1. Short title; table of contents.
Sec. 2. General authorizations.
Sec. 3. Authority to impose secondary market fees.
Sec. 4. Penalties.
Sec. 5. Authority to reduce loan guarantee percentages.
Sec. 6. Study and report.
Sec. 7. Repealer.
Sec. 8. Microloan program amendments.
Sec. 9. Small Business Development Center Program.
Sec. 10. White House Conference on Small Business.
Sec. 11. National Women's Business Council.

SEC. 2. GENERAL AUTHORIZATIONS.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended—

(1) in subsection (g)(2) by striking "$7,030,000,000" and by inserting in lieu thereof "$7,155,000,000";

(2) in subsection (g)(2) by striking "$775,000,000" and by inserting in lieu thereof "$900,000,000";

(3) in subsection (i)(2) by striking "$8,083,000,000" and by inserting in lieu thereof "$8,458,000,000"; and

(4) in subsection (i)(2) by striking "$825,000,000" and by inserting in lieu thereof "$1,200,000,000".

SEC. 3. AUTHORITY TO IMPOSE SECONDARY MARKET FEES.

(a) ADDITIONAL GUARANTEE FEES.—Section 5(g) of the Small Business Act (15 U.S.C. 634) is amended by striking paragraph (4) and by inserting in lieu thereof the following:

"(4)(A) The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f): an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration. Any such fees imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 7(a) of this Act: *Provided*, That such fees shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agency of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2).".

"(B) The Administration is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.".

(b) Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act after August 31, 1993.

SEC. 4. PENALTIES.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end of the following new paragraph:

"(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments on loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.".

SEC. 5. AUTHORITY TO REDUCE LOAN GUARANTEE PERCENTAGES

(A) GUARANTEE PERCENTAGES.—Section 7(a)(2) of the Small Business Act (15 U.S.C. 636) is amended—

(1) by striking from the end of clause (B)(i) the word "and" and by redesignating clause (B)(ii) as (B)(iv) and by inserting the following after clause (B)(i):

"(ii) not less than 75 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is more than 10 years, except that the participation by the Administration may be reduced below 75 percent upon request of the participating lender;

"(iii) not less than 85 percent of the financing outstanding at the time of disbursement, if such financing is more than $155,000 and the period of maturity of such financing is 10 years or less, except that the participation by the Administration may be reduced below 85 percent upon request of the participating lender; and";

(2) by striking the words "85 percent under subparagraph (B)" and by inserting in lieu thereof the following: "the above specified percentums";

(3) by striking from paragraph (B) the words "not less than 80 percent, except upon" and by inserting in lieu thereof the following: "not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the"; and

(4) by inserting after the third sentence the following: "The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, which is made applicable to other loan guarantees under section 7(a).".

(b) APPLICATION.—Notwithstanding any other provision of law, the amendments made by subsection (a) shall be effective September 1, 1993, but shall not be applicable to loan guarantee applications received by the Administration prior to August 21, 1993. In order to determine the percent of the loan to be guaranteed pursuant to the amendments made by subsection (a), the Administration shall aggregate the outstanding guaranteed principal of multiple loan guarantees issued on behalf of the same borrower.

SEC. 6. STUDY AND REPORT.

The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness, viability and growth of the secondary market authorized by section 5(f) of the Small Business Act. Not later than 16 months after the date of enactment, and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term "small business concerns owned and controlled by minorities", includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act.

SEC. 7. REPEALER.

Sections 3 and 5 of this Act are hereby repealed on September 30, 1996.

SEC. 8. MICROLOAN PROGRAM AMENDMENTS.

Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) is amended—

(1) in paragraph (1)(B)(iii), by striking "$15,000" and inserting "$25,000";

(2) in paragraph (5)(A), by striking "6 grants" and inserting "25 grants for terms of up to 5 years"; and

(3) in paragraph (9)(B) by striking "3 percent" and inserting "7 percent".

SEC. 9. SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.

(a) CLEARINGHOUSE.—Section 21(c)(7) of the Small Business Act (15 U.S.C. 648) is amended by striking "system which will" and by inserting in lieu thereof the following: "system. Subject to amounts approved in advance in appropriations acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall".

(b) AUTHORIZATION.—Section 25(i) of the Small Business Act (15 U.S.C. 652) is amended by striking "$8,000,000 for fiscal year 1993" and by inserting in lieu thereof "$2,000,000 for each of fiscal years 1993 and 1994".

(c) REGULATIONS.—Section 223 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (15 U.S.C. 631 note) is amended by striking the last sentence of subsection (b).

SEC. 10. WHITE HOUSE CONFERENCE ON SMALL BUSINESS.

The White House Conference on Small Business Authorization Act (15 U.S.C. 631 note) is amended—

(1) in section 2 by striking from subsection (a) "not earlier than January 1, 1994, and not later than April 1, 1994" and by inserting in lieu thereof "not earlier than May 1, 1995, and not later than September 30, 1995";

(2) in section 2 by striking from subsection (a) "December 1, 1992" and by inserting in lieu thereof "March 1, 1994"; and

(3) in section 5 by striking the second sentence of subsection (a) and by inserting in

lieu thereof the following: "Subsequent to the date of enactment of this Act, but not later than 30 days after the date of enactment of this Act, the President shall select and appoint eleven individuals to the Commission.".

SEC. 11. NATIONAL WOMEN'S BUSINESS COUNCIL.

Section 407 of the Women's Business Ownership Act of 1988 (15 U.S.C. 631 note) is amended to read as follows:

"SEC. 407. AUTHORIZATION.

"(a) IN GENERAL.—There are authorized to be appropriated to carry out this title—

"(1) $500,000 for fiscal year 1993; and

"(2) $500,000 for fiscal year 1994.

"(b) LIMITATION ON AUTHORITY.—New spending authority or authority to enter into contracts as authorized in this Act shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.

"(c) SUNSET.—This section shall cease to be effective on November 30, 1995.".

Mr. LAFALCE (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. LAFALCE. Mr. Speaker, last Monday this House passed under suspension of the rules four small business bills: H.R. 2746, to delay the White House Conference on Small Business and authorize the appointment of new commissioners to organize the conference; H.R. 2747, to increase the authorization for the development company loan and debenture guarantee programs; H.R. 2748, to amend the small business development center program; and H.R. 2766, to reduce the cost of the 7(a) loan guarantee program of the Small Business Administration.

At about the same time, the Senate approved the bill now under consideration. It contains some, but not all, of the provisions of the House-passed bills, and it also contains matters not addressed by the House.

The measures previously passed by the House are very time sensitive and need to be enacted prior to the August recess. If, for example, we do not enact the loan program amendments, we will lose savings as the program will continue under its current terms and conditions which cost more money than it would under either the proposed House changes or under the proposed Senate changes.

My amendment would consolidate all of these proposals, but after eliminating from both the Senate bill and the House bills those provisions which are not extremely urgent. The Small Business Committees will deal with them later. My amendment adds two Senate provisions which are time sensitive: extension of the authorization for the National Women's Business Council and minor amendments to the microloan program.

Most importantly, my amendment retains the provision to impose a new fee of ⅔ of 1 percent solely on SBA loans sold in the secondary market to private investors. This is the most profitable aspect of SBA lending and those who earn profits on secondary market sales should pay an additional fee. No additional fee should be imposed on those lenders who do not sell the loans, and the amendment does not do so.

Mr. Speaker, I urge passage of my amendment.

Mr. Speaker, I include with my remarks the following summary:

SECTIONAL SUMMARY OF AMENDMENT TO S. 1274

CITATION AND TABLE OF CONTENTS

Section 1 provides that the bill may be cited as "Small Business Guaranteed Credit Enhancement Act of 1993". It also provides a table of contents.

GENERAL AUTHORIZATIONS

Section 2(1) increases the total authorization for loan and debenture guarantees by the Small Business Administration in fiscal year 1993 from $7.03 billion to $7.155 billion, and within these amounts section 2(2) increases the authorization for debenture and loan guarantees for development companies from $775 million to $900 million.

Section 2(3) increases the total authorization for loan and debenture guarantees by the Small Business Administration in fiscal year 1994 from $8.083 billion to $8.458 billion, and within these amounts section 2(4) increases the authorization for debenture and loan guarantees for development companies from $825 million to $1.2 billion.

AUTHORITY TO IMPOSE SECONDARY MARKET FEES

Section 3(a) authorizes the Small Business Administration to collect two fees on new loans sold into the secondary market: first, SBA could impose a fee not to exceed 2/5 of 1% annually on the outstanding balance of loans sold in such market; and second, SBA could impose a fee of 50% of that portion of the sales price of any loan sold for a premium in excess of 110 percent of the outstanding principal amount.

Subsection 3(b) limits the new fees to loans sold in the secondary market for the first time after August 31, 1993.

PENALTIES

Section 4 authorizes SBA to permit lenders to charge a late fee of 5 percent per month on borrowers who do not make timely loan payment.

AUTHORITY TO REDUCE LOAN GUARANTEE PERCENTAGES

Section 5(a) authorizes SBA to reduce the maximum loan guarantee on real estate loans above $155,000 to 75% (instead of 85% as provided under existing law). It also authorizes SBA to reduce the maximum loan guarantee on loans made under the Preferred Lenders Program to 70% (instead of 80% as provided under existing law).

Subsection 5(b) permits the SBA to apply the lower percentages to loans approved after August 31, 1993, but it exempts loan guarantee requests which were pending at the Agency prior to August 21st.

STUDY AND REPORT

Section 6 requires SBA to study the impact of these changes (sections 3 and 5) upon the ability of small businesses to obtain financing, including the interest rate, and upon the viability of the secondary market in SBA guaranteed loans. The study would look at small business impact generally, and also specifically identify the impact on minority-owned and women-owned small business. SBA annually would report thereon to the Small Business Committees beginning 16 months after the date of enactment of this bill. The impact on minority-owned business and women-owned businesses would be separately determined and reported.

REPEALER

Section 7 repeals the changes made by sections 3 and 5 at the end of fiscal year 1996, which provides a three-year trial period.

MICROLOAN PROGRAM AMENDMENTS

Section 8(1) increased the maximum amount of a loan which may be guaranteed by an intermediary in the microloan program to $25,000 per borrower (now $15,000).

Section 8(2) increased the maximum amount of grants which may be made to intermediaries which guarantee microloans to 25 such grants for terms of up to 5 years each (now 6 grants for a one year grant).

Section 8(3) increases the amount of the loan capital appropriation which may be used for training to 7 percent (instead of 3 percent).

SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

Section 9(a) authorizes the Small Business Administration to fund Small Business Development Center information sharing systems (i.e., a library of materials) by making grants or cooperative agreements with one or more such centers instead of by issuing a contract after soliciting proposals.

Subsection 9(b) reduces the authorization for the Small Business Development Center replication program in Central Europe for 1993 from $8 million to $2 million and authorizes a similar amount for fiscal year 1994.

Subsection 9(c) strikes a provision of current law which prohibits the Small Business Administration from publishing regulations on the Small Business Development Center Program in the Federal Register.

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Section 10(1) and (2) delay the dates for the White House Conference on Small Business. The state meetings would begin not earlier than March 1, 1994 (instead of not earlier than December 1, 1992), and the national conference would be held between May 1, 1995 and September 30, 1995 (instead of between January 1, 1994 and April 1, 1994 under existing law).

Section 10(3) provides that the President shall appoint commissioners to oversee the conference, and that such appointments shall be made after the enactment of this Act but not later than 30 days after the date of such enactment.

NATIONAL WOMEN'S BUSINESS COUNCIL

Section 11 extends the authorization for the Women's Business Ownership Council by authorizing $500,000 for fiscal year 1994 and by terminating the program on November 30, 1995.

Mrs. MEYERS of Kansas. Mr. Speaker, I thank the committee chairman for his explanation.

I support the passage of S. 1274 with this amendment.

The SPEAKER pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from New York [Mr. LAFALCE].

The amendment in the nature of a substitute was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. LAFALCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material, on S. 1274, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

FLUID MILK PROMOTION AMENDMENTS ACT OF 1993

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that the Committee on Agriculture be discharged from further consideration of the Senate bill (S. 1205) to amend the Fluid Milk Promotion Act of 1990 to define fluid milk processors to exclude de minimis processors, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

Mr. ROBERTS. Reserving the right to object, Mr. Speaker, and I shall not object, I yield to the distinguished gentleman from Texas [Mr. DE LA GARZA], the chairman of the Committee on Agriculture, to explain to our colleagues the intent of the bill.

Mr. DE LA GARZA. Mr. Speaker, I appreciate the gentleman's yielding to me.

Mr. Speaker, S. 1205 would amend the Fluid Milk Promotion Act which authorizes the establishment of an industry-funded fluid milk education effort. The bill would make it explicit that if the fluid milk industry's consensus is that the program should be confined to processors with marketings exceeding a certain threshhold, then such a program may be put in place.

The Fluid Milk Promotion Act was enacted as part of the 1990 farm bill. Under its provisions, if fluid milk processors agree in a referendum, they each contribute a share of their marketing receipts from fluid milk sales to a fund dedicated to public education regarding the benefits of milk.

One of the most alarming trends that we see in nutrition today—especially in the nutrition of our Nation's children—is the increasing rate at which nutritionally bankrupt beverages are consumed at the expense of nutritious and wholesome milk.

Of course, it is no wonder that such a trend is occurring; because no matter which way you turn, the consumer is bombarded by the promotional efforts of the large, sophisticated beverage companies. Over here there's a talking soda machine, over there a giant billboard, and on TV our children see their heroes in sports and entertainment promoting soft drinks night and day. This bill will allow the fluid milk processors of our Nation to join together and match those efforts—only in this case to sell a product which is important to the health of our people.

In the process of developing a promotional program industry leaders determined that it could be carried out most effectively if participation was confined to processors of sufficient size to garner the full benefits of the educational efforts which are to be undertaken. Consequently, the united industry's proposal which is to be brought up for a vote in a referendum would require that program assessments be collected only from those processors whose monthly average marketings exceed 500,000 pounds of fluid milk products. Since the statute authorizing the program does not specifically authorize such a small processor exclusion, enactment of S. 1205 is required to remove any doubt as to the legal validity of this program detail.

Passage of this bill will help ensure that the fluid milk processing industry may have the opportunity to go forward with a vote on a self-funded program designed to educate and enlighten the public with regard to the delicious benefits of nutritious milk.

Mr. ROBERTS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1205

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 "Fluid Milk Promotion Amendments Act of 1993".

SEC. 2. DEFINITION OF FLUID MILK PROCESSOR.

(a) FLUID MILK PROCESSOR.—Paragraph (4) of section 1999C of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6402(4)) is amended to read as follows:

"(4) FLUID MILK PROCESSOR.—The term 'fluid milk processor' means any person who processes and markets commercially more than 500,000 pounds of fluid milk products in consumer-type packages per month.".

(b) CONFORMING AMENDMENT.—Section 1999J(e) of such Act (7 U.S.C. 6409(e)) is amended by inserting after "4504(g))" the following: ", and that are fluid milk processors,".

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DE LA GARZA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on S. 1205, the Senate bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include therein extraneous material on general debate on the bill, H.R. 2401, now about to be considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

The SPEAKER pro tempore. Pursuant to House Resolution 233 and rule XXIII, the Chair declares the House into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2401.

□ 1915

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2401) to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Pursuant to the rule, the gentleman from California [Mr. DELLUMS] will be recognized for 60 minutes and the gentleman from South Carolina [Mr. SPENCE] will be recognized for 60 minutes.

The Chair recognizes the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to bring before my colleagues the bill, H.R. 2401, the National Defense Authorization Act of fiscal year 1994. The overall level of budget authority recommended by the committee, $262.8 billion, is approximately that recommended by President Clinton.

Before I address the particulars of this Bill, let me take a moment to put this year's action in perspective. We are in the midst of a reorientation of the national defense budget away from the needs of the cold war. The old Soviet threat is gone. While there is a

great difference of opinion concerning how big a force structure will be required in the absence of such a threat, there is general agreement that our forces can and should be cut substantially. There is also general agreement that these force reductions should be carried out in an orderly way, to ensure that the force drawdown does not impair the quality and readiness of the remaining forces.

I have circulated to my colleagues my own historical perspective on President Clinton's defense budget proposals. While it may seem surprising, the current and planned drawdown is less severe and more gradual than those following the wars in Korea and Vietnam. Those who are concerned about the ability of the Pentagon to maintain ready forces should note that President Clinton's budgets continue the high ratios of defense spending to active duty personnel that produced the high-quality force of the 1980's. Given the relatively small size of the military threats to our security that can be discerned around the world, it is reasonable to ask for a detailed justification of why we will need in 1988 to spend as much in real dollars as we did during the mid-1970's, and why we will need an active duty force fully two-thirds as large as that which we maintained in those cold war years.

While there is a broad consensus that defense should be reduced in an orderly fashion, the public record so far contains little analytic basis to determine either what the end-point of the reduction should be, or how fast a reduction can be absorbed without unacceptable disruption. Our progress in this deliberation was delayed by the length of time it has taken the new administration to get its people in place and to perform the comprehensive review of defense needs and programs promised by Secretary Aspin. I pledge to my colleagues that, with Secretary Aspin's "bottom-up review" as a starting point, the House Armed Services Committee will provide an appropriate evidentiary base for more far-reaching decisions next year. For this year, the force structure reductions in the bill only modestly accelerate those already contemplated by the Bush administration.

This bill does not come as far as I would like in adapting the military budget to the needs of the post-cold war era—including our needs at home that require a smaller defense budget and greater social spending. I have already suggested that there is a prima facie case that the defense spending and program envisioned by the Clinton administration is larger than needed to deal with the security environment as it exists today. More detailed consideration and deliberation would be required to convert this prima facie case into one that would be conclusive enough to carry the Congress.

However, the bill does make significant progress that we can accelerate in the future if we can build on this year's consensus. As reported by the committee, it takes some particularly noteworthy steps away from cold war priorities:

It cuts ballistic missile defense to $3 billion—less than one-half the level planned by the Bush administration—and kills Brilliant Pebbles and other space-based systems inconsistent with the ABM treaty;

It bans developed of "mininuke" weapons, and creates a "stockpile stewardship" program to move the defense establishment further toward technical readiness for and political support of a complete nuclear test ban;

It postpones commitment to additional attack submarines until current ones are paid for, fences D–5 funds pending an administration report on options for saving money and reducing warhead levels, and maintains the previous funding cap on the B–2 Program;

It cushions the blow of the defense drawdown, strengthens the civilian economy, and improves the defense industrial base by increased funding for defense conversion, reinvestment, and transition assistance, to a total of $3 billion including dual-use technology investments, a national shipbuilding initiative, and significantly expanded community assistance funding;

It devotes a record $11.2 billion to environmental cleanup and improvement, and does so in a way that will stimulate the development of new technologies and new markets for American firms; and

It reorients civil defense programs toward disaster relief and away from an exclusive focus on nuclear war.

The committee bill also contains other element of sound defense policy:

It puts people first—and protects the quality of our military personnel—by funding a full 2.2 percent military pay raise;

It reallocates operations and maintenance spending to improve force readiness and cut defense waste and overhead;

It rationalizes and improves the affordability of tactical aircraft and other major procurement programs still relevant to the post-cold-war world;

It maintains procurement options and preserves important elements of defense industrial base by low-rate procurement and upgrades of key weapons systems;

It continues to modernize the Guard and Reserve Forces that are an increasingly important element of our overall military capability; and

It establishes a National Commission on Military Roles and Missions, to spur a more significant rationalization of the defense effort.

□ 1920

The bill also contains at least one policy that, while unacceptable to this Member in substantive terms, is not as retrograde as it might have been:

It supports the President and the Joint Chiefs of Staff on the issue of allowing gay and lesbian service members to serve their country.

Finally, without going beyond title X or embarking on comprehensive acquisition reform, the bill would make some important technical changes to defense-specific acquisition statutes. Deputy Secretary of Defense Bill Perry has plainly stated that acquisition reform is essential if we are to have an affordable defense and the strong, dual-use, industrial and technology base that is needed for a strong economy. But, as my colleagues fully recognized, this issue requires the involvement of other committees, especially Small Business and Government Operations. The committee actions should not conflict with the consideration of other procurement reform legislation, notably H.R. 2238, which I have cosponsored with my good friend JOHN CONYERS. Comprehensive acquisition reform legislation is needed, and it continues to be a priority of the committee.

As noted above, I intend that the Committee will scrutinize the Pentagon's bottom-up review and conduct its own independent investigation of how much and what sorts of military forces are needed to keep the United States secure and strong, economically and socially as well as militarily. We will also continue our oversight of the defense establishment, to ensure that defense resources are efficiently managed. As a committee we have already traveled some distance down this path, Mr. Chairman, and finally, while I believe that this bill must be seen purely and simply as a transitional one, it takes needed steps, in my humble opinion, into the future, and I believe that it can be supported by the majority of my colleagues.

With those remarks, Mr. Chairman, I reserve the balance of my time.

Mr. SPENCE. Mr. Chairman, I yield myself such time as I may consume.

(Mr. SPENCE asked and was given permission to revise and extend his remarks.)

Mr. SPENCE. Mr. Chairman, I want to commend the chairman of the full committee, the gentleman from California [Mr. DELLUMS], for the way in which he has conducted our meetings this year in the Committee on Armed Services, and I want to commend the members of the committee for their devotion to the task that we had before us. The chairman has in great detail laid out for us what this bill contains. Therefore, I want to use just a few minutes to give an assessment, in my view, of what is happening to us today from the standpoint of our national defense.

Mr. Chairman, I have served on the House Committee on Armed Services for 23 years. During the period of time I have seen Presidents and Members of

Congress, military leaders, defense budgets, come and go. I have experienced good times and bad, times of war and times of peace. I have experienced cutbacks in our military, and the hollow military. I have seen strong and weak defense budgets. I have seen them all. I have experienced, been involved in, fights over various systems involving ships, aircraft, people in our military.

Since World War II, Mr. Chairman, we have been faced with a worldwide military threat. We have won the cold war. We won it mainly because we won the arms race and the Communist system could simply not compete.

It might seem unusual to some, Mr. Chairman, but I am more concerned today for our security as a nation than ever before. My colleagues might wonder why, and I would like to tell them. Now we face many threats that we have not had before, replacing the ones we have disposed of. As has been mentioned before, CIA Director Woolsey recently said that it is as if we have slain a large dragon and found ourselves in a jungle full of a bewildering variety of very poisonous snakes. But the largest threat in my estimation that we face in the military, Mr. Chairman, is ourselves. I simply believe we are cutting back too much, too fast, too deep.

Mr. Chairman, we never seem to learn the lessons of history. There will be other wars. It is only a matter of when they will come. As long as we have human beings acting like human beings there will be other wars. We do not seem to realize what we are doing, that we are doing irreparable harm, not only to our national security, but to our economic security.

Let me remind my colleagues of what we have already done to our defenses and where we are heading in my estimation. From the standpoint of the defense share of our Federal budget, at the time of the Korean war the Defense budget accounted for 57 percent. In the Vietnam era, 43 percent of our Federal budget was devoted to defense. In 1992, Mr. Chairman, the percentage of our budget devoted to defense was down to 20.7 percent, and, under the Clinton plan, by 1997 it will be on the order of 15 percent. Expressed at a percentage of the gross national product, during the Korean war defense represented 11.9 percent; during Vietnam, 9.1 percent; and under the Bush Presidency, by 1997 it would have been 3.6 percent. Under President Clinton it will be significantly less.

□ 1930

Under President Bush and even under President Reagan, cuts were instituted, proposed, and carried out. The cuts instituted and proposed by President Bush, for instance, amounted to $50 billion even below the already low budget summit levels for defense spending.

The Bush plan cut the number of ships by 177, Air Force wings by 10, Army divisions by 6, from 18 to 12. Secretary Cheney terminated 129 weapons systems. He terminated the production of the advanced cruise missile, reduced warheads on Minuteman missiles from three to one, canceled the MX, small ICBM, and SRAM II programs.

We have closed or realigned 402 bases in the United States and 840 overseas. We cut 16,000 people each month from DOD, 530,000 since 1988. Today we are cutting 250,000 jobs a year from a defense force which includes industrial base and civilian employees totaling approximately 6 million. How much more can we cut?

The cuts proposed by President Clinton, according to CBO estimates, will cost 900,000 defense-related jobs beyond those already resulting from President Bush's cuts. People ask how can it hurt us economically? Almost daily we hear about job losses due to cutbacks in the active duty and reserves, civilian employees, industrial base plan closures, base closures, and realignments.

We hear talk of unemployment, job creation plans, retraining of workers, and conversion, all of these things in an effort to create jobs at the same time we are simultaneously eliminating hundreds of thousands of well-paying, high-skill jobs.

This is only part of the damage. All of these jobs we are cutting out, all of these employees, support families. They pay taxes and buy goods and services from other businesses, enabling them to employ people who support families and pay taxes and buy goods and services from still other families. The chain reaction of job losses due to all these cuts is simply unimaginable.

Under President Clinton's proposed reductions, there will be $127 billion in cuts over the next 4 to 5 years, cuts over twice as much as those proposed by President Bush. It is a political figure. It is not based on any threat assessment. The threat assessment has yet to come forth.

Next year's authorization bill, 1994, amounts to $263.4 billion almost $10 billion lower than fiscal year 1993 spending levels. This comes after military leaders have testified that they have already cut to the bone, that they cannot cut much more.

When reminded that these cuts for next fiscal year represent one-tenth of the cuts we are to expect under the Clinton 5-year proposal, they do not see how they can make up the other nine-tenths. And I do not either. It will be impossible to do responsibly.

We are doing irreparable harm, I repeat, not only to our military security, but to our economic security.

Mr. Chairman, we never seem to learn from history. In 1939, after cutbacks in the face of war clouds gathering in Europe and Asia, our country ranked 17th in the world as a military power, somewhere between Portugal and Bulgaria. Mr. Chairman, let us not arrive at that same place again.

Mr. Chairman, a lot has changed since the House last debated the defense authorization bill. Despite the end of the cold war, U.S. military forces continue to deploy around the world. The situation with Iraq remains tense, North Korea has rattled its nuclear saber unlike any time in recent memory, the United States-led U.N. peacekeeping effort in Somalia has fallen apart, we have begun to deploy personnel into Macedonia, and we have incrementally moved from flying humanitarian relief missions to deploying combat aircraft to provide cover for U.N. forces in Bosnia. This is all in addition to the hundreds of commitments U.S. forces have around the world each day.

On the political front, we have a new President in the White House and a new national security team in the executive branch. Here, on the Armed Services Committee, we have a new chairman and a new ranking Republican, and 20 new members. Despite all of this turbulence I believe the committee has put together a reasonable bill, even a good bill, if one is comfortable with the fact that the debate over the top-line spending figure for next fiscal year has been decided.

In putting this bill together, the chairman consulted with committee Republicans and he allowed the process to work as it should. Although full committee markup of this bill took 15 hours, the spirit in which the debate was conducted is responsible, I believe, for the support committee members gave when it came time to vote to report the bill out of committee. I commend the chairman and I commend all my colleagues on the committee.

Unfortunately, there is much more at stake as the House considers H.R. 2401 than the committee process. The fiscal year 1994 defense top-line figure is almost $17 billion below President Bush's fiscal year 1994 proposed spending figure and is $9 billion below this current fiscal year's defense spending level. This reduction follows on the heels of 8 consecutive years of real decline in defense spending, and represents only a small, first year down payment on a 5-year plan proposed by President Clinton to implement the largest reductions in defense since the end of World War II.

From the perspective of the requirements being placed on the U.S. military, I am not sure that cuts of this magnitude are advisable. Moreover, I am not convinced that the President's plan is politically sustainable with the American people and, therefore, here in Congress.

The foundation of U.S. military capability is the people and the defense infrastructure within which they operate. The skill, dedication, and abilities of the people and the strength of the supporting infrastructure dictate the degree to which U.S. forces are ready and, at the end of the day, capable.

PEOPLE

People represent the heart and soul of both the All-Volunteer Force and the highly skilled work force that equips and sustains this force. The impact that defense cutbacks are having on these people is staggering.

The Clinton administration's Bureau of Labor Statistics recently indicated that 300,000 active duty, Reserve, and civilians have been laid off since 1987, with an additional loss of 700,000 such jobs expected by 1997 under

Clinton-proposed spending levels. We all recall how the financial markets shook back in 1991 when General Motors announced its intention to lay off 75,000 employees over a 4-year period. To put the military cutbacks into some perspective, in that same year, the Army alone laid off 114,000 active duty personnel.

The news on private sector defense related employment is no better. The Bureau of Labor Statistics indicated that 600,000 jobs were lost due to the cutbacks of the late 1980's/early 1990's, with an additional loss of 1.2 million jobs expected under Clinton-proposed spending levels. The projected decline in defense spending and consequent shrinking of the industrial base will result in the lowest level of defense-related purchases of goods and services since before World War II.

INFRASTRUCTURE

During the past 4 years, the Department of Defense and the Base Closure Commission has recommended the closure or alignment of more than 200 domestic and 700 overseas bases. This represents more than 10 percent of the U.S. domestic, and 40 percent of the U.S. overseas basing infrastructure. In just the last 3 years the U.S. military presence in Europe has dropped by 50 percent with additional reductions still being implemented. In the Pacific, the United States is already implementing at least a 25-percent reduction in its presence. There should be no doubt that the military's infrastructure and forward presence is shrinking.

As for the private sector defense infrastructure, or industrial base, the contractions are equally, if not more, severe. Recent analysis indicates that the large defense contractors have reduced their work forces anywhere from 25–35 percent over the past several years with no apparent end to the down-sizing in sight. For every defense-related job that a prime contractor terminates, many additional jobs are lost at the subcontractor and vendor base level. The rapid shrinking of the defense industrial base will likely result in the demise of entire industrial sectors in the years ahead. The loss of defense jobs is significant not only based on their magnitude, but because the employees being laid off are generally were paid and highly skilled. We are losing valuable, and sometimes unique, skills as defense cutbacks result in greater job losses.

The bottom line of the defense debate is not found, however, in the dismal statistics that illustrate the size and severity of defense cutbacks. The bottom line is the impact such cutbacks are having, and will have, on the readiness and the capability of U.S. military forces. It took a generation to build the quality All Volunteer Force of today, and even longer to build the world wide infrastructure that equips and sustains it. In my opinion, the proposed spending cutbacks put much of it at risk.

READINESS AT RISK

Those of us who lived through the defense debates of the 1970's understand what a hollow military is. Although we may define and illustrate it differently, I think we all agree that repeating this painful lesson of our military's history ought to be avoided at all costs. Unfortunately, statistical and anecdotal evidence of a growing readiness problem is already becoming visible.

No single indicator of a readiness problem is, in and of itself, sufficient cause for alarm. However, when these indicators increase, and patterns develop, we need to begin paying attention. I believe that time is fast approaching.

Testimony from all the military services, recently compiled by Senator MCCAIN, illustrates a troubling pattern of readiness shortfalls. For example:

In the Army:

OPTEMPO, or training dollars, per division were cut by 21 percent through the late 1980's.

Total operations and maintenance dollars per soldier have been cut by 36 percent.

There is a $5.8 billion real property maintenance backlog.

Depot maintenance dollars per division have been cut by 38 percent, and in fiscal year 1994 is only funded at 58 percent of the Army's requirement.

The number of recruits with a high school degree who are entering the Army has dropped from 100 to 90 percent in the last year.

In the Marine Corps:

Tours of duty are being extended—deployed times for an average Marine infantry battalion have increased from 43 to 57 percent of the calendar year.

Since the end of the cold war, the percentage of marines deployed overseas at any given time has grown from 22 to 30 percent.

Combat training is underfunded by $7.8 million.

The cost of correcting the growing combat equipment backlog will grow to $165 million in fiscal year 1994.

Reconstitution of the maritime pre-positioning forces used in Desert Storm is still not complete.

Real property maintenance is only being funded at 60 percent of the annual requirement.

Although the numbers vary, the pattern with regards to recruiting, training dollars, the growth in depot maintenance, and real property maintenance backlogs is becoming more prevalent. Similar indicators of a growing readiness problem are also evident in the Navy and the Air Force.

To his credit, Secretary Aspin has recognized the seriousness of the readiness problems the military services are confronting. He recently established the new position of Under Secretary for Personnel and Readiness and has also appointed an independent panel of respected retired senior military officers to monitor the readiness problem.

Unfortunately, the size of President Clinton's proposed defense outlays cuts to be implemented over a short 5-year period leaves Secretary Aspin little or no alternative but to disproportionately cut people and readiness—the only defense accounts that are fast spending enough to provide the requisite savings in such a short period of time.

At a more fundamental level, whether one believes that the Clinton-proposed defense cuts are too little or, like me, too much, everyone ought to be concerned that these cuts were proposed and endorsed without the benefit of any strategic forethought or review. Congress had already endorsed the Clinton defense cuts in the budget resolution before Secretary Aspin had even begun his so-called bottom-up review.

During testimony before the Armed Services Committee earlier this spring, Secretary Aspin responded to the allegation that the President's proposed defense cuts were pulled out of thin air by insisting that, "they are a little better than that, but not much." Recent quotes by unnamed White House officials to the affect that the President's defense cuts were essentially set in stone regardless of what Secretary Aspin's bottom-up review concluded certainly lends weight to accusations that the administration has put the political and budgetary cart before the strategic review and global commitment horse.

While I am worried about the specific implications of larger defense cuts—fewer divisions, carriers, tactical fighter wings, loss of critical job skills, crumbling of the industrial base—at the end of the day, I am most concerned over how these cuts will, in their totality, hurt our military preparedness. I believe that if the Clinton-proposed defense cuts are implemented, this Nation will end up with a dramatically reduced capability to employ military force as a tool to protect and promote U.S. national interests in the future. I can reach no other conclusion in view of the severity of the proposed cuts. This is not acceptable to me.

Mr. DELLUMS. Mr. Chairman, I yield 5 minutes to the distinguished gentlewoman from Colorado [Mrs. SCHROEDER], the chairman of the Subcommittee on Research and Technology.

Mrs. SCHROEDER. Mr. Chairman, I thank the gentleman for yielding. I want to start out by saying I am delighted that I follow the gentleman from South Carolina [Mr. SPENCE], because I must sound a lot more positive than the gentleman is right now.

First of all, it has been a wonderful year to serve under the gentleman from California [Mr. DELLUMS] and our wonderful leader over here, too, Marilyn Elrod. Having a woman head up the staff is terrific. I must say they have a vision, and what this research and this development part has done is crystallize that vision of how we have learned from history and how we make sure we never get caught short again. Because it is saying that as long as the world threat, the mega threat, of a huge giant looking at us seems to be melting down, we still must maintain a strong tech base.

So one of the things that we were tasked to do in the Subcommittee on Research and Development was look at all sorts of dual use programs, look at conversion or diversification programs, look at every innovative thing we could find to rebuild a strong, strong tech base in the civilian sector, so if it ever had to be transferred back to the military sector, we would be ready, we would be in the starting box, and there we would go. And I must say we have been more successful than we ever thought we would be.

First of all, our overall part for research and development is $29.5 billion. But $3 billion-plus of this went for this

diversification program and to rebuild that tech base in the civilian sector so America remains strong and we do not lose these high-technology jobs that are so essential.

We have our technology reinvestment program, the TRP. We just finished that competition that went on nationwide. Guess what? It is so oversubscribed that the chairman and I are getting gray hair over and over again just thinking about where we get enough money to fund it.

We had in the kitty $471 million for this. We had so many proposals pour in, of which the Federal Government only funds half and the private sector funds the other half, but so many proposals came in that it would take $8.3 billion to fund the Government's share. So that means the private sector is willing to be a partner with us and gamble with us. We are so proud to say that we had added $300 million to the President's request on this. But we now see, because so many people want to participate and do this and these proposals are such high quality, that we are short. And if anybody wants to give us more money anywhere, we will take it, because we really think this is America's future. But we are trying very hard to do that.

We have also doubled the request for manufacturing technology so we can upgrade that and lower the cost of systems.

We have emphasized things such as x-ray lithography, advanced electronic packaging materials, flat panel displays, and advanced high performance computing.

We have put in money for new simulators, which will help save us money in training. We have emphasized fuel cells and electronic vehicle technology programs as we look at the dual use things out there. We have studied the medium-launch infrastructure and the competitive single-stage orbit program.

All sorts of environmental technologies are coming forward, which not only the Defense Department needs, but any number of other people need.

We have really tried very hard to make sure this country never gets caught short again. The good news is American ingenuity is out there and wants to play. They want to play. Many CEO's of major corporations told us they did not want to play. But what we found out was the scientists and engineers right below them want to play, want to do it. I really salute our chairman, because he has been doing everything he can to keep that momentum going, because that is how America remains strong.

□ 1940

That is how we do not get caught short again. That is how we maintain our technological edge.

Now, when we look at the other areas, we have tried to cut out redundancy. We have cut back the number of special access programs, as much as we could. We have tried to do as many things as we could in the open and have open discussions, almost more discussions than anybody could survive.

But I think that we have really done a very good job of trying to prepare for a new day. That is not to say it is all perfect. That is not to say that everything here is wonderful. But we have gone a long way.

We have also focused on women's health and research in women's health, because it has been really ignored by the Defense Department for a very long time. And I must say, I think all of these I am very proud of. The part that I am upset about is, I wish we had been able to lift the ban against gays and homosexuals and lesbians. It bothers me very much we could not do that, because I believe in performance-based criteria, period, rather than discrimination on gender or any other reason.

Hopefully, we have gradually moved toward a more moderate position and eventually we will win.

I thank the Chairman, and I encourage every Member to get involved in this.

Mr. Chairman, I am pleased to report to the committee the research and technology portions, including the conversion provisions, of H.R. 2401, the Defense authorization bill.

This has been an unusual year. The end of the cold war and the press of the Federal budget deficit provided a unique opportunity to set a new direction for our Defense budget. The new administration brought a change of philosophies and priorities to the Department of Defense, but the lack of appointments to key policymaking positions made it difficult for the Subcommittee on Research and Technology to probe how the administration views the future.

The committee-reported bill recommends a total of $29.5 billion for research and technology, including $3 billion for conversion activities. In this day of a new world order and a declining budget, we put together this recommendation guided by four principles.

First, we supported a strong conversion program, built on principles and programs developed by the committee last year to assist defense dependent companies, communities, and personnel. We increased funding for the technology reinvestment project [TRP] by $300 million to continue last year's authorized level. Proposals for the TRP were due last month, and nearly 3,000 proposals were received by the Advanced Research Projects Agency [ARPA], seeking over $8.3 billion of Government-matched funding. We expect that many of these proposals will be high quality that merit cost-shared funding under the program.

Second, given the emphasis on dual use technology in conversion and the need to maintain a strong technology base, we strengthened the defense technology base infrastructure. We doubled the request for manufacturing technology, that will help the services attain lower cost systems in the future. We supported electronic and advanced materials, and emphasized x-ray lithography, advanced electronic packaging materials, flat panel displays, and advanced high performance computing.

We strengthened dual-use experimental programs, with emphasis on fuel cells and electric vehicle technology. We supported aerospace technology by funding the National Aerospace Plane, medium launch infrastructure, and began a competitive single-stage-to-orbit program. We emphasized environmental technologies, by increasing support for the Strategic Environmental Research and Development Program [SERDP], and requiring the development of a comprehensive database on environmental cleanup research. We renewed our commitment to health sciences and recognized the growing role of women in the military by creating a Defense Women's Health Research Center.

Third, we took a hard look at major weapon system development, including special access programs. We looked for redundancy in programs and those that did not reflect the post-cold war realities and made appropriate adjustments. We terminated the Navy AFX Program and the Marine Corps advanced short take-off vertical landing aircraft [ASTOVL]. We terminated the Army non-line-of-sight [NLOS] missile because it is unaffordable and its projected capability is provided by other systems. We reduced certain special access programs, especially those with expensive development tails. We intend to take a comprehensive look at special access programs in the near future.

But the subcommittee did not just cut programs. We supported development of new high-velocity, longer range gun technology. We supported simulation technologies, to save training and testing costs. We increased funding for the F–14 strike fighter and supported the F/A–18 E/F.

Fourth, we tried to rationalize ballistic missile defense [BMD]. In cutting BMD by nearly $800 million from the President's budget request, we supported a program that places priority on theater ballistic missile defense, with an emphasis on near-term basic capability in both the upper and lower tier. We supported a treaty-compliant ground-based system. We slowed down national missile defense and followon systems, by reducing the emphasis on space-based systems, and eliminating funding for Brilliant Pebbles.

The committee reported a strong bill that begins to reflect the new realities we face today. I urge my colleagues to support the committee's reported bill.

Mr. DELLUMS. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. SKELTON) having assumed the chair, Mr. REYNOLDS, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2401) to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes, had come to no resolution thereon.

MAKING IN ORDER ON TOMORROW OR ANY DAY THEREAFTER CONSIDERATION OF CONFERENCE REPORT ON H.R. 2493, AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 1994

Mr. FROST. Mr. Speaker, I ask unanimous consent that notwithstanding the provisions of clause 2 of rule XXVIII, it be in order at any time on Thursday, August 5, 1993, or any day thereafter, to consider the conference report, amendments in disagreement, and motions to dispose of amendments in disagreement, to the bill (H.R. 2493) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and related agencies programs, for the fiscal year ending September 30, 1994, and for other purposes, and that the conference report, amendments in disagreement, and motions printed in the joint explanatory statement of the committee of conference to dispose of amendments in disagreement be considered as read when called up for consideration.

The SPEAKER pro tempore (Mr. SKELTON). Is there objection to the request of the gentleman from Texas?

There was no objection.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1994

The SPEAKER pro tempore. Pursuant to House Resolution 233 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2401.

□ 1944

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2401) to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes, with Mr. REYNOLDS in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore (Mr. REYNOLDS). When the Committee of the Whole rose earlier today, the gentleman from California [Mr. DELLUMS] had 45 minutes remaining, and the gentleman from South Carolina [Mr. SPENCE] had 51 minutes remaining in general debate.

The Chair recognizes the gentleman from South Carolina [Mr. SPENCE].

Mr. SPENCE. Mr. Chairman, I yield 2 minutes to the gentleman from Arizona [Mr. STUMP], the ranking member of our Subcommittee on Research and Technology.

Mr. STUMP. Mr. Chairman, I would like to begin by commending the chairwoman of our Research and Technology Subcommittee, my distinguished colleague from Colorado, PAT SCHROEDER, for her leadership in her first year as our chairwoman. I commend her for her leadership on a variety of complex issues that we have addressed this year.

Although the authorization we are recommending for title II is very close to the administration's request, I have three basic concerns regarding our committee action:

First, major reductions in ballistic missile defense and intelligence programs.

Second, the continued charade of what is commonly known as defense conversion.

Third, a continuation of a disturbing trend begun in recent years of providing funding in the Defense authorization bill for nondefense purposes.

The continued proliferation of theater and longer range ballistic missiles calls for U.S. development and deployment of upgraded surveillance systems as well as both theater and national missile defense systems. Yet, over $2 billion have been cut from ballistic missile defense and intelligence programs.

In some instances, funds cut from ballistic missile defense and intelligence are being used to fund worthwhile, yet unrequested defense programs. In other cases, hundreds of millions of dollars are going for ill-defined, questionable purposes that show no direct contribution to national security.

The bill continues a very disturbing trend begun in recent years that results in larger and larger sums of what is being requested, authorized and appropriated for the Department of Defense are going for nondefense purposes.

While some of these programs are well intentioned and serve laudable purposes they should be budgeted and funded under the responsible department or agency, not out of Department of Defense funds. Let me give you just two examples of what I am talking about:

First, over $11 billion are going to be authorized for environmental research and development and cleanup. And that does not include millions of dollars out of the Department of Defense budget being contemplated by this administration for environmental cleanup in Russia. We must be concerned with environmental cleanup and related technologies, but the first concern needs to be the adequate funding of national security programs and maintenance of the defense industrial base.

Second, while the House is appropriating double digit percentage increases in health care funding for the National Institutes of Health we are diverting defense dollars from military programs to add duplicative programs in DOD. Over $200 million was added to the DOD budget by Congress last year for cancer research. Yet, none of the money has been obligated and we are again taking funds from national defense programs in this bill to add additional cancer research funds this year. Of course cancer research is important. But it should be funded in NIH or elsewhere in the Department of Health and Human Services.

The list goes on and on and I have not even yet mentioned the continued charade of defense conversion.

We are three-quarters of the way through the fiscal year, yet less than 15 percent of the $1.8 billion appropriated last year for defense conversion has been obligated. However, in the continued game of who gets to claim the larger number for defense conversion, we are authorizing another $3 billion for defense conversion in this bill.

In addition, approximately $250 million of last year's defense conversion appropriated dollars have been transferred out of DOD. Many more hundreds of millions are destined to be transferred to other departments as this ill-defined process continues.

In conclusion, Mr. Chairman, I believe it is time to refocus upon what it is the Department of Defense is supposed to be about, what we are asking our young men and women to do, and then getting on with providing the proper resources to support our national security. DOD is not the State Department. DOD is not the Agency for International Development. DOD is not the NIH. DOD is not the Department of Energy. And we should not be taking dollars intended for the Nation's security away for other purposes, resulting in underequipping and underpaying our military people so that DOD dollars can be used for all these other purposes.

We need to begin now, before we find ourselves with a Desert One force in a Desert Storm world.

Mr. DELLUMS. Mr. Chairman, I yield 4 minutes to my distinguished colleague, the gentleman from Florida [Mr. HUTTO], chairman of the Subcommittee on Readiness.

Mr. HUTTO. Mr. Chairman, I rise in support of our committee report on the Department of Defense authorization request for fiscal year 1994, particularly the issues of readiness, as I am chairman of that subcommittee.

We received a budget that was largely a layover from the prior administration. In the Readiness Subcommittee we worked hard to fashion a bill that would address some of the longstanding concerns of the committee; and while we are vitally interested in the outcome of the upcoming bottom-up review, we wanted to influence Defense spending in the right direction while we await Secretary Aspin's major overhaul.

Let me address the core of our work on the Readiness Subcommitee—that

is, sustaining readiness of the force. Since the Readiness Subcommittee was created in the 97th Congress, we have worked hard to ensure the safety and effectiveness of our forces on the battlefield, including the means to get them there early and in sufficient numbers. This effort has been manifested time and again through the exemplary performance of our dedicated people as they are called upon to serve our Nation.

While we are the focal point for monitoring the readiness of the force, each subcommittee can take credit for our readiness posture. Construction of facilities, personnel initiatives, and equipment modernization are all essential elements of readiness. When we hear reports that the force is hollow, we track them down.

So far, I can report that our units are up to the job. We all have an obligation to resist crying wolf on the hollow force. Anecdotal tales do not tell the full story. But most agree—from the Secretary of Defense to commanders who testified to us this year to studies by defense think tanks—that the real danger looms that we will lose the edge in the years ahead if we foolishly reduce readiness expenditures that will take years to recover, being penny wise and pound foolish from a budgetary point of view. The general environment for today's drawdown is better than in the 1970's in both materiel and manpower, but we must be cautious about drawing down too much and too quickly and learn from history.

Secretary Aspin has created a readiness task force under the leadership of retired Army Gen. Shy Meyer. While we await the results of this report, I continue to believe that the best monitors of readiness are those unit commanders and the Joint Chiefs of Staff who have their pulse on readiness day-to-day and who ultimately will be responsible for advising the Commander-in-Chief of the readiness of our troops to commit to battle or to any mission they are called upon to do. We need to ensure that these commanders are allowed to tell it like it is when Congress seeks to ascertain our readiness posture.

This year, in many ways, is no different from other years. We have detected softening in some readiness indicators and have acted to correct these deficiencies from maintenance of equipment to operating tempo expenditures. For example:

OPTEMPO accounts have increased by $1.5 billion.

Depot maintenance has been increased by $765 million.

The contributions to the military personnel pay raise is about $250 million.

We need to ensure that support dollars are not reduced disproportionately with force structure. We need to ensure that short-term readiness is balanced with long-term readiness as we look at our investment accounts or R&D and weapons. And we have placed in law a fence around direct readiness money to keep the tip of the spear as sharp as ever.

We continue to fund readiness at the requested level, and I might point out that over the last 10 years, we have funded operation and maintenance and readiness at 96 percent of the budget request.

The funding posture does not mean that the subcommittee advocates waste and inefficiency. We will not allow overhead, bloated bureaucracy, or inefficiency and duplication to be covered by the readiness umbrella. Again this year we have met this headon.

Operation and maintenance funding now constitutes the largest segment of Defense spending at just over $89 billion. Considering inflation and new initiatives, it is still $3.8 billion below the 1993 level. We have increased funding for depot maintenance and direct readiness expenditures.

Mr. Chairman, the bottom line is that the military must live with restraints, and military leaders have to make some hard tradeoffs. We need to focus on unbalanced and inefficient distribution of resources that are caused by a rapid drawdown. We need to assist them in this process. We need to assure them that when tradeoffs are made, they are the right ones. Above all, we must make sure our forces are ready to defend the freedoms we enjoy as Americans.

□ 1950

Mr. SPENCE. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia [Mr. BATEMAN].

Mr. BATEMAN. Mr. Chairman, I thank my distinguished ranking member of the Committee on Armed Services for yielding me the time.

Mr. Chairman, I could spend all of this time just re-echoing the sentiments that have been expressed by the chairman of our full committee this year. Over the past 35 years or so I have presided over dozens of organizations and meetings and certainly participated in literally hundreds of organizational meetings, conferences, conventions, committee meetings, and what have you. Few if any have ever presided over such organizations or meetings or functions with greater aplomb or greater fairness than the chairman of our full committee. I want to, indeed, compliment him, as my colleagues have done, for an inordinately skillful and balanced manner in which he has assumed his new responsibilities as the chairman of the House Committee on Armed Services.

This is not the Defense bill that I would like for our committee to have written and sent to the floor. It is deficient in a number of regards, in my perspective, but given that which we had to work with and the realities of allocations of budget authority, I think we have used the budget authority available to us. There are changes that I would have preferred in the manner in which we used it, but the approach has been sound.

In the crucible of debate on the floor there will be many amendments offered to this bill, and on which I will be drawn into those debates, seeking to defend some of the decisions made, seeking to reverse others. However, the committee has done, I think, a commendable job, given what it had to work with.

In the remaining moments of my time, I would simply like to make this point. We talk about readiness, we talk about hollow forces, we talk about the adequacy of our national defense, and people talk about win-draw, win a war and a half strategies, and all of these scenarios. Little if any do I hear any more that this country, if it has the strength to deter mischievous action on the part of potential aggressors and enemies, we will have done something extraordinarily important for the security of our country and the avoidance of conflict.

I hope as we go through this Congress in this session, and most particularly in the sessions to come, as we debate and argue about the adequacy of our forces and where we should put our always limited defense dollars, that there is still room in the public policy discussion to consider and to put into the equation defense as one of the touchstones of what our national security policy should be.

There are many aspects of what I think deterrence would do for us. There are many particular programs that I would like to talk about. In the interest of time, which has expired, we will leave this for another day.

Again, my congratulations to the chairman, to the ranking member, and to all the members of the committee who have worked very hard to bring this product to the floor.

Mr. DELLUMS. Mr. Chairman, I thank my distinguished colleague for his generous remarks.

I yield 5 minutes to my distinguished colleague, the gentleman from Missouri [Mr. SKELTON], the chairman of the Subcommittee on Military Forces and Personnel of the Committee on Armed Services.

Mr. SKELTON. Mr. Chairman, I appreciate this opportunity to speak as the chairman of the subcommittee.

First, I wish to express my genuine pleasure to the chairman, the gentleman from California, RON DELLUMS, for his strong initial success as chairman of our committee. He has produced a good bill. He has been fair in his deliberations, and he has been even-handed in the debates.

I commend the gentleman on his well-deserved reputation for fairness

and, sir, if I may add a personal note, for the strong backing that he has given this particular Member and subcommittee chairman in the ups and downs that we have experienced in getting this far with this bill.

THOUGHTS ON SUBCOMMITTEE HIGHLIGHTS

Mr. Speaker, on behalf of the Subcommittee on Military Forces and Personnel, I am pleased to report to the House on the personnel portions of H.R. 2401, the Defense authorization bill for fiscal year 1994.

At the outset, I want to commend all the members of the subcommittee—especially the ranking member, the gentleman from Arizona, JON KYL, for their diligence and hard work on the difficult issues before us this year. The subcommittee has held 27 hearings so far this year on force structure, Guard and Reserve effectiveness, the manpower budget request, medical care, professional military education, and homosexuals in the military.

I am especially pleased with action taken on the matter of funding a full 2.2-percent military pay raise. It was done in a responsible fashion by finding offsets in the fiscal year 1994 Defense budget request. Many in the military have come to view a pay raise as symbolic of Congress' support for maintaining an adequate quality of life. This action will help maintain morale of service members in a time of turbulence.

On the issue of DOD policy on homosexuals, the language pertaining to homosexuals in the military is the same provision offered by Senator NUNN and adopted by the Senate Armed Services Committee by a vote of 17–5. The five dissenters were Senators KENNEDY, BINGAMAN, LEVIN, LIEBERMAN, and ROBB.

In my view, the committee elected to support the men and women of the Armed Forces on this issue. The polls I have seen indicate that service members are overwhelmingly in favor of continuing the ban on homosexuals in the military. I am very cautious about any change that threatens the morale and cohesion of our fighting force. We must not risk undermining the best military force in our Nation's history. Second best is not an acceptable option on the battlefield.

Based on the testimony of the Secretary of Defense, the Joint Chiefs, the general counsel of the Department of Defense, and the services' senior enlisted members during our hearings 2 weeks ago, I am convinced that the heart and soul of the pre-January 1993 policy has been preserved. The result is a policy that will change very little of the day-to-day life of service members. The bottom line remains the same as it always has been: Homosexuals will be separated if they demonstrate conduct that is disruptive to morale and unit cohesion.

The language in the committee bill codifies the critical elements of the old policy. The language includes a statement of congressional support for reinstating the practice of asking applicants about their sexual orientation if the Secretary of Defense determines that is necessary in the future.

I know we are all anxious to put this issue behind us and get on with the many other challenges ahead. I believe codification essential if we hope to put this divisive issue behind us. The language approved by the committee allows us to achieve that purpose.

On the issue of end strengths, the committee approved the budget request for active and Reserve component end strengths with the exception of the Coast Guard Selected Reserve, which would be reduced by 2,000 less than the budget proposed. These end-strength figures represent an active duty reduction of 107,700 below fiscal year 1993 levels, and a Reserve reduction of 65,580.

Here are some other highlights. The committee voted to: establish a floor on Army National Guard force structure; increase the President's Selected Reserve call-up authority, based on the Desert Storm experience; direct the Army to develop a plan to test small unit integration; approve the Secretary of Defense's request to repeal the statutory restriction on the assignment of women to combatant vessels; and authorize funding for an improved pharmaceutical benefit for dependents and retirees.

THOUGHTS ON DEFENSE IN GENERAL

Allow me now to address the overall defense picture. Quality people, modern weapons and equipment, tough training, and intelligent, well-educated leaders are the key elements that make for strong, capable, and flexible Armed Forces. The investments of the early 1980's allowed us to raise, equip, train, and maintain military forces second to none.

The following facts should be kept in mind as we go through this examination of the fiscal year 1994 defense bill. First, this is the ninth year of a real decline in defense spending. The current request of $250.7 billion in budget authority is almost $30 billion less than what had been planned for in fiscal year 1994 only 2 years ago.

Second, over 120 major defense programs have been cut since the 1990 budget agreement.

Third, we are reducing the size of our forces and the people who man them. Over the past 3 years the Army has eliminated four active Army divisions, from 18 to 14; the Navy 99 ships, 547 to 448; and the Air Force 20 active duty squadrons, 76 to 56. This year alone, personnel reductions will total 107,000 in the active component and 65,000 in the Reserve component.

Fourth, as many of our colleagues know, bases are being closed or consolidated at home and abroad, over 800 prior to this year. In Europe, our forces have come down from 314,000 in 1990 to 160,000 by the end of this year.

Fifth, the resources freed for other needs in our society have been considerable. Outlays devoted to defense as a percentage of GNP reached 6.5 percent in fiscal year 1986. The figure for fiscal year 1993 is 4.6 percent, a drop of almost 2 percentage points. This is one way to measure the "peace dividend." Another way to measure the peace dividend, the way I measure it, is in the war that was never fought—world war III with the Soviet Union.

As I noted earlier, quality people are an important element, the most crucial element, in any military force. There are signs, however, that we are not maintaining the high standards of the past few years. High school graduates entering the services have dipped from 97 percent at the time of Desert Storm to 94 percent today. The comparable figure in 1980, the low point of the post-Vietnam era, was 68 percent. Similarly, there has been some deterioration in enlistment test results. Today, the figure for those who score in the upper half is 70 percent. During Desert Storm it was 75 percent. In 1980, it was 37 percent. Yes, we are in much better shape than we were in 1980, but there are some warning signs that we would be imprudent to ignore.

Last year, I was concerned about the cuts in the operations and maintenance accounts. These are the accounts that fund the kind of tough operational training our forces need if they are to maintain their readiness. I remain concerned but am reassured to some extent that measures are being taken in the fiscal year 1994 budget to protect direct readiness of units by the reallocation of funds to increase operating tempo and training for operational units. We will have to monitor this matter closely year by year.

My real concern relates to the size of the Defense budget and the size of the force structure in future years. We shall soon see what comes out of Secretary Aspin's "Bottom Up Review." I understand the desire of some to shift resources from defense to domestic needs. My fear is that those who would urge accelerated cuts in defense spending and force structure will lead us to the same place we have found ourselves on past occasions in our history—with military forces ill-prepared to fight. This was the case in Korea in the summer of 1950 and in the deserts of Iran in the spring of 1980.

We need not repeat these sad experiences yet again in some other distant location, and I will work to the best of my ability to ensure that, at least in this era, past is not prologue. Americans want a reduction in defense spending but they don't want to undo the great investments in time, effort, and money that have resulted in the finest military force in our Nation's history.

It is far better to maintain a larger military force than a smaller one if the

larger force reduces the likelihood the Nation will have to be used in a general war. George Washington was right: "To be prepared for war is one of the most effectual means of preserving peace." And in the long run cheaper, too.

Earlier this year, in a speech at West Point, President Clinton warned about cutting defense too much. "The budget cuts that have come at the end of the cold war were necessary, even welcome," he said. "But we must be mindful," he continued, "that there is a limit beyond which we must not go." In a press interview that same day the President described his intent as sending "a cautionary note to the House and Senate." He continued, "I think we have cut all we should right now." I believe the President is right on target.

Despite the cuts in both spending and force structure, I shall vote for this measure because I believe it maintains the strong, capable, and flexible Armed Forces for the 1990's and beyond that this Nation requires. The committee members have done their homework on the bill before you today, and I request that the House take great care in its efforts to refashion the committee's work.

I close by expressing my genuine pleasure with the work of the new committee chairman, the new ranking member, and the committee staff for the fine work done on the fiscal year 1994 defense bill. This committee continues to do first class work in a variety of important defense issues.

The new chairman has led the committee in a manner that does credit to his well-deserved reputation for fairness. As did his predecessor, he has attempted to raise the sights of committee members from the line-item trees to the policy forest. He is having a fair measure of success. While there are still disagreements on line items and policies among the members, and between the Congress and the administration, the differences are to a greater degree based on well-articulated policy choices. This is how the work on national defense should be done, especially in the years ahead as the choices become tougher.

Mr. MCCURDY. Mr. Chairman, I am pleased to rise in support of H.R. 2401, the National Defense Authorization Act for fiscal year 1994. As chairman of the Subcommittee on Military Installations and Facilities, it is my pleasure to report to the House on division B which would authorize $11.5 billion for military construction, family housing, reserve components, and for other purposes. I would like to take this opportunity to thank the ranking member, Mr. HUNTER, and the other members of the subcommittee for their efforts on this section of the bill.

This subcommittee has a wide range of jurisdiction, from military construction and environmental cleanup to this Nation's burdensharing initiatives. I am pleased that we were able in my first year as chair of this subcommittee to make significant progress in a number of areas within our jurisdiction.

Our subcommittee held extensive hearings and from those hearings we have developed a strong foundation from which we produced this portion of the authorization bill.

The important initiatives in this year's bill include calling upon the Secretary of Defense to submit to the Congress a strategic basing plan in order that future investment in military construction can be targeted to installations and locations that have long-term, strategic importance to the United States. This plan is imperative if the taxpayer is to support future military infrastructure development overseas and our forces are to remain a viable presence in other parts of the world.

Given the importance of the All-Volunteer Force and the need to provide service personnel and their families a decent living environment, the committee has fully funded quality of life projects, including full authorization of the family housing construction request with the addition of $68.9 million for adequately maintaining family housing units worldwide. We have also authorized several medical facilities and child development centers to better meet the health and educational needs of our Armed Forces personnel and their families.

This committee has also authorized several important environmental initiatives, including the addition of $606 million to the base closure accounts to implement expedited transfer from properties for civilian reuse. At the committee's request, through an interagency transfer of funds, we have established the mechanism for formation of field teams consisting of EPA and DOD personnel at closing bases to help expedite the cleanup process. The committee has also mandated reporting requirements in order to facilitate better tracking of progress of site remediation and expenditure of funds to give Congress the ability to provide more effective oversight. The committee has also provided additional funding for formerly used defense sites to identify and remediate additional hazardous waste problems.

Many of these initiatives that the committee has favorably acted upon were part of the President's July 2 announcement on revitalizing base closure communities. The committee felt that these initiatives should be acted upon in an expeditious manner in order to assist communities who have been adversely affected by the last three rounds of base closures. At the same time, we have also fully authorized the administration's request for military construction associated with base closures and realignments from the base closure rounds in 1988, 1991, and 1993. We have also cautioned the Department of Defense that these base closure accounts should not be viewed as a convenient fallback for projects that do not meet the necessary requirements in the regular military construction budgeting process.

In the military construction area, the committee has provided over $3.2 billion for the active forces and $639 million for guard and reserve facilities, with additional planning and design moneys to properly facilitate important congressional initiatives. We have authorized most of the administration's request and have deleted those projects which had questionable requirements.

This year has been unique in that the Subcommittee on Military Construction of the House Appropriations Committee has already passed its bill on the floor. In working closely with Chairman HEFNER, we have attempted to craft a bill which shows some parallels as we both prepare for conference.

In the burdensharing arena, the committee has fully funded the NATO Infrastructure Fund at $240 million while supporting the ongoing reform initiatives within NATO to ensure proper expenditure of cooperative funds. These reform initiatives include United States endorsement of any approved projects and projects slated for construction in the United States.

Mr. Chairman, I would like to take this opportunity to thank all of those Members with whom I have worked and believe that our section of the bill makes a positive contribution to our national defense. I urge the adoption of the bill by the House.

□ 2000

Mr. SPENCE. Mr. Chairman, I yield 4 minutes to the gentleman from California [Mr. HUNTER], the ranking member on our Subcommittee on Military Installations and Facilities.

Mr. HUNTER. Mr. Chairman, this committee has a tradition of comity and respect and decorum, and I want to, as other Members have done, commend our chairman, our new chairman for continuing that tradition, and for earning the respect of all of the Members of the Republican side of the aisle. And I also want to thank our great ranking member, the gentleman from South Carolina [Mr. SPENCE] for his leadership of the Republican side of the aisle on this committee. I have often thought that the Committee on Armed Services is and necessarily should be one of the most bipartisan, nonpartisan committees in the House, and I think we have worked many issues in that tradition in this particular markup.

As ranking member of the Committee on Military Facilities and Installations, I also want to thank all of our great staff people who put together an expeditious markup in some difficult circumstances of short time and a lot of pressure and a varied schedule. All of our staff members did marvelous work, and I want to thank all of the Members, Republican and Democrat on the subcommittee, and commend the gentleman from Oklahoma [Mr. MCCURDY] our chairman, for his good leadership.

Let me talk about just a couple of things that we have done in this military construction area that I think Members are interested in.

First, it is our responsibility to fund the implementation of the BRAC process. That is the base realignment and closure process, and in this bill we have $3.5 billion authorized for BRAC accounts.

I also want every one to know that language is included in the bill that requires the department to provide an analysis of how the additional $500 million for expedited cleanup of these bases will be spent. I think it is important that we get on with this process.

The realignment and closure process has been difficult for our Members, for the communities they represent, and it is now time to move along so that those communities can take those new uses for their bases that they will be involved with in the next several years, plan their strategies, make their plans, and get on with the new and different manner of using the properties that are going to be closed by the DOD.

Finally, we have a provision that was included here that allows the Secretary of Defense to transfer property located at a military base slated to be closed to any person who agrees to conduct the necessary cleanup, and that gives to DOD ability to negotiate and to look for and to make transitions with people who will say, for example, I want to use that base for an industrial park, and I am willing to pay for cleanup. That will allow us to take that base off the rolls without spending taxpayer dollars in cleaning up that property, and I think it is a good, solid step toward operating this BRAC process like a business. So I think that is a good provision.

Also we have funded quality-of-life programs in this bill. We have $68.9 million to maintain existing family housing. That is an important aspect of quality of life for our military families. And we have done that.

Finally, I think Members will be pleased to know that we have lifted the moratorium on construction that has been in place, and many bases have a severe backlog of needed construction, and this bill begins to address this backlog.

Having said that, Mr. Chairman, I want to reiterate the statements of my ranking members and the Members on both sides of the aisle on this committee that I think overall this funding level, while not serious this year, is the first in a 5-year backsliding or downsliding of military readiness. Because of that, I think that this Congress needs to address the new dangers that are manifest in this post-cold war world, and particularly the emergence of the missile age, which I think this committee has not adequately addressed with capability to defend against missile attacks. And I will be talking more about that during the amendment process.

Again I thank the gentleman for yielding the time.

Mr. DELLUMS. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Virginia [Mr. SISISKY] who chairs the Subcommittee on Oversight and Investigations.

Mr. SISISKY. Mr. Chairman, I thank the gentleman for yielding the time and congratulate him on his success on his first markup of the bill under his chairmanship. He knows how I feel about him, and I am sure he knows how other members of the committee feel. And I also thank the gentleman from South Carolina [Mr. SPENCE] the ranking member, and of course, the gentleman from Utah [Mr. HANSEN], the ranking member of my subcommittee.

Mr. Chairman, in January I took over as chairman of the Oversight and -Investigations Subcommittee. Most of our work is related to investigations, but we handle an assortment of legislation as well. Let me just single out a handful of items in this bill.

First, the bill contains $1.1 billion for the military role in the drug interdiction effort, essentially the same as we have spent on this for the 2 previous years. We have changed the request, however, to provide $40 million for the training and other support of law enforcement officers, mainly in State and local governments. The Pentagon had requested a mere $4.5 million.

Second, we include language Defense Secretary Les Aspin requested to carry out the reorganization of OSD. Dozens of officials report to the Secretary. The span of control is much too great. Secretary Aspin wishes to create a more pyramidal structure. His request—which we have approved—would increase the number of Under Secretaries from 2 to 4 and reduce the number of Assistant Secretaries from 12 to 10. Effectively, under the new structure, Assistant Secretaries will no longer report to the Defense Secretary; they will report to the four Under Secretaries, who will report to the Defense Secretary.

Third, we have rewritten the civil defense act in light of the end of the cold war and the poor performance of FEMA in Hurricane Andrew. The civil defense law still says FEMA must use those funds principally with nuclear attack in mind. We have rewritten the law to tell FEMA to adopt the all-hazards philosophy. In other words, FEMA is being told to use civil defense funds to prepare for all kinds of disasters—ranging from hurricanes and floods to toxic spills and terrorists bombings. One of the problems we found after Hurricane Andrew was that FEMA withheld some of its communications gear and other equipment because it felt they had to be kept free in case of a nuclear attack. Under this revision, that won't happen again.

Fourth, we have been struggling with the Pentagon's proposals called global cooperative initiatives. This package got tied up in a dispute between the State and Defense Departments. As a result, we simply inserted a three-line placeholder in the committee mark. We have now got the administration proposal and are working on language in cooperation with the Foreign Affairs Committee.

There is one other provision I would like to highlight for the Members. This spring, the Military Acquisition Subcommittee and the Oversight and Investigations Subcommittee held joint hearings on the C–17 transport aircraft. This program suffers multiple and serious problems. While those problems are solvable, they are not yet solved. What the committee has done is place C–17 money into an intertheater airlift account. This encourages the administration in its review of alternatives to consider all its options, including a more sensible structure of the C–17 program.

Finally, let me address an issue that has led to some confusion—how we dealt with so-called section 800 acquisition reform. The committee, and indeed Congress, has been trying to reform the acquisition system for decades. But this isn't just an armed services issue; it requires the involvement of other committees, notably Small Business—on which I also sit—and Government Operations. For that reason, let me make clear what we did and did not do. We did propose several largely technical amendments to defense-specific statutes. We also addressed commercial products and a simplified acquisition threshold, applying the new threshold only to defense contracts and only in very specific circumstances. We did not embark on comprehensive reform or go beyond title 10. Simply put, we made a downpayment on acquisition reform in a way that won't conflict with the consideration of other legislation. We will move forward on acquisition reform—but we will do so in a structured and a comprehensive manner, not lurching about through the statute books.

Further steps will seek to create a simpler and more flexible acquisition system, better managed by fewer people using fewer tax dollars, and one that will maintain the department's technological edge.

Mr. Chairman, I encourage all Members to support the committee bill. It's very definitely a transition budget, but it takes us the first step into the post-cold war world. And that's what we need right now.

□ 2010

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from Utah [Mr. HANSEN], the ranking member of our Subcommittee on Oversight and Investigations.

Mr. HANSEN. Mr. Chairman, I join the gentleman from Virginia [Mr. SISISKY] in presenting to the House those portions of the defense authorization bill reported by the Oversight and Investigations Subcommittee.

Mr. SISISKY has already covered most of the highlights and I won't duplicate his explanations, but I want to briefly comment on a handful of the items in this bill.

First is an amendment I offered dealing with the conditions under which we commit United States troops abroad to be placed under the command of a foreign national as was just done in Somalia and Macedonia.

While much attention has been given to the debate over whether and when United States forces should be used to conduct humanitarian missions around the world, not much attention has been given to the question of how—that is, will American troops deployed to quell unrest around the world remain under United States control, or will they be allowed to be commanded by a foreign national such as what we have done in Somalia and Macedonia?

There are those who believe that the United States should almost never allow U.S. troops to be placed under foreign control. My own view is that it should be the exception rather than the rule. And, in those instances where it is necessary to place the fate of our young men and women in the hands of a foreign official, I believe that the President and the Secretary of Defense have an obligation to provide Congress and the American people with a detailed justification of why such a command and control arrangement is in the national interest.

For this reason, I offered an amendment that was accepted by the committee requiring that Congress be provided with the basic information associated with any such proposed deployments of U.S. forces. This amendment is not intended to block or determine the placement of U.S. forces under foreign command.

Instead, it is intended to allow Congress to understand what is being proposed and reach our own conclusions on the wisdom of placing the fate of young Americans in the hands of the United Nations.

Mr. Chairman, this is not an abstract issue. Earlier this year, prior to the hand off to the U.N. of the operation in Somalia, the ranking Republican of the House Armed Services Committee, Mr. SPENCE, wrote to the Secretary of Defense asking for basic information on the command and control arrangements being contemplated for United States forces once the U.N. took over the operation.

Six months later and several months after the placement of United States forces under the command of a Turkish general, Mr. SPENCE has yet to receive a response to this legitimate request of the Department of Defense.

I should state that my amendment was not prompted solely by this incident, but I mention it to underscore the need to have a formal mechanism by which Congress receives crucial information on such deployments.

The second item I would mention is the provision dealing with the Central Imagery Office or CIO. This amendment results from our discussions with the House Intelligence Committee over action taken in their bill to direct the elimination of the CIO and shift its functions to the Defense Intelligence Agency.

As the chair and ranking member on the subcommittee with oversight over DOD organization, Mr. SISISKY and I took a close look at this issue and believe the action taken by our sister committee is premature and deserves more study. Therefore, our provision places any reorganization plan on hold until the Secretary of Defense and the Director of CIA can take a closer look at the issue and give us some recommendations on what is the best thing to do.

Finally, I want to briefly mention the concerns I have with the open-ended authorization for the DOD to conduct peacekeeping military operations through the Global Cooperative Funding account contained in this bill. This topic is the subject of nine separate amendments filed with the Rules Committee and likely to receive further debate as we proceed with consideration of the bill. I will reserve my comments on this topic for a later time when we can cover it with the depth and attention it deserves.

In closing, let me once again thank Mr. SISISKY and Mr. DELLUMS for their cooperation and fair treatment during the markup process.

Mr. Chairman, the Defense budget is in a free-fall. What we see today in H.R. 2401 is the beginning installment on what I genuinely fear to be the gutting of America's defense.

After every major armed conflict of this century, we have rushed headlong to disarm ourselves with harmful, even deadly consequences.

World War I was supposed to be the "war to end all wars," but a few short years later we found ourselves engaged in a monumental struggle to wage battles in two hemispheres. V–J Day was still a recent memory when the Korean conflict arose. The tragedy of Vietnam is forever imprinted in our hearts and minds.

Now, on the heels of Desert Storm, with United States troops on the ground in Macedonia and in Somalia, and likely to be deployed to any number of hot spots now heating up in the world, we apparently are set to go down the same time-worn path of tearing down our defense, gutting our readiness in the overly optimistic hope and prayer that we will not need to send our troops into harm's way again.

Well, Mr. Chairman, as a member of the Armed Services Committee and as a newly appointed member to the Intelligence Committee, I believe we cannot continue down this slippery slope of huge defense cuts without stumbling. The chinks in our armour are already beginning to appear.

Some of the recent signs of the beginning of the deterioration of our military forces are already here. One of the Members put together a very interesting report showing where they felt we had troubles with the Marine Corps, the Army, and Navy, and the Air Force, and I would commend that to many of our friends for their reading.

Former Secretary of Defense, Dick Cheney, one of the most competent and respected Defense officials in recent memory, has had this to say about the Clinton Defense cut plan:

> The cuts proposed by President Clinton are dangerous. Could we win another Desert Storm after them? I think so. But I don't think we could do it as effectively as we did in 1990 and 1991. The cost and casualties would be higher. It would take us longer to respond to a crisis and to finish the job.
>
> We saw in 1980 the problems that arise when the U.S. doesn't maintain ready forces in peacetime. Remember "Desert one," when we weren't able to mount a successful rescue operation to get our hostages out of the Embassy in Tehran? We had equipment failures, we had an accident when two aircraft collided in the desert, eight people were killed, and the whole mission had to be aborted. Now compare this with Desert Shield in 1990. From the time the President said, "go," it took us only 14 hours to send the First Tactical Fighter Wing from Langely AFB in Virginia to Saudi Arabia. Ten years before, in 1980, that same unit flunked its operational readiness exam; 47 out of the 72 aircraft were grounded for lack of spare parts.
>
> That's what will happen again if the Clinton Defense cuts are ultimately approved. We'll end up with a force that's not ready to deploy on short notice, that's not capable of carrying out the missions we assign it. It's the kind of force that would cause us to suffer much higher casualties than necessary in the next conflict because we didn't maintain adequate peacetime capability. That's the real danger of the Clinton budget cuts.

Mr. Chairman, can the Defense budget be reduced in light of the end of the cold war? Yes, and the Bush/Cheney plan of a 25-percent reduction over 5 years would have done that while still preserving our readiness.

We are now spending less than 3.5 percent of our GNP on defense. That is the lowest it has been since before World War II.

Contrary to a lot of popular perceptions reinforced by the media, defense spending has been declining since 1985, and is now beginning a free-fall.

We all witnessed during the budget debates earlier this year. That Defense has been targeted by this administration as the bill payer. When additional money was needed to cover the administration's ambitious social spending agenda, where was the first area it looked? Defense; cuts were forced. The services were forced to cut into training money, money for CHAMPUS health care, and other things, just to come up with the money for the budget drill.

I did not perceive a reasoned analysis to justify additional Defense cuts. Rather, Defense was ordered to come up with the money without regard for the effect the cuts would have on readiness or our troops.

What I believe is being proposed in this bill is a first installment, is an additional $126 billion reduction over and above the Bush-Cheney reductions over 5 years. Clinton would cut $126 billion, or over double what he said during his campaign.

The President talks about creating jobs with his tax and spend program. But I hope he realizes that his additional Defense cuts are projected to cost, conservatively, over 2 million direct jobs and probably just as many indirect jobs.

I know that for a fact. My own State and district are reeling from the slash Defense policies of this administration, everything from base closures to program terminations, and more yet on the horizon.

Mr. Chairman, I would urge us to be careful as we go into this and that we look at it very carefully, and in the next time that we have this debate, I hope when we get into amendments that we can look at some of these particular areas.

I thank the gentleman for the time.

Mr. DELLUMS. Mr. Chairman, I yield 4 minutes to the distinguished gentlewoman from Tennessee [Mrs. LLOYD], a senior member of the committee.

Mr. LLOYD. Mr. Chairman, I rise in strong support of H.R. 2401, the fiscal year 1994 Defense authorization bill. We on the Armed Services Committee have put together a responsible bill that meets our Nation's evolving defense challenges. Under the outstanding and very fair leadership of our new chairman, the committee carefully worked through the issues, sought consensus and reported out a measure that this Congress can be proud of and, I would hope, support.

I would like to point out some lesser known features of this bill that I feel contribute to its overall strength and quality.

As my colleagues know, nuclear weapons research and development has been sharply reduced in recent years. While our reliance on our arsenal and the stockpile itself has shrunk, the need to maintain the capabilities to service, dismantle and perhaps produce nuclear weapons remains constant. Our bill encourages technology transfer as a means to maintain critical skills and capabilities. The stockpile stewardship program established in the bill is excellent example of wise foresight to preserve needed core intellectual and technical competencies.

The committee's obligation to environmental restoration and waste management continues in this bill. Many of our colleagues in this body have expressed concerns over the progress of the Department of Energy's environmental cleanup efforts. The committee shares these concerns and has directed DOE to prepare an annual report on the costs and schedules for cleanup activities. This should give the committee the guidance it needs to respond to our cleanup needs wisely and efficiently.

We have also chosen to continue the valuable scholarship and fellowship program to support and solicit new talent in the environmental cleanup arena.

The committee also recommends starting a pilot program to decontaminate and recycle metals. Mr. Chairman, DOE and DOD are in possession of vast amounts of valuable materials, equipment and precious metals that are being unwisely stored or disposed. In this era of recycling, it should be the intent of the Department to explore the opportunities available to recycle uncontaminated and decontaminated materials and equipment.

I am also pleased to report that provisions from the Defense Women's Health Improvement Act authorizing primary and preventive care services targeted at women have been incorporated into this bill. The bill includes funding to establish a Defense Women's Health Research Center as well as reauthorizes the Army's Breast Cancer Research Program.

Service in the military subjects women to unique health conditions that current military health care services must address. The provisions which Congresswoman SCHROEDER and I have worked on correct that deficiency and honor the women who serve and exemplifies our commitment to their health and well-being.

Mr. Chairman, we will no doubt have a parade of amendments to this legislation. I want to caution Members to think very carefully before voting to cut Defense spending any more than the committee has already. While it is politically appealing to cut spending, careless reductions to our military directly affect the first class men and women who serve. Please keep that in mind.

Mr. Chairman, I urge support for H.R. 2401.

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from Arizona [Mr. KYL], the ranking member of the Subcommittee on Military Forces and Personnel.

□ 2020

Mr. KYL. Mr. Chairman, as ranking Republican on the Military Forces and Personnel Subcommittee, I can assure my colleagues that the personnel-related provisions of H.R. 2401 reflect the bipartisan consensus of the committee.

I must compliment Mr. SKELTON, the subcommittee chairman, on the open and truly bipartisan manner in which he conducted business. It was that very openness and willingness to deal forthrightly that enabled us to resolve so many tough issues. As a result of this cooperation in the Personnel Subcommittee and to move the bill to the floor, I voted to report H.R. 2401 out of committee.

Let me briefly review some of the measures which I believe make the personnel provisions of H.R. 2401 particularly noteworthy.

Pay raise: In authorizing a full 2.2 percent pay raise, we put politics aside and did the right thing for the men and women of the Armed Forces. We have the highest quality force this Nation has ever had. To maintain that quality, it was essential to provide an increase in pay to at least keep pace with inflation. The 2.2 percent raise just barely does that. Both IKE SKELTON and I would have liked to have done more; but we can do no less.

Women in the military: The bill includes several provisions which recognize the significant role of women in the military today. While I have personal reservations about expanding the combat role of women, it was the committee's will to allow women to serve on combat ships. Similarly, in provisions that had my strongest support, the committee mandated that men and women be held to the same performance standards, and that no changes be implemented in current restrictions against women serving in ground combat positions until Congress had an opportunity to review the justification for change.

Policy on homosexuals: After 5 days of full and open hearings, extensive debate by the subcommittee and full committee, and an overwhelming vote to reject lifting the ban on homosexuals in the military, we codified a policy that preserves military unit cohesion, readiness and capability, and subordinates individual and group desires to those ends. Therefore, the bill carries forward the longstanding principle of previous DOD policy that homosexuality is incompatible with military service, and requires that service members who engage in homosexual conduct be separated from the military. In short, the bill—using the same language adopted by the Senate—maintains the ban on homosexuals in the military. Moreover, it rejects any effort to create limited zones of privacy for homosexuals, and imposes no new restrictions on commanders, NCO's and military authorities who are charged with maintaining morale, good order and discipline in their units.

Turning from the personnel issues, I want to mention some other aspects of H.R. 2401, which, unlike the personnel provisions, do give me great concern.

Mr. Chairman, there is a growing trend, evident in H.R. 2401, to blur and distort the roles and missions of the Department of Defense in an unhealthy way. By creating ways to transfer defense dollars to other Federal agencies and to require DOD to assume requirements for matters that previously were the responsibility of other departments, Congress will ultimately undermine military readiness—especially as we simultaneously reduce Defense spending far too rapidly. I will say more on this later in the debate. My point now is simply to raise this most serious issue.

A second issue that concerns me is the committee's position regarding ballistic missile defense, funding it

over $600 million below Bill Clinton's request. Although the full committee increased the authorization by approximately $200 million above the amount sought by the subcommittee, the program as established under the Missile Defense Act is in shreds. Yet, our intelligence establishment has made it clear that missile defense remains of critical importance to national security. I do not believe that the amounts this committee authorized for the program truly recognizes that importance. A third area of concern is our nuclear program. We will no longer conduct underground tests, because, opponents say, we can simulate through computer analysis and other means what we used to do with tests. Now, with testing stopped, opponents argue that its no longer necessary to allocate much money to the program because we don't have to pay for tests. Its a circular argument that risks our nuclear deterrent. How did we get to the point where our most dangerous and sophisticated weapons receive less attention than the most mundane weapon?

Mr. Chairman, on the whole, H.R. 2401 is unsupportable. In my view, it sets us on a course that risks disaster, another hollow force in the short run and an inability to meet national defense missions in the long run.

Unless substantially changed, I anticipate that I will not vote to support the bill.

I thank the gentleman for the time.

Mr. DELLUMS. Mr. Chairman, I yield 3 minutes to my distinguished colleague, the gentleman from Virginia [Mr. PICKETT].

Mr. PICKETT. I thank our chairman for yielding time to me.

Mr. Chairman, during its consideration of the President's defense budget request, the Committee on Armed Services, and specifically, the Readiness Subcommittee, conducted a series of hearings on military industrial depots. To begin with, I would like to compliment the Readiness Subcommittee chairman, the gentleman from Florida [Mr. HUTTO] for providing the leadership necessary to take this important issue head on, and for his fairness for allowing all those interested to participate.

One of the primary objectives of these hearings was to try to establish the extent to which the depot-level workload of our military departments should be kept in house and what should be accomplished by the private sector. For several years, the Congress has been attempting to formally establish a level of maintenance and repair that should always be accomplished by the Government and not be offered for competition with the private sector. This basic level, or core, is necessary to maintain the ability of the military to keep the in-house capability to maintain critical inventory items that support the war fighting requirements of our Nation.

There is no doubt the production of military equipment is nearly nonexistent and the aerospace industry is fighting for survival. There are those that say we must maintain our defense contractor industrial base because when these companies shut their doors, we cannot reopen them quickly or cheaply. We cannot just put our work force on hold with the hope that one day they will be called—when they are gone, so are the critical skills that took years to build and maintain.

The same can be said for our military depots. It is a fact that the military is downsizing at near record levels. Men and equipment are being reduced at a rapid pace. One of the key elements of this drawdown is that we must accomplish the reductions with a keen eye on what will be left. We must be certain the support structure of the future will continue to keep our remaining forces at the high level of readiness we have come to demand and expect.

In the hearings before the subcommittee, many of the representatives of private industry stated they could and should perform more of the depot maintenance—that they need this work to continue to maintain their capability. There have been several recent articles in the press reporting the military services may want to put all of their depot-level maintenance in the private sector. I believe this would be a serious mistake. I am concerned that the loss of critical skills within the services maintenance and repair depots could affect the ability to surge in critical situations and also could eventually lead to the total loss of specific capabilities which could allow private contractors to establish prices without competition.

Mr. Chairman, I believe the depot maintenance task force, mandated in the committee bill, will be a significant first step in resolving these issues. It is my belief that a task force with representation from all sides is the only way we are to determine the correct mix of public and private depot workload. The ability of this Nation to respond to a national emergency, and respond as least as well as we did in Desert Storm, must be maintained.

Mr. SPENCE. Mr. Chairman, I yield 4 minutes to the gentleman from Pennsylvania [Mr. WELDON].

Mr. WELDON. Mr. Chairman, I rise in support of the committee chairman, who in his first year as chairman did, I think, a fantastic job in keeping a process moving very quickly and very open and very fair, working with our ranking Republican, the gentleman from South Carolina [Mr. SPENCE] who did a fine job of keeping all of our Republicans involved in the process and able to contribute to the success of this piece of legislation. The marathon markup that we held for almost 15 hours, and yet coming out of that markup with a sense of good feeling among the Members, is indicative of the kind of atmosphere both of those gentlemen created in this process.

I think we did make some improvements in the process. I applaud the subcommittee chairwoman, the gentlewoman from Colorado [Mrs. SCHROEDER] and our ranking member, the gentleman from Arizona [BOB STUMP] for allowing us to make some changes in the defense conversion section of the bill that I think will be good.

We in fact adopted some defense acquisition process reforms that the minority suggested.

□ 2030

We began a process of removing some of the bureaucracy that had been inserted in last year's bill when the administration was not so quick to respond to the defense conversion initiative. They were good changes and positive ones.

There were many other positive changes. I think what we did with the C–17 program was very positive and I support that, as well as what the gentleman from Virginia [Mr. SISISKY] and the gentleman from Utah [Mr. HANSEN] did in terms of reforming FEMA and the way FEMA operates and the way it interacts with the military, all positive changes.

But let me say, Mr. Chairman, I think we did the best we could in a very difficult, if not an impossible situation. That is partly because of the perception that is out there in America about defense spending. The perception is that we are spending more and more of our Federal money on the military. I think it is very important to keep things in perspective and perhaps a comparison that I use frequently back in my district.

Compare defense spending in two ways. One as a percentage of GNP, gross national product, and the other as a percentage of total Federal outlays. In the 1960's when John Kennedy was President at a time of relative peace after the Korean war, but before the Vietnam war, we were spending over 9 percent of our GNP on the military. We were spending over 50 cents of every Federal dollar on defense. That is in the 1960's in peacetime.

With this bill that we are going to pass and enact this year, we will spend about 3½ percent of our GNP of the country and about 17 cents of every Federal dollar.

So in terms as a percentage of total Federal outlays that come out of the Federal Government, we in fact are seeing a defense that is shrinking.

Let me say to my colleagues, I do not necessarily disagree with the need to cut back the military. I have supported the chairman on main programs like the B–2 and cutting back on two land-based missile systems; but the key thing that I think put us at a disadvantage this year is that we were making

these cuts in a vacuum. We were not making them based upon a threat assessment.

It was a terrible disadvantage to us because our colleagues in this body expect us to go through the world troublespots and then come back and make recommendations based upon those threats.

It was Senator SAM NUNN who said, "No one knows where these cuts are going to come from. The numbers have been pulled out of the air." That is the reality of the situation and we had to deal with it and it was a very difficult task. We were handed a budget number and we had to deal with it.

In fact, Mr. Chairman, I am going to make a prediction as we begin the process of working on this bill now and in September. My prediction is that defense spending over the next 5 years is going to undo and undermine the Clinton economic plan. I say that because if you look at the Clinton economic plan, the largest and most substantive cuts are in the military. In fact, they total between $126 billion and $128 billion.

Now, I am one who believes we can make some additional cuts, but if you look at the comments that are being put forth by the Joint Chiefs of Staff that are on the record, if you look at the comments of the Defense Appropriations chairman, the gentleman from Pennsylvania [Mr. MURTHA], who is saying that we cannot live with these cuts in the outyears.

My prediction is that the defense cut levels that are predicted in the Clinton plan are not going to be able to be realized. Therefore, the Clinton budget is going to fall apart based upon the cuts not being achievable in the military segment.

Key Democrats, the Joint Chiefs and key Republicans are saying this. This is going to be our real challenge, a potential hollow force, unable to meet the needs that we have around the world and a substantial job loss.

There are two reports that I want to enter into the RECORD. One is done by the Congressional Budget Office and one by the Office of Technology Assessment, both this year, that project between 1.5 million and 2.8 million jobs over 5 years if these defense cuts are made. We are not going to be able to live with that as a House and a Senate, and I do not think the administration is, either.

Therefore, my key prediction is that the defense level that we are currently projecting in the Clinton plan over the next 5 years in fact will be the one straw that breaks the back of that plan and causes that economic plan to fall apart.

I thank the distinguished chairman for his leadership.

Mr. DELLUMS. Mr. Chairman, I thank the gentleman for his remarks.

Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from California [Ms. HARMAN].

Ms. HARMAN. Mr. Chairman, I rise in strong support H.R. 2401, the 1994 Defense authorization bill. This bill does several important things. It funds key national security programs to meet the post-cold war threats. It promotes our economic security by reinvesting in our industrial base. It takes care of people, both in the services and in transit to other careers. And finally, it makes record investments in environmental initiatives at the Defense and Energy Departments.

My district is located in the South Bay area of Los Angeles—the heart of America's aerospace industry, and a region that is reeling under the impact of falling defense budgets. My district's priorities are different from those of many of my colleagues, on and off of the committee. But I think we can all agree that it is time to make choices in our defense spending, as in every other area of the Federal budget. As defense spending is reduced further over the next few years, it is crucial that we fund only the programs we really need, so we can fund them well. There are a lot of tough decision ahead, but this bill starts us on that road.

The bill reported by the Armed Services Committee directs DOD to make choices and set priorities in many areas, including airlift, attack submarines, tactical aviation and missile defenses. It also increases funding for some new options—notably space vehicles, which I think is a key area. Many of these decisions will be part of Secretary Aspin's "Bottom-Up Review", and the committee has given defense planners the freedom to meet military needs as they think best while they cut overlap and duplication. I think this approach is responsible, and will give Congress a strong base for a more thorough review of defense spending in fiscal year 1995.

I was closely involved in several of these committee decisions and would like to highlight them. H.R. 2401 provides $1.4 billion for research and development on the F–18 E/F, the Navy's next-generation multirole fighter plane. It also provides $1.6 billion for F–18 C/Ds, which performed strongly in Operation Desert Storm and are flying today off all of our aircraft carriers. Nearly half of the F–18 is built in my district, and I think it is a sound investment in this time of hard defense choices.

I would also like to say a few words about the C–17 transport plane, which is built next door to my district in Long Beach and accounts for thousands of jobs in southern California. I have visited the C–17 plant, and I also have considered all of the testimony and materials gathered by the committee very carefully. I think that this bill takes the right action on the C–17 program: As requested by the Defense Department, it provides funds for airlift—which we clearly need—and gives Secretary Aspin time to look at requirements, cost, and capabilities and report an informed decision to the Congress. I hope that DOD can resolve its concerns in all of these areas and move the C–17 Program ahead, and I look forward to receiving its decision.

H.R. 2401 also provides over $3 billion for defense conversion and reinvestment programs. As Representative of a district hit hard by defense cuts, I cannot overstate how important these funds are. There is great human and physical capital in southern California, and many other regions, that we will lose forever if we wait for the market to replace defense spending with something else. The Research and Technology Subcommittee held a number of hearings on defense reinvestment and preserving the industrial base. We concluded that the Federal Government can and should help create market "pull" to jump-start new industries—industries that will employ defense workers to make dual-use and commercial products.

This bill does just that. It provides $575 million for the Technology Reinvestment Project, in which the Advanced Research Projects Agency and five other agencies will fund the development of key dual-use technologies, from aeronautics to communications to transportation. It also provides $50 million for ARPA demonstration of advanced technologies for electric vehicles for military and civilian use. And it authorizes $200 million to underwrite a loan guarantee program for shipbuilding, so that we can rebuild a key U.S. industry and recapture a share of that major world market. These investments will make our economy stronger and our defense more affordable, and will give former defense workers new ways to use their skills. I strongly support them.

There are important transition measures in this bill for people and property too. One program is based in part on legislation introduced by my colleague, Congressman STEVE HORN of Long Beach, to help ex-military personnel find jobs in law enforcement, teaching, health care, and environmental cleanup. This bill also provides more than $11 billion for environmental programs at DOD and DOE, including over $100 million for cleanup of bases on this year's closure list. California has a major share of these sites, and making them usable again is a very important part of our State's economic transition. Again, I commend the committee for its forward-looking work in these areas.

Mr. Chairman, I want to say a few words about one of the hardest issues that the committee dealt with in this bill: the gay ban. I have stated my view on this floor and in the Armed Services Committee, that the military gay ban is unconstitutional. I also have worked

to revise the committee's report language to make clear that investigations of violations of the Uniform Code of Military Justice will proceed in an even-handed manner. Just as the military is affected by forces in international affairs and by trends in the national economy, it must be impacted by trends in American society—and that includes evolving views about homosexuality.

Finally, Mr. Chairman, let me say how extraordinary is the opportunity to serve under the committee chairman, the gentleman from California [Mr. DELLUMS]. He is fair. He is a passionate advocate of his point of view. He is multidimensional, and he knows well how to use what he aptly calls the "potent podium" behind which he sits. I am honored to be his sister Californian on the committee.

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. DORNAN].

Mr. DORNAN. Mr. Chairman and my colleagues and the 1 million Americans, if that audience still hangs on through C-SPAN approaching the 9th hour on the east coast and to a few visitors in our gallery here who have enough interest in our defenses to stay with us——

The CHAIRMAN (Mr. REYNOLDS). The gentleman will address his remarks to the Chair.

Mr. DORNAN. I thank the Chair.

Mr. Chairman, I would like to point out that it has been a pleasure to serve under the gentleman from California [Mr. DELLUMS] as chairman.

I want to be very delicate in my words here and not criticize past majority party leadership, but there has to be a certain amount of honor given to someone who, although he uses the potent power of the podium, as the prior speaker just put it, allows the minority voices to be heard as potently as they choose.

The gentleman and I, over the 16 years that I have been here and the 22 years that the gentleman has served in this Chamber, we have always agreed that this Chamber and all our fellow American citizens benefit from wide open, robust, hard debate, and that makes it a joy to serve under the gentleman.

The press, over the public lifetime of the gentleman from California, has described him—this is the dominant media culture—in a flattering way as a peace warrior.

They have described me—and others—in not quite a flattering way as a cold war warrior.

And yes, on active duty as a combat ready fighter pilot under a five star general who spoke at that podium, more than anybody else, except for Franklin Roosevelt and followed by Ronald Reagan, I was never called upon to harm any other mother's son. That is the way I wish all of our fine young men and women to serve in our services.

□ 2040

Mr. Chairman, in this House, in 1977, in the depths of depression when I first got here, defense depression with a hollow force, I remember telling my brothers one night after I got home that I thought we were hell-bent toward a nuclear exchange someday because of the way we were allowing our defenses to collapse, thereby tempting an evil empire.

Now I would like to point out to the gentleman from California [Mr. DELLUMS] and all those who follow his leadership, that his goal, as a peace warrior, was always to stop people from brutalizing one another and to maximize freedom, but, as a cold war warrior, and that definition meant "very bloody, very hot, dozens of airplanes, Navy and Air Force, shot down on the perimeter of the evil empire, 33,629 killed in combat in Korea, 47,135 killed in combat in Southeast Asia," that was part of the cold war, and my objective, and I think this is why we respect one another, was identical to the gentleman from California: to stop people from brutalizing one another and to maximize freedom. So, if our goals are the same, then let us continue that robust debate.

On my side I want to thank the retired Navy captain who has never retired from defending his country and living up to that line in the Preamble that says, "To provide for the common defense." It is great to have as our skipper on the Republican side Capt. FLOYD SPENCE of the great Palmetto State.

Now it is time for me to brag about something I think I contributed to here, Mr. Chairman, and Mr. Chairman, and Mr. Republican Leader. H.R. 1670 was my freestanding bill to keep that 2.2-percent pay raise, and I appreciate the wisdom of all of my colleagues on both sides putting that money back in the bill because the almost 6 years I wore a flight suit I never considered myself just a Federal worker. Postal workers work hard, but they do not deploy 52 percent of the year to sleep in eight hot bunks on one of these assault helicopter ships in the Marine Corps. That 2.2-percent raise was an integral part of our combat readiness.

Also, my freestanding bill: 667, which got up to 107 sponsors before Senator NUNN in the other Chamber made it pretty much policy, I think resolved, and I refuse to use the word that is an adjective for gay, cheerful, happy. I repeat what I said in committee: 110,000 dead male homosexuals for anal sex is not happy. It is a homosexual ban, and it is a ban plus.

Also I want to thank the chairman for putting in those 36 OH-58D Kiowa Warrior helicopters. That gives us a robust aeroscout role.

I also thank the gentleman for the recommendation to fund single-stage rocket technology, which will, I think, create a lot of jobs in my old district there in the South Bay, and it will revolutionize military and civilian space launch capability.

There are still some very dangerous shortcomings in this bill, shortcomings that can cost us lives on the battlefield. Remember it was 50 years ago this week that the young Lt. John F. Kennedy was cut in two by a Japanese destroyer near Brackett Island and, this past weekend, August 1, 1993, marked the 50th anniversary of the famous U.S. Army Air Force bombing raid on the Nazi oil refineries at Ploesti, Rumania. On that day, 177 four-engine B-24D "Liberator" long range bombers, each carrying 4,000 pounds of explosives, took off from bases in Libya and flew across the Mediterranean and the mountains of Albania and Southern Serbia. Then, after crossing the Danube River in Bulgaria and passing the city of Pitesti in Rumania, these large bombers, commanded by Brig. Gen. Uzal G. Ent, dropped to just 500 feet in altitude—"on the deck." Lower and lower, finally, literally dodging chimneys, as well as heavy antiaircraft fire, the aircraft dropped 311 tons of explosives on the oil fields destroying 40 percent of the oil production which supplied 40 percent of the Axis petroleum needs.

The cost of this operation, called Tidal Wave, was very heavy. Fifty-four aircraft were lost and 532 men were killed or captured. Five participants in the raid were awarded our military's highest decoration, the Congressional Medal of Honor. They were Col. John R. Kane, Col. Leon W. Johnson, Lt. Col. Addison Baker, Maj. John J. Jerstad, and 2d Lt. Lloyd Hughes. Let us never forget the heroism all of those who participated in this famous raid, OR, what we can do today to minimize the allied casualties in, if Plato was correct, tomorrow's bombing operations. Plato wisely observed that only the dead have seen the end of war.

This past week, the House Armed Services Committee rejected a proposal by both the Department of Defense and the United States Air Force, to provide the revolutionary B-2 "Shadow" long range bomber with near-term precision-guided conventional munitions. Unlike the B-24, which carried heavy protective armament in the form of machine guns but still required significant fighter escort, the beloved "little brothers," the B-2 relies on "stealth" technology to remain virtually invisible to enemy radar detection. Like the B-24, the B-2 has tremendous range and payload making it capable of delivering thousands of pounds of explosives nearly anywhere in the world.

The program we failed to fund, but hopefully will agree to in conference with the Senate, is called GATS GAM.

GATS stands for GPS (Global-Positioning-Satellite) Aided Targeting System. GAM stands for GPS Aided Munition. GATS would use the B–2's already advanced radar system to accurately locate targets. This would be especially useful in targeting mobile targets such as the elusive Scud launchers in Iraq. Meanwhile, GAM would improve both the accuracy and the flexibility of bombs dropped by our B–2's. A GPS-aided munition like GAM could be dropped in any type of weather and along with GATS would ensure target accuracy within just a few feet.

By proceeding forward with this program, we would have an operational capability by mid-1996, at least 2 years earlier than any other program. With renewed ballistic missile development in North Korea, continued brutal killing in the Balkans, and continued terrorist activity in the Middle East, we very well may need this capability during those 2 years earlier. I'm sure the bomber crews of the 1943 Polesti raid would have treasured such a capability 50 years ago on a hot August day, penetrating deeper into hostile skies than any air warriors in history with no advantage of surprise.

Let's not forget the lessons of history when we make defense decisions for tomorrow. Modest investment today in programs such as GATS GAM can help ensure both the success and survival of our brave air crews who may have to fly dangerous missions against heavily defended strategic targets. As Dwight D. Eisenhower once commented:

> We should base our security upon military formations which make maximum use of science and technology in order to minimize numbers of men.

Mr. Chairman, 50 years in history is a snap of the finger. Let us not relive that.

Mr. DELLUMS. Mr. Chairman, I yield 1 minute to the gentleman from Texas, Mr. PETE GEREN, for the purposes of a colloquy.

Mr. PETE GEREN of Texas. Mr. Chairman, I rise to seek clarification of the committee report that accompanies H.R. 2401, the National Defense Authorization Act for fiscal year 1994. Specifically, I seek clarification of the procurement report language for the F–16 aircraft.

It is my understanding that the procurement tables contained in the report are correct and reflect the action taken by the committee on this program. And, that paragraphs two and three of the accompanying F–16 report language are incorrect and do not reflect final committee action.

Mr. DELLUMS. Mr. Chairman, will the gentleman yield?

Mr. PETE GEREN of Texas. I yield to the gentleman from California.

Mr. DELLUMS. Mr. Chairman, the gentleman is correct. The F–16 report language as recommended by the committee should read:

> The budget request contained $724.7 million to procure 24 F–16 aircraft in fiscal year 1994 and $70.8 million for advance procurement for fiscal year 1995.
>
> The committee recommends authorization of $724.7 million for procurement of 24 F–16 aircraft in fiscal year 1994 and $70.8 million for advance procurement for fiscal year 1995.

Mr. PETE GEREN of Texas. Mr. Chairman, I thank the gentleman for California [Mr. DELLUMS], and let me just say in so in conclusion that I want to add my voice to those who have expressed their appreciation to the gentleman for his outstanding leadership in leading our committee this year. I say to him, "Thank you, Mr. Chairman."

Mr. SPENCE. Mr. Chairman, I yield 3 minutes to the gentleman from Colorado [Mr. HEFLEY].

Mr. HEFLEY. Mr. Chairman, let me say at the outset that there is much good about this bill within the bounds that were given to us, and the chairman, the new chairman, of our committee and our new ranking member led us very well through 15 grueling hours of committee work to try to produce this product, and, as I say, given the bounds within which we were confined, I think it is a pretty good product. But I want to express that I am concerned about the directions we are going with our national defense structure in this country.

Mr. Chairman, over and over in this committee General Powell and Dick Cheney used to come before us, and they would plead with us to let us draw down in a reasonable way. They would point out that we have never in this country drawn down in a reasonable way because we are a nation of Pollyannas. We want to believe everything will be just fine and that we will not have any more wars.

Mr. Chairman, after the First World War we dismantled. After the Second World War we dismantled. After the Korean war we dismantled again. And after Vietnam, Mr. Chairman, again we dismantled our defense structure. It would appear that now that we feel we have won the cold war that we are all in the direction, not entirely with this particular bill, but in the direction over the 5-year plan of dismantling our defense structure again.

President Bush's defense cuts have already lowered defense spending by 27 percent since 1986. I think that pretty well fit into the design that General Powell and Dick Cheney were talking about of a reasonable drawdown.

But the Clinton proposal added an additional $127 billion over 4 years, reducing defense spending by 45 percent since 1968.

I am concerned about that precipitous a reduction. By fiscal year 1997 defense spending as a percentage of gross domestic product will be at its lowest level since before World War II. Since 1985, procurement of weapons systems has declined by 57 percent. Of course this means many jobs lost, both military jobs and private sector jobs, but maybe even beyond that.

And maybe even more important than that is the danger of losing our defense industrial base, which, as has been pointed out by other speakers, once lost, cannot be reconstituted quickly in case of a national emergency, and believe me, my colleagues, there will be more national emergencies. It is not over. It is not going to be peace on earth forever. We will have other national emergencies.

There are cuts in troop levels. Five hundred thirty thousand active duty, reserve, and civilian personnel have been put out of work since 1988. Currently, there are approximately 1.8 million active duty soldiers. Clinton wants to draw down to 1.4 million.

Mr. Chairman, when Secretary of Defense Aspin was before our committee this year I asked the following question:

"Les, is the drawdown that you are proposing, the levels you are proposing, the amount of spending you are proposing, is this based upon a threat assessment, or is this based upon thin air?"

He hesitated a moment, and he said, "Well, in the outyears it pretty much comes out of thin air."

Mr. Chairman, that is not the way we ought to be doing business. We ought to be looking at the threat assessment and weighing it very, very carefully. It should not be a matter of the President calling down and saying, "Les, we need so many billions of dollars, we want to spend it for something else, and it's got to come out of defense. Find it somewhere."

That is not the way to do business.

□ 2050

I would hope as we look at this bill and as we look at defense bills in the next 2 or 3 years, we will be very careful to be mindful that the defense of this Nation is the most important thing the Government does.

Mr. DELLUMS. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from Oregon [Ms. FURSE], a member of the committee.

Ms. FURSE. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, there are many important initiatives contained within this fiscal year 1994 defense authorization which we have before us today. I am very proud to serve on the Committee on Armed Services, but especially to serve under the distinguished chairmanship of the gentleman from California [Mr. DELLUMS]. I am also proud to serve on the Subcommittee on Research and Technology chaired by the gentlewoman from Colorado [Mrs. SCHROEDER].

Mr. Chairman, there are items in this bill that I am particularly pleased

with. We have begun the process of reducing funding for certain cold-war-era weapons systems, such as star wars. We have started on the path toward prohibiting research and development of low yield nuclear weapons. These are clearly inappropriate as we attempt to convince the rest of the world to stop nuclear proliferation. And we have urged in this budget that defense contractors prepare to move toward dependence on producing weapons to dependence on other types of manufacturing. We have authorized $11.4 billion for environmental restoration, and we have begun, Mr. Chairman, to address the long neglected health care needs of the women who serve in the U.S. military.

So although we are going in the right direction toward establishing new priorities for national security, yet in my view we are not moving fast enough. This budget does not yet accurately address the real security needs of the United States for the 21st century. It is still focusing too much on warmaking and too little on conflict resolution. There is too little support for our military personnel and our veterans as they seek to rebuild their careers and their lives. There is too little funding for defense conversion to rebuild our economic foundation, and we know that conversion is working and it will flourish.

Now, in this budget we have no need to fear that a budget of $260 billion will put us at a security disadvantage. The next largest national defense budget is that of the United Kingdom, at $42 billion.

My concern with this budget is one of national economic priorities, because so many of our society are suffering and they need our support, and we have to turn them away for lack of resources.

Mr. Chairman, I believe in a strong national defense, and I believe that true national defense means strong and healthy communities. It means building healthy businesses and investing in education and our children. But in many ways we have begun to design a U.S. military that more accurately reflects this country's security needs, and I look forward to working with the distinguished chairman as we design that new security. We have begun the work, and I believe with the leadership of the gentleman from California [Mr. DELLUMS], we will reach our goal, which is national and international security based upon global peace.

Mr. SPENCE. Mr. Chairman, I yield 5 minutes to the gentleman from California [Mr. CUNNINGHAM], our Top Gun Navy pilot.

Mr. CUNNINGHAM. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, first of all, I would like to thank my chairman, the gentleman from California [Mr. DELLUMS]. I stated this in subcommittee, committee, and the press. We may disagree on a lot of issues, but the gentleman has not only been fair, he has been supportive, and there is not an issue that he has not allowed fair debate on. I know the chairman stands by that, and I would like to thank the gentleman for that.

Mr. Chairman, I do have some concerns. I served 20 years in the U.S. Navy. I have flown in combat. I was on 7th Fleet staff, which was the defense of other countries. I was a commanding officer of an adversary squadron. I flew not only in Vietnam, but in Israel. And from that combat and the needs of the men and women that work in that program and DOD every day, gave me a pretty good look at what we need in the future for the defense of this country. I have some real concerns, and I would like to go over those concerns.

Mr. Chairman, first of all, the $50 billion cut, which is a 30-percent cut, was attributed to George Bush. I would like to remind my colleagues that George Bush did not get his budget, just like we will not get our budget tomorrow. George Bush would not have cut $50 billion. And in the upcoming Clinton budget that we will be looking at tomorrow, there is a defense cut of an additional, above the $50 billion, $127 billion. One hundred twenty-seven billion dollars. And at the same time we are looking for ways to take dollars out of the rest of DOD.

Some of those, for example, will be going to Russia. We had an amendment that tried to earmark those for defense issues. For example, I think colleagues on both sides of the aisle would support DOD dollars going to dismantle nuclear weapons in Russia. I do not want my children looking at them, and neither do the Members of the other side. But yet those dollars were put into a general fund. That is wrong.

Most members on this committee, and I stress "most members," probably 99 percent of them, support the men and women in the military service. But there are some members on this committee where if the defense program is not in their district, they let us kill it. If we can weaken it and provide money for the social agenda, let us kill it.

Those Members that supported the total lifting of the ban on homosexuals, that have never fired a shot in anger, that have never been in combat, I would ask them to stick to the areas that they are knowledgeable about. Because both Colin Powell, the Joint Chiefs, and the rest of them, have stated that homosexuals are not compatible in the service. Ninety-seven percent of those people that have to serve with them say it is not compatible with what they do.

Mr. Chairman, I am not black, which is quite evident, but I attend a lot of black churches in my district. They have told me that to confuse civil rights with the homosexual agenda is wrong, that it is a disservice to the community. When 97 percent of the military do not support it, it is wrong.

We kill systems and try to prevent the advancement of those systems. A good example is the ARGUM program. There are those Members that would stop the advancement of the B–2, even though the numbers have dwindled down. ARGUM is a system that allows a 60-foot CEP for a weapon, and with a radar would bring that distance to the target that you would miss to 20 feet. Since it was an interim service, they found a way to say let us put it on the B–1. The B–1, you cannot even hang a bomb on the wing, and there is no electrical service that goes down to release that bomb. So it is not an effective system.

Mr. Chairman, my main concern is the lack of DOD and this committee on the procurement of aviation. Since the A–12 has gone down, we are looking at an F–22. The Navy is looking at an F–18EF, which I have flown. I have flown the F–14, –15, –16, and –18, and I can beat the F–18EF today, and that would be our front line fighter in 20 years. That is wrong.

Mr. Chairman, I was not aware that the F–16 procurement is in there, and I was glad to see that.

AFX has been canceled. What do we do? In the year 2010 we have no plan for a high-end fighter for the Air Force or the Navy, and we need to adjust that.

Mr. Chairman, I have supported women in combat, and I winged the very first F–14 female pilot at Kingsville, TX, just 3 weeks ago. I think she will serve with distinction.

But I would also ask the Secretary of the Navy to put Tailhook behind us. It is time that we press on and serve the men and women in the services that we have.

Mr. DELLUMS. Mr. Chairman, I yield 3 minutes to the distinguished gentlewoman from Illinois [Mrs. COLLINS].

Mrs. COLLINS of Illinois. Mr. Chairman, H.R. 2401, the Department of Defense Authorization Act for fiscal year 1994, moves us forward on a number of important priorities relating to the anticipated style of conflicts of the 1990's and early next century. However, the bill also suffers from some serious shortcomings of great consequence to our society.

First of all, I would like to commend the chairman of the Armed Services Committee Congressman RON DELLUMS, for crafting an authorization that revamps some of the past assumptions about our national defense. In particular, the focus on conversion of certain Defense activities and facilities toward other uses is to be lauded, as this was a difficult task. The bill's attention to environmental cleanup and remediation of Defense facilities is an example of how long-overlooked needs in the Department are finally getting

the attention that they demand. Much needs to be done in this area and I am pleased that we are getting on with this business.

In addition, the provisions that promote gender equity in the DOD are of profound importance and deserve high praise. No longer may women in the military be viewed as mere accessories, restricted to positions that conflict with their ambition, training, and skills. America still needs a large dose of increased opportunity for women in virtually all fields, and I hope that tearing down the wall within the DOD, which has traditionally been very heavily male-dominated, will go far in sending such a message to all sectors of society.

Unfortunately however there is a shortcoming in this bill that concerns me. It is that H.R. 2401 fails to give a similar boost to minority businesses in our country. In 1986, the 1207 Program was created to establish a 5-percent set-aside for small disadvantaged businesses [SDB's] in DOD contracting.

Unfortunately, it must be noted that this program has never been given the top-level support, nor the administrative tools, that it needs in order to succeed. The 1207 Program has still not reached its 5-percent goal and, until recently, only resulted in contracting with SDB's in the 2- to 3-percent range. This is inexcusable, shocking, and downright unfair.

During the 1980's and early 1990's, the Reagan and Bush administrations offered no real encouragement to SDB's and even erected new barriers to SDB participation in Federal contracting and subcontracting. Some of these impediments included emphasis on long track records and imposition of bonding and capitalization requirements, all of which favored older, more established firms. All in all, the Reagan era contracting policy seemed to disdainfully thumb its nose at minorities, ignoring our contribution to American productivity, and the Bush administration perpetuated the transgression. Bureaucratic resistance to the 1207 Program was made possible by appalling indifference at all senior levels of those administrations.

Thus, with the start of a new era, many of us have been hopeful that we could start fresh, by equipping the 1207 Program with serious tools so that it could accomplish its original aims. In fact, the House of Representatives originally passed this program as a 10-percent set-aside, and there remains the need to bring the program up to this level. In a country where, by conservative estimates, about 25 percent of the population is composed of people of color, it is a pathetic illusion of fairness to assert that the Government needs to only do 5 percent of its business with so many millions of its citizens.

Consequently, I am disappointed that H.R. 2401 has, in effect, failed to statutorily reverse this state of affairs. Earlier this year, I introduced H.R. 1609, the Department of Defense Set-Aside Enforcement Act to remedy these inequities, bolster the program and equip it with concrete teeth for enforcement of the program. I regret that the Armed Services Committee chose to look disfavorably on H.R. 1609's provisions and ignore the plight of minority businesses trying to do business with the DOD. I will, however, continue to advance these concerns.

It is no longer sufficient to establish small-dollar, token demonstration projects. It is no longer satisfactory to point to a remote tangent of a program and suggest that the interests of 25 percent of our Nation's citizens are accommodated thereby. Instead, this is a time when fortitude must be summoned, to do what is equitable and just to create opportunities for all Americans, not just those who traditionally have done business with the Department of Defense.

Today, highly skilled minority-owned businesses have come of age in a full range of activities, from high-tech manufacturing in information and telecommunications industries to environmental cleanup and financial services. They must be recognized for their contribution, and the 1207 Program must be improved to facilitate their full access to DOD contracting and subcontracting dollars.

In short, Mr. Chairman, we were serious about our commitment to these concerns when we wrote them into our laws as the 1207 Program. It is incumbent upon us therefore, to take steps to improve the program and establish a viable enforcement mechanism.

It simply is no longer satisfactory to ignore the role of millions of Americans in the Defense process under the guise of moving forward on other issues. The two are not incompatible. We simply must recognize this fact.

□ 2100

Mr. SPENCE. Mr. Chairman, I yield 3 minutes to the gentlewoman from Florida [Mrs. FOWLER], who is a very vigorous freshman of our committee and represents the district formerly represented by our colleague, Charlie Bennett.

Mrs. FOWLER. Mr. Chairman, as a freshman on the House Armed Services Committee, I would like to commend the chairman and ranking member, FLOYD SPENCE, for his fairness to the freshmen members. I look forward to a continued relationship with my colleagues on this committee as we work to maintain a quality military.

The Defense budget has been on the decline since 1985 and will continue to plummet rapidly under the proposed Defense budget. This trend is nothing short of dangerous—it threatens the safety of our Nation.

Today this country is involved in three active conflicts in Somalia, Iraq, and the Balkans. And as we have all heard on the news in the past 48 hours the President is considering a more active role in the Balkans. We have the people to fight these conflicts and win in 1993 but will we have the ability to win them in 1995 or 1996?

We cannot afford to cut any deeper without jeopardizing the efficiency and effectiveness of the U.S. military. We are losing our ability to deter and defend.

This drawdown is about people, men and women who have sworn to protect this country with their lives and whom we reward with inadequate pay, training, and equipment—or with a pink slip.

Yes, the cold war is over, but we cannot assume that there will be no enemy rather we have to maintain our readiness for our ability to meet potential enemies and to win future conflicts.

Mr. DELLUMS. Mr. Chairman, I yield 4 minutes to my distinguished colleague, the gentlewoman from California [Ms. WOOLSEY].

Ms. WOOLSEY. Mr. Chairman, I rise today to commend the work of the chairman of the Armed Services Committee, Mr. RON DELLUMS, for his tireless work toward achieving a more sane defense policy for this Nation. I also want to make a point about two issues—first, excess defense spending, and second, discrimination against gays and lesbians in the military.

"The cold war is over." We have heard this phrase repeatedly in the House during the past few days. But, while Members of Congress keep using this phrase, we are failing to translate the message into sound peacetime spending policies.

For example, in terms of current dollars, America spent $231 billion on defense in 1975. This year's bill calls for $263 billion in defense spending, a budget that is five times that of the State of California. In 1993—a year when America has no superpower enemy—Congress is considering a bill to spend $32 billion more than the defense budget that was passed during the Nixon years. The bill does make cuts in some of the wasteful Reagan-Bush programs, but we are still spending far too much in light that the "cold war is over."

Later in the defense appropriations debate, my colleagues and I will be offering an amendment which takes aim at a most glaring example of Pentagon waste. Mr. DELLUMS, Mr. PENNY, and I will offer an amendment to save the taxpayers up to $10 billion by ending procurement of the Trident D–5 nuclear missile. This submarine-launched missile is a cold war weapons system. We already have 295 D–5's that will last well into the 21st century, and we certainly don't need more. In light of our lessened cold war defense needs, our alarming budget deficit, and our urgent need to improve programs for children

and families, we cannot afford to continue this wasteful spending on Trident D–5 nuclear missiles.

As I said, Mr. Chairman, our defense budget is no lower than it was in 1975, but our policy toward gays in the military is no better than it was in the dark ages. On the policy of "don't ask/don't tell," I say, don't ask me to support it; don't tell me that it's fair. The proposal contained in this bill would not only gag gay and lesbian soldiers from admitting their sexual orientation to anyone, including family members; it would also prohibit conduct on and off the base. Moreover, it will continue to subject soldiers to unjust investigation and persecution. Mr. Chairman, I find it outrageous that the Department of Defense has wasted hundreds of millions of taxpayer dollars to conduct witch hunts, which amount to nothing less than an internal war against the citizens of this country.

Here in this Chamber, we must do what is right. We must strike codification of the "don't ask, don't tell, don't pursue" policy.

Mr. Chairman, in November 1992, the American people elected 110 new Members of Congress because they wanted change. I can tell you, Mr. Chairman, that I do not see enough change in this bill.

Mr. DELLUMS. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. KLINK].

Mr. KLINK. Mr. Chairman, I thank the distinguished gentleman for yielding time to me.

I am not a member of his committee, but as a member of the Democratic Steering and Policy Committee, I worked very hard to try to get two of our Members from our State on the committee, and we did that, the gentleman from Pennsylvania [Mr. MCHALE] and the gentleman from Pennsylvania [Mr. HOLDEN]. I trust that they are contributing members of the committee.

I rise to talk tonight about the fact that we understand, as I come from the Pittsburgh area and it is the arsenal of democracy, I was happy to hear some of the Members talk earlier about the need to keep that defense work force in place.

We share your concerns with that. There are so many things the gentleman from California [Mr. DELLUMS] and the members of the committee have to look at. Not only do we look upon them to keep our armed services ready and to make sure that we have a fighting force, if and when we need it, but there are so many other smaller details in addition to the big picture that they have to look at.

I wanted to bring just one such item to Members' attention tonight. And that is, we are downsizing the military. We are also getting rid of a lot of our strategic materials stockpile. We are going to be voting on a reconciliation bill. And a part of this is to show America that we can manage. To manage we have to manage the little parts of the picture, too.

I just want to talk about something that relates to my district. Part of the stockpile is zinc.

□ 2110

Part of this stockpile is zinc. People out there might say, "What is so important about zinc?" The fact of the matter is that we are currently selling off this stockpile at $100 per ton less than the price that is being paid by our U.S. Mint, who uses this zinc to mint pennies. As a result, we could actually save the Federal Government $2.5 million a year if we would be able to work out a methodology where we could transfer from one part of Government, that is, the Department of Defense, over to the U.S. Mint, so there are many things like that we need to look at, of course, as we are downsizing.

I trust the chairman who is taking over this committee at one of the most challenging times, from what I have heard from the members of the gentleman's committee, he is certainly up to the task, and I look forward in my committee assignments and here on the floor to working with the chairman.

Mr. DELLUMS. Mr. Chairman, I yield 5 minutes to my distinguished colleague, the gentleman from New York [Mr. HOCHBRUECKNER].

Mr. HOCHBRUECKNER. Mr. Chairman, I thank the gentleman for yielding to me.

Mr. Chairman, I guess I will have to give a New York style speech here. I have a 7-minute speech, and I only have 5 minutes to present it. Let me speak quickly and to the point.

Over the last 25 years I have been very heavily associated with the naval aviation field, first serving in the U.S. Navy, then in aerospace engineering for close to 20 years, and now for 7 years in the House Committee on Armed Services. I have a great concern about naval aviation and its future.

We have to recognize that in the future of our Nation the navy is going to be the out-front service. As we look at our base closings overseas, it is very clear that by 1995, based on testimony we have heard in committee, that 51 percent of our overseas base structure is going to be on the way to shutdown. They will mostly be Army and Air Force bases, as we pull over 200,000 of our troops out of Europe. Consequently, the Navy will be the outfront service, and it is imperative that the Navy have the aircraft it needs, because it wil be the aircraft carriers that will be out front presenting the U.S. flag and protecting our interests around this world.

Certainly, nuclear is out, conventional is in, and good conventional aircraft are what we need for the future protection of our national interests.

The bill before us is not a perfect bill. It is a good bill, and I will support it, but it has some problems. There are two problems that the people of this Nation should be aware of that need to be corrected in the future. The first is that the Navy in fiscal year 1994 will be taking a $5.7 billion cut, contrasted with the Army's $3.2 billion and the Air Force's $2 billion. If we add that up, what it means is that the Navy this coming year will have a $500 million greater cut than the sum of the Air Force and the Army cuts. That is not fair, especially in light of the fact that the Navy will be the out-front service in the future. That is the first funding problem.

The second funding problem is that naval aviation has been shortchanged. Since 1985, defense spending has been declining. In fact, the Navy's budget has come down 26 percent since 1985, while naval aviation's budget has come down by 45 percent. If naval aviation in the last 7 years had just taken its equivalent share of the defense cuts, there would have been $13.5 billion more allocated to naval aviation, and we would not have naval aviation in the disarray that it is today.

Clearly naval aviation needs help. If we look at the plan this year, the bad news in this budget bill is that the A/FX is cancelled. Clearly this is the next generation of attack aircraft that is essential to our Navy and its future. The A–6 Intruder is a great aircraft. I worked on it 30 years ago when it had a drum memory computer. It is a great aircraft, but its time has passed. It is time for the next generation of attack aircraft.

Whether we call it an A/FX, a JAF, or an XYZ, it makes no difference. It has to be developed by the Navy and it has to have deep-strike capability, and hopefully a fair amount of stealth. We have to put that program back in place. Hopefully, the "Bottom-up Review" will indicate that we need that plane, and we will then restore funding next year, and all we will have seen is a 1-year delay in the program.

The good news is that the Grumman F–14 Tomcat will be upgraded to an attack version. That makes a lot of sense. That is something I have been promoting for the last 3 years, and I am delighted that the Navy asked for it this year, and both the Senate and the House Committees on Armed Services have seen fit to fund that program this year. I think it makes a lot of sense as a gap-filler between the A–6's as they get demobilized toward the end of the century until the A/FX or JAF or XYZ comes along to replace it. We really do need an attack version of the F–14.

Mr. Chairman, clearly this is a good bill, and the chairman, the gentleman from California [Mr. DELLUMS], is to be

commended for the excellent work that he put into it, but nothing is perfect on this Earth. Clearly, this is a program that needs some changes.

I am hopeful that in the coming months and next year we will be able to correct some of these funding deficiencies that do exist in this bill, and in fact get on with supporting naval aviation in order to assure that the Navy, as the lead, out-front service in the future, is properly equipped with the best aircraft that this country can provide.

Mr. Chairman, I thank the chairman of the Armed Services Committee for the opportunity to say my piece on this important bill. It is a good bill. It deserves the support of this Congress, and I certainly intend to strongly support it.

Mr. DELLUMS. Mr. Chairman, I yield myself the time remaining on this side of the aisle.

The CHAIRMAN. The gentleman from California [Mr. DELLUMS] has 4 minutes remaining.

Mr. DELLUMS. Mr. Chairman, we are now in the last minutes of this debate. I would like to make a few comments and observations.

First, my distinguished colleague, the gentlewoman from Illinois [Mrs. COLLINS], made a very significant and important point here. Many of these concerns of the gentlewoman, in this gentleman's humble opinion, will be addressed at the point where we bring an acquisition reform bill to the floor in a separate piece of legislation, so many of the issues that could not be resolved in the context of this bill before us hopefully will be resolved in the context of the acquisition reform legislation. I look forward to working with my distinguished colleague in those areas. We both have no differences of opinion, and have been very strong advocates in that regard.

Second, Mr. Chairman, this is my first time coming to the floor as Chair of the Committee on Armed Services. It is a very interesting point of departure, because for the last 22 years this gentleman has tried to be the loyal opposition, to challenge ever-increasing military budgets, to challenge increasing nuclear weapons, to challenge militarism and intervention. Now I find myself on the floor bringing a piece of legislation that in some ways embodies a great deal of that, but I think that this committee has taken a turn. One has to view this bill in transition terms.

The cold war is over, the Berlin Wall is down, the Soviet Union no longer exists, and the Warsaw Pact has vanished over the radar screen. In this gentleman's humble opinion, while this bill has done some good things, I agree with a number of previous speakers who have said that we can go further. We can, indeed, do more.

There were certain handicaps this year. As I have said in other forums, this is the easiest budget, Mr. Chairman, the easiest budget for us tomorrow. What will become difficult is the budget next year and the year after that and the year after that and the year after that.

Over the years we have talked about left wing, right wing, and center We have talked about peace advocates and cold war years. We now have to reach to new ideas and new paradigms and new policies and new philosophies where those labels do not exist. We have to come to the floor with enough intellectual honesty to attempt to redefine national security, to attempt to redefine the threat that exists out there in very real and nonpolitical terms.

Mr. Chairman, we have to grapple with significant issues: What is the appropriate level of force as we proceed to the 21st century? What is the definition of force in a post-cold war world? What is the application of force in the post-Cold War world? What is the nature of our responsibilities in the world? Do we move closer to international arrangements that preclude us from engaging in militarism in the world as we have done in the past? How do we really engage in economic conversion?

It is easy for us to talk about no longer building B–2 bombers and building effective mass transit systems: no longer building weapons of war and destruction, but enhancing the quality of human life. Now the moral imperative is, how do we truly do that?

This bill starts down that road. It is a long way from where we have to go, but Mr. Chairman, I challenge each and every one of us as we begin to debate now this post-cold war era to come to the table with enough intellectual honesty to grapple with each other significantly, to try to reshape our national forces in ways that make sense, to bring our military budget down in ways that make sense, to reorder our national priorities in ways that make sense, and address the pain and the human misery of our people.

□ 2120

And I look forward to that effort, and I plan to contribute to that with as much significance as I can.

The role of the chairman is to try to help achieve a consensus, but there is also another RON DELLUMS, and that is the RON DELLUMS that is elected from the Oakland-Berkeley area in California. And I will come to the floor with that person wanting to engage you significantly around the politics that we have to pursue as we march into the 21st century.

The CHAIRMAN pro tempore (Mr. REYNOLDS). The time of the gentleman from California [Mr. DELLUMS] has expired.

Mr. SPENCE. Mr. Chairman, I have no further requests for time, and I am pleased to yield 2 additional minutes to the gentleman from California [Mr. DELLUMS].

Mr. DELLUMS. Mr. Chairman, I thank my colleague.

Finally, let me say that it has been a great pleasure to work with my distinguished colleague, the gentleman from South Carolina [Mr. SPENCE]. He is a good and decent man. We have very different politics, but he is open and easy to work with. I tried diligently to communicate openly and hopefully effectively with all of my colleagues on the Republican side of the aisle, because I think that the debates and the discussions, the fights that we have ought to go down around substance and policy, not around process and procedure. We ought to be about openness. We ought to be about fairness. We ought to be about protecting the rights of all of our colleagues. Some have complimented me on the Republican side for standing firmly in support of the rights of minorities, and maybe that is because I have been one all of my life, and I understand what that is all about.

But I came here truly committed to an open and honest debate. So let our differences be differences of substance, not on process.

Mr. Chairman, I am very proud of the fact that I have met with our Republican colleagues on more than one occasion, that we marked this bill up, and five of the six subcommittees were marked in the open, not in the dark, and 12 of the 14-plus hours of discussion and debate in marking up this bill was done in the open, with the press and the public there being able to scrutinize and see the kind of decisions that we make.

Finally, I am very proud of the fact that while my becoming chair of this committee in some way may be some minor footnote in history, I would also like to point out that in becoming chair of the House Armed Services Committee I appointed Marilyn Elrod to be the staff director. That also made some history, because for the first time in American history on either side of the Hill the House Armed Services Committee staff director is a woman. We blew down the glass ceiling, and we are going to go even further as we refine the nature of our politics in this institution, and the nature of our politics in the country and the world.

Finally, I want to thank all of the members of the staff of the House Armed Services Committee on both sides of the aisle. These are extraordinary people and very fine people, Mr. Chairman. In my capacity as a subcommittee chair I only dealt with two, three or four staff people. Now I am required to deal with thousands of items, hundreds of policy considerations and scores of staff people. And in the process of getting to this moment, I have been extraordinarily impressed with the integrity, with the energy, with

the enthusiasm and the eagerness of a magnificent group of people. Give us time to increase the learning curve, Mr. Chairman, and you ain't seen nothing yet.

Mr. GOODLING. Mr. Chairman, I am becoming more and more fearful of the direction of this country is taking in regard to military readiness and defense capability.

On one hand, U.S. foreign policy has embarked on a seemingly haphazard path through the "new world disorder." The Administration has committed United States troops under U.N. command for the nexus of "nation-building," or equally nebulous, as a tripwire. The House had the opportunity to set an early withdrawal date from the quagmire in Somalia, and missed the chance. Three-hundred United States troops are deployed in Macedonia under a foreign U.N. commander who has warned the United States troops against the use of force. Our President has now threatened the use of airpower in Bosnia, although we do not know if airpower will achieve our objective—maybe we do not even know what our exact objective is.

All of this comes at a time when the defense budget is being slashed to meet budgetary requirements without regard to threat assessment. The administration is proposing to cut Defense budget authority by $127 billion below the previous administration's plan over 5 years. Under this bill, the fiscal year 1994 Defense cut represents only 9 percent of the 5-year plan's scheduled cuts. This means the cuts for the remaining 4 years must average $28 billion each year. The Congress and the two previous administrations recognized the need to exercise a policy of defense builddown, decreasing Defense budget authority by 27 percent since 1986. However, this decrease was based upon a formal review of defense requirements and the maintenance of military readiness. The new plan is not. Unspecified cuts are proposed and expected to be carried out without any regard to national security and certainly not in conjunction with a security threat assessment.

The task before the administration and Congress is twofold. First, our Government needs to outline very strict guidelines for the intervention of our troops and resources in no uncertain terms. If we do not, we will be stretched to virtually every continent in the world at great fiscal cost for almost no strategic reason. Second, we must carefully review threats to U.S. security and assess whether the proposed slashes in defense spending will destroy military readiness and impair the ability of U.S. Armed Forces to counter direct threats to U.S. national security. Noting the razor's edge of readiness on which we are now treading so precariously, the Government must oppose future slashes in defense spending which are not based on threat assessment.

Mr. PACKARD. Mr. Chairman, I rise today in strong support of a provision in the Defense Authorization Act to codify the ban on homosexuals serving in the military.

Our military is under attack from the liberals in Congress and from the Clinton administration, seriously undermining the morale and readiness of our Armed Forces.

Service in the Armed Forces is unique and unparalleled in civilian society. More than any other single factor, military unit cohesion is paramount to the success or failure of America's defense. But there are those among our country's leadership who would destroy that cohesion.

Combat ability is unalterably tied to mutual trust and confidence among servicemembers. Extensive hearings and studies have decisively proven that the presence of known homosexuals within a unit will undermine that trust and confidence, endangering the entire unit, and compromising our military mission.

From the lowest grunt to the highest commander, our military men and women have expressed time and time again that homosexuality is in no way compatible with military service.

The ban on homosexuals must remain intact for the military to maintain combat readiness in defense of our country. We can not allow the radical gay and lesbian activists to use the military as a lab to conduct their social experiments. I strongly urge my colleagues to support language in the Defense authorization bill that codifies the ban.

Mr. FARR. Mr. Chairman, I rise in support of H.R. 2401, The National Defense Authorization Act for fiscal year 1994.

The distinguished chairman of the Armed Services Committee, Mr. DELLUMS, has reported out a bill that moves closer to President Clinton's 5-year commitment to trim the Defense budget by at least $127 million. This is a positive step in a new direction toward reordering our national priorities while looking ahead to our needs of the 21st century. While the bill makes substantial cuts in a number of areas, it retains $111 million for the cost of maintaining U.S. Forces engaged in peacekeeping, disaster relief, and other international multilateral operations. This is critical to our Nation's new defense role.

Although deeper cuts in the Defense budget are still needed to meet the growing demands of new priorities, this year's Defense authorization bill makes a step in the right direction toward downsizing.

Mr. BUYER. Mr. Chairman, writing in Federalist Paper No. 3, John Jay stated that "Among the many objects to which wise and free people find it necessary to direct their attention, that of providing for their safety seems to be the first." This wise counsel, delivered at an early stage in our Nation's history, has been at the root of the annual Defense debate since Congress first considered how best to defend our interests. As early as 1794, the Untied States faced a military challenge, In February of that year, 126 sailors were held for ransom by Barbary pirates in Algiers. Congress responded the next month by creating U.S. Navy and authorized the construction of six warships to address this threat. But in what proved to be a harbinger of things to come, opponents limited the appropriation of funds, making it impossible to complete even three of the frigates within 3 years. President Washington was reduced to buying the peace with Algiers by ransoming the sailors for $1 million.

So it is today. President Clinton's fiscal year 1994 defense budget has triggered a furious debate. In his briefing before the House Armed Services Committee, Secretary of Defense Aspin called it "* * * the Clinton plan for national security." In reality, it is the Clinton plan for national insecurity. Instead of basing the plan on real world threats, the administration has opted to decide how much money needs to be cut from Defense to feed the domestic agenda, and shaped a national security policy around what was left. Jeane Kirkpatrick rightly calls this the Alice in Wonderland approach: "Sentence first, evidence later." It is nothing more than an attempt to balance the budget on the back of the Defense Department.

The clearest proof of this approach is seen in what was presented as the four new post-cold-war dangers. Although economic danger was listed as third, Mr. Aspin stated that "Bill Clinton would place it as the no. 1 threat to national security." Proposing that the slow growth of the economy and the fast growing deficit are the real threat, the administration believes redirecting military savings to the domestic front must be a priority. Following this logic, we are asked to believe that every dollar that is cut from Defense somehow improves our ability to defend ourselves. This may be a difficult concept for front line troops under fire to grasp when they discover no ammunition, no equipment, no gasoline, and no reinforcements to get them out of a life or death situation.

The administration has also proposed $488 million for new initiatives called global cooperation. This category includes $300 million for peacekeeping, and an additional $148 million for disaster relief, humanitarian assistance, and the promotion of democracy. While this appeals to those who desire that the military become more involved in the humanitarian use of force, this initiative in fact takes us down a dangerous path. A willingness to participate in these nontraditional missions implies our intervention overseas will be based on individual human rights, not on this Nation's vital interests.

While the tragedy of situations like the former Yugoslavia, Somalia, and Cambodia cannot be denied, the moral responsibility to prevent these atrocities must be balanced against the difficulties of a long-term, open-ended commitment with vaguely defined goals. Peacekeeping, peacemaking, and peace enforcement operations are missions that require a completely different type of training and mindset than those normally acquired in standard combat training. At a time when we are reducing the size of the force, adding on an additional commitment, especially one with such grave consequences, makes little sense.

The figures attached to this budget speak volumes. If enacted, the Clinton budget would result in a 41 percent real decline in the Defense budget from 1985 to 1997. The Bush plan would have already resulted in Defense spending accounting for the smallest percentage of the GNP since before WW II. The Clinton administration plans to subtract another $127 billion from this figure. This reduction, coupled with an increase in the personnel and operational tempo of our forward deployed units runs the danger of breaking the force.

The problem of reduced Defense spending without a serious defense plan based on an assessment of risks to national security is exacerbated by the fact that a great deal of money in the defense budget goes to non-defense projects. I witnessed this firsthand last

week as the House Armed Services Committee marked up the Defense authorization bill. As the mark-up progressed, it became clear just how much pork was inserted by Members of Congress. A few examples will illustrate my point.

One Member seeks to establish a women's health and research center in the Member's district at a cost to the American taxpayers of $40 million by amending section 234 of the Annual Report on Ballistic Missile Defense Program. This was done discretely by adding a series of provisions as to where this particular program should be located. When you look at all those requirements, you realize that the only place in the world that meets this criteria would be a facility located in that particular district.

Another section of the Defense authorization bill would direct the Secretary of the Army to establish a cooperative program with the Secretary of Agriculture for the development of biodegradable industrial products from agriculture products. While I support initiatives that promote new uses of agriculture products, those types of programs should fall under the jurisdiction of the Department of Agriculture and not the Department of Defense.

America has every right to be proud of its accomplishments. Communism has been discredited, the cold war is over, and we have survived as the sole remaining superpower. It is time to reshape our military forces for the task ahead. Very real threats still remain. Regional conflicts that threaten our ability to conduct international trade, nuclear proliferation, and the increased belligerency of countries like Korea, are all very real and valid concerns.

I applaud Secretary Aspin's bottom-up review to consider the roles and missions of our military. But it must be a real review. First, there must be a national security plan that addresses our political goals from which we derive our basic national defense doctrine. From there, we can shape our forces to achieve our goals. The review must not be artificially restricted by budget constraints that will hamstring the military's ability to accomplish the mission. If the review finds that additional funds are required for the defense, the requirement must be seriously considered. To do less is a disservice to the American people.

John Jay, when he wrote Federalist No. 3, commented that America had already entered into six treaties with foreign governments, five of which were " * * * able to annoy and injure us. * * *" Today, we are party to a great many more treaties that could require our military strength around the globe. Before we embark on a drastic and possibly irreversible course of thoughtlessly dismantling our forces, we must think seriously about the consequences. Like Jay, it seems to me that the safety of the Nation and the people should come first.

Mr. EVERETT. Mr. Chairman: I rise in reluctant support of the Defense Authorization bill for fiscal year 1994. Even though this bill cuts nearly $12 billion off of the budget George Bush would have submitted, Secretary of Defense Les Aspin casually refers to this defense budget as merely treading water until the Clinton administration comes up with a long term defense strategy. The most frightening point about this funding level is that it represents less than 10 percent of the defense cuts called for under Clinton's outyear budget plan. Ladies and gentlemen, these are unconscionable and irresponsible levels to fund our national security programs.

Here's how Clinton's defense cuts play-out:

	Billions
Fiscal year:	
1994	$11.8
1995	15.2
1996	24.5
1997	36.2
1998	39.2
Total over the next 5 years	127

Just a short while ago, this House considered the Intelligence Authorization bill. Throughout the debate we heard Member after Member take the well and declare the world safe because the Soviet Union no longer exists. Let me remind my colleagues that we still have troops in Somalia, we now have troops in Macedonia, and the President is very close to launching air strikes over Bosnia.

Right now, we have somewhere on the order of 22,000 soldiers deployed in 60 countries; nearly doubled from last year; 200 ships forward deployed; and the Marine Corps has 30 percent of its force operating forward—that's up from 20 percent last year.

This so-called restless peace is taking our men and women in uniform to the far corners of the world with fewer and fewer resources to get the job done. We continue to ask them to do more with less. We are quickly approaching a slippery slope that will lead us to the hollow forces of the 1970's. It would be a travesty to allow the finest military in the modern world to whither away, but that is exactly what we're doing if Clinton's outyear defense budget is adopted.

Beyond the funding problems, this bill contains a number of well balanced programs and initiatives.

PAY RAISE

A 2.2 percent pay raise for all active duty personnel was included in the bill. The Clinton administration didn't request this in their budget submission, but the committee felt that men and women in uniform, many of whom have families and make less than $20,000 per year, were deserving of a raise.

GAYS IN MILITARY

The committee supported the codification of the policy that homosexuality is incompatible with military service, and that homosexual conduct will result in the immediate separation from service. Though I would have preferred that the committee would have adopted the Hunter amendment to "ask the question during enlistment," I am hopeful that the House will approve this amendment.

ACQUISITION

The modernization of Army Aviation continues with the development of the Comanche, while maintaining hot production lines for the Apache and AHIP.

The modernization of tactical aviation is also well balanced with the cancellation of the AFX and the further development of the F–22 and the F/A–18E/F.

After many hearings and much scrutiny, the committee determined that we should continue with the C–17 to meet our airlift requirements, once certain program milestones are met.

In closing, this budget places us in a holding pattern until the Clinton administration has formulated its long-term national security strategy known as the "Bottom Up Review." If it follows the $127 billion cuts that Secretary of Defense Les Aspin said were pulled out of the air, this Nation is in big trouble. As the Army Chief of Staff, General Gordon Sullivan, said before the Committee on Armed Services, "I'm mortgaging the future to pay for today's readiness."

Mr. DELLUMS. Mr. Chairman, I yield back of the balance of my time.

Mr. SPENCE. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker pro tempore [Mr. WATT] having assumed the chair, Mr. REYNOLDS, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2401) to authorize appropriations for fiscal year 1994 for military activities of the Department of Defense, to prescribe military personnel strengths for fiscal year 1994, and for other purposes, had come to no resolution thereon.

TRANSFER OF SPECIAL ORDER TIME

Mr. QUINN. Mr. Speaker, I ask unanimous consent that on Thursday, August 5, 1993, the gentleman from Michigan [Mr. UPTON] be permitted to take the 60-minute special order previously granted to the gentleman from Indiana [Mr. BURTON].

The SPEAKER pro tempore. Is there objection to the request of the gentlemen from New York?

There was no objection.

TRANSFER OF SPECIAL ORDER TIME

Mr. QUINN. Mr. Speaker, I ask unanimous consent that the gentleman from Indiana [Mr. BURTON] be permitted to take the 60-minute special order granted to the gentleman from Michigan [Mr. UPTON], for today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

TRANSFER OF SPECIAL ORDER TIME

Mr. HOCHBRUECKNER. Mr. Speaker, I ask unanimous consent that the special order granted to the gentleman from Michigan [Mr. BONIOR] for August 4, 1993, be allocated to the gentleman from Pennsylvania [Mr. KANJORSKI].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

TRANSFER OF SPECIAL ORDER TIME

Mr. HOCHBRUECKNER. Mr. Speaker, I ask unanimous consent that the special order of the gentleman from Michigan [Mr. BONIOR] on August 5, 1993, be allocated to the gentleman from Michigan [Mr. DINGELL].

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

GENDER EQUITY IN SPORTS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois [Mrs. COLLINS] is recognized for 5 minutes.

Mrs. COLLINS of Illinois. Mr. Speaker, I have come to the well on several occasions to discuss the subject of gender equity in sports. yesterday, the Congress took its own step in the direction of gender equity when three congresswomen—Democrats MARIA CANTWELL and BLANCHE LAMBERT and Republican ILEANA ROS-LEHTINEN—became the first women to play in the annual congressional baseball game. I am also proud to report that the Democrats defeated the Republicans 13 to 1.

Today the Subcommittee on Commerce, Consumer Protection, and Competitiveness held its fourth hearing on the subject of gender equity in sports. Whereas previous hearings looked at college sports, today's hearing looked at the issue from the perspective of elementary and secondary education and we received test from those in the front lines—coaches and athletes—as well as testimony on how States are tackling gender equity issues.

In 1970, less than 1 out of every 25 high school girls was an athlete. By 1990, nearly one out of every three was a girl. The number of female high school athletes has grown by 1.7 million in the last 20 years.

As a result, 35 percent of all high school athletes are now girls compared to a mere 7 percent 20 years ago. This is good. It shows improvement, but sex discrimination in athletics remains a factor in keeping this percentage below 50 percent, which represents the enrollment percentage.

At today's hearing we received testimony from two distinguished women coaches. Coach Dorothy Gaters has successfully coached the girls basketball team at John Marshall High School in my district. In fact, her team, the Marshall Lady Gladiators, is the two-time defending class AA champion in the State of Illinois.

For 14 years, Coach Wanda Oates taught the girls of Ballou High to believe in themselves and to achieve.

Throughout her coaching career, the girls team held 10 city and tournament titles. She has since returned to Ballou to coach the boys basketball team.

Each of the coaches spoke eloquently about the importance of athletics for young women, and the continuing forms of discrimination that faced girl athletes and women coaches.

We also received testimony from Christine Pride, a high school student in Silver Spring, MD, who spoke about first-hand experiences with sex discrimination from her participation in the girls' softball program. She had a point of reference for comparison, since her brother, who is now a professional baseball player with the Montreal Expos, had graduated from the same high school. She saw the perks and goodies, such as shoes and athletic wear, that were bestowed upon him while women received nothing.

High school years lay the foundation for a youngster's future, either in pursuit of a college degree or in search of employment. Participation in athletics teaches our young people how to play as a member of a team, how to take risks, how to discipline and challenge themselves.

It is important to note that, according to a 1990 study from the Institute on Athletics and Education at the University of Chicago, high school girls who play sports are 80 percent less likely to be involved in an unwanted pregnancy, 93 percent less likely to be involved with drugs, and three times more likely to graduate from high school. Athletic girls tend to have higher attendance records, better GPA's and lower dropout rates.

Girls in high school do not have the same resources as their collegiate sisters who have taken the issue of sex discrimination in athletic opportunities to court. However, they are beginning to notice the differences and speak up. At a recent basketball tournament an athletic shoe manufacturer sent along nice new shoes for the boys, but none for the girls. Girls at the tournament rode in 100-degree weather on buses without air-conditioning, while the football players and boys basketball players enjoyed riding in air-conditioned comfort. The girls brought these differences up to the coordinator, who deemed them minor complaints. Subtle differences, but continued disparities such as these have a tremendous impact on a young, maturing girl.

Enlightened State officials are beginning to pick up the ball. In Illinois, as Ola Bundy, the assistant executive director of the Illinois High School Association, testified, the State Board of Education has adopted sex equity rules, more popularly known as title IX with teeth in it. Public schools are subject to a periodic school approval process which they must pass to receive funding. This process includes a thorough review of a school's athletic program. In addition, schools must complete a sports interest survey every 4 years to ensure that the interests and abilities of the students are being met.

Recently, I conducted a survey in the schools in my own district and found that roughly one in three athletes is a girl. This ratio is similar to that which is found at the national level with one exception. The girls in schools with more resources fared far better than those girls in the poorest schools. I suspect this may be the case in other, less fortunate urban schools.

Every time a young woman is told that her team can only practice when the boys are done, every time she sees her male counterparts enjoying better equipment and better facilities, and every time she sees women coaches treated worse than their male counterparts, she is learning all of the wrong lessons: That men are entitled to better treatment than women.

My bill, H.R. 921, the Equity in Education Act, is designed to bring about gender equity in college sports through full disclosure. Yet gender equity at the college level will only be fully successful when opportunities for girls from kindergarten to high school are made equal.

As Christine Pride testified:

> I know that these changes cannot possibly occur overnight but I also know that it is harshly unfair that I, with my 3.75 g.p.a. and 1200+ S.A.T. score will have to sweat out my acceptance to the University of North Carolina at Chapel Hill, while some male basketball player who barely qualifies under Proposition 48 will be relaxed knowing that he will be accepted at almost any school he wishes to attend.

We must collectively find a way of getting our girls and women off the sidelines, onto the court, and playing the game.

□ 2130

INTERNATIONAL TRADE COMMISSION DECISION COSTS AMERICAN JOBS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio [Mr. REGULA] is recognized for 5 minutes.

Mr. REGULA. Mr. Speaker, last Tuesday, the U.S. International Trade Commission returned its vote on the 72 steel cases alleging dumping. The ITC found in favor of domestic companies on plate, galvanized, and certain cold-rolled products in less than half of the cases. All hot-rolled steel products, which constitute over 1.2 billion dollars' worth of the cases, were found to not be guilty of dumping.

Its decision to deny relief in a significant majority of the steel cases, valued at over $3.2 billion, is lost jobs for steel. But it is also losses for the supporting industries from food services to trucking.

I strongly disagree with the decision. The facts are undisputed.

The Department of Commerce had found 1 month earlier antidumping duties as high as 109 percent and set duties to offset subsidies of foreign steel as high as 73.9 percent. The findings confirmed the presence of massive and persistent subsidies and dumping of foreign steel. It is estimated that over $100 billion in subsidies have been given to foreign steel makers since 1980. Such cheating indexes have resulted in 258,000 lost jobs and closure of over 450 facilities in the United States.

Worldwide overcapacity is the root cause of current market distortions while dumping and subsidies are merely the symptoms. In 1974, world steel demand, which had been growing an average of 5 percent per year since 1960, leveled off. But massive overcapacity has continued to be built resulting in a depressed market with current Western world excess crude steel capacity at 140 million tons.

This creates a difficult situation for our Nation since it is the only net importer of steel today and has the most open market in the world. We have become the market of choice for dumping. Jobs have been lost and lives ruined by these predatory trade practices.

Clearly, world trade in steel has been distorted by foreign subsidies and dumping practices far more than any other manufacturing sector. As already noted, over $100 billion has been spent in foreign subsidies in the past decade. In France, the two state-owned steel firms, Usinor and Sacilor, suffered unbroken succession of losses for 12 consecutive years ending in 1987. Despite these losses the firms have dramatically increased spending based on subsidies estimated at $16 billion since the mid-1970's. In Italy, the steel industry has lost more money than its worth, on average, every 18 months for 15 straight years between 1975 and 1991. It has received over $20 billion in subsidies since 1980. British Steel received subsidies estimated at $15 billion from 1976 through 1988.

The clear facts are that economic logic and the free market have not prevailed in the trade of steel and U.S. producers are losing substantial revenue and market share to imports that cannot compete without subsidies on the same terms as our own mills compete.

The puzzle is how the ITC could ignore the obvious facts of injury to U.S. producers and their workers.

It is my intent and other members of the congressional steel caucus to move to urge our negotiators to address the issue of structural overcapacity in the upcoming steel talks to resume in September. We will offer a specific plan which will overcome the impact of the ITC ruling.

The core of our proposal is to permit limited types of steel subsidies based on an exchange between the value of the subsidy for reductions in a participating country's capacity to produce and to put caps on the amount of steel it may export outside its borders. It is a more effective program than originally envisioned under the MSA or operated during the VRA's in years past.

This approach is consistent with our trading partners' arguments that certain subsidies should be permitted since they encourage reductions in excess capacity. In fact, both Spain and Italy have recently petitioned the EC to allow subsidies based on this principle of valuation exchange. Our approach will put teeth in the steel agreement and address the real problem of excess capacity. This means more good jobs and a peace of mind to steelworkers that their job will continue to be there in the future.

Also, the proposal is conditioned on the permanent closing of facilities without the possibility of resale for use by another source. We employ an elaborate set of rules to prohibit the targeting of subsets of our steel industry by offshore producers and address the issue of pricing.

By mid-September, the steel caucus plans to present its concerns to the various foreign delegations in Geneva. It is our hope an agreement can be reached before the end of the year.

In conclusion, the facts clearly demonstrate that U.S. producers have suffered significant injury over the past decade from illegal and unfair trade abuses by offshore steel manufacturers and their governments. The unfair import share is significant and rising. Financial performance of steel producers has deteriorated sharply over the last 3 years. And domestic producers have lost significant sales to dumped merchandise.

Now we must act to ensure the incorrect ruling of the ITC does not rob further jobs from American workers. I ask my colleagues to help us to clean up the cheating index left untouched by the ITC.

A PLEA ON BEHALF OF ADOPTED CHILDREN AND ADOPTIVE PARENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. KLINK] is recognized for 5 minutes.

Mr. KLINK. Mr. Speaker, I take the well tonight to again make a plea on behalf of adopted children and adoptive parents. I also want to let the House know that tens of thousands of birth parents have also been needlessly traumatized by the judicial gutlessness in the Jessica DeBoer case.

As an adoptive father I know that it does not take more than a few brief minutes to bond with a child. When someone hands the child to you and says this child is yours to raise, it does not matter if the child was one that you fathered or a child you are adopting. In my own case, our child was 5 months old and had been with us since birth, when the call came that there was a custody problem. You have to go through it, though I pray no one ever has to, to understand how it feels when the State, or county in this case, takes an action to remove your child from your home and send that child to an unsure future.

Too often the case turns on the fact that some one had sex and then conceived a child and that child is their property. Children have rights; they are not property. The DeBoer case is the Dred Scot decision of the 1990's. This must not and cannot be tolerated.

Clinical psychologist Jeree Pawl says she does not normally testify in cases like the DeBoer case. But that as an expert on infants and toddlers she would, in this instance. The doctor says, and I concur, that parents and babies come to know one another through feeding, diapering, giggles, tears, hiccups, baths, stories, and kisses. Those are the stuff of life for infants and parents. The earliest life experiences are the most profound in shaping who we are. The doctor points out that this is why abused children continue to suffer after being removed from abusive situations.

Dr. Pawl states that even with the youngest children being shifted from one primary caregiver to another can cause dramatic changes in sleep patterns, eating patterns, or other essential functions. The doctor continues: "Jessica will have only her physical self. She will not have her familiar psychological self because that self is by no means at the stage of development, independent, continuing." A small child torn from the tapestry of relationships into which she is so complexly woven, loses not only that familiar world but herself. Removing such a small child from everything and everyone she knows results not only in profound mourning and yearning for those whom the child loves, but a numbing loss of any organized sense of self.

Yet the attorney spokesman for the Schmidts would have us believe the little 2½-year-old girl took control of the situation and never even whimpered for her parents, that leaving a loving home and two people who have loved her since shortly after her birth was like going to a babysitter's house for an hour. This change is forever and will forever scar the child Jessica Deboer.

Let me repeat some things I have said before. This is not about birth parents' rights versus adoptive parents' rights. It is about children's rights. We in Congress must take action to make up for the shortcoming in our judicial interpretations. Leave no doubt that the best interest of the child is what truly matters. That when the psychological makeup is put at risk like

Jessica's, or when there is a clear and imminent physical danger, the child must be protected by the full force of law.

This is truly, ladies and gentlemen, a national moment of shame. I think, in our mind's eye, that we should not forget what it looked like when that child was being taken away from her parents, her cries and her screams, and that we should be moved to do something.

So many childless couples who are thinking about adoption, so many children who need to be adopted and need to be cared for, need to be loved, so many of them are going to hesitate because of what happened in the DeBoer case.

I will just mention that out of an estimated 50,000 adoptions every year in this country, only 500 end in cases like this. We, as Congress Members, need to move.

Mr. Speaker, I am including at this point in the RECORD the affidavit of Dr. Jeree Pawl on the DeBoer case, as follows:

AFFIDAVIT OF DR. JEREE H. PAWL

ANICUS CURIAE BRIEF—RE: JESSICA IN THE CASE DEBOER VS. SCHMIDT

My name is Jeree H. Pawl. I am a clinical psychologist with a Ph.D. conferred by the University of Michigan in December of 1959. My specialization has always been the treatment of young children and their parents. In 1973 I began focusing solely on infants, toddlers and their parents at the Child Development Project at the University of Michigan. When its Director, Mrs. Selma Fraiberg, joined the faculty of the University of California, San Francisco in 1979 and began a similar program, there, I joined her as her Associate Director. I have now been the Director of that program since 1981.

The program provides direct clinical services to infants (age birth to three) and their parents as well as to other primary caregivers. It also provides consultation to the courts, to the Department of Social Services, and to other agencies and programs providing services to this age group. This includes mental health consultation to both center and family daycare, the pediatric outpatient and inpatient departments at San Francisco General Hospital where the program is located and other services throughout the City and County of San Francisco. It is also one of the major training sites in infant mental health in the country: I am a Clinical Professor in the Department of Psychiatry and the Vice President of a national organization focusing on infancy, Zero to Three/The National Center for Clinical Infant Programs.

I do not ordinarily testify or become involved in cases where I am not directly familiar with all of the individuals concerned. The material with which I have been provided, however, indicate that the "adoptive parents" of the child have been adequate parents to this specific child. Though questions have been raised about the biological father's volatility and past behavior with other children, the biological parents also seem to fall into the range of ordinary adults, who might be expected to provide fairly reasonable caregiving for some hypothetical child under ordinary circumstances.

The young child, Jessica, (age 2 years, 2 months) is also described by everyone as a well-adjusted, ordinary child who loves well and is well loved and gives every evidence of having good capacities in all areas of her development. Because Jessica is doing well and because the sets of "parents'" capacities are not directly at issue, it is possible to speak for Jessica and to her experience. I will try to describe as well as I can what she, as an ordinary, well developing, well-loved child has currently achieved, how she is therefore organized and what one can feel confident that she will experience if she is removed from her current "parents" and sent away to live with those who are to her, total strangers.

Jessica came to the intended adoptive "parents" very shortly after her birth. This couple had long wanted a child for whom they could provide. They were ready and eager to accept Jessica as that long awaited child and to be to her the parents they so much wanted to be. Jessica, as are all babies, was totally ready to engage wholeheartedly with whomever it was that cared for her. At issue is her relationship with her parents and her sense of herself and the world that has evolved. Those relationships are formed in the most ordinary, nitty-gritty, day-after-day interactions. Parents and babies come to know one another through the feeding, diapering, giggles, tears, hiccups, baths, stories and kisses that are the stuff of life for infants and toddlers and their parents. The formation of the parent-child relationship is a process and it begins at the beginning.

Although experience throughout life are crucial and many later life experiences may be traumatizing or positively shaping, the earliest experiences are both the most ordinary and the most profound. An infant is being introduced by those who care for him or her to the way it is to *be* with other human beings. Is it good and promising? Is it bewildering or scary? Even lonely? These qualities matter tremendously to who it is a baby is likely to become, but whatever those qualities are, those who do this introducing whether the introducing is wonderful or dreadful are destined because of that role to become the central figures in a child's life. What is learned is crucial but those who teach it become all important. They become an ever-growing part of a child's internal as well as external world. This is why even abused children suffer when they are removed from their abusing parents as they sometimes must be. Despite the abysmal quality of their treatment and of their lives, they are fiercely connected simply because that is all there has ever been. The ties of severely abused children to their parents are very tortured but very strong and the ties of positively nurtured children are essentially bonds of love and are even more powerful.

We know that even with the youngest children (a matter of months) who are shifted from one primary caregiver into the care of another, we can expect dramatic shifts in their affective states, in their sleep patterns, in their eating patterns and other essential functioning. We know that they sometimes withdraw or become irritable, and inconsolable. We also know that such disruptions may be ameliorated somewhat with very young infants if, the new caregivers are more devoted, more responsive and able to behave in ways that contrast in dramatically positive ways with the previous lost relationship. We know that in the first few years the effects of such shifts increase in intensity and duration and that when the initial patterns of interaction were particularly good, the negative effects will be intensified and deepened as well. The loss of a potential parental figure or figures when a child is in the first few years of life is among the most devastating life experience that a human being can have. When the immediate and familiar family members are there it will be of some help to the child. Without that, the entire world is lost.

Adults seem always to imagine that their suffering is somehow more important than that of children and that the smaller the child, the less the suffering counts. Children, it is said, will "get over it" because they are "just little".

In point of fact, adults have many more ways of managing severe losses and at the very least they have the opportunity to understand what it is that is happening. They are able to fit the dreadful event into some narrative explanation, however anguished, angry, or hurt they may be. Very young children cannot do this, they are just beginning to create narratives for themselves at age 2 and they simply cannot cognitively comprehend so momentous an event as the loss of their parents. They have nothing with which to cope with it and in this specific traumatic instance, Jessica would be losing absolutely every single thing and person familiar to her except her physical self. Jessica will have only her physical self. She will not have her familiar psychological self because that self is by no means at this stage of development, independent of its surround and the presence of its essential core, her familiar parental figures. This sense of self is dependent on the relationships in which it is embedded. A small child torn from the tapestry of relationships into which she is so complexly woven, loses not only that familiar world, but herself. A small child relies heavily on the predictability of what it is that she can create with those around her for a sense of self-knowledge and integrity. Removing such a small child from everything and everyone she knows results not only in profound mourning and yearning for those whom the child loves, but a numbing loss of any organized sense of self. The child no longer knows who she is—in a very profound sense.

The obvious dislike of adults for states of helplessness apparently interferes with the ability of adults quite to imagine (or certainly to wish to imagine) the quality of helplessness that defines important aspects of any child's experience. This aspect of realistic helplessness is counterbalanced quite effectively by parents whose attitudes embody strong protection and the use of themselves to help a child feel the many impacts that she does in fact have and can have. Embedded in the responsiveness of the parent is the source of a child's sense of autonomy, of importance, and of value. This tempers the child's sense of helplessness but it never eliminates it. The small child is reminded of this every day and it is the good and the familiar parent who knows the child well and has evolved with the child their unique vocabulary of interaction upon whom the child can rely. It is this responsive parent who prevents the sense of helplessness from becoming a defining feature for a child but that helplessness exists and when those parents are absent, the child's confidence wanes. When the parents are permanently absent and a child of 2, like Jessica, is removed from all familiar adults there is no one who knows her or who knows her unique language—a language not of speech but a language of love learned in intimate and repeated interaction with those who have nurtured her. This is in itself a severe trauma. None of the ways she has learned to be with

people work. All children experience this briefly with strangers or more intensely in a new daycare or other situation but they simultaneously rediscover themselves upon reunification with their parents and such experiences (if reasonably benign) result in flexibility and growth. If, however, as with Jessica, this happens in the context of the worst, and most awesome loss one can possibly imagine, it does not result in growth. The internal litany is anguishing. Over and over the child thinks, "They do not come. Where are they? Why have they left me?" She is utterly helpless to recover them, those human beings more important to her than anything in the world. The torment for the child is almost indescribable. No adult would ever have to face this cognitive as well as emotional inability to understand what it was that was happening. How can one expect a small child to cope with this. Is it possible that the judicial system that should be devoted to the well being and protection of children should itself inflict so dreadful a punishment? Such an experience for a child of Jessica's age is deforming. It deforms who she can become, her view of herself, of the world, and what it is that human beings can offer to one another. It is crucial that the court grant leave to appeal. This is far too serious a matter in the life of this small child to be decided on the basis of a biological father's accidental fatherhood.

Jessica, in being removed from her current "parents", will be transported into a nightmare and it is one which will never end. The feelings she will experience cannot be resolved. Perhaps the most compelling way to try to imagine it is to think of it as a kidnapping. Legally it is certainly not a kidnapping, but psychologically, that is exactly what it is from the point of view of Jessica. A small child, normal in every respect, with good and loving parents is kidnapped from a court house, or a shopping mall. The kidnappers do not intend to harm her—they just want her for their own child and so they kidnap her. What would Jessica's experience be initially? If Jessica is a particularly trusting child who feels fairly safe with people in general, she would be alarmed, she may even be stunned enough and bewildered enough to tolerate the intended kindness temporarily. Still, if these strangers are emotional and overwrought, then they will violate Jessica's notions of how strangers behave—strangers hold back, strangers don't swoop, strangers don't demand things of you and they pay some attention to how it is that you feel. Maybe these strangers would be skillful enough to quell Jessica's fears briefly but then the terror would strike—sooner or later. "Where are the people she knows? Where are my mommy and daddy? I want my mommy and daddy. I want my mommy and daddy. I want my mommy and daddy." In fact, someone's child has been stolen. A little girl has been stolen from her parents. The most important people in her world upon whom she depends for everything and for the central understanding of herself and of the world are missing. This is just the beginning for Jessica. The terror and confusion as to where her "parents" are and why it is that they don't come will not be resolved. The yearning, the fear and the sorrow are dreadful and it is only the beginning.

I cannot predict exactly the course for Jessica if this shift occurs but I do know that it will change her forever. There will be a darkness, a sadness, a lack of trust, anxiety and fear within her relationships forever. That will be her legacy. This is true whether she "remembers" or not. Feelings are not encoded in the same way as other information and a 2-year old does not encode information in the same way as an adult. Experiences are less readily digestible and as a result, become even more salient to what a child's expectations are. Jessica's expectations will be that you can lose the most precious things without any foreshadowing, without any understanding and that you are helpless to stop it and can do nothing about it. In an instant you can and will lose absolutely everything that you care about—everything. We can know that this would be the central fact of her affective understanding of human relationships. She would not be able to say that, but she will feel it and she will act it and it will interfere with her sense of what is possible between people forever.

The adults in this case have suffered and will continue to suffer though to differing degrees depending on the ultimate outcome. Jessica has been relatively protected though even the best efforts of the current "parents" cannot have shielded her from their moments of most extreme despair. How can the solution be to insure that it is now the child who will suffer more than anyone? Jessica should have some right not to suffer at the hands of the judicial system. It does not matter how clumsily or thoughtlessly any of the adults, (judicially or personally involved) have behaved in this case that has affected the time that Jessica has spent her life with her current' parental figures. She is not responsible for that. She should not and must not be punished for responding wholly naturally to the love and the care that she has received by falling in love in return. That is the nature of the human experience and Jessica must not be punished for it. Emotionally speaking, and it is all that matters from Jessica's point of view, she is with her parents. She knows and feels nothing but the absolute rightness of what it is that they have created together. The system has tricked her but it must not punish her as well.

Will Jessica care someday what her story is? Of course. All adoptive children become curious as to what their story is. If done correctly, it is a story told as the child's curiosity and interest make it relevant. The child continues to be respected as well as protected and will, when it is appropriate, know her biological parents and wrestle with the meaning of it. We know that adoption, if sanely handled, includes the possibility of a new relationship that may be available to a child with their biological parents and that the relationship with the adoptive parents only deepens.

The problems surrounding adoption have as much to do with the status of adoptive parents as second class parents as anything else. When parenthood is recognized as at least as much as a privilege as a right and that one earns one's true status of parenthood by one's assumption of the role, and not a sexual act, it will go far to improve the status both of the adoptive parents, parents in general and the attitudes toward the rights of children.

Jessica's plight alone should argue for the necessity of the court granting the leave to appeal but Jessica also represents numerous children who will face the same fate if this precedent is established. Surely this should not be allowed until every possible consideration is given to so grave a matter. The right of a child to have his or her well being considered is both too precious and as yet too fragile to dismiss without the most serious consideration.

INTRODUCTION OF CONSTITUTIONAL AMENDMENT TO PROHIBIT CONGRESS FROM RAISING TAXES RETROACTIVELY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California [Mr. Royce] is recognized for 5 minutes.

Mr. ROYCE. Mr. Speaker, they say there are only two things certain in this life: death and taxes. Now, President Clinton even wants us to raise taxes on the dead.

As we learned yesterday, the President's budget reconciliation bill not only raises income taxes on millions of working Americans this year, it raises them retroactive to January 1. Now, to add insult to injury, we learn that it also raises estate taxes retroactive to the same date.

So the families of millions of people who have already passed away this year will now be assessed additional estate taxes in order to finance the biggest spending increase in American history. I guess you could say it is taxation without respiration.

And if you think that is a crime, you are wrong, because criminals are protected by the Constitution against retroactive changes in the law, but taxpayers are not. That is why I introduced a constitutional amendment in this House yesterday to prohibit Congress from raising taxes retroactively. We need to give taxpayers the same protection we give to criminals.

Mr. Speaker, there are very real consequences to retroactive taxation, economic consequences which are directly contrary to the stated intent of the President's plan. Consider the small business man who had decided to purchase a new computer this year, who now learns the will owe an extra $3,000 in back taxes under the President's plan. Scratch the computer, that money is going to Washington to pay for more Government spending. And when you multiply that effect by thousands, scratch many jobs.

Mr. Speaker, this is economic insanity. I hope all my colleagues will join me in voting against the President's plan, and in passing a constitutional amendment to House Joint Resolution 248 to end what has become an open season on taxpayers.

□ 2140

I yield to the gentleman from Oklahoma.

Mr. INHOFE. I thank the gentleman for yielding.

Mr. Speaker, I did not know that the gentleman was going to bring this subject up this evening. But I had a phone call from my district in Tulsa, OK, from someone who had retired from a large company. His retirement date started back in December. He had made preparations based on the tax laws in force at that time, and he was outraged that they are going to go back and

change the rules on which he had predicated his time of retirement.

Mr. Speaker, has the gentleman in the well heard of any others like that? Are there any others like that in the country?

Mr. ROYCE. We have heard of many cases. The situation is the rules are not changed, not even before the introduction of the bill, not even up until President Clinton's term, but back into the Bush administration, back to January 1. President Clinton was sworn in on January 20. This bill reaches back 8 months from today to increase taxes retroactively so those individuals who were not aware of this fact will now find that their income taxes will go up retroactively, estate taxes, gift taxes also will be raised retroactively.

Mr. INHOFE. I was told also today that never in history have we passed a retroactive tax in terms of income tax. Is that correct, has the gentleman heard that?

Mr. ROYCE. I believe this is true.

Mr. INHOFE. Then this would be unprecedented, to the best of the gentleman's knowledge?

Mr. ROYCE. I believe it is unprecedented. It is my understanding that this is an unprecedented act not only in the history of this county, I do not know of any case where a situation of this magnitude, going back 8 months to raise taxes—I was informed today that even the new Russian Constitution protects people from a retroactive tax increase. I do not know if this is true. This information came from Senator DOLE's office, and I am going to check on it.

But at the very least, our Constitution in the United States should protect the American public and give them the same protection.

Mr. Speaker, I yield to the gentleman from Pennsylvania.

Mr. KANJORSKI. Mr. Speaker, I call the gentleman's attention to the first Income Tax Act enacted by the Congress of the Untied States, October 1917, making taxes retroactive to January 1, 1917.

Mr. INHOFE. I would suggest that may be it is only unprecedented before 1917. I certainly do not think that that makes it acceptable. My concern with this, I tell the gentleman from California, is that it is a sense-of-fairness issue. This is a fairness issue. I certainly want to be part of the gentleman's resolution and thank him for bringing it up.

THE CRIME CONTROL ACT OF 1993

The SPEAKER pro tempore. (Mr. WATT). Under a previous order of the House, the gentleman from Florida [Mr. MCCOLLUM] is recognized for 5 minutes.

Mr. MCCOLLUM. Mr. Speaker, I come tonight to talk to the body, because today I introduced the Crime Control Act of 1993 on behalf of the Republican task force on crime, the leadership task force on our side of the aisle, and because I think we need to talk about that a little bit, to explain what it is doing. It is one of the largest, most comprehensive bills on crime ever produced in this body by either party. I think it is something that we need to discuss in terms of why we introduced it and what its entire perspective is in this country today with respect to the whole crime issue.

First of all, I think it is important to note there have been 5 million victims of violent crime in this country since 1960. The crime rate since 1960 for violent crime is up over 500 percent, which is absolutely astonishing when you think about it for a minute.

We also know that during that same period of time, we have seen the expected punishment for violent crimes drop by about two-thirds; that is, the length of time that you are going to serve in jail is about two-thirds less than what it was back in the 1950's or 1960's for whatever crimes you happen to be convicted of and captured for.

We are releasing prisoners from our overcrowded prisons in this country, State prison systems, at untold record rates. They are going back out on the streets and committing more violent crimes again and again and again.

We simply have to put a stop to this. The American public understands that this is one of the most grevious problems facing this Nation today. That is why this comprehensive bill was created.

What it goes into in great detail is an effort to put some money, some resources, everything in the way that we possibly can to stop this, in the law if we could get this bill enacted.

Let me run by, first of all, some of the features in this bill.

In the brief time I have here, I cannot begin to discuss all of the features that there are there. First of all, we would put 20,000 new cops on the streets just for those communities where the crime rate is very, very bad, under a grant program funded with roughly $2 million over 5 years. Included in the grant program that we propose in this new legislation is a special funding for community policing projects for crime prevention programs, again only in those communities where there is a very high crime rate. Roughly $500 million over a period of 5 years to be devoted to grant programs for schools in high-crime areas in order to get crime prevention in those school systems for burglar alarms, for more security guards, and so forth.

Then, in addition to that, because the alien problem is so great, we would nearly double the number of criminal investigators in the Immigration and Naturalization Service. We would add 3,000 border patrol, which is almost double the number of border patrol that we have today.

Probably the most creative provision in the entire bill is a provision that was drafted in order to help solve the overcrowding problem. It is a sharing proposition between the States and Federal Government for a regional prison system in which certain State criminals would be incarcerated, if the States agree to pay 50 percent of the cost of construction of these prisons and they agree to pay 50 percent of the cost of the operation and maintenance, and the other 50 percent is paid for by the Federal Government.

What is involved in this is about a $3 billion program to get it going over 3 years. All of this money that I have just described coming from savings by taking a 5 percent cut across the board in administration overhead for all of our Government agencies. I think that is important to note that this prison system concept is a carrot-and-stick proposition, very little stick and a lot of carrot involved in it.

What we are talking about is a 50,000 prison bed population increase just for those who are two-time felons in the violent area, committing violent felonies, or commit serious drug traffic offenses, who then commit another crime of violence involving the use of a firearm or a crime of violence involving a sexual offense. In order to qualify, that is what the prisoner has to be.

For the State to get into the program, the State has to do more than that, and that is the real carrot in this whole process for us to contribute as much Federal resources as we would. The State has to pass truth-in-sentencing laws for those who commit violent crimes, and those who commit drug traffic offenses, whereby their prisoners in those States must serve at least 85 percent of the amount of time that is given.

All too often, sentences are being given and prisoners are getting out serving next to no time at all for the crimes that they are committing at the State level today because of overcrowding and other reasons.

We also require minimum mandatory sentences of 10 years for persons who are convicted of serious felonies and subsequently are convicted of a crime of violence involving the use of a firearm or a crime of violence involving a sexual assault.

It is a very innovative provision for regional prisons that we hope the Congress will take note of.

In addition to this, we have provisions on the protection of neighborhoods, families, and children; we would secure schools, secure neighborhoods, crimes against children, equal protection for victims of crime, sexual violence crimes, terrorism, and so on and so forth. It is a very comprehensive bill, including restoring the habeas corpus provisions that have been talked

about so much where prisoners can have endless appeals from their death sentences, which we do not want anymore, and restoring the Federal death penalty.

□ 2150

It is a very comprehensive bill. It includes restoring the habeas corpus provisions that have been talked about so much where prisoners can have endless appeals from their death sentences, which we do not want anymore, and restoring the Federal death penalty. It is the most comprehensive bill ever produced by anybody.

I am proud of it. I think the Members need to know about it and I hope there will be many cosponsors to the Crime Control Act of 1993.

DISCHARGE PETITION FRAUD EXPOSED

The SPEAKER pro tempore (Mr. WATT). Under a previous order of the House, the gentleman from Oklahoma [Mr. INHOFE] is recognized for 60 minutes.

Mr. INHOFE. Mr. Speaker, in the last 5 years, this House has been plagued by more scandals than in its 200-year history before that. First we heard about the restaurant scandal. Then we heard about the gym scandal. Then we heard about the Post Office scandal. Then we heard about the Bank scandal. Now we hear about the Post Office scandal again.

In the last election, more incumbents were rejected by the Electorate than any time in contemporary history.

The irony of all this is, if you look at all these scandals, all these scandals that I just mentioned, there is one innocuous procedure in this House that inflicts far more damage on the citizens of America than all of these scandals put together.

Webster's Ninth New Collegiate Dictionary defines fraud as:

> Deceit, trickery: intentional perversion of truth * * * an act of deceiving or misrepresenting * * * one who is not what he pretends to be.

Tonight we are exposing the biggest fraud in the history of Congress—a fraud that has endured for 63 years.

Tonight I am joined by several freshmen, newly-elected Congressmen who are among the most reform-minded individuals, a lot of them are referred to as the reform brigade. They have been instrumental in bringing us to this point tonight, that when understood, will be considered the most significant reform of the last six decades. These freshman Members have wondered, as I did when I was first elected, why is it that legislation that enjoys a mandate by the people, that for example might poll 90 percent of the people in favor of it, somehow is introduced, then disappears, never to be brought up again, as if it fell into a deep, dark hole.

Tonight we are going to solve the 63-year old mystery of that deep, dark hole.

Mr. Speaker, the cornerstone of the foundation of fraud, hypocrisy, deceit, and even institutional corruption is found in a rule first articulated in 1930 by then Speaker of the House John Nance Garner.

Now, something strange was going on. I am not sure, since I am not a journalist, why it was, but prior to 1930, for some reason, nobody really cared what happened in the House of Representatives. The journalists did not write about it. The editorial boards did not endorse things. They just did not seem to care. So you had this arrogant feeling and attitude around here that we could do anything we wanted, we were immune, no one was going to say anything about it. It was perpetuating the "Insider's Club."

But in 1930, there was an investigative reporter who started focusing on voting behavior, and they even started actually printing and editorializing on specific votes on sensitive subjects. Keep in mind, this was back in 1930.

So the leadership caucused behind closed doors, I would imagine. They devised a system where they could hide their positions from the public. I mean, after all, what business was it of the public to know what the Congresspeople were doing. What right did they have, at that time, to know how their Congressmen were voting?

Speaker John Nance Garner and his leadership in Congress devised a system that was ingenious. They provided for a discharge petition that would be sacrosanct in secret, and here is how it worked. I know this is complicated. The complication of this fraud is what has made it so difficult to expose for 63 years, but you need to know how this thing works.

Bills and resolutions that were popular at home, but were against the wishes of the leadership insiders, would be assigned to a committee, such as the Rules Committee, with the unwritten understanding with the chairman of the committee that they would never bring it up for a vote.

Let us be sure we understand this. Congressmen could cosponsor legislation that is popular at home, knowing all the time that it would never have to be voted on. The only way it could come out of committee for a recorded floor vote would be for 218 Members of the House of Representatives to sign a discharge petition. The discharge petition would be kept in a locked drawer, and if the camera can go right up behind the gentleman's head there to the left of the podium where the book is, the Journal, that is where the locked drawer is, the sinister locked drawer that only Members of Congress can see, and it is kept in secret. The only time this drawer could be opened would be during a House session and then only the Members of the Congress could see the discharge petition. A Member of Congress could sign it, he could look at it, but he could not record anything that was in it. He could not even take a pen or a pencil up to the desk with him.

Now, we have got two problems here in exposing this thing. First of all, how do you know under these conditions who signed the discharge petition if you cannot go up there and write them down, because you have to get up to 218 names and that is really a job. This apparently has never been done until now. We have 200 names on a discharge petition. I showed this list to someone today and this senior member told me that to the best of his recollection, he had been here over 30 years, he has never seen a list compiled of everyone who signed a discharge petition.

If a Member of Congress somehow figured out how to obtain a list of those who signed, he could not divulge the names to the public. If he did, he would be subject to punishment which could include expulsion from the House of Representatives.

In fact, when a Member signs a discharge petition, he is given a notice called "Important Notice."

Now, if the camera could look over there at this "Important Notice", this is what is given to each Member when he signs a discharge petition. I will read, in part it says:

> The publication or release of the names of the Members who have signed this or any other Discharge Petition is strictly prohibited under the precedents of the House. The prerogative of individual Members to determine when and whether to sign a Discharge Petition is in the nature of a private and serious agreement.

It goes on to say that you are even violating the House rules if you tell someone how many names are on the discharge petition. There are 200 on this Discharge Petition No. 2 which I just filed under the House rules.

Now, I am not a lawyer and certainly not a constitutional lawyer, but I believe this directly defies article I of the Constitution which states, "Each House shall keep a Journal of its Proceedings."

Now, does this not clearly imply that the Journal is for public consumption?

Our Founding Fathers did not say a secret Journal. They referred to secrecy, but historically this has been when talking about intimate personnel matters or matters of national security. I am a great believer in the covert possibility and activities that can go on, because the public cannot know everything that affects our national security, but it certainly does not mean you hide your votes and your positions from the people at home.

Can you imagine being expelled from the House of Representatives just for telling the truth to the folks back home?

What a foolproof system they set up in 1930. A Member could make the people at home think that he was voting their wishes, while all the time he was opposing them, and it worked.

Years went by, decades went by, no one found out. No one found out until 63 years later. Tonight everyone finds out. Tonight we have the ability to ignite and annihiliate that cornerstone of the foundation of fraud, hypocrisy, deceit and institutional corruption, and this is how we will do it.

In March of this year, I introduced House Resolution 134. House Resolution 134 is a very simple resolution. Some of the greatest reforms we have are in one sentence. All this says is, "Once a motion to discharge has been filed, the Clerk shall make the signatures a matter of public record." That is all it says, very simple, let the people know.

Let me repeat that. "Once a motion to discharge has been filed, the Clerk shall make the signatures a matter of public record." Of course, as I expected, this was assigned to the Rules Committee.

Think of the irony of all this. The resolution to reform this Discharge Petition process is bottled up in the Rules Committee and the only way to get it out is with a discharge petition.

So I started getting signatures from individuals I thought to be reform oriented, one at a time. Those here with me tonight, the ones you are seeing here, are the ones who were the very first to sign this discharge petition.

□ 2200

And that gave courage to others to defy the leadership in signing this. I had to explain to each individual the process; I did not know it when I was first elected to Congress; and then ask them if they would go up and sign discharge petition No. 2 up at the desk and come back and tell me what number they had assigned to them. Each one has a number. I was No. 1. JIMMY DUNCAN was No. 2. BUCK MCKEON was No. 3. And it goes on all the way to No. 200 that we have on this. Think of the time it took.

Now, 5 months later, we have 200 signatures on the Discharge Petition No. 2. It takes 218 to discharge it to a vote. So, we are 18 short, only 18 signatures away from the most significant reform in 63 years.

Now how can we get the additional 18 signatures? Listen, Mr. Speaker. Listen very carefully.

The day after tomorrow we will be leaving for our August recess. I am announcing here on the floor of the House of Representatives that the day after tomorrow, at the close of business, I am disclosing to the Wall Street Journal, and they have agreed to print, the names of all Members who have not signed DISCHARGE Petition No. 2.

Let me repeat this so it is abundantly clear to all Members of Congress and have it into the RECORD so it cannot be confused. I will actually read this:

I am announcing tonight here on the floor of the House of Representatives that the day after tomorrow, at the close of business, I am disclosing to the Wall Street Journal, and they have agreed to print, the names of all Members who have not signed Discharge Petition No. 2.

Mr. Speaker, I understand. I have talked it over with my wife that I am taking a chance of being expelled for my actions, expelled from the House of Representatives from the position which I have been in elected to represent over a half million voters, that those half million citizens of Oklahoma could be disenfranchised through the enforcement of the rule that has somehow endured over six decades, an evenly conceived rule we intend to dispose of with House Resolution 134 and Discharge Petition No. 2.

I am doing this, Mr. Speaker, because no one else over the past 63 years has been willing to do it. I am not excited about it. I wish someone else would do it. But I am doing it to destroy that pillar on which most of the fraud, deceit and hypocrisy around here depend in order to exist. I am doing it because the people deserve to know what is going on in this place.

So, Mr. Speaker, tonight I encourage my colleagues to sign Discharge Petition No. 2, and do it quickly because once that 218th signature, only 18 more people, goes on the discharge petition, the books are closed, no one else can sign it, and you are too late to get in on this reform, and it will come out, and we will vote on it, and we will pass it.

In doing so, imagine what we will be able to accomplish. We will be able to debate and participate in recorded votes on those issues that are so important to mainstream America.

They asked the question, which all you guys, you freshmen, have heard at your townhall meetings. I think you have had them already. They say, "Why is it the Congress refuses to pass legislation that all you guys want, all the people in your districts want," and the answer is now obvious. They hide their positions behind a 63-year-old House rule.

I really do not want to be overly dramatic, but I say to my colleagues, "Do you all understand the significance of this? There will be no place left to hide our votes and our positions from the people back home. The fraud would die forever. One short trip to the secret door to sign Discharge Petition No. 2 is all it takes. Take a friend with you."

Mr. MCINNIS. Mr. Speaker, will the gentleman yield?

Mr. INHOFE. Yes, I yield to the gentleman from California.

Mr. MCINNIS. I hate to ask to be yielded to and receive an insult, but I say to the gentleman from Oklahoma that I am curious. I want to be sure that we can all understand how this compares to State legislative procedures throughout the country. I am formerly the majority leader from the State of Colorado, and we had a very open process there. We had what we call the sunshine act. All the business that we did dealing with the government of the State was subject to open meeting laws.

Can the gentleman in very simple terms so that I can understand what the discharge petition really means, can the gentleman explain how that would compare to the usual State system that he is aware of and how this compares to an open type of process?

Mr. INHOFE. I understand the gentleman from Colorado [Mr. MCINNIS] was a minority leader; was he not, in the legislature?

Mr. MCINNIS. With some deal of pride I say that I was the majority leader.

Mr. INHOFE. Majority leader. I did not know Republicans were ever majorities.

OK; let me tell the gentleman how it is in Oklahoma, and the gentleman can tell me if it is the same way in Colorado.

I say to the gentleman, "In Oklahoma, if you want to bring a bill up from a committee, and the committee boss won't allow you to do it, all you do is stand up on the floor in an open session, and move to suspend the rules and discharge from whatever committee it is whatever resolution you want. Then the person who doesn't like that normally stands up and moves to table. Then they vote on it, and it's all public record. Everybody knows it. It's out in the open."

Mr. MCINNIS. And in that process, that is all an open process. There is no, as I understand it from the process in Oklahoma, which I think tracks the process in Colorado, the names of the people that want to blast it out of the committee, so to speak, it is done on the House floor. It is not in secret.

Mr. INHOFE. It is unconscionable that this could happen. I never dreamed before I was elected to the U.S. House of Representatives—but look at that notice, the publication, release, of names of Members who have signed this or any other discharge petition. If you release those, you are subject to penalties and punishment.

Mr. MCINNIS. Explain again in terms that are not put into fancy rules, explain in terms that I can understand, exactly what the purpose and the meaning of trying to hide these things. Why do they hide the names? Why do they follow a process? Why does this body follow a process different than most of the legislative bodies in this country, if not all the legislative bodies in the country, and why is it done in such secrecy?

Mr. INHOFE. I say to the gentleman, "SCOTT, you are a freshman, so you are new in this body. I don't think you ever dreamed that there would be this kind of secrecy going on. I don't think any of you freshmen were. I wasn't when I was elected to Congress."

The difference is this:

Congress has been run for many, many years by a group of people who have been in Congress for a long time. They have become very arrogant.

Remember what Lord Acton said. He said, "Power tends to corrupt. Absolute power corrupts absolutely."

And this is what has happened in this House of Representatives. This is why they have done it in my opinion.

I say to my colleagues, "If you take anything like that—let me just describe some of the things that are popular at home. The vast majority of people in America want a strong national defense, want a budget-balancing amendment to the Constitution. They don't want Government-subsidized abortion. They don't want flag desecration. They don't want congressional pay raises done without an open vote."

Yet, Mr. Speaker, all five of these things are things that we find buried in committees because, while people at home want these things, they have strong positions, the leadership does not.

So, how else can they do it? They put it in committee, and the only way to get it out is a discharge petition, and those names are held in secret. So, a Member of Congress can go home and say, "Yes, I want a budget-balancing amendment to the Constitution. Look at me. I have my name. I have coauthored the budget-balancing amendment to the Constitution," knowing full well that he is not going to sign and be one of the 218 signatures. It will never happen.

Mr. MCINNIS. I thank the gentleman.

Mr. INHOFE. Yes, sir.

I yield to the gentlewoman from Florida [Mrs. FOWLER].

Mrs. FOWLER. Mr. Speaker, I first want to thank my good friend from Oklahoma for bringing this very important issue to the House floor tonight. And I want to thank him for allowing me the time to join him in support of this effort to open up the procedures of this—the people's house.

I have the honor of serving as the cochair of my freshman Republican class congressional reform task force. Representative PETER TORKILDSEN and I worked with our 48-member freshman class to develop a list of what we believed to be the most important changes we wanted to see in this body.

While we recognized the negative impact that various perks and privileges here have on the perception of Congress by the American people, we focused our reform package on substantive and procedural reforms that will really impact the way we do business.

One of those reforms involves the discharge petition. The freshman Republican class, all 48 of us, agreed just 3 months after arriving here that all discharge petitions must be available to the public.

I want to thank the gentleman from Oklahoma because he is the one who brought the secrecy of the discharge petition to the attention of our class.

As a group of members who were sent here with a mandate for change, with a message that the American people wanted greater access to their Government and its operations, our freshman class immediately threw its support behind Mr. INHOFE's effort.

I think the gentleman should know that we spent several hours in several meetings debating what reforms would get the support of our entire freshman class. When we got to the proposal by the gentleman from Oklahoma, there was no debate.

There was disbelief. Disbelief that a member could publicly declare his or her support of a bill, with the comfortable knowledge that the real proof of that support would be kept hidden away in a secret box here on the house floor.

Tonight we began debate on the Defense authorization bill. As a member of the armed services committee, I know very well that there are things we must handle in this body, items that would jeopardize national security, that must be kept secret.

But I cannot imagine what is jeopardized by lifting the shroud of secrecy around the discharge petition. The only thing I see we stand to disclose is some hypocrisy, and that disclosure is not such a bad thing.

□ 2210

I would like to ask the gentleman one question. I understand, as you said earlier, that you plan to release the people who have not signed the discharge petition, their names, on Friday after we adjourn. What if by Friday you have reached 218 signatures on the discharge petition?

Mr. INHOFE. First of all, let me thank the gentlewoman from Florida for her remarks. I remember so well going into your caucus and facing the 40-some new freshmen that came in here and trying to explain this, because it is so difficult and unbelievable that it could happen.

I would say that is a very good question. Let me tell you what should happen. Everyone should be aware of this.

Everyone in here, except for one person sitting in this body, has signed the discharge petition. If, prior to the end of the workday on Friday, the 218th Member goes up and asks the Clerk to sign that, and he signs it, then they close the books. At that point no one else can sign it. So if someone has the intention of signing it, and there are already 218, it is a done deal. At that point it is opened up to public scrutiny. The secrecy veil is lifted once the 218th signature is on the discharge petition.

So if that happens, obviously I will not release the names to the Wall Street Journal, because it is a matter of public record.

Mrs. FOWLER. If by Friday you have picked up another 18 signatures, we will not face the possibility of losing you in this House. We would not want that to happen.

Mr. INHOFE. That may or may not be true.

Mrs. FOWLER. For a lot of reasons, we will encourage another 18 people to sign the petition between now and Friday. I commend the gentleman for bringing this to our attention and that of the American people.

Mr. INHOFE. Thank you. Let me now yield to the gentleman from Idaho [Mr. CRAPO], who is a new Member leader. There is a position in the freshman class that is in the leadership position. He represents the freshman class in the leadership along with the gentleman from Georgia [Mr. GINGRICH] and the gentleman from Illinois [Mr. MICHEL].

Mr. CRAPO. Mr. Speaker, I appreciate the opportunity you have given me tonight, the gentleman from Oklahoma, to discuss one of the important issues that our freshman class has found here in Congress and to bring it to forward.

Before I talk about that specifically, I want to just kind of set a little bit of the stage here, because this experience of coming to Congress and finding the shroud of secrecy and the procedures that are designed to keep the American public from understanding what is happening in Washington is not simply focused and does not end with this battle.

On the very first day that I served in this Congress, I was exposed to what is called the closed rule. It was that day that we came with many new opportunities and many new proposals for change in the rules of the House and the way that the House operates. We found out that day the very first technique that is used to stop us from getting into that kind of debate, and that is a closed rule, where a proposed set of House rules was put forward. Not the one with the reform measures in it, but the one which was predesigned to be the one which will govern the House, and amendments to that proposed rule were not allowed.

Then you might ask yourself, with so many people in this country and so many candidates saying we support a balanced budget amendment and a line-item veto, why is it we do not do those?

Well, the line-item veto issue came up, and we found out about the King of the Hill procedure, whereby people can put matters up, a line-item veto, and vote for it. But as long as following measures that are similar come along

after it, the last one that passed knocks off all the previous ones to pass, and it becomes the measure that goes forward. The opportunity was there for those who came here claiming that they supported a line-item veto to vote for a line-item veto, only to know that it would be knocked off under the King of the Hill procedure when a later vote the very same day transpired.

We learned another way in which those who claimed to support a measure can come here and then not have to go back to their constituency with that measure being law, but being able to say that they did support it.

Here is another one, the one we are talking about tonight, the discharge petition. It has been explained very well. But it is just another way in which those who serve here can tell their constituents that they support or co-sponsored a measure. But without signing the discharge petition and having that be publicly known, they can be sure that the secrecy around that discharge petition will keep it secret and will make it so that it does not come up for a vote.

I just want to thank the gentleman from Oklahoma for bringing this to the attention of the freshman class, thank my other freshman Members who are here to support this effort, and to say that on many fronts, not just those that I have identified, we have got to go forward and make sure that we let the sunshine in on the process of how matters are raised here in this Congress and how votes are taken.

Mr. INHOFE. I thank the gentleman from Idaho. It is interesting all three things you brought up are things that are in the discharge petition that is locked in the secret drawer right now. It is very true, because no one knows who signs the discharge petitions. That is what we are going to change here tonight.

Mr. CRAPO. If the gentleman will yield further, I understand you and a former Member did something like this a little while ago in the past.

Mr. INHOFE. Yes, we did that. That is a gentleman who is no longer serving in this body, Chuck Douglas. I was giving an indoctrination talk to the class that was elected in 1988, and I explained this problem. He said, "I see a loophole. Don't expose the names of the people who signed it." Point to that, will you, Steve, to make sure everyone sees that. That is an incredible little important notice, the one that says you cannot release the names of anyone. He said, "It says you can't release the names of those who sign it. It didn't say those who didn't sign."

So we tried that with the discharge petition on the balanced budget amendment to the Constitution. We had to bluff, because we did not have the names of everyone, like I have here. This is the first time this list has been accumulated, I believe. That is how we were able to get it out and get it for a vote.

By the way, that balanced budget amendment to the Constitution only failed by seven votes.

Mr. CRAPO. But it took this kind of a procedure to force that out for a vote.

Mr. INHOFE. Somewhat devious, yes, but it worked.

Mr. CRAPO. We have not had a vote on a balanced budget amendment in this Congress.

Mr. INHOFE. No. I appreciate that when this happens and this passes, that we will.

Mr. BUYER. If the gentleman will yield, this really does help explain a lot to me. I think it helps explain a lot to the American people, and I really thank the gentleman for bringing it to the attention of the freshmen.

Many of us have had our eyes opened a lot about the processes here in Congress, and I have made this statement before, that there is no such thing as a silver bullet to fire at the Capitol to reform it in one shot. It is very difficult to talk about reforms of the discharge petition without talking about other reforms.

The gentleman from Idaho [Mr. CRAPO] mentioned about the Rules Committee, and there are so many other things. And any time that you have matters of secrecy, that bothers me. When you are making laws and setting rules and the agenda for America, there should be an open process to that.

The other thing that I have recognized in disappointment is not only this, and you can call me naive if you like, but I believe this, right here, the floor of the United States Congress, should be the arena of the greatest open debate and exchange of ideas in the world. Right now I have to stand here as a U.S. Congressman in saying that this is the most undemocratic institution I have ever seen. But, you know what? We are going to change it. And that is what is great about America. Because you can bring in the influx of new people, as a matter of fact, to make those changes, and the new people can be the adrenalin for the reforms. And hopefully the freshmen are the adrenalin for you and your courage to step forward in exactly what you are doing.

There is one thing that really surprises me. When I look at this right here, when I went to that drawer and I signed that discharge petition, I did that out of a personal belief. Yes, I believe in the balanced budget amendment. But I believe in it. I really believe in it. And if other people really believed in it, they would walk over there to that petition, open the drawer, and sign the doggone thing.

But I never knew until tonight, I guess I did not read this resolution that is also hidden in the drawer, that when I signed it, that that was a private and serious agreement among Members. I did not know that. I did not have any idea it was a private agreement.

Mr. INHOFE. I believe the gentleman from Indiana [Mr. BUYER], there is no one more qualified to talk about what makes America great. Just so everyone is aware of it, he is a warrior and one of the high decorated soldiers of the Persian Gulf War. I know you have had a lot of time to think about what make America different from other countries from the foxhole.

Mr. BUYER. You are right. I am not here to talk about the battlefield, although I can say this is a new arena of the battlefield. But I am really curious here, because I have some feelings here that you are stepping out and acting with great courage under a scrutiny and potential punishment. When you said you are facing potential expulsion from the Congress for the step forward to disclose what is an incredibly absurd procedure, can you give me some detail on what that would mean?

□ 2220

Mr. INHOFE. Yes, I can. I have here the Constitution and Jefferson's "Manual of Rules and Practice of the House of Representatives." And I can quote from it. They talk about each House "may punish its Members" et cetera. It says three methods of punishment have been "reprimand, censure, and expulsion."

Now, the most severe punishment, obviously, is that of expulsion. And it would be highly unlikely that this would happen.

In fact, a very well-known reformer around the country, whose name I probably should not mention, but Mr. Perot said that "Let them try. It will make this such a big national issue, they wouldn't dare to do that, because the people are tired of this kind of insider operation."

This is what we are going to change.

Mr. BUYER. You are absolutely right. There is a trust deficit between the American people and the Congress. But what is important is that there are Members really on both sides of the aisle, who really want to make some reforms to this institution. Hopefully, we can come together in that bipartisan effort to make this a better institution for all of America.

I salute you.

Mr. INHOFE. Mr. Speaker, I yield to the gentleman from New York [Mr. QUINN].

Mr. QUINN. Mr. Speaker, I thank the gentleman for yielding to me.

It is an interesting situation we find ourselves in at all of the microphones this evening. I want to thank the gentleman from Oklahoma [Mr. INHOFE] for his effort, not only tonight and the past few weeks to bring this matter before the American people and before

the Congress, but also for your efforts in the past before this group of freshmen in this Congress.

I would like to just give a different perspective, if I may, and take a couple of minutes. I know we have a lot of speakers here tonight, but I would like to give you a personal experience that I have had since we have been here.

Back in the beginning, in the first part of January, we talked with a lot of different Members, especially the freshman class, on both sides of the aisle. And the interesting thing for me, as we came into the Congress and we talked to other Republican Members from across the country and other Democrat Members from across the country, is that all of us, all 110 of us, talked about the same things last fall in our campaign. We all talked about change and reform.

It seems that all of us, no matter what the party was, no matter what the State or district was, seemed to talk about the same theme over and over again, that we had to change the way that Congress did business, that business as usual is not what the electorate wanted anymore.

We came here, and we talked about some of those changes. And we shared a lot of the same views, Democrats and Republicans, Members from New York State, my State, Members from Indiana, Members from Michigan, from all over the country shared those same ideas.

Back in February or March, I joined with a couple of other freshman Members, and we did some work on the line-item veto. The gentleman from Massachusetts, [Mr. BLUTE], and the gentleman from Delaware, [Mr. CASTLE], worked with me. And we talked with Members on the other side of the aisle, and we worked with other senior Members who had talked about the line-item veto for a number of years here in the Congress.

We got ourselves to a position where we had a vote, and the real line-item veto that we offered was not approved. A watered-down version was, and President Clinton has that to look at right now.

But as we talked about that line-item veto, we found even more that those reform measures that we all talked about last fall was a common theme across the country. Well, our vote was not successful. We failed. We had about 200 votes. We had 30 or 35 Democrats voted with us in that instance.

But that item still now languishes in the magic box of the discharge papers. I think that experience for me, of the line-item veto, and now this information about the procedure for discharge to get a vote again, is news to me, as the other gentlemen have said.

I would be surprised if many of the freshman Members, maybe even some of the sophomores and junior Members here in the body know about this system and how it works.

We know now firsthand.

Mr. INHOFE. I talked to a senior Member of the other side of the aisle who is a very reform-minded individual. When I told him, explained it to him, he has been here a lot longer than I have, he was not aware that this veil of secrecy takes place.

Mr. QUINN. I am a little bit relieved to hear that I am not the only one, but it is a little ironic and a little disappointing then to find out that this is indeed the case. And it is the very items that many of us talked about, things like a balanced budget amendment or a line-item veto or term limits. It is those kinds of things that the country is talking about that seem to be locked up in the box that cannot be moved.

Indeed, the ironic part here, as the gentleman from Oklahoma [Mr. INHOFE] said earlier, is that the motion to change this system is part of the system. That is what makes it difficult.

It is complicated for Members to even understand. Indeed, many members, as we have just heard, do not even know about the system. Think how complicated it is for people back home in our districts. I know when I had a chance to talk back in Buffalo, NY, and a little bit around New York State about our work on the line-item veto and then explained this discharge petition process, people cannot believe it.

And one of the problems is, we do not get calls in our offices from people who say, from Buffalo or New York or anywhere else, "Hey, Mr. Quinn, change this discharge petition process, will you?" It does not happen, because there are so many other things to worry about.

Yet, if we could get some changes in that process, it is my guess that some of the other important things we have all talked about, both sides of the aisle, all across the country, like the line-item veto and like the balanced budget amendment and like term limitations, would be able to come to a vote.

The gentleman has brought that to our attention tonight. I am here, then, to add my voice, for those of us who worked on the line-item veto, to this effort this evening and to say and echo your comment that we get those 218 names on that discharge petition.

I would ask tonight for those other freshman Members from both sides of the aisle who were involved in these kinds of reforms, we ask you to come forward, too, and add your name to that. I appreciate the gentleman's efforts.

Mr. INHOFE. Mr. Speaker, I thank the gentleman from New York for his very eloquent statement. I can only give you this assurance, that when we get our 218 signatures and we get this repealed, that the line-item veto will be brought out. There is a mandate at home. People want it. Thank you very much for your statement.

Mr. Speaker, I yield to the gentleman from a neighboring district of mine, from northwestern Arkansas, the gentleman from Arkansas [Mr. HUTCHINSON].

Mr. HUTCHINSON. Mr. Speaker, I thank the gentleman from Oklahoma. I am so proud to have a neighbor to my west who has the courage of his convictions to put so much on the line.

I want to commend you this evening for your willingness to really put yourself in a position of, undoubtedly there will be criticism and there will be colleagues who resent what you are doing tonight. I want to commend your courage and your conviction for the stand that you have taken.

I am proud also to be able to stand here with the class of reform, and it is impressive, I believe, at this hour of the evening for there to be so many of my freshman colleagues who are willing to stand shoulder to shoulder with you, JIM, and to say, yes, it is time that this system was changed. It is time that the discharge petition methodology of being able to hide it away and keep it secret, it is time that that changed.

We, this class of reform, we ran as reformers. We ran against many of the abuses that the American people have become aware of in this institution.

We ran against the tilted playing field where all the rules were built to help the incumbents and to ensure that the incumbents stayed in power. And I think that as we talked about many of the reforms that were needed, many of the abuses that the American people are aware of, the one most overlooked, probably the one least heard of is this one that you have sought to repeal and to change.

Yet, it is one that will lead to so many other reforms, if we are able to initiate change here.

It is amazing that you can take something that is overwhelmingly popular with the American people and, under the system as we have it now, something popular like the balanced budget amendment, my colleagues would be allowed to go and to sign on as cosponsors, go back to their districts and proclaim to their constituents, "I am cosponsoring the balanced budget amendment to the Constitution," and yet never lift a finger to bring that kind of a proposal to a vote of their colleagues before the House of Representatives, because they have a system in the present discharge procedure that protects them and enables them to go back and get the political good and yet never be able to take the liability of casting a vote on the floor of the House of Representatives.

I know we have many, and it would be a shame if they all did not get a chance to speak. I merely want to refer

to the Arkansas experience, because in the State of Arkansas, we have a discharge procedure. And I think it surely must be akin to those in California and Oklahoma and Colorado and some of the other States that we have heard about.

We have 100 Members in the Arkansas House of Representatives. If I have 51 cosponsors on a bill and my bill gets buried in the committee, where they will not allow that bill to come out for a vote on the floor of the full house, I can go to my cosponsors. I can have them sign a petition to pull it out of committee. The petition is opened. The petition is public. The petition can be examined on any day by anybody.

I can present that petition with 51 names on it, my cosponsors, and it will come to a vote of the full House of the Arkansas Legislature.

□ 2230

I think that is the way it ought to work. I think that is the way most State legislatures work. That is the way this institution needs to work, out in the sunlight where everybody can see it.

I commend the gentleman for the job he is doing, for the leadership he has taken on this. I hope the other 18 will sign up quickly and this reform will become a reality.

Mr. INHOFE. Mr. Speaker, I really thank the good gentleman from Arkansas.

Let me tell one story that is real quick. This is what stimulated this to start with back in 1987. I will not use the names, because I do not want to embarrass any of my fellow colleagues.

I was down here on the floor on the first day of January 1987, when I went up to a friend of mine who happens to be a very liberal individual from the same region of the country that I am from, and I said to him, "You know, we are here, we are representing kind of the same general part of the country. You are among the 3 percent most liberal Members of Congress, and I will be in the 3 percent most conservative Members. How do you account for that?"

Before he could answer, another guy who is a well-known liberal in Congress came up, and he is from an Eastern State, and he says, "It is easy, Inhofe. All you do is vote liberal, and in press releases, conservative."

Wow, that is really a profound statement.

Then I started looking to see, how can you do that? That is when we discovered this is the vehicle that allows people to do that.

I yield to the gentleman from Alabama [Mr. BACHUS], who has been at the forefront and the cutting edge of a lot of our reforms.

Mr. BACHUS of Alabama. Mr. Speaker, I want to point out, to the credit of the gentleman from Oklahoma tonight, that almost all of the freshman class officers are here to support you, and I think that is a tribute to what you are trying to do, that we are here standing behind you.

Mr. Speaker, it takes tremendous courage for the gentleman to do what he is doing, Mr. INHOFE, you, as you have stated, could be expelled from this body for trying to tell the people of this country the truth, for trying to uncover the fact that information has been not only concealed from them in many cases, but they have been misled.

I say that because there are people in this House that say they support important measures, and they are even sponsoring these measures, and they have campaigned on those measures, yet they are not willing to bring those measures to a vote in this House.

They are publicly listed for something or against it, writing letters every day to their constituents saying they are up here in Washington fighting for something, and as I said, even taking the extreme measure of sponsoring a measure, but yet at the same time taking an action which prevents that from being brought up on the floor of this House. That is inconceivable.

I served in the Alabama Senate, and in the Alabama House. I was one of only three Republicans in the Alabama Senate. You talk about a minority. I know exactly what you meant when you said, "I am not used to calling our Members majority leaders." I can tell you, when I am only 1 of 3 in the State senate, that is a shock to me to know that we are in the majority anywhere.

However, as few as we were in the Alabama Senate, the majority party never tried to enforce a rule like this. As outnumbered as we were, we had one powerful tool and that is the fact that everything was done in public. We had two ways to inform the public whether someone was for something or not. One was to do it as they do in Colorado and Oklahoma, and that is call it up on the floor of the House or the Senate.

We also had another way. If something was in committee, or, as it is here, locked in that box, and the American people wanted it brought to a vote, what we could do is we could sign our names to a discharge petition, yet that petition was public. Boy, that is a big difference.

We had a discharge petition in Alabama. You did not, they did not in Colorado, but ours was public. The people knew who signed it, and they knew the day they signed it. Many times when people wanted a measure up, they knew exactly who had signed it and who had not, and they called people who had not and said, "Please sign that petition." Right now we cannot do that.

Because of that, I saw on NBC News recently a report on the honeybee subsidy, and it said that over 300 Members of Congress had said, "That is a wasteful expenditure." There are some that do not think it is, but there are over 300 who said it was.

I am not here to say that it is or is not. I am only here to say that the news media for years have pointed out that we have been unable to eliminate what the vast majority of the country says is a wasteful expenditure.

If your effort is a success, the American people will know on every measure who is for it and who is against it. They can demand that those things be brought up for a vote and those measures be voted on. I want to commend the gentlemen. I want to say this. Someone has already said this in a different way. If you are successful, you will revolutionize this body. You will revolutionize it.

I have only one question for you, JIM. You have said, correctly, that right now you can be expelled from this body. My question is this. Do you think that is really a possibility? We had a Member of this body who allowed a criminal enterprise to operate from his residence. This body issued a simple censure. We had another Member that covered up criminal activity, and this body, not this membership but another body, decided that a private reprimand was in order.

I cannot imagine that you would be exposing a sham and you would be exposing the fact that many Members of this body misled the voters in their districts, and yet you would be expelled for telling the American people the truth, for actually trying to make this body the people's place.

I will say this to you, I think that when you take this action, I think we will learn a lot about this body because, JIM, they do not have to take any action against you. If they do not, the secrecy and shroud will be lifted from this body and the people of this country for the first time in 63 years will know how each and every one of us stand on each issue before this Congress.

I cannot imagine one Member of this body asking that for your action, that you be censured or that you be expelled. I say that, but at the same time, I am glad I am not you.

Mr. INHOFE. I would have to respond to the gentleman from Alabama. I do not think it will happen, either. If it did, all I would have to do is run again and you would be running with the biggest mandate in America, so I do not think it would happen.

Mr. BACHUS of Alabama. You certainly would.

Mr. INHOFE. I point that out because at least you are looking at a set of rules that say, "This is what could happen," and the people need to know that this is what could happen. I thank the gentleman from Alabama for his remarks.

I yield to the gentleman from Minnesota [Mr. HOEKSTRA].

Mr. HOEKSTRA. The gentleman from Michigan.

Mr. BACHUS of Alabama. Michigan is close enough. There are 40-some of us who came in, so please do not hold us too tight. We will make a mistake like that now and again.

Mr. HOEKSTRA. That is fine.

I think it is important to put this in context. Last night many of us had the opportunity to watch the President talk about his new tax program, his spending program, and asking the American people to support it. As we take a look at what came out in the polls today, we find out that the American people are somewhat suspect that Congress, the President, will really carry through on the promises and the commitments that are inherent in that program.

I think it is very interesting, as we take a look at the package and as we listened to the President last night, I thought there was much significance in terms of the things that the President did not ask for as the things that he did ask for.

Perhaps the gentleman from Oklahoma can tell me where this line-item veto is. I helped introduce the package, I have signed onto it. Let the American people know where is the line-item veto.

Mr. INHOFE. I wondered the same thing when I was listening to the presentation of what he was going to ask for. I remembered back on the campaign all this discussion about a line-item veto, how he was supporting it. It has disappeared. I will tell you where the line-item veto is, it is in that drawer, right behind the gentleman from California [Mr. HORN]. That drawer is locked, and the drawer will be opened when we get our signatures.

Mr. HOEKSTRA. If the gentleman will yield, so we will not be able to get a vote on the line-item veto, most likely, unless we change this petition?

Mr. INHOFE. If this petition succeeds and we eradicate the secret veil up there on the Speaker's desk, then we will bring it out for a vote, and I can assure the gentleman that it will come up.

Mr. HOEKSTRA. If the gentleman will yield further, what has happened to the balanced budget amendment?

Mr. INHOFE. It is in the drawer, too. That is Discharge Petition No. 1, I think, and term limits.

Mr. HOEKSTRA. If the gentleman will yield further, term limits, we are not going to vote on term limits, either?

Mr. INHOFE. Let us wait. If we get our 18 signatures, everything in that drawer will be brought out, because once they become public, people are going to demand that their representatives sign whatever discharge petition is in there.

□ 2240

Mr. HOEKSTRA. So unless we change the discharge petition, a lot of these reforms we have been pushing, and that we have been going home and telling our constituents about, unless we change this discharge practice, most likely all 435 of us could go back for reelection next year and say we really worked hard on it, and there would not be any recorded vote in terms of whether we actually believed or not?

Mr. INHOFE. That is right, and that is what we are going to correct, and I thank the gentleman.

Mr. HOEKSTRA. I support this effort. I think it is a need reform, and it really opens up the process.

Mr. INHOFE. I thank the gentleman from Michigan for his time and for his comments.

Mr. Speaker, I yield to the gentleman from Florida [Mr. MICA].

Mr. MICA. First I want to commend the gentleman from Oklahoma [Mr. INHOFE], for his courage and the conviction that he has had in bringing before the House of Representatives this important reform issue. I also want to thank my colleagues in the freshman class, Mr. BUCKY MCKEON, the class president of the Republican freshman class, who has kept the class together in a reform mode, and particularly TILLIE FOWLER of Florida and PETER TORKILDSEN of Massachusetts who have continued also to keep the fire of reform lit before the Congress.

Let me say having been involved in this reform measure and various reform issues, it is very difficult, it is very difficult in this Congress. This reform we are talking about may not be the reform that will change this whole institution, but what it is is it is historically symbolic of the problems with the institution, that behind that closed drawer we operate in secrecy, and we pass taxes behind closed doors in secrecy.

I come from a State that has a sunshine law. There our public records are public. Here I think in the case of national defense that we can keep things secret possibly or some personnel matters, but other than that we should let the sunshine in, let the public know. They have a right to know.

So what you are doing tonight, sir, is very symbolic of the whole problem with this institution, and the reform that really needs to go forward. And other than the few colleagues here and the names you have on that signature page, this is the only reform we are talking about that is really and truly a bipartisan effort that we have some knowledge of. So I commend you.

Now, what I challenge you to do, sir, is on tomorrow, or Friday, release the names of the people who go there and take their names off of that petition, just like they did with the balanced budget amendment and betrayed the American people. So this is symbolic. It is not the most important thing we will ever do, but your freshman Members here are with you.

So I ask you and challenge you, will you release those names?

Mr. INHOFE. Yes, in the event that happens. Of course, as was brought up earlier in the discussion, I would advise the gentleman from Florida that once the 218th name is on there, they are automatically released and are a matter of public record anyway.

Mr. MICA. What I want to know, sir, is the people that go tomorrow, who take their names, have their arms twisted and take their names off that petition.

Mr. INHOFE. And the answer is "yes," and this is a good time to repeat the challenge that I stated earlier, because it has to be repeated, because the whole reason for this is to get the point across that while I love my colleagues that I serve with, that if at the end of the business day, if Friday before our August recess we do not have the 218th signature on that Discharge Petition No. 2, I will release the names of those who have not signed to the Wall Street Journal, and they have agreed to print those names.

So I thank the gentleman very much for his comments.

Mr. Speaker, I yield to the gentleman from California [Mr. HORN].

Mr. HORN. I thank the gentleman and want to commend the others of my distinguished colleagues and my colleague from Oklahoma who serves with me on the Public Works and Transportation Committee. You have done yeoman service here, JIM, in terms of organizing this effort. And I think it will be one of the most significant reforms that has happened in this institution in years. And there is a very simple reason for that. Credibility is at stake here both for individuals in the chamber and also for the House as an institution.

When I served as a Senate staff member three decades ago, I can only recall one Member who misled me as one of the leadership staff on a vote. Our word is generally our bond with our colleagues. When we promise something, we keep that, and ordinarily we do for a very simple reason: our votes become public.

The discharge petition does not become public. The discharge petition has not led to a radical wave of legislation in this century. In fact, only two bills that have been discharged have become law in the history of the discharge petition, only two. So you cannot expect particularly a wave of reform as a result.

On the other hand, the examples that several have cited while we all know of where powerful committee chairmen come and glare down at one of their committee members who has signed the petition and forces them to go up and cross off their names, and we do not know that, because unless you can see Members on either side of the name that you have signed, you never know

what has happened to the rest of the petition. So I think what you are doing to reestablish credibility, another way to reestablish it, to open up the Chamber to democracy so that people through their Representative can work their will, is absolutely essential.

Mr. INHOFE. If the gentleman will yield on this point, he gave me a very interesting statistic that I was not aware of. Only two have become law.

Mr. HORN. Only two bills.

Mr. INHOFE. A more revealing statistic would be how many discharge petitions have been successful. And I would suggest that you could count them on two hands, because of the secrecy. Now that will change as soon as it is opened up to the public and is a matter of public record. And here we are only talking about one sentence in this bill. It says once a motion to discharge has been filed, the Clerk shall make the signatures a matter of public record.

Mr. HORN. And we all have a list of items such as the line item veto. And how about the notch babies? That has been buried. How about term limits? We had a group here a few weeks ago at midnight or 1 a.m. talking to the American people about how term limits has been bottled up in the Judiciary Committee since the gentleman from Florida [Mr. MCCOLLUM], first introduced it in 1981.

Mr. HOKE. If the gentleman will yield on that, are you saying that the people of America, am I correct in understanding that last fall, 14 States passed term limits, is that correct?

Mr. HORN. A total of 15, yes, now have term limits.

Mr. HOKE. And the average margin was a margin of 3 to 1, about 75 percent?

Mr. HORN. That is correct.

Mr. HOKE. So you are saying that if pressure were put on individual Representatives to sign a discharge petition, and the people knew about the existence of such a petition and said to their individual Representative sign that petition, we want term limits, that making this public would be a way for the people to have a much more direct impact on legislation, as opposed to powerful committee chairs?

Mr. HORN. The gentleman is absolutely correct. What we have all seen happen in recent years is the cosponsorship game. People are urged to write us, "Will you lend your name to the bill?" I have refrained from cosponsoring hundreds of bills, thousands indeed, as have some of you. It is just a gimmick.

In the first place, we do not have the time to do the important issues we need to have done, and those of us working on the deficit, health care, economic prosperity, that is what is really significant, not all of the frivolous things of every special interest group that is trying to justify its existence. And yet scorecards are completed on Members of Congress simply based on our cosponsorship. So Members say, "I want to look good to that group," and they lend their name.

Mr. INHOFE. If the gentleman from California will yield, if my clock is right we only have one minute remaining, and of course I would like to hear more from the gentleman from Ohio [Mr. HOKE], and the gentleman from Arkansas [Mr. DICKEY]. But I would like to yield to the gentleman who is the president of the freshman class, the gentleman from California [Mr. MCKEON].

Mr. MCKEON. I thank the gentleman for yielding. I just wanted to be here and be a part of the freshman class in talking about the discharge petition.

A year and a half ago I knew nothing at all about how the Congress functioned, I knew nothing about the legislature, and when I go back home most of the people that I talk to know about as much as I did. And they are very interested in the day-to-day process. What do we do each day, how does legislation pass, what do you do, is it like you thought it would be. And I tell him the story about you, because you are one of my heroes.

After I won a hard fought primary last year I watched on television for several days the balanced budget amendment fight.

□ 2250

And the reason we got to watch that was because the gentleman from Oklahoma [Mr. INHOFE], because many people, many more than it took to pass that bill, had signed onto that bill, and could go back to their districts and say, "I am in support of the balanced budget amendment, and I signed onto the bill," knowing it would never be released from the committee and they would never have to vote on it and that it would never have to be brought up on the floor.

The gentleman from Oklahoma [Mr. INHOFE] then, through working with this discharge petition, made it possible that that was brought to the floor, and that we were able to have a debate and then, of course, we know that some changed and pulled their name from the bill and changed their vote and it lost by a few votes.

When I got here on the floor, I learned that that whole thing was possible because of the work the gentleman has done on this discharge petition, and I am proud to be a part of it, proud to join you in your effort to make this public and to let the American people really see how this process works and how it can work if we can open this up. I just want to commend the gentleman and to thank him.

Mr. INHOFE. I want to thank the gentleman from California [Mr. MCKEON], because he is, as I said, the president of the freshman class and has led them into this mode of reform that this Congress has not seen anything like. The fact that you took up my resolution 134 that I believe now will pass with the support we have you will be able to participate in what I would consider to be the greatest reform we have had during our time. If there is time, I yield to the gentleman from Arkansas [Mr. DICKEY].

Mr. DICKEY. I thank the gentleman for yielding.

I want to say this, that the word that comes to my mind is "slippery." I do not want to be a part of any slippery activities. I do not want to be called slippery. I do not want you, as the American people, to believe that is what we want to do up here. We do not want to make it comfortable for us up here to serve you and not be accountable. That is what you want, and that is what you are entitled to. That is the reason I am here tonight supporting these brothers and these colleagues.

Mr. INHOFE. I appreciate that. I thank the indulgence of the Chair, because I know I have gone a couple of minutes over my time. I thank the Speaker for the time and his indulgence.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT TO ACCOMPANY H.R. 2264, OMNIBUS BUDGET RECONCILIATION ACT OF 1993

Mr. MOAKLEY, from the Committee on Rules, submitted a privileged report (Rept. No. 103-217) on the resolution (H. Res. 240) waiving points of order against the conference report to accompany the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994, which was referred to the House Calendar and ordered to be printed.

WHY WE NEED THE DEFICIT REDUCTION BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Pennsylvania [Mr. KANJORSKI] is recognized for 60 minutes.

Mr. KANJORSKI. Mr. Speaker, I rise tonight after listening to the discussion immediately preceding me. Although my primary purpose tonight is to comment on the deficit reduction bill, I have decided to comment on the previous hour of debate slightly, because what I wish to address tonight is probably the reverse of what I have heard some of the freshmen colleagues talk about tonight, and that is that I think if I had to describe the ailment suffered by America in 1993 it is that we are having a difficult time adjusting to learning how to live in a democratic society with success.

We are in 1993. In the last 2 years we have conclusively won the third world

war. We have won the war without building another cemetery anywhere in the land. We have no destroyed cities, and no destroyed cities exist in the world. We do not have pent-up consumer demand like we did at the end of World War II.

But we now have the capacity, because there is no great threat to democracy or America in the world today, that we can concentrate on our economic house in order and, of course, for the last hour I have heard words that do disturb me, "corruption," "scandal," "undemocratic," and "selfish."

To my freshman friends who are new Members of the House, I do not think, you mean those words seriously. I think, in effect, you are as proud as I am to be a member of the 103d Congress, in the 205th year of the Constitutional Republic of the United States, and to represent 560,000 Americans.

This country has trouble. But there is no one in this country who would willingly change his place and leave this country for the position, the political activity, the laws, the Government, or the society of any other nation on this Earth.

Do you know what the 7 or 8 or 10 million Americans who watch C–SPAN, who watch this Congress in action are thinking to themselves tonight? They must have been as depressed as I am for to listen for an hour to men such as you and I who have been given the quality and the trust of our fellow citizens to come here and serve, yet who belittle, desecrate, and use terminologies describing this Government and the actions of this branch of the constitutional government, the oldest existing on Earth today, to suggest that we are about to lose it when, in reality, we have the good fortune to represent the highest standard of living, the freest, best, most highly educated people in the world, living under freedom at any time in the history of the world.

Now, we have our problems, and sometimes I think the problem that we have is we overemphasize this aisle that separates the two parties on this floor. You know, you may be a Republican, I may be a Democrat, and we have a good friend of mine who is a Socialist, but before we belong to any party, we made a free election of our own conscience to run for office in this society. We got the majority support of the constituents of our districts to come here and exercise the best judgment and will we can.

The American peoples do not want to hear us desecrate the Constitution, the law, or the Government of this country. What they want us to do is learn to work together. I think that whatever we can do, and if it is reforming the rules of the House to create openness, I think you will find that there are bridges that can be built across this aisle. But I would suggest the way we will get there or should get there is not by polemic activities around midnight with derogatory expressions about this institution that have to cause psychological shock to the American people.

Mr. INHOFE. Will the gentleman yield on that point?

Mr. KANJORSKI. I certainly will yield to the gentleman from Oklahoma.

Mr. INHOFE. I will ask the gentleman, and first of all, I will make a statement that I do not think any freshman here talking was saying anything to desecrate either this body or the Constitution, but I want to ask the gentleman a question. Does the gentleman embrace the rule that keeps this secret? Do you embrace this rule?

Mr. KANJORSKI. I will reclaim my time for a second. In your remarks, I say to the gentleman from Oklahoma [Mr. INHOFE], you mentioned scandal, corruption, antidemocratic activity by the leadership of the House, and by the Members of this House. Well, I have been a member of this House for 8 years. I have never engaged in any scandalous, corrupt, or surreptitious activity which would in any way compromise the Constitution of the United States or my oath of office.

Mr. INHOFE. If the gentleman will yield further, are you aware there are many from your side of the aisle who have signed this discharge petition who find this just as repugnant as those of us on this side of the aisle? And, secondly, do you embrace the secrecy of the discharge petition process?

Mr. KANJORSKI. Let me tell you something on that very point. I tried to get your attention here.

You know, maybe we in this House should stop for a week and go up to a college or a university and take a history lesson.

Are you gentlemen aware that the Constitutional Convention of the United States that produced the greatest document that has ever governed men in freedom, in a democracy, was created in total secrecy? Now, how in the world can you suggest to the American people that a minor rule or a process here in this house is going to be so distorting when we know that as we move to govern ourselves in an egalitarian and democratic process; an experimentation of mankind after millions of years of evolution, after democracy died 5,000 years ago in Greece and only came back 205 years ago in America, and now 160 nations around this would use us as a guide and a model, and you decry that something done in secret can be criminal? Well, the Constitution of the United States was written in secret.

Mr. INHOFE. Well, your answer is you do embrace this secrecy, the secret veil of the discharge petition?

Mr. KANJORSKI. No; no. I do not embrace anything; the only thing I would suggest, and I am responding to you, is that I wish you would temper your words, your chosen words and your comments as they cast aspersions on the membership of this House, the past Members of this House. I have had the pleasure to be here and associated with this House some 40 years, not always as a Member of Congress, but I served in this House 40 years ago as a congressional page when the Speaker of this House was a man named Joseph Martin of Massachusetts, a Republican, and when Joseph Martin was the Speaker of the House from Massachusetts, and the gentleman from Oklahoma's party controlled this Congress, the same rule and order and procedure which the gentleman and his colleagues now decry existed here, and to suggest that it has some partisan view or it is done for some surreptitious purpose, I think, represents an element close to being fraudulent.

Mr. INHOFE. If the gentleman will yield one last time, you made the statement that you did not embrace anything. I do. I embrace our Constitution which says that each House shall keep a Journal of its proceedings; the intent is obviously that they want the people to know what is going on here. That violates that provision of the Constitution.

□ 2300

Mr. KANJORSKI. I think there are processes in the law, in the rules of the House and in this Government to have the gentleman's issue debated and revised without the scurrilous attacks on other Members of the House or the House itself we have heard tonight. God knows, if this world needs anything, it needs the United States of America under our Constitution. There are billions of people in this world tonight who would swim the oceans or climb across the highest mountains to claim what freedoms we all exercise so freely and nonchalantly.

I suggest to the Members here—and this is my thought—that I know there are a lot of our constituents out there who would like to start thinking positively about their country. They want to criticize us when we are wrong, they want us to correct wher. we can make corrections, but they also want us to respect that Government that we serve and the people we represent.

I yield to the gentleman for a moment, and I invite the gentleman to stay on here for my speech, because it is a topic which is a little more important actually than the discharge petition, not to say the discharge petition is not important in your mind. We should look at it. But stay here with me; we could have a discussion on an issue of real importance, the need to pass the deficit reduction bill.

I yield to the gentleman.

Mr. DICKEY. I want to tell you, from a freshman's viewpoint, that what you

say is correct, that is the way we should have it. The bridge, though, does not need to be across this aisle. That is part of the problem.

As a freshman sees it, the top leadership in both parties get together and the Nation suffers in a lot of instances. What we need is a bridge from this body to the American people so that it can to two ways, so they can travel this way and we can travel that way and we can have communication. And our goal is not to stay out of touch.

That is what I think the freshman viewpoint really is.

I thank the gentleman.

Mr. KANJORSKI. I congratulate the gentleman. I think it is, too.

What I encourage the gentleman to do is to stay longer, because there is a lot to learn from those of us who have spent a few more years here, from several standpoints. It is not as a criticism that I say that. I will tell you that what I am going to talk about tonight is the budget of the United States.

Mr. DICKEY. And I want to listen to that.

Mr. KANJORSKI. And I want the gentleman to listen to it because the real issue that we are all talking about is not just the $500 billion deficit reduction bill, and cutting or not cutting spending, or raising or lowering tax rates; no, it is that we are a unique country in a unique time in history, where all of us average men are selected by our peers to govern. That concept is mind-boggling. Today I sat on this floor in a seat not too much farther from where Mr. HOCHBRUECKNER is sitting now, and I witnessed the President of the United States come up here to speak to the Democratic Caucus. I have had occasion over the last 6 or 7 months to spend a great deal of time with the President, but I did not know him prior to the election process.

Mr. DICKEY. He is from a very good State.

Mr. KANJORSKI. He certainly is. Although I did not have the occasion to really know him before he came to office, I feel I know him well today. But when he was elected I really had an open mind about what this man is all about.

Today he talked about the budget. I know most of the issues he raised. So it allowed my mind to wander. And the magnificent thing is that every day when I walk into this Hall, down this aisle, I am acutely aware of the fact that I am just a Representative of 560,000 people like myself. We had to pick somebody. I am pleased they picked me because I love this job.

I know most, if not all, of the Members who come and serve here do it because they love this job. They do not do it for profit. Most of them earned more money in private life than they get paid here. They do not do it for perks. Most of them don't need the perks. Most Members do not work 8 or 10 or 12 hours a day; we all work 12 hours a day, 7 days a week. We know that.

In any other area of society we would be called workaholics, almost bordering on insanity the amount of time we work.

But, you know, it is not work to us. We get a real pleasure out of the opportunity of trying to solve the serious problems that exist in our society.

Well, what struck me today with the President of the United States—because when I first met a President, it was Ike Eisenhower in that little room off there when he would come up for the State of the Union Address. And I have had the pleasure to know every President personally since Eisenhower.

Mr. Clinton, for the first time in a long time, is really a people's President. He came from Arkansas—Hope, AR—1,200 people. As a little boy, he used to sit in his back yard throwing his knife with his best friend, who went on to tremendous success, and dedicated their lives to public service and came to Washington committed to change.

What he talked about today was not exercising undue influence, was not exercising an imperial presidency; it was saying that we had to take America, unified, into a new changed era, into a third century. In order to do that under the democratic process, so difficult to live under, we had to communicate and educate ourselves as representatives of the people and the people we represent. He knows how hard that is. It is extremely hard. I am here tonight to try to help with that. I want to talk about the budget tonight.

The reason I want to talk about the budget tonight is I think it is going to be a spectacular first step that America will take into its third century. An example of leadership for not only the free world but indeed the entire world because the entire world will soon be free because of America.

Now, we have got a problem; we have fought the third world war since I was 3 years old, for 50 years. We did not do it on that many battlefields, although there were Koreas and Vietnam and Kuwait and areas like that; but we fought a challenging foe in two forms: One, totalitarianism wherever it may exist in whatever form, but finally, after the destruction and defeat of Hitler and that form of totalitarianism, we ran into an enemy known as communism and the dictatorship of the Soviet Union.

We opened our treasury, we sent our best young men and women into the military, we set the best scientific minds of America to work, and we took all the capital we could afford and all that we could borrow, and we applied it to the task of not seeing democracy disappear from the face of the Earth as it did in ancient Greece.

We as a people, 250 million people, Americans saved democracy for 5 billion people on this globe today, at a terrible cost: over $3 trillion of additional debt in 12 years, unprepared to meet a new challenge, institutions that are rather old and stagnant and not able to get out there and deal with challenges.

What are those challenges? We have no destroyed cities to put our people to work rebuilding; because our cities were not destroyed. We have no cemeteries to dig, because we killed very few people in the war. We have no pentup consumer demand, because most Americans did not lose anything by winning the war.

The fact of the matter is, over the last 50 years we won the third world war, maintained a strong economy, the strongest quality of life in the world, and maintained all of our free institutions.

But now we are faced with a challenge, we are faced with the spoiled appetite of an immature group of people who think that you can charge and run up the debt forever. And we, some of us at least, think that that cannot be done.

Mr. DICKEY. How can I say amen to that?

Mr. KANJORSKI. I agree with you. That is what this is all about.

Here is the budget, here is a graph that indicates very clearly what is going to happen. If we do nothing, we experience the top line; the budget will continue to climb in its deficit, but, by the year 2003, just 10 years from now, it will exceed $600 billion.

□ 2310

By that time we will have an accumulated debt of somewhere around $14 trillion. If we pass the proposal that our President and our Congress, working in mutuality has framed, we will have the green line. We will have a drop for a period of about 3 to 4 years from $350 billion down to as low as $220 billion and then a reversal, again climbing up where 10 years from now the budget will be back to an imbalance of about $350 billion.

The third line is if we pass the Clinton proposals and the economy improves as anticipated, we will have a decrease from the $350 billion down to $200 billion and then just a slight leveling and increasing to around $220 billion, but still a deficit.

On the other hand, the President is saying, "Give me the first step. It isn't the best. It isn't my dream or my desire."

The fact of the matter is, it is not the desire of one of us, of 537 federally elected officials here in Washington, the program that we will be voting on tomorrow is not the ideal or the dream of any one of us.

The fact is we all have a plan, 537 plans.

Now, that is our choice. If we do nothing, the deficit goes up. If we get together and pass the program, if we correct health insurance, if the economy goes up, we can take the deficit down to a level in the next 10 years where it is down around $150 billion a year, which is minuscule and completely ineffective of its effect negatively on the economy of the United States.

Mr. DICKEY. Mr. Speaker, will the gentleman yield?

Mr. KANJORSKI. I yield to the gentleman from Arkansas.

Mr. DICKEY. I need to ask the gentleman a question, since the gentleman was here.

I have been told and I believe that President Clinton wanted to cut spending first. He could not get past the congress in that respect.

Let me ask this question. How is the promise of Congress any different now than it was to President Bush in 1990?

Mr. KANJORSKI. The promises made in the 1990 agreement were kept. They are a matter of law. They were not vitiated.

What happened to the 1990 agreement—and in a way, I am glad the gentleman is here, because this can give me an opportunity to answer some questions.

Do you know what happened in 1990? I was one of the Members who refused to vote for the compromise three times. The fourth time on October 29 after there was an adjustment on taxes on the very wealthy where it went up to 31 percent, I thought that was fair. I knew we needed that revenue to succeed.

What happened, however, at that precise moment in October, the recession had already started in September, and the business climate and the economic climate of this country was materially falling, not growing, unemployment going up and interest rates going up and no response. A completely stagnant economy was occurring. It continued on through to the very end, near the end of the Bush administration.

Mr. DICKEY. But what happened was that the tax increased that recession.

Mr. KANJORSKI. No.

Mr. DICKEY. I was in the middle of it as a businessman and I know what happened. We had to cut jobs and we had to scrimp and save.

Mr. KANJORSKI. Does the gentleman mean he had to cut jobs because we raised personal income at the highest level three percentage points?

Mr. DICKEY. Yes, and I will say this, the spending went up in Congress. I did not know it at the time, but I knew that the taxes had their effect.

Mr. KANJORSKI. I agree, the spending went up, but not proportionately.

The problem that we are having, I said this to one of my staff the other day, we are talking at each other, not to each other.

Mr. DICKEY. All right.

Mr. KANJORSKI. The reason spending would always go up, as long as the population of the United States grows spending will always go up. If we stop spending and the population grows by 10 million every year, we are significantly decreasing the quality of life of the American people.

We are always hearing these figures. Now, let us talk about real figures. When we ended the Second World War, the United States had a debt of $350 billion. We had a gross domestic product, everything we produced in the United States was worth $350 billion, a ratio of 1 to 1. We only had 120 million Americans.

Need anyone question what America was like, if you did not live in 1945 and 1946, I will tell you what it was like. I lived in a little town. I lived in the same town, on the same street that I lived in that very day.

There were two automobiles in the entire block. Half the people worked in very menial conditions with very had labor situations, rather than machinery or modern technology. The income level of the average family was not sufficient to buy a home, to buy an automobile, to send children to school, but it started to increase because there was such pent up demand, and when the boys came home America did not worry about the $350 billion debt and the $350 billion Gross Domestic Product. They said, "We are going to cut this economy loose and let it grow," and that it did and it did it with great stability.

The secret of 1945 to 1965 was the fact there was stability in interest rates in America and marginal inflation. We did not have hyper-inflation.

I remember as a school boy in that period of time investing my money in deposit accounts at the bank for half of 1 percent interest.

I remember when you could go out to Levittown and buy a middle class home for $20,000 and get a 3½ percent mortgage. Those homes today sell for $300,000. It is just in the last six months that the mortgages have fallen below 10 percent.

What this President is asking us to do is to remember what happended in 1945, but also remember the differences, and here is what the differences are.

We do not have pent-up demand for 5 years. We all have the television, cars, washing machines, homes, clothing. We have no great consumer demand that can be the engine to take us out.

We do not have any cities to rebuild, either here or anywhere in the world.

Worst or all, we have warehouses full of hundreds of billions of dollars of supplies built to fight the third world war that no longer has to be used for that purpose, and we have a defense industry that has to be disassembled involving millions of workers and hundreds and hundreds of billions in capital that if not converted are lost to society.

Mr. DICKEY. Mr. Speaker, if the gentleman will yield, that is interesting history. I do not know that. I did not live as much of that part as the gentleman has.

But what has Congress promised to do this time that is different than what it promised President Bush in 1990 as far as spending cuts are concerned? Help me there.

Mr. KANJORSKI. The President of the United States said that we have to make an adjustment. Some people say, well, let us do away with the deficit. We could do that. We could end the deficit today. We could refuse to pay interest on our lending, and that is over $300 billion, and we balance the budget.

But unfortunately, our bondholders would want to foreclose on America, and we all know that cannot happen. We cannot do that. So that is not an alternative.

We have another alternative. We could close the defense establishment of the United States, just close it down, blow up or sell off everything we have, release all the troops, close all the defense industry plants, and that will save us $300 billion a year. That is one of the basic tenets why we have a union and an actual government, to provide for the defense of the American people.

Mr. DICKEY. But that would be a spending cut, would it not?

Mr. KANJORSKI. Sure, it would.

Mr. DICKEY. All right, why is it we cannot have spending cuts? Why is it that Congress stands in the way between our goal of spending cuts as far as the Nation is concerned and taxes?

Mr. KANJORSKI. We have had spending cuts. This President is cutting defense, but he is not going to cut it anymore than he thinks he possibly can to provide for the protection of the United States. I would have him cut it more.

On this floor today, I voted to cut the Intelligence budget 10 percent. That would have been the equivalent of $2½ billion. I do not think we need that money after the fall of the Soviet Union. I think $22, $23 or $24 billion is sufficient for Intelligence expenditures in this country and the other $2½ billion to $3 billion is lesser.

My colleagues differ with me. I understand that. That is what democracy is all about.

□ 2320

I am glad I am not the only person that makes all the decisions around here because I know how often I can be mistaken, too. This is a collective, compromise judgment of the American people and their Representatives.

Mr. DICKEY. But I am differing with the gentleman also. The gentleman seems to think that this Congress, this body, both the House and the Senate, are going to cut spending, whereas they promised the same thing to President Bush and this Nation, and we increased spending. For every dollar we took in we increased spending $1.71.

Tell me as a freshman, tell me how it is different now that this Congress is promising spending cuts to a President and to an administration in later years, how is it different than what was promised to President Bush?

Mr. KANJORSKI. OK. The gentleman studied President Clinton's program and the program we are about to pass.

Mr. DICKEY. I have not studied it like the gentleman has.

Mr. KANJORSKI. Well, let me talk to some of it. It is basically——

Mr. DICKEY. Well, how is it different? How is it different than Bush? That is all I am asking.

Mr. KANJORSKI. Well, I think the gentleman has heard the term around here "smoke and mirrors."

Mr. DICKEY. Yes, sir.

Mr. KANJORSKI. The Bush agreement was a summit agreement between the leadership of the House and the Senate and the President of the United States, and unfortunately the President never went there. Mr. Darman and Mr. Sununu—now this is Mr. Darman at the end of last year, said, "Oops. I missed the deficit by a hundred and fifty billion, just a little slight miss."

I say to the gentleman, "Well, anyway, when you're dealing with people like that, and you're dealing for political advantage, and you're dealing outside of the institutions. you're mistaken. That didn't happen this time. This time the President of the United States within 30 days of taking office came up here, on February the 17th, and he told the Representatives of the American people we have got to stop the increase of the deficit."

Mr. DICKEY. We have got to stop spending; is that not what he is saying?

Mr. KANJORSKI. No. You have got to stop spending, and you have got to raise revenues so that your deficits do not exceed the growth of your gross domestic product. The President spoke the truth when he said the sky is not going to fall today, it is not going to fall tomorrow, probably not for years. I would project we could go the way we are going right now for 8 to 10 years. By that time the debt would rise to around $14 trillion. At that point no idiot in the world would buy an American bound because we would, as for all intents and purposes, be absolutely bankrupt. The President says we are not there yet. He said:

"Work with me, and let us begin to reverse the trend." This bill is the first step he is asking for.

Mr. DICKEY. He is asking that from Congress?

Mr. KANJORSKI. He said that to Congress. He said, "Give me a third of that cut."

Mr. DICKEY. How is that any different than what this Congress promised President Bush when they said, "O.K., we will not have any spending except under emergency circumstances——"

Mr. KANJORSKI. Because——

Mr. DICKEY. And then all of a sudden emergency circumstances allowed us to increase spending from a dollar of take in revenue to $1.71 expenditure. Now how is it any different? I am just a freshman.

Mr. KANJORSKI. I say to the gentleman, "When you get into the cuts and the numbers, you have to remember the revenue intake far underperformed because of the recession that occurred. Nobody anticipated the depths of the recession, nor did anyone realize that it had even started at the time. So, when your revenues are out, automatically you are going to take less in. Your spending goes up as your recession occurs. Every time you have 1 percent unemployment in the United States, it costs us $30 billion in unemployment compensation alone—every year."

Mr. DICKEY. Interest rates are that way too; are they not?

Mr. KANJORSKI. Excuse me?

Mr. DICKEY. Interest rates are that way too.

Mr. KANJORSKI. Absolutely.

As I was saying, what happened in 1990 is people got together.

I was here then, and I think in a way George Bush was a man who was willing to make a tough decision.

Mr. DICKEY. He meant well; did he not?

Mr. KANJORSKI. Oh, he absolutely did, and he thought he was doing the right thing. If I had to make a criticism of the former President it would be that he never got to know us, he never came around, he never really talked to us. He was out of touch with people and with the people's Representatives.

Mr. DICKEY. President Clinton is different from that, and he means well, too.

Mr. KANJORSKI. Exactly. He means well, and he goes one step further. He is talking to us two, three, four times a week. We are involved with him. He is inviting discourse, ideas, thought processes, and he has told us:

"This package is not the panacea."

What he is asking for, $500 billion, is just a beginning, a first step. I say to my colleague, "If you do not follow it up with containment of health care costs, it is a disaster. We go right back up again. But even if you do that, and you do not follow up with welfare reform, you are not going to have change. But even above and beyond that: This is the first President of the United States in 60 years that, as a Democrat, is internally going to reform this Government. He is going to do for Washington what Richard Nixon did for the world when he opened China to the world of nations."

Mr. DICKEY. Well, I am not going to disagree with that, and he is from Arkansas, and I want Arkansas to get the credit, if it possibly can.

But the one thing that is not different is that this Congress is the same, the insatiable desire of this body to spend money. It is exactly the same. We can have Presidents come and go, and Presidents can be different——

Mr. KANJORSKI. Mr. Speaker, let me tell the gentleman what the real facts are.

Mr. DICKEY. All right.

Mr. KANJORSKI. To date we have passed 11 of the 13 appropriations bills for fiscal year 1994. We have already come in $10 billion below what the budget agreement calls for. So, if we passed every appropriations bill from now until the end of the year, and passed the budget, as we are, we will be spending at least $10 billion less than expected. We are on our way.

We have a lot of good opportunities.

I do not know how the gentleman voted on the super collider.

Mr. DICKEY. I voted against it.

Mr. KANJORSKI. As did I, and we defeated it. I hope it is dead, but I have seen these spending monsters rear their heads several times. We kick them in the teeth, and they keep getting oxygen and staying alive. I also voted against funding the space station, and this time I was on the losing side. Those are judgment calls. I think both the SSC and the space station are magnificent. I think they help science.

Mr. DICKEY. I will agree.

Mr. KANJORSKI. They help America in the forefront.

Mr. DICKEY. Right.

Mr. KANJORSKI. Our problem is we have got to be a country of priorities. Can we afford everything at one time? At this time? No.

I had a similar discussion with a friend of mine the other day, and they said, "Well, you know, Spain—look what Queen Isabella and King Ferdinand did. They financed Columbus, who discovered the New World."

Spain, however, does not run the New World today. Spain is not a great power anymore.

We have an obligation, not be a great——

Mr. DICKEY. I ask the gentleman, "Wasn't it Portugal?"

Mr. KANJORSKI. I am sorry?

Mr. DICKEY. Was she the queen of Portugal or Spain?

Mr. KANJORSKI. Spain.

Mr. DICKEY. All right.

Mr. KANJORSKI. Spain funded the Columbus discovery of America.

Now I think this is a good history lesson to us, that, yes, there are a lot of things we would like to do. There are great explorers out there. There are great discoveries to be made, whether they be in space, in science, or in the laboratories. They all should be done, and hopefully all will be done at some time. But before financing these endeavors we must stabilize our society after having fought a war for 50 years and get our house in order.

Our President is telling us this, and instead we are arguing over details—somebody does not like this little aspect of it, and, therefore, they will not support it. We are given a choice on the House floor; one option was accepted and one was defeated, with perhaps 140 votes. If we do not pass this one, we will have no budget. We will have chaos.

Mr. DICKEY. Well, we can cut spending.

Mr. KANJORSKI. We are cutting spending, and let me get to that.

Mr. DICKEY. I am talking about cutting spending together——

Mr. KANJORSKI. We are cutting spending. We are cutting it by virtue of the law contained in this bill. The package before us mandates that $250 billion in more than 200 projects that the President highlighted will be contained or cut.

Mr. DICKEY. So long as it is not a waiver, and so long as the next Congress does not come in and say, "Wait a minute. We did not agree to that. We want to change it, and we are just going to put a waiver on it."

Mr. KANJORSKI. No, no, that is exactly the point. The President of the United States has to sign that waiver or it cannot be passed. Congress cannot change the law alone. This is going to be law. The President would have to participate in any changes. If he does back down, that is why we hold general elections in the United States, and the gentleman and I will be on the same side if he does not hold to it.

I am telling the gentleman this:

"I have not known this President personally for a long time, but he is one of the brightest men in the Government and one of the sharpest men I have ever met in my lifetime. I do not think any one can question his seriousness and this intellectual capacity, to deal with these issues and his willingness to listen and to take input from all quarters. And what he has said to us is that at this particular time we have a window of opportunity for budget deficit containment. But we cannot cut the 300 billion in one year and balance the budget—oh, we can, but we would drive America into a depression the likes of which would probably make 1930 look healthy. Just can not do it."

Now every known economist on the right and on the left and throughout the country has said that. Just last week, just last week, Alan Greenspan appeared before my committee, and his comment—now we cannot argue that Mr. Greenspan is in any way politically related to this administration. His comments were: I think it is important that some major credible deficit reduction bill be passed. There is an expectation in the marketplace that a credible initiative will eventually emerge from the process which has been going on for the last 6 months or so. I fear that should that expectation be thwarted, that the markets would respond in a negative fashion.

□ 2330

What Mr. Greenspan was saying, very simple, is do not pass this budget, go into gridlock, and the interest markets will take their toll.

Now, what will they do to us?

Mr. DICKEY. Have you said yet how it is different, what Congress promised this President as opposed to what this Congress promised President Bush? Is it any different? I can just get off of this if you will say it is exactly the same thing.

Mr. KANJORSKI. No, it is not. The programs that will be set out are specifically set out in law.

Mr. DICKEY. That was done with Bush, too?

Mr. KANJORSKI. No. The agreement with Bush was identify cuts to be made in the future.

Mr. DICKEY. But the number of dollars that were supposed to be cut are greater than what is in this one.

Mr. KANJORSKI. Not to call the name up of a very reputable Senator on the other side of the Capitol from a Midwestern State that may start with the letter K, but he suggested he had a plan. He took every one of the Democratic cuts and an additional unspecified $67 billion. And that is very analogous to what happened in 1990. That is so easy, to cut an unspecified $67 billion. Because when we talk here tonight, the American people think that there is a vast oven down here that Members of Congress like you and I, when we have nothing better to do on the House floor, run out there and shuffle greenbacks into that fire as fast as we can.

Mr. DICKEY. That is what I think.

Mr. KANJORSKI. I have been here 8 years. I have not found that. I can tell you what I have found. I have found that there are programs that are contained in the Budget of the United States for $1,500,000,000,000 that have constituencies all over the country, that cross party lines, cross social lines, cross economic lines, and cross interest lines.

I can tell you that the scientists think that the super collider is absolutely essential for $10 billion. I will tell you the homeless man in Philadelphia cannot comprehend a Government that will spend $10 billion for a 54-mile tunnel, and allow him to sleep in the cold of Philadelphia.

Who is right? I do not know. Our responsibility is to test it all. I know of no program, with the exception of a few—I do not understand the honey program, OK—but people tell me that that even does some good for somebody in pollinating crops. Maybe it does; I do not know.

But we have libraries, we have education, we have hospitals, we have research and development, we have the Armed Forces, we have Justice Department, we have the FBI, we have Congress, we have the Presidency, we have Government. We build highways; we build waterways; we build sewage plants; we build airports.

There is no blast furnace where we are burning money. Sometimes we are all guilty of not having the foresight and the vision of what the best judgment or expenditure of our dollars would be. But those dollars are not being thrown away. They are being expended for a collective judgment's idea as Representatives of the people as to what the priorities should be.

Now, what got us into trouble is very simple.

Mr. DICKEY. Let me tell you. I think you had four votes——

The SPEAKER pro tempore (Mr. WATT). The Chair would advise that the gentleman from Pennsylvania [Mr. KANJORSKI] has the time, if he wishes to yield.

Mr. KANJORSKI. I will yield to the gentleman.

Mr. DICKEY. I am supposed to say that?

Mr. BACHUS of Alabama. I would ask the gentleman to yield, not so much for debate, but I have an honest inquiry.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. KANJORSKI] controls the time.

Mr. KANJORSKI. Do you want to take it first?

Mr. DICKEY. Go ahead. Go ahead.

Mr. BACHUS of Alabama. I want to come down here and compliment the gentleman from Pennsylvania [Mr. KANJORSKI] about something that he said. You said that we have a tendency to speak at each other instead of to each other, and instead of engaging in sometimes meaningful debate, or even conversation about the problems that face our Nation, it is almost as if we are shooting arrows back and forth. And I think you are to be complimented on that.

Mr. DICKEY. I do, too.

Mr. BACHUS of Alabama. If this body had done more of that on this budget, we would be further along. And I also want to compliment you on something you said tonight that I am going to bear in mind. I mean, it needed to be said. And that is the fact that as this country grows and as the revenues grow, as far as spending going up, to a certain extent that is a natural process. And it should be kept in mind. So I want to compliment you for that.

There are concerns that we have about the budget. I would say this to you, just as an offering of another viewpoint. I think the President, when he said he would cut the deficit $500 billion, I think that that may have been a mistake. There is a debate now over 496 or 500.

Mr. KANJORSKI. Will the gentleman yield back for just a minute? You are

right in a way. Now, the experience I have when I go to town meetings in my district—and this is not anything against my constituents—they are no different than constituents all over America. They have to support a family; they have to earn a living. They do not have the time to spend in economics and government, and they are not necessarily schooled in it.

When you use the term "deficit" or "debt," 80 or 90 percent cannot distinguish between the two. I even hear some of the best commentators and journalists make that mistake and some of our fellow Representatives that really do not know the distinction.

When you use that word, "cut the deficit," a deficit by definition adds to the debt. When you cut the deficit, you are increasing debt. But people do not know that, and we should talk about those terms.

But what the President is saying is we have got to get the increasing rate of the increasing debt because of the increasing deficit on a yearly basis under control. And if it comes to the same ratio that the gross domestic product is growing, at least we are not going behind.

We have now got it in a position that we can put some treatment to it. And none of that treatment is going to be happy, because it means we are spending more than we should and that we are willing to pay in taxes or in revenues. That is true.

But we did that to win the third world war. And now you just cannot stop that overnight without oh, oh, it is not going to affect you or me.

We are elected for 2 years. But I can tell you I have traveled this country with my committee to California, to Utah, to Montana, to Alaska, to Pennsylvania, to Ohio. All over this country there are defense industries that are directly or indirectly related to feeding that tremendous machinery. That when you disassemble the Department of Defense, the sudden reaction, the rippling effect is four and five and six jobs in the private sector for every military job we let down.

Oh, it is easy for the guy to sit in the corner bar and say, "Oh, just cut the Defense Department 100 billion."

How? How many aircraft carriers are you going to cut down? How are we going to protect the oil travel of the world? We are the only superpower in the world. We are in a very transient period, where another Hitler could rise from the ashes of hatred and conflict. We know that.

On the other hand, we cannot afford to maintain indefinitely the expense it took to win the third world war. Our people will not stand it. We have lost our unifying external force, the hate of the Soviet Union and communism. We are proving for the first time in Western civilization that a self-elected body of representatives in a democratic system are going to be able to change the economic direction of their Nation in peacetime. And by convincing and persuading, informing, and educating an electorate.

That, if done, will be the first successful attempt ever in the history of Western civilization. What a challenge. But do you know what? We have got a Rhodes scholar to do it.

Mr. DICKEY. You have got what?

Mr. KANJORSKI. We have a Rhodes scholar to do it. We have a pretty nice young team, a new generation, born after the war, coming into power, without all the prejudice that preceded with the Depression and the hatreds that went through this country in the twenties and thirties, and people that are looking off with vision.

□ 2340

And I hear a President saying to me, if we can contain this cancer and, even better yet, if we can extricate this cancer from the body, America can lead the renaissance of the world, that we will increase wealth and capital and productivity and quality of life, not only for every living American but for every free man in the world. And when he says "free man in the world," he means the whole world to be free. And I believe he could do it. I believe we can do it. But we cannot do it if we do not take that first step.

And he says, join us in taking the step.

If you do not want to—and politics is important to this country—through the fighting of the Democrats and the Republicans and challenging each other's axioms and assumptions, we get the truth, or we get nearer the truth than any other system.

We do not ask you to come over and join us and take the responsibility. What we ask you to do, and the plea I make to you tonight—I am so pleased you stayed here—the plea I make to you tonight is, it is beyond the 435 of us that sit here. I am not going to persuade you and change your philosophy, and you are not going to persuade me and change my philosophy. But we have millions of Americans that really do not know whether or not this income tax is going to affect all of them. Let us be honest with them.

You may not agree with the income tax, because you may feel that the people that it will affect it does so wrongly. I understand that.

On the other hand, it is unfair to suggest to the millions of Americans tonight that have tight budgets that their Government or their President is going to take their incomes away in income tax. He is not going to do that. What he is going to do is in this chart right here.

He is going to ask us in this Congress, if it passes this budget, we will level an income tax that will only affect people that are making more than a gross income of $180,000 a year as a married couple or a taxable income of $140,000 a year.

Now, in my congressional district in northeastern Pennsylvania, that is 800 people.

Mr. BACHUS of Alabama. Mr. Speaker, will the gentleman yield?

Mr. KANJORSKI. Surely.

Mr. BACHUS of Alabama. Let me say this to you: I think you are raising some points that are valid, but at the same time what I would say to you is this.

I think it is more important how we reduce the deficit than the amount. Instead of saying $500 billion, if it is 490 or 480, and that additional $10 to $20 billion is unfair, and most of us agree it is, I am saying, the retroactivity.

Mr. KANJORSKI. The problem is, laws in America need a majority. We have got to get 218 votes here, and we have to get 51 over there. I have been here 8 years now, and I have seen President Reagan come here and tell us how he is going to balance the budget and spend more money on defense and cut the income tax. And a lot of us scratched our heads and said, boy, it must be new economics, because when we went to school that is not the way it works. And it did not. And I do not fault the President, because I just gave him credit.

I think in the 1980's, we drove ourselves into great debt, but there was a victory. We collapsed the Soviet Union. We sat down at the poker table. We played poker stakes, and they went belly up and broke. We did not defeat them in war. We did not destroy their philosophy. We bankrupted the buggers, and we have taken that threat away.

Mr. BACHUS of Alabama. I would say this, Mr. KANJORSKI: We could debate this income tax. And we probably could debate it for an hour or two and not agree.

What I would say, and I would hope that this body can agree to at this late hour, is that instead of $500 billion, let us go for 480. I am saying this: There are certain things like the retroactivity which I think most of the Members of this body are worried about and concerned about.

Mr. KANJORSKI. Let me throw a truth out there. What nobody has said on retroactivity that I have heard, they took that into consideration.

First of all, there are many precedents. The first original income tax act was passed. The 1986 act was retroactive. So it is nothing new.

But let me give you what really effectively we are doing there. We had to come up with the revenues to meet that window of opportunity. If you slipped down to $400 billion or $350 billion, that is easy. Unfortunately, that is not enough to get us anywhere. It will not take care of the credibility of

the marketplace, the financiers of the world or on Wall Street.

They will see that as nothing more than an inability of the Government to operate. You could go to $700 billion, but most of your economists say you will pay a terrible price in unemployment, lack of capacity, because you will contract the economy to the point where it not only will not grow but will materially decrease and contract in its productivity.

They say the measure, the window is somewhere in that range. Nobody knows. It could be 450. It could be 550; 500 is not a magic word. But the President wants the American people to make a dedication with us and with him to change the direction of this country.

Just recognize by putting it up there, and he says, we are not asking you to pay a terrible price. What we are asking are those people that have had exceptionally good times and have had their taxes reduced—when John Kennedy was President of the United States, the highest tax rate on wealthy people was 92 percent. It subsequently was reduced to 70 percent. Then it was reduced to 50 percent, and then it was reduced to 28 percent.

Now we took it up 3 percent in 1990, and we are asking to take it up 4 percent more.

Mr. DICKEY. Mr. Speaker, if the gentleman will continue to yield, the three of the four votes that you made against the Bush tax, that is where we are. That is where the people who are elected and who are freshman, that is exactly where we are. Could you discuss why you voted those three times against taxing the American people?

Mr. KANJORSKI. Not against taxing. I refused, because I thought it was very unfair. I thought the taxes that were going to be imposed were on the middle class, and the cuts that were going to be imposed were on the poor. We were not sufficiently taxing the wealthy people.

I have got to tell you a story. Friends of mine that are very well-to-do constantly come up to me, over the last 5, 6, 7 years, and say, "It is unconscionable not to be charging me a higher rate. You know, take it this way."

Mr. DICKEY. I will go along with that.

Mr. KANJORSKI. They are saying to you, "Look, you know what, man, I am making $1 million a year in a free nation. I can speak as I will. I can do as I will. And if you take 5 percent away from me on a million dollars, that is $50,000. That is nothing."

Mr. BACHUS of Alabama. Mr. Speaker, If the gentleman will continue to yield, I have this concern. I have the concern that 80 percent of the businesses in this country pay taxes at an individual tax rate.

Mr. KANJORSKI. They do not. I will give you the next chart.

The effect on small business. You would hear people crying or the Senator from Kansas, this is going to work havoc on small business. Has anybody looked at the program? Corporations that are earning less than $10 million a year in profit have no corporate tax increase at all.

Mr. BACHUS of Alabama. Are you saying partnerships and S corporation?

Mr. KANJORSKI. I will go through them. Corporations, the corporate tax going from 34 to 35 percent, it does not go up on corporations making less than $10 million a year in profit. So they are free. So obviously, that is not small business we are affecting there.

Let us run to businesses. If you are in business in America, you have choice. You can form a corporation and have the tax consequences of your profits done in the corporation, or you can get a tax loophole and you can get into what we call a sub S.

Most of our constituents listening to this do not know what sub S corporation is, but it is a vehicle by which the business' income can be directly transferred without tax consequences to the individual owners, if there are a limited number of owners and they qualify under the law.

In other words, it gives you the capacity to have limited liability in a corporate entity and singular advantage in tax avoidance as a private individual. It is probably one of the most successful tax loopholes to encourage business and create wealth that the Tax Code has ever created.

The only way a person with a sub S corporation ends up paying more money is if his corporation earns more than $180,000 a year in profit and he is a sub S corporation and, therefore, passes it on to him as individual income. If that is the case, he is one of 4 percent of all Americans that have incomes that are subject to taxation.

Mr. BACHUS of Alabama. You are saying that is not small businesses. That is.

Mr. KANJORSKI. I am saying all businesses. There is no new taxes on 96 percent as a result of the income tax.

□ 2350

Mr. BACHUS of Alabama. Of the individuals?

Mr. KANJORSKI. Individuals and small business.

Mr. BACHUS of Alabama. I think your chart says "most small businesses."

Mr. KANJORSKI. I am sorry, what you are saying, most small businesses will pay no new taxes. Only this area, and this 4 percent area are individuals that either own Subchapter S partnerships or small corporations and gain salaries from those corporations of more than $180,000 a year.

Mr. BACHUS of Alabama. That 4 percent figure you are talking about, you are saying that every individual is a small business, to come up with that 4 percent, are you?

Mr. KANJORSKI. No, I am saying this is 100 percent of small businesses. Only 4 percent of them have a tax consequence. In order to have that tax consequence, they have to have a personal income from that small business in excess of $180,000.

Mr. BACHUS of Alabama. You are assuming that all the partnerships and all the S corporations go down and incorporate.

Mr. KANJORSKI. No. An S corporation would have to incorporate, but they would pass it out to the individual. That still fits in that 4 percent.

Mr. BACHUS of Alabama. But what I am saying, again, what you have taken to get to that 4 percent figure, you have taken all the individuals in the country.

Mr. KANJORSKI. Taken all the businesses in the country.

Mr. BACHUS of Alabama. And all the individuals in the country.

Mr. KANJORSKI. Individuals and businesses.

Mr. BACHUS of Alabama. But individuals are not businesses.

Mr. KANJORSKI. Individuals can have a corporation, a personal corporation. A lawyer can have a corporation. An individual can incorporate.

Mr. BACHUS of Alabama. I understand, but I think what you are saying there is you have 250 million people in this country, say 4 percent of those are going to pay more?

Mr. KANJORSKI. No, less than that. Four percent of all the people that are in business are going to pay more, and only 1.2 percent of the entire employed body of America will pay more.

The SPEAKER pro tempore (Mr. WATT). The Chair would advise the gentleman from Pennsylvania that he has 3 minutes remaining.

Mr. KANJORSKI. Mr. Speaker, let me show one more example, and I do not want you to leave, gentlemen.

Here is the best reason to support President Clinton's program, instead of playing around the edges. As I told you, only 1.2 percent of Americans will be asked to pay a higher income tax, nobody else. So 98.8 percent are tax-free. We should drive that home to the American people.

In my congressional district, the income tax increase will only affect 800 people. That is it. The average family, anybody earning under $140,000 in taxable income that is not affected by the increase in income tax, will pay a tax as a result of the increase in gasoline of $3 a month, $36 a year. With that they have the opportunity of cutting a half a trillion dollars out of the deficit, of $1.5 trillion that will accumulate in the next 5 years, for $3 a month.

Will it cost them anything? No. They will pay increased gasoline taxes of $3 a month, but do you know what they gain and have gained as a result of the

decrease in interest rates? If they are an average American, and if they have a mortgage for 30 years, $100,000, the interest rate has gone down 2.5 percent, and they will save $175 a month if they refinance their mortgage.

If they have an automobile loan for $15,000 for four years, the interest rate has gone down 2 percent on their car. They will save $14 a month.

If they have a credit card, it has gone down 2 percentage points on the credit card on average across the country, and if they have a credit card that has $2,500 on it, they will save $2 a month.

They will save a grand total of $191, on average, and they will be asked in that month to contribute $3. I suggest to you with this graph that every American except the 1.2 percent that earn a taxable income in excess of $140,000 will in fact have a huge savings as a result of the program that the President has asked us to pass.

Finally, I want to say this. I do not agree with the President's program, and none of my colleagues here in the House or in the Senate agree with it, in its entirety. We are a democratic system that requires consensus, and the majority to rule.

Our choice is, we prove that democracy and representative government under our Constitution can work in the most challenging of times, both economically and historically, as I pointed out, or we abdicate that role to leadership by dictatorship or fiat.

The American people that elected us to Congress did not expect us to be more brilliant than they are or more able than they are. They have asked us to give them our best judgment, to work in their behalf, to work with their President that they elected in November to put America on the right course.

I submit to you that this is the right course. Ninety-eight point eight percent of Americans will make money if we adopt the President's budget. One point two percent will pay 4 percent for the first $100,000, 3.6 percent for all money above a quarter of a million dollars, and most of those are happy to have the opportunity to do business, have ownership of capital and exercise the freedom of wealthy men in a free Nation.

I ask my friends on the other side, tomorrow we are going to have a vote. It is impossible that every Republican agrees monolithically that this is a bad program. It is very possible that there are many among you that, like myself, do not agree in its entirety, but know that this country must go forward, and we have an elected President that wants to lead us in that change.

I would ask you to search your consciences tonight, talk with your people, but if you cannot vote with us, do not mislead the American people as a result of not knowing the facts or not having the facts available to you.

Finally, the President even made provisions for 1.2 percent. If they cannot pay that retroactive tax back to January, they will have 3 years, no interest and no penalty, in which to make that payment to catch up. That is not oppressive to wealthy people.

It would be oppressive if it were a gigantic increase and the tax collector went out and sold the assets and forced them to the wall. We are not doing that. We are asking them to pay more, but we consider it a fair share.

I want to thank you for being here. The fact that we could talk to each other civilly and in fairly decent debate style and answer some questions, I have not necessarily convinced you differently in your philosophy or ideas, and maybe you have not convinced me in mine, but I think we have shown to the American people tonight that the Congress is not all desirous of beating themselves, but in fact are looking for answers and solutions to problems that all Americans know we have, but want us to take the time and set the course to provide solutions for.

□ 2400

BUDGET RECONCILIATION

The SPEAKER pro tempore (Mr. WATT). Under a previous order of the House, the gentleman from Illinois [Mr. POSHARD] is recognized for 60 minutes.

Mr. POSHARD. Mr. Speaker, let me thank the staff of the House here and the American people for indulging us at such a late hour here this evening. I know the debate tomorrow on the budget bill is going to be long, and there is going to be a lot of Members who want to speak, and probably some of us will not get much time. I felt it important for those of us who wanted to have something a little bit more to say than the 30 seconds or 1 minute that we may be accorded tomorrow to try to say something about it tonight.

This has been a very difficult issue for many of us in the House, and difficult to decide what to do. But I appreciate your indulgence, and would like to share some of my thoughts on this debate with the American public.

I think it is easy in a debate of this nature to lose sight of the problems that we are trying to solve here. Sometimes the nature of the debate causes the issue and that gets very unfortunate, and I really appreciate the previous speaker, Mr. KANJORSKI, and the folks who stayed here to help him along with that debate.

But I would like at this point in time to restate the basic premise upon which this debate is based. I think that premise can best be stated in the form of a question. What is the single greatest problem that we face in this Nation?

I think most people would agree that the single greatest problem we face is the crushing debt that we have accrued as a people which undermines our ability to solve almost any other problem in this country. I want us to just go back to the basics here for a moment. I do not have any fancy boards here to show you some of my thoughts. My administrative assistant, Dave Strickland, and I sat down in the office a few hours ago and just kind of worked these out.

But I would like to make sure that we understand what the deficit really is and what the debt really is. The deficit is the annual amount that we spend in our Federal Government more than we take in. It is the amount we go in the hole every year in terms of our spending to meet our basic Government responsibilities.

If you will notice this little chart, back in 1980 we had a deficit that year of $73 billion that we spent more than we took in. Today, in 1993, we have a deficit of $285 billion projected this year that we will spend more than we take in, nearly four times as great as what we had in 1980. The annual accumulation of these deficits is our national debt. In 1980 we had a national debt of $908 billion, less than $1 trillion. Just 13 short years later that has quadrupled, more than quadrupled to the point where now we have a $4 trillion debt in our Federal Government.

I know these figures are staggering to the American people. They are staggering to those of us who work here in the Congress and who try to understand them. And it is hard to put them in perspective, but let me just give an idea of how much money we are talking about here, $285 billion of deficit spending this year.

I come from the State of Illinois. Illinois has the fifth largest budget in the United States of America as a State. This year the entire State budget for the State of Illinois is slightly in excess of $26 billion a year to run everything in that State, transportation, conservation, education, welfare, health care, everything for which the State has a responsibility, slightly in excess of $26 billion. We could run 10 States the size of Illinois for an entire year on just the deficit spending that we will accumulate this year in the Federal Government.

How great is our total debt of $4 trillion? Our entire federal budget this year could run everything in this country, including a little over $300 billion in interest that we are paying on that debt, which is about $1.5 trillion. As you can see, we could nearly run the entire country for three years on just the amount of money that we have accumulated, the $4 trillion on our national debt. That is an incredible amount of money, and it is by far the most pressing problem that we have in the Federal Government, to begin to deal with this deficit and this debt.

Well, how did we get here? What are the reasons for the accumulation of this kind of indebtedness?

This second chart will show in some very simplistic terms how we got here. And you know, this is where I think we get off the track in this House of Representatives, because here is where we want to start blaming each other. Instead of, as Mr. KANJORSKI said, building bridges across the aisles, we want to point fingers and blame one party or one branch of government for getting us $4 trillion in debt. We can go back again to 1980 when we were less than $1 trillion in debt, over a 200-year period of history in this country and begin there.

During the 1980's when President Reagan came into office he felt very strongly that the defense of this country should be built up tremendously, and he had his reasons for doing that. And as President of the United States he began to build the defense system of America up, for obvious reasons.

At one point in time during his administration the percentage of the national budget for defense was nearly 30 percent of the entire Federal budget, and there were several years when it was very high.

I think we can give to President Reagan this, and many of my colleagues do not want to do it, but I think it is true that the buildup of our military capability under President Reagan hastened the fall of communism and hasten the fall of the USSR, and probably in the long haul will save us trillions of dollars down the road in maybe not having to prepare for another NATO alliance as a standoff for 45 years against a Warsaw Pact community. But certainly I think it is a given that that military buildup did hasten the fall of communism. But is also exacted a tremendous price from our Federal Government in terms of having to borrow a great deal of money to afford that buildup.

The second thing that happened and has been happening for over a decade is the tremendous cost of health care in this country has just gone straight through the ceiling. Health care costs in America for the past decade have risen somewhere between 12 and 20 percent per year every year. And the American Government has responsibility for a lot of people in the area of health care in our Medicare and Medicaid programs. We have to assume a greater, extraordinary responsibility to take care of those people under a very cumbersome, high-cost health care system, and that has exacerbated the debt tremendously, because we have had to borrow money to assume that responsibility.

The third thing is, as Mr. KANJORSKI and others related in their previous statements, during that time the tax rates on the high-income people of this country were cut tremendously. One rate even stood at around 70 percent for the highest income tax bracket. That was cut during the 1980's down to 28 percent, and then brought back up in 1990 to 31 percent, and under the present budget reconciliation bill would be taken up to 35 percent.

0010

But the loss of revenue coming into the national treasury from that income bracket of people was substantial, and that exacerbated the deficit problem that we have in this country.

The fourth thing is the projected growth in the economy during the latter part of the 1980's and the early 1990's never measured up in terms of the growth that was predicted and upon which the budgets were predicated. Many of those growth predictions were around 4-percent growth in the economy, and it was assumed that we would get the natural revenue growth from that kind of growth in the economy. It never materialized. The economy grew at 2 to 2.5 or 2.7 percent during some of those years, and we did not get the revenue in that that we expected to get and, therefore, we came up short in our budgets that were already passed by this Congress.

So these four things for a period of time, the buildup of defense, the increasing cost of health care, the decrease of taxes on the wealthiest people of this country, and the lack of growth in the economy, or at least in terms of what had been predicted, all of these made up the problem for us of deficit spending and increasing tremendously from less than $1 trillion up to $4 trillion of national debt.

It does us no good to point fingers and blame people for this. The point is we are $4 trillion in debt today, and we have to go from here to find a way to solve this problem, and it will not be easy.

The choices cannot be easy. We do not need to blame people. We need to stop the blaming. The truth is all of us are at fault here. We have had an executive branch that for at least 12 years has told the American people, "You do not have to pay for anything; we are never going to raise your taxes for any reason." Well, that cannot be responsible. There are times in a democratic society when there is economic downturn or other reasons that may require us to go to the people and say we have to pay for things as we go here; we cannot borrow the money and put the next generation at risk by paying the high interest rates on the borrowed money.

We have had a legislative branch that for at least that long has been very reluctant to tell the American people, "No, you have to do without this," and an executive branch that says, "We are never going to raise your taxes. You do not have to pay for anything," and a legislative branch that says, "You do not have to do without anything." Neither of those are responsible.

At the same time we have had an American public who demand both, no taxes and no cuts.

Well, what does this budget attempt to do? In my judgment, it attempts to address both issues, and in the process hopefully changes the direction in which we have been going which is farther and farther into deficit spending and farther and farther into debt. It says there are times in this country when we must pay as we go and we must ask the people who can most afford to pay to pay a fairer share of that for the sake of the next generation.

There are times when we must say no, and it does not matter who a special interest group is, whether it belongs to those people whom the Republican Party try to protect or those people whom the Democrats try to protect. We cannot continue along this road.

Let us look at this next little chart if we may. Again, let us try to be honest here about what this budget is proposing to the American people.

We have a deficit this year of about $285 billion. Mr. Clinton has proposed in his budget not a great flowery economic growth prediction but a very conservative estimated growth of 2.7 percent in the economy. That is a conservative estimate. So that if the economy does not produce as vigorously as we would have hoped it would, at least we are not predicating a budget based upon those economic growth predictions of more money coming into the Treasury that we might otherwise expect. He has said that we will cut spending, the growth in Federal spending, of $255 billion over the next 5 years, and we will collect $241 billion of new taxes to be applied toward the deficit.

He has agreed to form a deficit-reduction trust fund to make sure that these cuts in spending and these taxes that we are going to be collecting into that trust fund can be traced toward deficit reduction.

Now, if all of this happens perfectly as the President has predicted or hopes, if we achieve this growth rate in the economy, if we achieve the cuts in spending and those are applied to the deficit, if we achieve the tax increases and those are applied to the deficit, and assuming we have no great catastrophic extraordinary events to contend with like another earthquake or hurricane or the present flood situation, and assuming that we do not have another S&L bailout of $200 billion or so to have to contend with, if this happens perfectly, we will have gone from $285 billion this fiscal year in deficit spending to somewhere around $180 billion to $185 billion deficit spending 4 or 5 years down the road.

Folks, we are not talking about wiping out the deficit here. We are talking about changing the direction fundamentally in which this Nation has

been going. But this is a tough thing to do. We are not even talking about getting rid of the deficit at this point in time. We are just hopeful about reducing the deficit about 40 percent over the lifetime of this budget, and that requires all of this to happen.

But even with that, if we accomplish this objective with the deficit, the debt during those times, those 5 years, will still be increasing by the yearly amount that we go into the hole with deficit spending, somewhere between the $285 billion and $181 billion a year. So even under the best scenario, our debt will have increased from $4 trillion to $5 trillion.

Now, if you think this is tough medicine, let me ask you this: What are the alternatives? If we are not willing to ask the wealthiest 1½ percent of the people of this Nation to pay these taxes and if we are not willing to achieve these cuts, then what are the alternatives?

Well, let us look at them. Let us see what they are.

If you wipe out the taxes all together, then, fine, that is an alternative. That may be what the will of the people eventually achieves.

These taxes are broken down 80 percent of these taxes to be paid by people making over $200,000 a year, 20 percent of them come in the form of a 4.3 cent per gallon gasoline tax, which every American pays for. It is about an additional $35 a year for the average American middle-income family. If we are not willing to assume those taxes, then take that $241 billion off. All you do is add it to the deficit and add it to the debt.

□ 0020

Instead of being $5 trillion in the hole at the end of this budget, we will be $5,250,000,000,000 plus the interest we will pay on that $250 billion over the next 5 years. If that is what we want to hand to our children, we can do that. If we do not think those taxes are justified, that is.

I am not saying right or wrong or indifferent, but this is what we are facing. If we do not think we ought to make those cuts in programs, then the same thing happens again; just add it on. Yes, it is true, folks, please try to understand this, for any Member of Congress who is trying to decide what to do with regard to this budget, just let me speak from the very personal viewpoint here because these are hard things for all of us.

But just consider this: If you really did not believe that this was the right thing for us do as a nation, if you really did not believe that, why in the world would you subject yourselves to a position that has taxes increasing, services cut, the deficit still being there are the debt increasing? And all of those things are going to happen if you vote for this budget.

But, my friends, what are the alternatives? If we do nothing, this deficit goes from $285 billion this year upward of $300 billion or $400 billion a year, and this debt is exacerbated by exactly the same amount as the deficit will go up every year.

If you only want half of this package, then just cut it in half. But you will do less deficit reduction and you will do less in taking care of the debt and the interest on the debt.

That is the alternative. There are not any easy choices here. I know everybody would like to go home and say, "I didn't vote to increase taxes, I didn't vote to cut your services, I didn't vote to increase the debt," but if you do not vote for this program, then the debt is going to be higher and the deficit is going to be higher.

I wish the choices were easier also. I do not represent an extremely wealthy district. I have counties in my district which have 28 percent unemployment or better. And I have children in my district just as there are children in every congressional district in this country who are going to be facing such a massive debt in their future that, ladies and gentlemen, they will never, ever, ever see their way clear to paying off this debt if we in this Congress today are not willing to make some hard choices in their favor.

People say to me all the time, "Well, but you are only slowing down the growth of Federal spending, you are not really cutting spending below the present year's budget." It is not less spending than last year, it is just less than you would be ordinarily increasing the spending. Now, that is true. There has not been a President, say, including President Reagan—he never came into office saying, "We are going to reduce Federal spending below last year's level," he said, "We are going to reduce the growth of Government spending because in Government that is what we can do."

People say cut it below last year's level. Well, tell me how we do this. I am an educator, school teacher, a school administrator. There are millions of children coming into our school system every year above last year's numbers. Do we cut back educational funding even when there are more children coming into the system with even greater needs? How about Medicare? We will have millions of seniors added to the Medicare rolls this coming year. Are we going to cut Medicare back below this year's present level? No one is suggesting that. I serve on the Committee on Transportation. In 1980 it cost us $1 million to build 1 mile of four-lane highway in this country. Today it costs us $3.5 million per mile to build a four-lane highway in this country.

The cost for infrastructure is not going down, it goes up. Sewer systems, water systems, roads, bridges. Are you suggesting that we cut transportation below last year's level when we are already hundreds of billions of dollars in arrears on just the basic surface transportation needs in this country, which are what move our goods and services and make us competitive as a nation?

How about the Justice Department? Every town meeting I have, people get up and what they tell me is, "Get the criminals off the streets, stop the drug trafficking, build the prisons." Are you suggesting then that we cut law enforcement below its present level, that we eliminate those drug programs that are trying to keep the drug pushers off the street, cut them back?

It is right that we try to slow down the growth of Government spending in whatever arena it may be, but when we have 10 million people being added to the census rolls every year in this country, when the needs get greater, and the costs of the Government's responsibility for those needs gets greater, how can we cut back from the present year's level?

Folks, this is not very fancy, but here is the budget. I know you cannot read this, but just let me deal with this for a couple of minutes if I may. This is a very simplistic way of looking at this budget, I know that; but maybe it is something that can help us understand a little better.

There are three major parts of the budget: discretionary programs, and those are programs over which the Congress has authority to increase or decrease or do whatever we wish. Then the entitlement programs are programs in our budget to which people are entitled if they qualify; if you are 62 years old and you paid into social security, you can draw social security. If you are social security-eligible, you are Medicare-eligible. If you are below a certain poverty level, you are Medicaid-eligible or maybe food stamps-eligible. If you are a Federal retiree, you get a Federal retiree pension.

□ 0030

The other major part of the budget is the interest on the national debt.

Now, Mr. Speaker, look at this. The discretionary programs over which we have the ability to raise, lower, slow down, whatever, constitute in this year's budget 35 percent of the total $1.5 trillion or $550 billion in discretionary programs. Those are defense, foreign aid; science, space and technology; energy, environment, transportation, education, health, justice, veterans and so on, the things for which you assume this Federal Government has a responsibility and needs to meet the obligations on behalf of the American people with respect to those agencies.

Thirty-five percent of the budget is in discretionary funding this year.

Look at this, the entitlement programs, Social Security, Medicare, Medicaid, food stamps SSI, unemployment

insurance, farm programs, the entitlement programs are 45 percent of the budget, or $676 billion.

Discretionary, 35 percent; entitlements, 45 percent, and here is the other major player, interest on that $4 trillion of national debt is 20 percent of the budget or $309 billion this year.

Look at this. Right now we have 65 percent, nearly two-thirds of the budget of this country which is going toward entitlement programs and interest on the debt, and only one-third, a little better than one-third going toward those other things for which we assume the Government has a major responsibility, defense and the domestic programs which we mentioned, education, health, justice and so on.

Now, if we do not choose to do anything except to accept the status quo, if we do not choose to move on this deficit and this debt, if we do not want to make the hard choices to do that, then this is what the next budgets will look like. Instead of the interest on the debt being 20 percent, it will be 21 or 22, and because the health care costs keep rising extraordinarily, Medicare will continue to go to the ceiling, Medicaid will go through the ceiling and entitlements will eat up a greater share of this budget so that it will not be two-thirds of your tax dollars going toward entitlements and interest, it will be three-fourths, and we will be running everything else in this Government, defense, education, health care, all of it, transportation, all of it on 25 cents out of every tax dollar.

Is that what you think we ought to let happen in this country? Are you telling us that we should not entertain asking the wealthiest people of this country to make up some of the taxes to help us reverse this trend and we should not ask middle and lower income Americans to pay an extra 4.3 cents a gallon on the gasoline tax to help us defray this kind of situation?

Mr. Speaker, this is critical. It is crucial. There are not any easy choices here. If we do not do something here, we will never find the courage down the road because the problems will be twice as bad.

We have to reverse this trend. The President signed today Executive orders for an entitlement cap so that we agree that this 45 percent of the budget does not go out of sight.

We have had a discretionary cap since 1990 and it has worked. Defense spending has been about the only item in the budget that has literally gone down in spending. The discretionary caps are still acquired here. We will have entitlement cap enforcement.

We have a budget deficit trust fund where we can track the taxes and the cuts for legitimate deficit reduction. We have nearly $500 billion of deficit reduction which is only the beginning, but it is a beginning. It does not solve the problem, but it is a step in the right direction.

Mr. Speaker, let me remind the Members again of the problem. The problem is $4 trillion of debt, 20 percent of our budget going to interest on that debt, and escalating health care costs which drive the entitlement part of our budget out of sight.

This is the first step in the right direction, but it is only the first step.

The second step is health care reform to keep these health care costs down so we can continue to afford Medicare and Medicaid and the other health needs of this country.

The third step is to take up additional cuts, as hard as that may be in the future, which this Congress is going to have to do.

The fourth step, as the President and Vice President have promised us, is to revise the Federal Government to make it more efficient and more effective, and that is what the Vice President is going to be coming out with in the near future, a total look at the Federal Government and revamping it for cost-effectiveness and cost-efficiency.

Well, this is not the end. It is only the start, but it is a beginning.

President Kennedy was fond of quoting an old Chinese adage which says, "A journey of 1,000 miles must be started with a single step."

Mr. Speaker, we have a journey of a lot more than 1,000 miles ahead of us, but let us begin. Let us take this first step, not to fiscal soundness yet, but in the hope that by having enough courage to do what is necessary here we will get down the road for the sake of our children and our grandchildren. Surely we can do this much.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. QUINN) to revise and extend their remarks and include extraneous material:)

Mr. GOSS, for 5 minutes, today.

Mr. ROYCE, for 5 minutes, today.

Mr. MCCOLLUM, for 5 minutes, today.

Mr. DORNAN, for 5 minutes, on August 5 and 60 minutes, on August 6.

(The following Members (at the request of Mr. HOCHBRUECKNER) to revise and extend their remarks and include extraneous material:)

Mr. PALLONE, for 5 minutes, each day on August 5 and 6.

Mr. MFUME, for 60 minutes, on August 5.

Mr. WASHINGTON, for 60 minutes, on August 5.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. QUINN) and to include extraneous matter:)

Mr. PORTMAN in two instances.

Mr. FAWELL.

Mr. PORTER in two instances.

Mr. SOLOMON in four instances.

Mr. HOEKSTRA.

Mr. GILMAN.

Mr. GALLO.

Mr. BONILLA.

Mr. HASTERT.

Mr. GALLEGLY.

Mr. CRANE in three instances.

Mr. COX.

(The following Members (at the request of Mr. HOCHBRUECKNER) and to include extraneous matter:)

Mr. MANN in two instances.

Mr. DIXON.

Mr. HAMILTON in three instances.

Mr. PETERSON of Florida.

Mr. LEVIN.

Mr. MCCURDY.

Mr. KREIDLER.

Mr. MFUME.

Mr. VENTO.

Mr. HAMBURG.

Mr. MCCLOSKEY.

Mr. RICHARDSON in two instances.

Mr. STOKES in two instances.

Mr. MAZZOLI.

Mr. SLATTERY.

Mrs. MALONEY.

Mr. TRAFICANT.

Mr. ANDREWS of Maine.

Mr. STUDDS.

Mr. MINETA.

ENROLLED BILLS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 416. An act to extend the period during which chapter 12 of title 11 of the United States Code remains in effect, and for other purposes, and

H.R. 798. An act to amend title 38, United States Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1295. An act to amend the Rehabilitation Act of 1973 and the Education of the Deaf Act of 1986 to make technical and conforming amendments to the Act, and for other purposes.

ADJOURNMENT

Mr. POSHARD. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 39 minutes

a.m.), the House adjourned until today, Thursday, August 5, 1993, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

1698. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–70, "Asbestos Licensing and Control Act of 1990 Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1699. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–74, "Confirmation Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1700. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–71, "Board of Trustees of the University of the District of Columbia Term Holdover Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1701. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–68, "Insurers Rehabilitation and Liquidation Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1702. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–69, "Law on Credit for Reinsurance Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1703. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–67, "Basic Operations Options Training Children to Adults Maturity Program Establishment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1704. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–66, "Registered Limited Liability Partnership Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1705. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–62, "Closing of a Public Alley in Square 5359, S.O. 92–57, Act of 1993." pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1706. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–63, "Subsidy for Existing Low-Yield Cooperative and Single-Room Occupancy Projects Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1707. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–64, "Sales and Use Tax on Newspapers Temporary Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1708. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–65, "Authorization for Medical Consent for Children in the Care of Adults Other than Parents Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1709. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. Act 10–61, "Student Health Care Amendment Act of 1993," pursuant to D.C. Code, section 1–233(c)(1); to the Committee on the District of Columbia.

1710. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting copies of the report of political contributions by William Green Miller, of Virginia, to be Ambassador to the Ukraine, and members of his family, pursuant to 22 U.S.C. 3944(b)(2); to the Committee on Foreign Affairs.

1711. A letter from the Assistant Secretary of State for Legislative Affairs, transmitting a draft of proposed legislation to provide for the adjudication of certain claims against Iraq and for other purposes; to the Committee on Foreign Affairs.

1712. A letter from the Chairman, Federal Election Commission, transmitting proposed regulations governing multicandidate political committees, pursuant to 2 U.S.C. 438(d); to the Committee on House Administration.

1713. A letter from the Chairman, Federal Election Commission, transmitting new reporting form 1m and revised form 3x, governing notification of multicandidate committee status, pursuant to 2 U.S.C. 438(d); to the Committee on House Administration.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proposed calendar, as follows:

Mr. SABO: Committee of Conference. Conference report on H.R. 2264. A bill to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994 (Rept. 103–213). Ordered to be printed.

Mr. STUDDS: Committee on Merchant Marine and Fisheries. H.R. 2112. A bill to provide for the development and implementation of a national strategy to encourage and promote opportunities for the U.S. private sector to provide environmentally sound technology (including marine biotechnology), goods, and services to the global market, and for other purposes; with an amendment (Rept. 103–214, Pt. 1). Ordered to be printed.

Mr. CONYERS: Committee on Government Operations. H.R. 2139. A bill to amend title 44, United States Code, to authorize appropriations for the National Historical Publications and Records Commission (Rept. 103–215). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS: Committee on Government Operations. A report on "The Immigration and Naturalization Service: Overwhelmed and Unprepared for the Future" (Rept. 103–216). Referred to the Committee of the Whole House on the State of the Union.

Mr. BEILENSON: Committee on Rules. House Resolution 240. Resolution waiving points of order against the conference report to accompany the bill (H.R. 2264) to provide for reconciliation pursuant to section 7 of the concurrent resolution on the budget for fiscal year 1994 (Rept. 103–217). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. TORRES (for himself, Mr. BECERRA, Mr. BERMAN, Mr. BEILENSON, Mr. BROWN of California, Mr. CALVERT, Mr. CUNNINGHAM, Mr. DELLUMS, Mr. DIXON, Mr. DOOLEY, Mr. DOOLITTLE, Mr. DORNAN, Mr. DREIER, Mr. EDWARDS of California, Ms. ESHOO, Mr. FARR, Mr. FAZIO, Mr. FILNER, Mr. GALLEGLY, Mr. HAMBURG, Ms. HARMAN, Mr. HORN, Mr. HUFFINGTON, Mr. HUNTER, Mr. KIM, Mr. LANTOS, Mr. LEHMAN, Mr. LEWIS of California, Mr. MARTINEZ, Mr. MATSUI, Mr. MCCANDLESS, Mr. MILLER of California, Mr. MINETA, Mr. MOORHEAD, Mr. PACKARD, Ms. PELOSI, Mr. ROHRABACHER, Ms. ROYBAL-ALLARD, Ms. SCHENK, Mr. STARK, Mr. THOMAS of California, Ms. WATERS, and Ms. WOOLSEY):

H.R. 2853. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [Superfund] to establish a public-private partnership demonstration project for the cleanup of ground water pollution in the San Gabriel Basin; jointly, to the Committees on Energy and Commerce and Public Works and Transportation.

By Mr. ANDREWS of Maine:

H.R. 2854. A bill to reauthorize the National Women's Business Council, and for other purposes; to the Committee on Small Business.

By Mr. ANDREWS of Texas:

H.R. 2855. A bill to suspend until January 1, 1995, the duty on anthraquinone; to the Committee on Ways and Means.

By Mr. CONYERS (for himself and Mr. CLINGER):

H.R. 2856. A bill to increase the overall economy and efficiency of Government operations and enable more efficient use of Federal funding, by authorizing a demonstration program that enables local governments and private, not-for-profit organizations to use amounts available under certain Federal assistance programs in accordance with approved integrated assistance plans; to the Committee on Government Operations.

By Mr. COOPER:

H.R. 2857. A bill to amend the Internal Revenue Code of 1986 to repeal the credit provided by section 936 of such Code; to the Committee on Ways and Means.

By Mr. COX:

H.R. 2858. A bill to abolish the Interstate Commerce Commission; jointly, to the Committees on Energy and Commerce and Public Works and Transportation.

By Mr. EMERSON:

H.R. 2859. A bill to amend the Immigration and Nationality Act to provide that public ceremonies for the admission of new citizens shall be conducted solely in English; to the Committee on the Judiciary.

H.R. 2860. A bill to amend the Interstate Commerce Act to modify the Interstate Commerce Commission's regulatory responsibilities over the trucking industry, and for other purposes; to the Committee on Public Works and Transportation.

By Mr. FAWELL (for himself, Mr. SANGMEISTER, Mr. POSHARD, Mr. COSTELLO, and Mr. HYDE):

H.R. 2861. A bill to amend the Act of September 30, 1950, to require the Secretary of Education to calculate each payment to a local educational agency under section 2 of such act on the basis of assessed valuation figures provided by the local official responsible for assessing the value of real property located in the jurisdiction of such local educational agency for purposes of levying a

property tax; to the Committee on Education and Labor.

By Mr. FRANKS of Connecticut (for himself, Mr. GINGRICH, Mr. WALKER, Mr. ARMEY, Mr. HYDE, Mr. DELAY, Mr. PAXON, Mr. ALLARD, Mr. BAKER of California, Mr. BAKER of Louisiana, Mr. BARRETT of Nebraska, Mr. BARTLETT of Maryland, Mr. BATEMAN, Mr. BEREUTER, Mr. BLILEY, Mr. BLUTE, Mr. BOEHNER, Mr. BONILLA, Mr. BUNNING, Mr. BURTON of Indiana, Mr. CAMP, Mr. CALLAHAN, Mr. CANADY, Mr. CLINGER, Mr. COLLINS of Georgia, Mr. COMBEST, Mr. COX, Mr. CRANE, Mr. CUNNINGHAM, Mr. DOOLITTLE, Mr. DORNAN, Mr. DREIER, Ms. DUNN, Mr. EVERETT, Mr. FAWELL, Ms. FOWLER, Mr. GALLEGLY, Mr. GEKAS, Mr. GILMAN, Mr. GILLMOR, Mr. GOODLATTE, Mr. GOODLING, Mr. GOSS, Mr. GREENWOOD, Mr. HANCOCK, Mr. HANSEN, Mr. HASTERT, Mr. HEFLEY, Mr. HERGER, Mr. HOBSON, Mr. HOEKSTRA, Mr. HUNTER, Mr. INHOFE, Mrs. JOHNSON of Connecticut, Mr. SAM JOHNSON of Texas, Mr. KIM, Mr. KING, Mr. KINGSTON, Mr. LEVY, Mr. LEWIS of Florida, Mr. LIGHTFOOT, Mr. LIVINGSTON, Mr. MCCOLLUM, Mr. MCCRERY, Mr. MCKEON, Mr. MOORHEAD, Mr. MYERS of Indiana, Mr. OXLEY, Mr. PETRI, Mr. POMBO, Mr. PORTMAN, Ms. PRYCE of Ohio, Mr. QUILLEN, Mr. QUINN, Mr. RAMSTAD, Mr. REGULA, Mr. RIDGE, Mr. ROBERTS, Mr. ROHRABACHER, Mr. ROTH, Mr. SCHIFF, Mr. SHAYS, Mr. SHUSTER, Mr. SKEEN, Mr. SMITH of Oregon, Mr. SMITH of Texas, Mr. SMITH of Michigan, Mr. SOLOMON, Mr. STEARNS, Mr. STUMP, Mr. SUNDQUIST, Mr. TALENT, Mr. TORKILDSEN, Mr. WALSH, Mr. WELDON, Mr. YOUNG of Florida, and Mr. ZELIFF):

H.R. 2862. A bill to assure compliance with the guarantees of the 5th, 14th, and 15th amendments to the Constitution by prohibiting the intentional creation of legislative districts based on the race, color, or language minority status of voters within such districts; to the Committee on the Judiciary.

By Mr. GALLO (for himself, Ms. KAPTUR, and Ms. MOLINARI):

H.R. 2863. A bill to amend title 13, United States Code, to require that any data relating to the incidence of poverty produced or published by the Secretary of Commerce for subnational areas is corrected for difference in the cost-of-living in those areas; to the Committee on Post Office and Civil Service.

By Mr. GLICKMAN:

H.R. 2864. A bill to provide for the disclosure of financial benefits by lobbyists, and for other purposes; to the Committee on the Judiciary.

By Mr. GREENWOOD (for himself and Mr. SANTORUM):

H.R. 2865. A bill to extend until January 1, 1998, the existing suspensions of duty on m-Xylenediamine ("MXDA") and 1,3-Bis(aminomethyl) cyclohexane ("1,3-BAC"); to the Committee on Ways and Means.

By Mr. HAMBURG (for himself, Mr. STARK, Mr. STUDDS, Mr. GEPHARDT, Mr. MILLER of California, Mr. WAXMAN, Mr. DEFAZIO, Ms. WOOLSEY, Mrs. SCHROEDER, Mr. MATSUI, Mr. BRYANT, Mr. VENTO, Mr. RAVENEL, Mr. ABERCROMBIE, Mr. RICHARDSON, Mr. SMITH of Iowa, Ms. FURSE, Mr. EDWARDS of California, Mr. SABO, Mr. BROWN of Ohio, Mr. POSHARD, Miss COLLINS of Michigan, Mr. ACKERMAN, Mr. DELLUMS, Mr. ANDREWS of Maine, Mr. OLVER, Ms. MOLINARI, Mr. MARKEY, Mr. BARRETT of Wisconsin, Mr. BEILENSON, Mr. BERMAN, Mr. BISHOP, Mrs. MINK, Mr. BLACKWELL, Mr. SERRANO, Mr. BONIOR, Mr. WASHINGTON, Mr. BROWN of California, Mr. JACOBS, Mr. COLEMAN, Mr. MFUME, Ms. WATERS, Mr. WATT, Mr. TORRES, Mr. CLAYTON, Mr. RAHALL, Mr. CLYBURN, Mr. DIXON, Mrs. COLLINS of Illinois, Mr. KOPETSKI, Mr. LANCASTER, Mr. ENGEL, Ms. SHEPHERD, Mr. UNDERWOOD, Ms. ESHOO, Mr. INSLEE, Mr. POMEROY, Ms. ROYAL-ALLARD, Mr. JOHNSON of South Dakota, Mr. EVANS, Mr. LIPINSKI, Mr. FALEOMAVAEGA, Mr. MORAN, Mr. OWENS, Mr. PASTOR, Mr. FARR, Mr. FILNER, Mr. HINCHEY, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. LANTOS, Mr. MARTINEZ, Mr. MCHALE, Mrs. MEEK, Ms. PELOSI, Mrs. UNSOELD, Ms. VELAZQUEZ, Mr. ROMERO-BARCELO, Mr. SANDERS, and Mr. SHARP):

H.R. 2866. A bill to provide for the sound management and protection of Redwood forest areas in Humboldt County, CA, by adding certain lands and waters to the Six Rivers National Forest and by including a portion of such lands in the national wilderness preservation system; jointly, to the Committees on Natural Resources and Agriculture.

By Mr. HASTINGS:

H.R. 2867. A bill to amend title VII of the Civil Rights Act of 1964 with respect to establishing an unlawful employment practice based on disparate treatment; to the Committee on Education and Labor.

By Mr. JEFFERSON (for himself, Mr. LIVINGSTON, Mr. TAUZIN, Mr. FIELDS of Louisiana, Mr. MCCRERY, Mr. BAKER of Louisiana, and Mr. HAYES):

H.R. 2868. A bill to designate the Federal building located at 600 Camp Street in New Orleans, LA, as the "John Minor Wisdom United States Courthouse"; to the Committee on Public Works and Transportation.

By Mrs. JOHNSON of Connecticut (by request):

H.R. 2869. A bill to extend until December 31, 1998, the temporary suspension of duties on 2,6-Dichlorobenzonitrile, relating to mixtures and inerts; to the Committee on Ways and Means.

By Mr. KREIDLER (for himself, Mr. SWIFT, Mr. DICKS, Ms. CANTWELL, and Mrs. UNSOELD):

H.R. 2870. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to exempt from preemption under such title certain provisions of the law of the State of Washington relating to health plans; to the Committee on Education and Labor.

By Mr. SLATTERY:

H.R. 2871. A bill to amend the Public Health Service Act to provide for the conduct of expanded studies and the establishment of innovative programs with respect to traumatic brain injury, and for other purposes; to the Committee on Energy and Commerce.

By Mr. MCCOLLUM (for himself, Mr. MICHEL, Mr. GINGRICH, Mr. ARMEY, Mr. HYDE, Mr. HUNTER, Mr. DELAY, Mr. FISH, Mr. CANADY, Mr. GEKAS, Ms. PRYCE of Ohio, Mr. RAMSTAD, Mr. ROGERS, Mr. SHAW, Mr. SMITH of Texas, Mr. BAKER of California, Mr. BLILEY, Mr. BUNNING, Mr. BUYER, Mr. CAMP, Mr. CASTLE, Mr. COBLE, Mr. COX, Mr. DOOLITTLE, Mr. EWING, Ms. FOWLER, Mr. GOSS, Mr. GRAMS, Mr. GREENWOOD, Mr. HORN, Mr. KIM, Mr. KOLBE, Mr. KYL, Mr. LEWIS of Florida, Mr. LINDER, Mr. MCDADE, Mr. MCKEON, Mr. MICA, Ms. MOLINARI, Mr. MOORHEAD, Mr. OXLEY, Mr. SOLOMON, Mr. SMITH of Michigan, Mr. TORKILDSEN, Mrs. VUCANOVICH, Mr. WALKER, Mr. WELDON, Mr. ZELIFF, Mr. ZIMMER, Mr. LAZIO, Mr. MCHUGH, Mr. BALLENGER, and Mr. GALLEGLY):

H.R. 2872. A bill to prevent and punish crime, to strengthen the rights of crime victims, to assist State and local efforts against crime, and for other purposes; to the Committee on the Judiciary.

By Mr. MINETA (for himself and Mr. BOEHLERT):

H.R. 2873. A bill to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to provide for an expanded Federal program of hazard mitigation, relief, and insurance against the risk of catastrophic natural disasters, such as hurricanes, earthquakes and volcanic eruptions, and for other purposes; jointly, to the Committees on Public Works and Transportation and Banking, Finance and Urban Affairs.

By Mr. RICHARDSON (for himself and Mr. THOMAS of Wyoming):

H.R. 2874. A bill to improve the management of Indian fish and wildlife resources on Indian lands, and for other purposes; to the Committee on Natural Resources.

By Mr. RICHARDSON (for himself, Mr. SCHIFF, and Mr. SKEEN):

H.R. 2875. A bill to promote the industrial competitiveness and economic growth of the United States by strengthening the linkages between the laboratories of the Department of Energy and the private sector and by supporting the development and application of technologies critical to the economic, scientific, and technological competitiveness of the United States, and for other purposes; jointly, to the Committees on Science, Space, and Technology, Energy and Commerce, and Armed Services.

By Mr. TRAFICANT:

H. Con. Res. 132. Concurrent resolution concerning the case of John Demjanjuk, Sr.; to the Committee on the Judiciary.

By Mr. MOAKLEY:

H. Res. 235. Resolution providing for a required response of the House of Representatives to any special direct spending message submitted by the President; to the Committee on Rules.

By Mr. BURTON of Indiana:

H. Res. 236. Resolution to declare that July 28, 1994, be recognized as Parents Day; to the Committee on Post Office and Civil Service.

By Ms. DUNN (for herself, Mr. BACCHUS of Florida, Mr. POMBO, and Mr. ZIMMER):

H. Res. 237. Resolution amending the Rules of the House of Representatives to require open committee meetings and to allow the broadcasting and still photography of any committee meetings or hearings that are open to the public; to the Committee on Rules.

By Mr. ISTOOK (for himself, Mr. HOEKSTRA, Mr. BOEHNER, Mr. BARTLETT of Maryland, Mr. BAKER of Louisiana, Mr. SAM JOHNSON of Texas, Ms. PRYCE of Ohio, Mr. DOOLITTLE, Mr. SMITH of Michigan, Mr. BUYER, Mr. KINGSTON, Mr. POMBO, Mr. CRAPO, Mr. BLUTE, Mr. BURTON of Indiana, Mr. ZELIFF, Mr. GRAMS, and Mr. DELAY):

H. Res. 238. Resolution calling on the Committee on Standards of Official Conduct to

conduct an investigation into activity at the House Post Office to determine whether House rules were broken or whether public funds were embezzled by Members; to the Committee on Rules.

By Mr. MICA (for himself, Mr GONZALEZ, Mr WELDON, Mr BONILLA, Mr RAMSTAD, Mr JACOBS, Mr CRANE, Mr HILLIARD, Mr WALSH, Mr POMBO, Mr LIVINGSTON, Mr LIGHTFOOT, and Mr. ZELIFF):

H. Res. 239. Resolution urging the President to withdraw all United States Armed Forces from Somalia; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII.

231. The SPEAKER presented a memorial of the Legislature of the State of Alaska, relative to a constitutional amendment prohibiting the desecration of the American flag; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 22: Mr. GORDON and Mr. STRICKLAND.
H.R. 35: Mr. YATES.
H.R. 43: Mr. STRICKLAND.
H.R. 81: Mr. HILLIARD.
H.R. 101: Mr. BUNNING.
H.R. 207: Mr. POSHARD.
H.R. 212: Mr. COBLE.
H.R. 214: Mr. BLUTE and Ms. LONG.
H.R. 226: Mr. PETERSON of Minnesota, Mr. DURBIN, Ms. KAPTUR, Mr. DEFAZIO, Mr. TORRICELLI, and Mr. MURTHA.
H.R. 436: Ms. VELAZQUEZ, Mr. DEAL, Mrs. MINK, Mr. GENE GREEN of Texas, Mr. EWING, Mr. RAHALL and Mr. MICHEL.
H.R. 466: Mr. BREWSTER and Mr. HOAGLAND.
H.R. 515: Mr. ENGEL and Mr. GILCHREST.
H.R. 535: Mr. GOODLATTE and Mr. YOUNG of Alaska.
H.R. 551: Mr. BACHUS of Alabama, Mr. BARTLETT of Maryland, and Mr. OBERSTAR.
H.R. 558: Mr. LEWIS of Florida, Mr. SHAW, Mr. MINGE, Mr. LEVY, Mr. MCNULTY, Mr. GINGRICH, and Mr. HYDE.
H.R. 634: Mr. OBERSTAR.
H.R. 646: Mr. OBERSTAR.
H.R. 688: Mr. STUMP.
H.R. 799: Mr. GALLO, Mr. BARCA of Wisconsin, and Mr. WILSON.
H.R. 830: Ms. KAPTUR, Mr. OBERSTAR, Mr. STEARNS, Mr. LEWIS of California, Mr. LANCASTER, and Mr. INGLIS of South Carolina.
H.R. 892: Mr. DOOLITTLE and Mr. CAMP.
H.R. 894: Mr. COMBEST.
H.R. 922: Mr. BURTON of Indiana.
H.R. 930: Mr. KIM and Mr. CAMP.
H.R. 934: Mr. PRICE of North Carolina.
H.R. 937: Mr. MCDERMOTT, Mr. KILDEE, and Mr. MATSUI.
H.R. 960: Mr. BLACKWELL and Mr. PETERSON of Florida.
H.R. 1036: Mr. SERRANO and Mr. MOLLOHAN.
H.R. 1141: Mr. BAKER of California.
H.R. 1181: Mr. HEFNER, Mr. APPLEGATE, and Mr. HERGER.
H.R. 1188: Mr. GUTIERREZ and Mr. TUCKER.
H.R. 1270: Mr. FRANKS of New Jersey.
H.R. 1280: Mr. MARKEY, Mr. GILMAN, Mr. MCHALE, Mr. FAZIO, Mr. TORRICELLI, Mr. SCHUMER, and Mr. JOHNSTON of Florida.
H.R. 1302: Mr. GIBBONS.
H.R. 1322: Mr. LEVIN, Ms. SLAUGHTER, and Mr. BISHOP.
H.R. 1455: Mr. MEEHAN.
H.R. 1524: Mr. COLLINS of Georgia and Mr. DUNCAN.
H.R. 1525: Mr. JACOBS.
H.R. 1560: Mr. CUNNINGHAM.
H.R. 1604: Mr. BAKER of California.
H.R. 1645: Mr. DARDEN and Mr. JOHNSON of Florida.
H.R. 1687: Mr. MURPHY and Mr. Rose.
H.R. 1705: Mrs. UNSOELD, Ms. SCHENK, Mr. CLYBURN, Mr. HAMILTON, Mr. DEFAZIO, Mr. DEUTSCH, Mr. THOMPSON, Mr. MURPHY, Mr. FALEOMAVAEGA, Mr. FINGERHUT, Mr. BEILENSON, Mr. BACHUS of Alabama, Mr. POMEROY, Mr. MILLER of California, Mr. BARLOW, Mr. HUGHES, Mr. FROST, Mr. ROMERO-BARCELÓ, Mrs. THURMAN, Mr. SMITH of New Jersey, Mr. PASTOR, Mr. GOODLING, Mr. DE LA GARZA, Mr. ENGEL, Mr. FORD of Tennessee, Mr. FILNER, Mr. PETERSON of Minnesota, Mr. BECERRA, Mr. RANGEL, Mr. CHAPMAN, Mr. BEREUTER, Mr. PARKER, Mr. HOBSON, Mr. GUTIERREZ, Mr. EDWARDS of California, Mr. BROWDER, Mr. OBERSTAR, Mr. DINGELL, Mrs. CLAYTON, Mr. TAYLOR of Mississippi, Mr. DE LUGO, Ms. NORTON, Mr. JOHNSON of South Dakota, Ms. FURSE, Mr. Hyde, Mr. HOKE, Ms. HARMAN, Mr. SWIFT, Mr. MARTINEZ, Mr. STUPAK and Ms. PELOSI.
H.R. 1770: Mr. BISHOP.
H.R. 1771: Mr. BISHOP.
H.R. 1886: Mr. BISHOP, Mr. ROMERO-BARCELÓ, Mr. Spence, and Mr. BONIOR.
H.R. 1888: Mr. HALL of Texas, Mr. YATES, Mr. SERRANO, Mrs. JOHNSON of Connecticut, Mr. SUNDQUIST, Mr. GALLEGLY, Mr. HOBSON, and Mr. LAFALCE.
H.R. 1900: Mr. KREIDLER, Mr. SANDERS, Mr. CRAMER, Mr. TOWNS, and Mr. BRYANT.
H.R. 1910: Mr. MEEHAN, Mr. PORTMAN, Mr. EMERSON, Ms. FOWLER, Mr. PARKER, Mr. ZIMMER, and Mr. BISHOP.
H.R. 1938: Mr. RAVENEL.
H.R. 1943: Mr. STARK, Mr. PAYNE of New Jersey, Mr. SABO, and Mr. BEILENSON.
H.R. 2019: Mr. MCHALE.
H.R. 2095: Mr. MOLLOHAN.
H.R. 2119: Ms. VELÁZQUEZ, Ms. ROYBAL-ALLARD, Mr. COLEMAN, and Miss COLLINS of Michigan.
H.R. 2229: Mr. COYNE.
H.R. 2241: Mr. COLEMAN, Mr. PETE GEREN of Texas, and Mr. GIBBONS.
H.R. 2305: Mr. DELLUMS and Mr. UNDERWOOD.
H.R. 2319: Mr. BLUTE, Mr. TORKILDSEN, Mr. KIM, Mr. LEWIS of California, Mr. MILLER of Florida, and Mr. WOLF.
H.R. 2346: Mr. FLAKE and Ms. THURMAN.
H.R. 2392: Mr. BAKER of Louisiana.
H.R. 2424: Mr. LEVIN, Mr. LIPINSKI Mr. HUGHES, Mr. RANGEL, Mr. FROST, Mr. MCNULTY, Mr. GENE GREEN of Texas, and Mr. WALSH.
H.R. 2467: Mr. EVANS, Mr. EWING, Mr. GILCHREST, Mr. GORDON, Mr. GUNDERSON, Mr. LANCASTER, Mr. MCNULTY, Mr. MARTINEZ, Mr. MORAN, Mr. SOLOMON, and Ms. WOOLSEY.
H.R. 2488: Mr. ANDREWS of New Jersey, Mr. BARCA of Wisconsin, Ms. ESHOO, Ms. ROYBAL-ALLARD, and Mr. TORRICELLI.
H.R. 2499: Mr. GUNDERSON, Mr. LIVINGSTON, Mr. PARKER, and Mr. ZELIFF.
H.R. 2602: Mr. MILLER of Florida.
H.R. 2607: Mr. OWENS and Mr. BOEHLERT.
H.R. 2640: Mr. HASTERT.
H.R. 2650: Mr. SMITH of New Jersey, Mr. PALLONE, Mr. SAXTON, Mr. KLEIN, Mr. PAYNE of New Jersey, Mr. ANDREWS of New Jersey, Mr. ZIMMER, Mr. TORRICELLI, Mr. MENENDEZ, Mr. GALLO, Mr. FRANKS of New Jersey, and Mrs. ROUKEMA.
H.R. 2663: Mr. BACCHUS of Florida, Mr. LEVY, Mr. OBERSTAR, and Mr. STUPAK.
H.R. 2666: Mr. MENENDEZ, Mr. SANDERS, Mr. BISHOP, Mr. BORSKI, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. OLVER, Mr. FILNER, Mr. FROST, Mrs. MEEK, and Ms. NORTON.
H.R. 2707: Mr. SERRANO.
H.R. 2720: Ms. MOLINARI, Mr. LAZIO, Mr. DICKEY, Mr. BLUTE, Mr. QUINN, Mr. LEVY, Mr. COLLINS of Georgia, Mr. MCHUGH, Mr. BAKER of California, Mr. MCNULTY, Mr. PAXON, Mr. FRANKS of New Jersey, Mr. LIPINSKI, Mr. GILMAN, Ms. VELÁZQUEZ, Mr. HOCHBRUECKNER, Mr. FROST, Ms. PELOSI, Mr. ACKERMAN, Mr. FILNER, Mr. HYDE, Mr. CANADY, Mr. HINCHEY, Mr. SANDERS, Mr. SOLOMON, Mr. LEWIS OF California, Mr. POMBO, Mr. ENGEL, Mr. WALSH, Mr. PORTER, Mr. BOEHNER, Mr. EVANS, Mr. HUNTER, and Mr. TOWNS.
H.R. 2769: Mrs. MEEK and Mr. HINCHEY.
H.J. Res. 79: Mr. BILIRAKIS, Mr. BLILEY, Mr. BORSKI, Ms. ESHOO, Mr. GREENWOOD, Mr. LEWIS of Georgia, Mr. MCDERMOTT, Mrs. MINK, Mr. SMITH of Oregon, and Mr. CALVERT.
H.J. Res. 86: Mr. JOHNSON of South Dakota, Mr. GILMAN, Mr. SHUSTER, and Mr. ROSE.
H.J. Res. 112: Mr. SOLOMON.
H.J. Res. 139: Mr. BISHOP.
H.J. Res. 157: Mr. BORSKI, Mr. YATES, Mr. RAHALL, Mr. PAYNE of Virginia, Mr. GONZALEZ, Mr. EVANS, Mr. GREENWOOD, Mr. KILDEE, Mr. BACCHUS of Florida, Mr. LAFALCE, Ms. WATERS, Ms. PRYCE of Ohio, Mr. WAXMAN, Mr. MURTHA, Mr. DICKEY, Mr. MCNULTY, Mr. BEILENSON, Mr. BROWN of California, Mr. ROGERS, Mr. WYNN, Mr. DEUTSCH, Mr. PICKLE, Ms. BYRNE, Mr. EDWARDS of California, Mr. MILLER of California, Mr. MFUME, Mr. SAXTON, Mr. ROTH, Mr. EVERETT, Mr. TORKILDSEN, Mr. MEEHAN, Mr. CARR, Mr. SPRATT, Mr. HOAGLAND, Mr. BONIOR, Mr. SMITH of New Jersey, and Mr. BILBRAY.
H.J. Res. 175: Mr. CARDIN.
H.J. Res. 194: Mr. FAZIO, Mr. VOLKMER, Mr. HAMILTON, Mr. WHEAT, Mr. BISHOP, Mr. FIELDS of Louisiana, Ms. NORTON, Mr. RAHALL, and Mr. KLEIN.
H.J. Res. 245: Mr. MICA and Mr. BARTLETT of Maryland.
H.J. Res. 248: Mr. BAKER of California, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BLUTE, Mr. BONILLA, Mr. BURTON of Indiana, Mr. COX, Mr. GOSS, Mr. HAYES, Mr. HOEKSTRA, Mr. HOKE, Mr. HUTCHINSON, Mr. MANZULLO, Mr. KNOLLENBERG, Mr. KYL, Mr. PACKARD, Mr. POMBO, Mr. RAVENEL, Mr. RAMSTAD, Mr. ROHRABACHER, Mr. PARKER, Mr. ARMEY, Mr. DELAY, Mr. GINGRICH, Mr. KING, Mr. SPENCE, Mr. MICA, Mr. MCCOLLUM, Mr. HYDE, Mr. INHOFE, Mr. SMITH of Michigan, Mr. MCKEON, Mr. PAXON, Mr. MCINNIS, Ms. PRYCE of Ohio, Mr. EVERETT, Mr. MOORHEAD, Mr. QUINN, Mr. KIM, Mr. SOLOMON, Mr. DREIER, Mr. TORKILDSEN, and Mr. UPTON.
H. Con. Res. 5: Mr. DEFAZIO.
H. Con. Res. 100: Mr. MINETA, Mr. BAESLER, Mr. REED, Mr. RAVENEL, Mr. MARTINEZ, Mr. SHAYS, Mr. FLAKE, and Mr. MARKEY.
H. Con. Res. 117: Ms. ESHOO, Mr. HUGHES, and Mr. INSLEE.
H. Con. Res. 123: Ms. BYRNE.
H. Res. 26: Mr. SCHAEFER, Mr. SHAYS, Mr. FINGERHUT, Mr. MCCANDLESS, and Mr. HUNTER.
H. Res. 135: Mr. MENENDEZ.
H. Res. 165: Mr. APPLEGATE, Mrs. COLLINS of Illinois, Ms. FURSE, Ms. BYRNE, and Mr. RIDGE.
H. Res. 202: Mr. PORTMAN and Mr. HOEKSTRA.
H. Res. 234: Mr. STOKES, Mr. GLICKMAN, Ms. MOLINARI, Mr. KLUG, Mr. MOAKLEY, and Mr. TORKILDSEN.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, sponsors were deleted from public bills and resolutions as follows:

H.R. 501: Mr. FROST.

EXTENSIONS OF REMARKS

MEMORANDUM TO BILL CLINTON

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, I recently came across an editorial in the August 3, 1993 issue of Financial World by Mr. S.A. Spencer, principal investor of Holding Capital Group, that poignantly sums up the problem with Clinton economics. I appreciate the privilege of entering this into the CONGRESSIONAL RECORD and urge my colleagues to read this well thought-out article.

MEMORANDUM TO BILL CLINTON

DEAR BILL: I am intensely patriotic and the quintessential small entrepreneur. My group has made hundreds of investments and created thousands of jobs. We work ungodly hours to pay—several dozen times over—the average taxes of our fellow citizens.

A friend writes: "Yesterday, Robert Reich said on national TV that people who earn over $200,000 per year make out like bandits. I am a 74-year-old bandit who worked 4,000 hours last year helping companies get competitive. My crime: I paid $197,340.50 in federal income taxes. Had your policies been in effect I'd have long since sat on my butt collecting Social Security."

Even a numbskull manager in industry, Bill, wouldn't deliberately install an incentive plan that penalizes effort and contribution to his own shop and rewards the reverse.

With your system, our companies will pay 40% federal and state income tax. That leaves 60¢ on each dollar earned. In many states I'd pay 50% on all dividends from that remaining 60¢. If the company fails, I lose 100% of my investment. If it succeeds, I lose 70% of my gain. Who in his right mind would invest with odds like that. No casino is worse.

Yes, I can try sub S taxes with their myriad restrictions (including limits on employee ownership), or wait years for capital gains in order to keep 41¢—rather than 30¢—of every dollar earned. Still, all the downside is mine; most of the upside is yours.

And it's not just the technical issue of taxes. It's the broad issue of personal freedom. Bill, I am just not going to work for the state, through taxes, seven to nine months each year of my life. It's not quite the Russia of old, or Cuba today, but you're getting there. The only freedom left is not to work.

Some 200 national economies exist in the world, each with decades of experience. Not counting cities and states. Have you ever checked what works and what doesn't?

The member OECD admires most today is New Zealand. Its finance minister, Ruth Richardson, created a furor in February by calling your tax proposals "unintelligent." She was polite. In New Zealand the maximum tax on income is 33%. No double tax on dividends, no capital gains tax. Where would you rather invest, Bill? Where you keep 67¢ of the dollar earned, or 30¢?

If your approach worked, Cuba would be heaven. Not a hell its people are dying to leave.

And New York City. Highest taxes in the nation. Vastly outspends Chicago, per capita. Paradise? It lost 10.5% of its jobs while the U.S. added millions.

And it's about resource allocation. The Fortune 500 lost two million jobs in the 1980s. Smaller enterprises added 20 million jobs. Obviously, small, free entities are far more effective than big bureaucracies. Especially governments.

Even a numbskull manager, Bill, wouldn't move resources from his most effective people to his least. Have you looked at the progress and condition of the "poor" in Hong Kong and Singapore, where income tax rates are in the teens? That's success, not amateur night.

And by the way, Bill: Hong Kong and Singapore have nothing. No land, oil, gas, big farms, hydroelectric, coal, ore, space, natural resources, or Marshall Plan. They have just one tiny little thing—freedom. Thousands of free, hustling entrepreneurs who don't have to work most of their poor lives for the state. Just what our ancestors tried to find when they came here.

In the last presidential campaign, all three of you monumentally missed the point. In much of the 1980s we had relative entrepreneurial freedom. And an incredible flowering of innovation.

Thus, we were vastly better off than Europe or Canada: better economy, milder recession, faster recovery, far lower unemployment, low inflation, low interest—despite deficits and the task of defending the world.

Yet the European cesspool, with its progressive, productivity-punishing taxes, high labor and social costs and 10%-to-12% unemployment, is precisely the model you've adopted.

Now we will get an immense flowering of tax shelters and investment abroad.

The problem of the 1980s was indeed greed, Government greed. From 1980 to 1992, government revenues were up 95%, spending 137%, deficit up 366%. Attacking revenue producers—not costs—is exactly where the problem is not.

It is truly tragic for America, Bill, that you and your colleagues are utterly blind to basic human motivation—and all economic history—leading us down the path that is failing so spectacularly in Europe.

GOLDEN STATE MUTUAL LIFE INSURANCE CO.

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. DIXON. Mr. Speaker, I rise today to pay special tribute to Golden State Mutual Life Insurance Co., and to commemorate its 68 years of dedication and service to African-American communities throughout this Nation. Since its inception in 1925, Golden State Mutual has not only provided a valuable service to oftentimes overlooked inner-city communities, but has remained a successful and model business committed to providing jobs, and actively participating in community service. On Sunday, August 8, 1993, Golden State Mutual Life Insurance Co. will celebrate, along with past and present employees and their families—its 68th anniversary, in Los Angeles, CA. In commemoration of this event, organizers have selected as their theme "Recapturing Our Past and Insuring Our Future."

Golden State Mutual was founded in 1925 by three innovative business pioneers—William Nickerson, Jr., Norman O. Houston, and George A. Beavers—each of whom shared a commitment to ensuring for African-Americans the opportunity to purchase life insurance at reasonable and affordable rates.

Faced with seemingly insurmountable social and economic obstacles, these men set out to create an institution to fill a void in the black community; a void that for far too long had allowed African-Americans to be denied life insurance protection because they were viewed as uninsurable and/or high risks. This endeavor proved to be a formidable task.

The trio's dedication paid off, however, when Mr. Nickerson discovered an old and soon-to-expire California State statute under which the firm could be organized as an assessment company. Working against the clock, Messrs. Nickerson, Houston, and Beavers raced to secure 500 prepaid applications for life insurance, and deposit $15,000 with the California State Treasurer as a guarantee fund.

The persistence of the founders brought triumphant results and on July 23, 1925—just 12 hours before the expiration of the old assessment law—Nickerson, Houston, and Beavers received a telegram from the California Department of Insurance informing them that a license to operate as the Golden State Guarantee Fund Insurance Co. of Los Angeles had been granted. By the end of 1925, the company had paid its first death claim, established its first branch office, and moved to a large home office. By the end of 1929, the company's assets had grown to $73,033.00, its annual income to $188,847.00, and its employee force stood at 126.

While the Great Depression era brought economic ruin to numerous businesses, Golden State Guarantee Fund continued to show proof of its mettle as a solid business enterprise. During this period, the company declared its first dividend payment to policyowners. In 1931, Golden State Guarantee Fund Insurance Co. became Golden State Mutual Life Insurance Co. The company continued to expand throughout California and into Illinois.

By 1941, Golden State Mutual had accumulated sufficient capital through the sale of certificates of advancement to be reclassified as a mutual legal reserve insurer. On January 2, 1942, the conversion was complete. By 1944, the company's out-of-state services had expanded to Founder William Nickerson's native

State of Texas with the opening of a branch office in Dallas; a second office in Houston opened a year later.

For Mr. Nickerson, who served as chief executive officer and president since the company's incorporation, the opening of the Houston office was the realization of a 20-year ambition. Less than 6 months later, he died.

Following Mr. Nickerson's death, cofounder Norman O. Houston assumed the management reins of Golden State Mutual; cofounder George A. Beavers was elected chairman of the board of directors. Together they presided at the dedication in 1949 of Golden State Mutual's new home office building at the corner of Western Avenue and Adams Boulevard in Los Angeles.

Golden State Mutual continued to grow and prosper. By 1956, the company reached the $100 million mark in insurance in force and was providing services in six States throughout some 50 branch offices and general agencies.

During the 1960's, Golden State Mutual continued to solidify its base in the community. By the end of the decade, its insurance in force had climbed to $340,227,179.

Major management changes occurred in 1970 as the company continued its unparalleled growth. Norman O. Houston retired from active management after a stellar 25 year career as chief executive officer, but remained as chairman of the board of directors. The company turned to Ivan J. Houston, CLU, FLMI, Golden State Mutual's senior vice president and actuary—and Norman's brother—as its next president and chief executive officer. Under his tutelage, insurance in force surpassed $2.7 billion and the company expanded to 22 States and the District of Columbia. In 1977, Ivan J. Houston was elected chairman of the board.

During the 1980's, Golden State Mutual continued to rank among the 50 largest mutual life insurance companies in the Nation with over $4.5 billion of insurance in force. Organizationally, the company elected Larkin Teasley, FSA, as president and chief operating officer, with Ivan J. Houston assuming the title of chairman and chief executive officer.

Today, Golden State Mutual continues to prosper under the very able leadership of Larkin Teasley, who was elected president and chief executive officer in 1990, and Ivan J. Houston who remains as chairman of the board of directors. New products and services are part of an overall company effort to remain rooted in the growth and well-being of the communities Golden State Mutual has served so effectively for almost 70 years.

Standing on the threshold of a new century and empowered by the vision and perseverance which have long served as the company's hallmark, Golden State Mutual continues its prosperous growth as a company dedicated to providing financial security for generations to come.

Mr. Speaker, I am proud to salute the accomplishments of Golden State Mutual Life Insurance Co. on the occasion of its 68th anniversary of service to thousands of policyholders throughout this country. I ask my colleagues to join me in congratulating this company on its exemplary record of service, and in extending to Larkin Teasley, Ivan J. Houston, and Golden State Mutual's large family of employees continued success and prosperity in the future.

CONGRESS AND SELF-REGULATION

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, July 28, 1993, into the CONGRESSIONAL RECORD:

CONGRESS AND SELF-REGULATION

An emerging trend in Congress is the way it is opening up to more outside involvement to reduce conflicts of interest arising when the institution in effect judges and regulates itself. This move away from self-regulation is seen in its handling of a variety of matters ranging from pay raises to perks. Various proposals have been made to expand these efforts even further.

The changes in Congress are part of a broader trend in society. A variety of professions—doctors, lawyers, even the clergy—are being pressured by the public, the media, and academics to move away from systems of self-regulation. Various changes have been made. Some states, including California, Kentucky, and Connecticut, have set up independent ethics commissions to consider charges of misconduct against legislators. Even within the legal profession, which is already subject to significant outside regulation, there are calls for further moves away from self-regulation.

PAST CHANGES

Several steps have been taken by Congress to move away from self-regulation. For example, Congress generally does not judge complaints of improper election tactics made against a candidate for Congress, instead turning such sensitive and politically charged matters over to the Federal Election Commission. Congress has passed numerous laws over the years putting restrictions on the conduct of Members (such as restrictions on office accounts, receipt of gifts, and outside employment) and has given enforcement to the Justice Department and the courts. The politically charged question of congressional pay levels has been handled by having an outside commission recommend an outside commission recommended what they feel should be the proper pay level for Members, and by requiring pay increases to apply only to the next Congress, thus allowing the voters to have a say during the intervening election. Several other changes have also been made recently: the decision of what to do about congressional "perks" has largely been turned over to an independent House administrator; an office of Inspector General has been created for the House to watch out for wrongdoing; and even congressional newsletters such as this one are reviewed by a nonpartisan panel to ensure they are not used for political purposes. In all these cases the basic goal is to ensure a more objective handling of a particular matter, and to avoid getting members bogged down in no-win situations in which no matter what they do their decisions and motives will be questioned.

PROPOSALS

This session Congress is considering additional measures to move further away from self-regulation. One proposal is to improve the way in which Congress complies with the laws it requires the public to follow, such as employment discrimination or workplace standards. For example, House employees who feel they have been subjected to sexual harassment can only take their complaints to an office overseen by a congressional committee. The idea would be to set up an independent agency within the legislative branch to make sure Congress subjects itself to comparable rules and penalties for laws it writes for others; those who feel their case has not been treated fairly could appeal to the courts. Another proposal is to deal with the innate conflict of interest of having Members judge the ethical misconduct of other Members by involving outsiders in hearing ethics complaints. Panels of distinguished public citizens (including possible former Members or retired judges) would oversee the initial investigatory work and make recommendations of guilt and punishment, which would then be voted on by the full House or Senate. Other proposals include professionalizing the joint administrative functions of the House and Senate and requiring public audits of all legislative branch expenditures.

ASSESSMENT

Several factors lie behind the trend. First, moving away from self-regulation helps eliminate inherent conflicts of interest that naturally arise when one group sets its own pay and benefits or enforces its own rules or judges its own members. These conflicts of interest can be either positive or negative. For example, some may have an interest in protecting a colleague, while others, for partisan or personal reasons, may want to see a colleague embarrassed or wounded politically. Second, turning such tasks over to outsiders can free up time for more important duties—such as Members being able to work on legislative matters rather than sit on time-consuming panels reviewing the management of the House bank or the House post office. Third, such steps could help bolster public confidence in the institution and improve the perception of fairness and impartiality. The public is immediately skeptical when it hears, for example, that far fewer fair employment complaints are considered in Congress than in the comparable agencies. Fourth, congressional proceedings should be as open and inclusive as possible. Private citizens involved in helping Congress oversee itself can bring an added perspective to the proceedings; they can also learn something about the operations of Congress that they can take back to their communities. Fifth, Congress often criticizes the self-regulation efforts of others, such as criticizing network efforts to hold down TV violence, thereby putting on pressures to reform its own self-regulation. Finally, the trend seems to be picking up steam because recent steps away from self-regulation have generally worked well, showing Congress that it could do more.

Certainly there are limits to such reforms. Legitimate separation of powers concerns mean that Congress cannot simply turn over various enforcement questions to the Executive Branch. The Framers of the Constitution were deeply concerned that an overzealous Executive Branch not be allowed to use its prerogative to attack political opponents in Congress. In addition, some proposals, while appealing in theory, could run into a host of practical difficulties. For example, an outside ethics panel faces the challenge of finding former Members without strong ties of collegiality to old friends in the Congress

and finding distinguished private citizens who will not be pressing future legislative interests before Congress. Moreover, as we have seen from past reform efforts of various kinds, reforms can sometimes go too far and create unintended problems of their own. The campaign finance reforms of the 1970s were intended to reduce the impact of special interest money on Congress, but instead led to a proliferation of PACs. Finally, some say that the public skepticism about their leaders is so strong that nothing will be able to turn it around, and that no new procedure will be seen by large segments of the public as anything but a sham or smokescreen.

Congress needs to proceed cautiously and deliberately with further reforms, but my sense is that the general trend away from self-regulation for Congress and other groups is a healthy one, and one that will likely continue. It means more openness in the spirit of good government, and reflects confidence within the institution that it is able to withstand the scrutiny.

DEPARTMENT OF ENERGY NATIONAL COMPETITIVENESS TECHNOLOGY PARTNERSHIP ACT OF 1993

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. RICHARDSON. Mr. Speaker, I rise today to introduce the Department of Energy National Competitiveness Technology Partnership Act of 1993. This legislation, which I am pleased to introduce along with my colleagues STEVE SCHIFF and JOE SKEEN, is nearly identical to S. 473, a Senate bill introduced in March, and reported to the full Senate by the Committee on Energy and Natural Resources in June, by Senators BENNETT JOHNSTON, JEFF BINGAMAN, and PETE DOMENICI.

This legislation would strengthen the linkages between the laboratories of the Department of Energy and the private sector by supporting the development and application of critical technologies by the laboratories. At a time of challenges to U.S. competitiveness from foreign competition and the vagaries of world economic markets, this legislation will enhance the Department of Energy's [DOE] role in a national effort to improve the competitive position of U.S. industry and stimulate U.S. economic growth.

My legislation will enhance the DOE's present efforts to work with U.S. industry to utilize the significant science and engineering assets of the national laboratories to address the needs of the domestic economy. The DOE has already entered into 350 cooperative research and development agreements [CRADA's] with a total value of more than $600 million with businesses and corporations around the country. This bill will facilitate the expansion of these efforts and ensure that the future of the laboratories is not tied solely to weapons production and nuclear research, but is instead rooted in the multidisciplinary capabilities of the labs in a wide variety of applications.

The DOE, as the largest employer of scientists and engineers in the Federal Government, owns the Nation's foremost laboratories and basic science facilities. This laboratory system includes 10 multiprogram national laboratories, 11 large single-program laboratories, and 9 smaller laboratories. This system employs more than 23,000 researchers with advanced degrees in science and technology; more than 8,500 of these researchers have doctoral degrees.

U.S. competitiveness has benefited greatly from the Department's laboratories. In fact, the Nation's Federal research laboratories contribute to the national welfare in a broad range of areas including: materials science, manufacturing, high-performance computing, transportation, space, environmental science, human health, physics, nuclear fission and fusion energy, defense-related research, environmental restoration and waste management, and conservation, renewable and fossil energy sources.

My legislation will enhance the capabilities of the DOE laboratories by building on their resources through partnerships with U.S. businesses, industries, and universities in such areas as advanced manufacturing and materials, energy and environment, human health, high-performance computing and transportation. The bill establishes minimum percentage goals for each laboratory budget related to the creation of partnerships with industry and provides the Secretary of Energy with more flexibility in entering into partnerships with the private sector. To maximize the competitiveness of U.S. industry, the bill also creates new linkages between the laboratories and the private sector in the areas of intellectual property rights and patents.

Lastly, this bill creates a career path program under the Secretary of Energy to recruit employees of the national laboratories to serve in positions in the Department of Energy. Employment of national laboratory employees in the Federal Government has been problematic in the past because of employment restrictions in current law which could jeopardize future career opportunities in the national laboratory system. This bill erases those restrictions and allows laboratory employees to accept positions in the Federal Government without fear of later difficulties in securing laboratory employment.

Mr. Speaker, the national laboratory system is a precious national resource that should be supported in every way possible. If the laboratory complex did not already exist as a result of our Nation's cold war defense research, the current budgetary crisis would make it impossible to create such a system today. As we move into the 21st century and away from the heavily defense-oriented research activities of the past, we must realize that our national laboratories can continue to provide unique contributions to our national economy.

While we must preserve the existing missions and central competencies of the laboratories, we must seek to help the laboratories define their mission in a broad new context that includes a recognition of their past contributions to the Nation's technological and economic competitiveness and a realization of their future abilities in their ongoing defense-related research as well as development of new technologies in energy, environment, computing, manufacturing, health, transportation, materials research and chemistry, physics, biology, and all of the basic sciences.

I am proud to represent one of the Nation's preeminent laboratories, the Los Alamos National Laboratory in Los Alamos, NM, and I look forward to working with lab officials and my colleagues in Congress to ensure that as this Nation prepares for the 21st century we utilize the unique capabilities of the national laboratory system to the fullest extent possible. I urge my colleagues in the House to join me in this effort by cosponsoring this legislation.

THE POVERTY DATA CORRECTION ACT OF 1993

HON. DEAN A. GALLO

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. GALLO. Mr. Speaker, today I am introducing the Poverty Data Correction Act of 1993. This bill addresses one of the key failings of our current poverty statistics—their lack of validity. Simply stated, the matter is this: We assume that the poverty data provide counts of the number of persons in need. In fact, they do no such thing. The poverty counts are numbers below one national income standard that does not take into account the very real cost-of-living differences from one area of the country to another. Because of cost-of-living differences, a person whose income is just above the poverty level but who lives in a high cost-of-living State such as New Jersey, Connecticut, Illinois, or California can be much worse off than a person whose income is just below the poverty line but who lives in a low cost-of-living area such as Louisiana or New Mexico. Despite greater need, the former is not counted as poor; the latter is.

Our current measurement of poverty, in short, does not measure relative need. And yet, relative need is the very concept Congress is groping for when we design allocation formulas to distribute program funds. Relative need is what we think the poverty data measure. Not so. By using these data, we misdirect funds, sending proportionately more funding relative to need to some areas and less to others. This means that funds adequate-to-need for remedial education, for summer jobs, for training, and for other human development purposes, are systematically denied to places like Newark, Detroit, Cleveland, Los Angeles, the former mining towns of western Pennsylvania and northern Minnesota, and remote rural locations in Vermont and Iowa. More importantly, they are denied to needy persons in those areas who by any commonsense consideration are poor. The resulting patchwork distribution of funds amounts to no Federal policy at all.

Many Members of Congress already have expressed their concern over the lack of timeliness in poverty data. Addressing the timeliness problem only deals with half the issue. It is equally important, perhaps even more important, that, in reforming the poverty data, we deal with the present inability of these data to measure relative need. The way to do this would be to use a State-by-State cost-of-living index to produce State-specific poverty income standards. A State's residents whose income

falls below the State-specific poverty standard would then be counted as poor.

The bill I am introducing today does not change in any way the definitions of income that we use to measure poverty. Instead, it directs the Secretary of Commerce to use the existing national poverty threshold and, by applying a State-by-State cost-of-living index, to create a specific poverty threshold for each State. The bill directs that poverty population counts issued by the Secretary be compiled by means of these State thresholds.

I would like to submit with my statement two State-specific cost-of-living indices as examples of what can be done using existing data. The rank order of States in terms of their cost of living and the magnitude of cost differences separating them are similar in both cases. Differences of over 50 percent in the cost of living distinguish one State from another. With differences this wide, it is clear that our present use of one national income standard to determine poverty does grave injustice to the concept of need. The procedure I am advocating would multiply the national poverty standard by the values in a cost-of-living index to create poverty standards for each State.

I want to anticipate two doubts that may be raised about the idea of State-specific poverty standards. First, some analysts will posit that cost-of-living differences within States may be as great as differences between States—the example of New York City and upstate New York is often cited in this regard. Although the cost of living does vary within a State, it still is the case that a State-cost-of-living-adjusted poverty standard will come closer to the truth of what level of income constitutes need in any one State than does our present national poverty standard. In addition, the seminal work conducted at the University of Illinois shows that while there is a 57-percent difference in purchasing power between the highest and lowest States, the variation within States is in the lower ranges of 22 to 35 percent. Finally, the poverty data we have now are arbitrary and manifestly incorrect. What I am proposing is an obvious improvement, which may itself be improved further.

Second, some may argue that we need more research on this idea. In answer, I would say that while research on State cost-of-living differences is not voluminous, it is respected. Indeed, the National Center for Education Statistics plans to have one of these indices updated this fall when new census data become available. Instead of ordering more research or calling for more study, I would urge the Congress to move forward and direct the Census Bureau to implement the idea of State poverty standards. Nothing spawns research on a subject or leads to technical breakthroughs faster than Congress directing an agency to implement something.

All of us here have great respect for the research and analytical capability of our statistical agencies. We as policymakers do not have to figure out all the details of how to design data. We do need to set the direction, to point out the goal, and to issue the marching orders. I am confident that, if Congress enacts legislation directing the development and employment of State-specific poverty standards, our statistical agencies will respond to the challenge quickly and competently.

As legislators, our understanding of social conditions and our ability to formulate responsive programs depend on our having good information. In addition, because of congressional decisions taken over the past 25 years to use number-driven formulas for allocating Federal funds, we are now in a position where not only the development but also the implementation of the vast bulk of Federal domestic policy rests squarely on the Nation's statistical programs. Statistics drive billions of dollars this way and that—into some hamlets, into some cities, toward some persons, away from others. When statistical data programs fail to measure the conditions we policymakers think they are measuring, then the policies we enact also will fail. Unfortunately for well-intentioned Federal policy, the foremost example of this type of statistical failure is poverty data. The legislation I am introducing today would remedy that failure:

STATE RANKINGS IN COST-OF-LIVING STUDIES

State	McMahon study, 1988			State	Nelson study, 1989	
	Rank	Index[1] value	Percent change 1977–88		Rank	Index[1] value
District of Columbia	1	124.9	19.4	Alaksa[2]	1	
Connecticut	2	123.7	2.9	Hawaii[2]	1	
New Jersey	3	119.1	2.1	Connecticut	2	125.8
Massachusetts	4	114.0	5.8	New Jersey	2	125.8
Hawaii	5	113.9	NA	Massachusetts	3	121.8
New York	6	110.7	.3	District of Columbia	4	121.0
California	7	110.2	2.2	New York	5	113.2
Maryland	8	109.4	−3.4	Maryland	6	110.8
Illinois	9	107.7	4.5	New Hampshire	7	107.9
Minnesota	10	104.7	3.8	Rhode Island	8	106.8
Iowa	11	102.5	7.2	California	9	105.9
Michigan	12	102.2	1.5	Delaware	10	103.2
New Hampshire	13	101.9	−1.4	Pennsylvania	11	101.3
Delaware	14	101.7	−8.5	Arizona	12	100.8
Alaska	15	101.7	NA	Colorado	13	99.8
Colorado	16	101.6	1.0	Nevada	14	98.1
Washington	17	101.5	1.8	Illinois	15	97.4
Rhode Island	18	101.3	−2.2	Florida	16	97.3
Virginia	19	101.2	7.9	Virginia	17	97.1
Wisconsin	20	101.1	1.4	Washington	18	97.0
Ohio	21	100.7	.6	Ohio	19	95.8
Pennsylvania	22	100.3	5.4	Minnesota	20	95.6
Nebraska	22	100.3	5.2	Michigan	21	95.4
Oregon	23	99.5	1.4	Wisconsin	21	95.4
Kansas	24	98.0	4.5	Oregon	22	94.2
Nevada	25	97.1	−9.1	Texas	23	94.1
Missouri	26	96.8	.3	Georgia	23	94.1
Indiana	27	96.6	.3	Vermont	24	93.9
Wyoming	28	95.8	−2.5	Iowa	25	93.6
Vermont	29	94.9	−6.2	North Carolina	25	93.6
North Dakota	30	94.6	−2.8	Louisiana	26	93.4
Maine	31	94.0	2.4	Wyoming	26	93.4
South Dakota	32	92.9	−1.0	Tennessee	27	93.1
Montana	33	91.6	−5.3	New Mexico	28	92.9
Florida	34	90.6	−1.8	Utah	28	92.9
Georgia	35	90.0	−.5	Missouri	28	92.9
Tennessee	36	89.9	2.5	Nebraska	28	92.9
North Carolina	37	89.6	1.4	Indiana	28	92.9
West Virginia	38	89.4	4.8	South Carolina	29	92.6
Kentucky	39	89.2	−5.7	Oklahoma	30	92.5
Idaho	40	89.0	−7.7	North Dakota	31	92.2
Arizona	41	88.0	−11.3	Kentucky	32	92.1
Oklahoma	42	87.3	1.7	Maine	33	92.0
Texas	43	87.1	−.4	Alabama	34	91.9
Alabama	44	86.9	−.3	West Virginia	34	91.9
Louisiana	45	86.8	−3.7	Kansas	35	91.7
South Carolina	46	84.9	−3.9	South Dakota	36	91.6
Arkansas	47	84.8	−.9	Idaho	37	91.3
Utah	48	84.8	−14.2	Montana	38	91.1
New Mexico	49	83.6	−12.1	Arkansas	39	90.9
Mississippi	50	81.6	−4.8	Mississippi	40	90.3

[1] 100=national average for all states weighted by their population.
[2] Alaska and Hawaii are excluded from the study but assumed to rank first and second.

Source: Walter W. McMahon, "Geographical Cost of Living Differences: An Update." MacArthur/Spencer Series Number 7, Illinois State University, August 1988; and F. Howard Nelson, "An Interstate Cost-of-Living Index" in Educational Evaluation and Policy Analysis, Spring 1991, vol. 13, no. 1, pp. 103–111.

THE 100TH ANNIVERSARY OF B'NAI JEHOSHUA BETH ELOHIM

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. PORTER. Mr. Speaker, I rise today to pay tribute to Congregation B'nai Jehoshua Beth Elohim located in Glenview, IL, which will be celebrating its 100th anniversary on November 19, 1993. This is a wonderful milestone worthy of special recognition.

When this congregation was founded in 1893, it was originally known as B'nai Jehoshua and was located in Chicago. In the 1960's the congregation merged with another congregation, Beth Elohim, and relocated to Glenview, which is in my congressional district.

Throughout its 100-year history, Congregation B'nai Jehoshua Beth Elohim has provided a house of worship for thousands of Jewish families in the Chicagoland area. The strong devotion of these families to the congregation has been passed on from one generation to the next. In fact, some of the current members are descendants of families that founded the congregation. Today, Congregation B'nai Jehoshua Beth Elohim is widely recognized as a leader among Reform Jewish congregations throughout the country.

For 30 years, the congregation has been led by Rabbi Mark S. Shapiro, who has done an outstanding job in providing spiritual guidance to the members. To all members and officers of Congregation B'nai Jehoshua Beth Elohim and to Rabbi Shapiro, I want to convey my warmest congratulations and best wishes on their 100th anniversary. Their congregation is a living symbol of the faith and religious freedom that is at the heart of our Nation's strength. Here's to the next 100 years of the congregation's success and prosperity.

CONGRATULATIONS TO EAGLE SCOUT, JAMES D. BERLING

HON. DAVID MANN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. MANN. Mr. Speaker, I rise today to recognize the accomplishment of James D. Berling who will be awarded scouting's highest honor, the rank of Eagle Scout, at a Court of Honor on August 15, 1993.

The rank of Eagle Scout is not easily attained. As a member of Troop 510, sponsored by Bridgetown Church of Christ in Cincinnati, OH, James Berling is the youngest Scout to achieve this rank in the troop's 26-year history.

James Berling has been an exemplary Scout. He has earned the Ad Alteri Dei Religious Award and is a member of the Order of the Arrow honor campers. His Eagle Scout community improvement project involved over 150 volunteer hours with organizations in Cincinnati that exist to help the unemployed, the homeless, victims of domestic violence, and people addicted to drugs. Jim volunteered three times the number of hours a Scout is expected to spend on his community service project.

While devoted to Scouting, James has also excelled in his school endeavors. He has maintained his position on the honor roll at Bridgetown Junior High School. Jim has also been an avid soccer and basketball player while holding down a part-time job.

The adult leaders of the troop and James' parents should be justifiably proud. They share in his accomplishment through the help and support they have provided to him as he blazed the trail for other Scouts to follow. I congratulate James Berling on his outstanding accomplishment and wish him the best in all his future endeavors.

WHY GRIDLOCK

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, in response to the ineptitude of this House, Wednesday's Wall Street Journal carried an editorial entitled "Why Gridlock." President Clinton blames the delay and gridlock on the Republicans, all 176 of them, who can't pass or block anything by themselves even if they all voted together. In contrast, the Wall Street Journal correctly blames gridlock in Congress on boondoggle legislation.

Mr. Speaker, the British statesman Edmund Burke once said "bad laws are the worst form of tyranny." The flood relief bill that was passed by this House established a bad law. Handouts of $100-a-week to youths aged 17 to 30 is not deficit-wise legislation, it's pork barrel spending, the same old song from the same old crowd. Regardless, of its merits it didn't belong in the disaster assistance bill.

Mr. Speaker, I, and every other Member of this body, would be extremely negligent in our duties as Representatives of 585,000 constituents if we didn't oppose poor laws. The disaster assistance bill was not stopped by Republican opposition alone but also by a sizable number of Democrats. Why? Because the bill was tainted by the smell of pork. It's a very sad day when this House can't pass disaster assistance without trying to find a kickback.

Mr. Speaker, if every emergency becomes an excuse for deficit swelling pork, maybe a little gridlock isn't all a bad thing.

INTRODUCTION OF TRAUMATIC BRAIN INJURY ACT

HON. JIM SLATTERY

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SLATTERY. Mr. Speaker, I am pleased to introduce today the Traumatic Brain Injury Act of 1993.

Every 15 seconds someone in the United States suffers a head injury and 98 percent of these individuals will survive the accident. According to the National Head Injury Association [NHIA], a survivor of a severe brain injury typically faces 5–10 years of intensive medical and related services at an annual cost of approximately $86,000. Estimated lifetime costs to care for a traumatic brain injury survivor can exceed $4 million.

Half of all traumatic brain injuries are caused by car accidents. Among children, abuse accounts for 64 percent of all infant head injuries, while 50,000 head injuries occur each year as a result of bicycle accidents. This act will encourage development of national standards for bicycle helmets.

The legislation I am introducing today will help raise public awareness of the serious risks and tragic consequences of head injuries and will designate a Federal agency to oversee and promote projects to prevent traumatic brain injury and to assist in rehabilitation efforts across the Nation.

This legislation also will assist States in creating advisory boards to coordinate citizen participation in community traumatic brain injury programs and will create a registry to advance epidemiologic research efforts across the Nation.

I am pleased that the State of Kansas was the first State to submit and receive approval on a title XIX home and community based services waiver to provide services to people with head injuries in their own home. I am hopeful that my legislation will encourage other States to develop home care programs for traumatic brain injury survivors and will create a nationwide network for survivors and their families and friends.

The Traumatic Brain Injury Act, which emphasizes prevention and treatment options, will help these individuals and their families cope with the debilitating and life-long consequences of these tragic accidents.

I encourage my colleagues to cosponsor this important legislation and I look forward to the speedy enactment of the Traumatic Brain Injury Act of 1993.

INTRODUCTION OF THE HEADWATERS FOREST ACT

HON. DAN HAMBURG

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HAMBURG. Mr. Speaker, the Headwaters Forest Act I am introducing today is the first step in this Congress to protect permanently the largest privately owned stand of old growth redwood in the world.

These stands, located in my district in Northern California, are threatened by the owner's need to harvest aggressively to pay off high interest bond debt incurred to purchase them. In 1985, MAXXAM Inc. CEO Charles Hurwitz, with help from Michael Milken, engineered the takeover of Pacific Lumber Co., which had managed their redwood forests for sustainable yield for over 120 years. At the time of take-over, Pacific's land included about 16,000 acres of virgin old growth redwood.

Today, only about 5,300 acres of these majestic giants remain. They are the anchor for a unique ecosystem that is home to the Northern Spotted Owl, the marbled murrelet, several native stocks of salmon, and other old-

growth dependent species. Headwaters Forest old growth is one of the three primary nesting sites of the marbled murrelet, listed as threatened in California in October 1992 under the Endangered Species Act.

In late 1992, in spite of concerns expressed by the Fish and Wildlife Service about potential impact on critical nesting habitat of the marbled murrelet, Pacific Lumber began a weekend harvest of one of the virgin old growth groves. Although that harvest was halted by litigation, such harvests are virtually certain to continue without Federal acquisition. An important part of our national heritage rooted in northern coastal California will be lost forever.

The Headwaters Forest Act will authorize acquisition of the remaining old growth redwood groves and the second growth forests which connect them. The act forbids timber harvest in the old growth area and requires management to enhance and sustain the old growth ecosystems. Selective sustainable harvest of the second growth forests will be allowed to the extent consistent with maximizing the needs of the old growth. A management plan will be developed detailing rehabilitation and restoration of previously logged areas, giving preference to unemployed former timber workers and fishermen for this work.

No mystery shrouds the continued listing of species dependent on old growth forests, the old growth itself is rapidly falling victim to market pressures.

The old growth redwood forest is not a renewable resource. If these ancient trees are cut, the old growth redwood ecosystem is lost. The conditions that fostered its growth no longer exist. Scientists agree it is unlikely that old growth ecosystems will be recreated even if today's young trees are allowed to grow for hundreds of years. There is much we do not understand about these unique forests but we do know they contain yet undiscovered biological resources of potential great significant value.

Safeguarding the Headwaters Forest and the species it supports will contribute significantly to political peace between logging and environmental interests in coastal northern California and will preserve for our Nation, our children, and their children a truly non-renewable natural resource.

SALUTE TO PAUL EDWARD CRAWFORD

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. CRANE. Mr. Speaker, as it is all too often that we overlook everyday citizens who rise above and beyond the call of duty and perform outstanding acts of heroism, I'd like to take a moment to recognize an individual in my district whose actions saved the lives of two teenage boys.

On April 7, 1992, Paul Edward Crawford of Antioch, IL rescued two young teenage boys from drowning. James E. Kirwan and a friend had been boating in Center Lake in Salem, WI when their boat went out of control, throwing the two boys into the icy water. Crawford, on the shore of the lake at the time of the accident, noticed the two boys struggling to stay afloat and immediately dived into the water. After grabbing ahold of Kirwan and his friend, Crawford safely delivered the boys back to the shore. In recognition of his heroic act, the Carnegie Hero Fund has awarded Crawford a grant of $2,500.

I salute the heroic efforts of Paul Crawford, an exceptional resident of the Eighth Congressional District of Illinois.

TRIBUTE TO FLORIDA BAPTIST THEOLOGICAL COLLEGE

HON. DOUGLAS "PETE" PETERSON

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. PETERSON of Florida. Mr. Speaker, I rise today to proudly join Florida Baptist Theological College in celebration of its 50th anniversary.

Established in 1943 in Lakeland, FL, the Baptist Bible Institute was created to provide a mixture of Bible and general education courses to pastors and other church leaders needing seminary training.

As the college grew and became a regional institution, school leaders decided to move the school to a location allowing it to best serve the tristate area of Georgia, Alabama, and Florida. In 1957, the institute completed a relocation to Graceville, in the northwestern panhandle of Florida, and became known as the Florida Baptist Theological College.

Mr. Speaker, throughout the last 50 years, Florida Baptist Theological College has never lost sight of its purpose: to educate and train God-called men and women for lifetime Christian service. The college offers 2- and 4-year programs in the fields of theology, religious education, and church music. The school is licensed by the Florida State Board of Colleges and Universities, holds membership in the Association of Southern Baptist Colleges and Schools, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools.

Once again, congratulations to Florida Baptist Theological College on its upcoming September 7, 1993, Founder's Day celebration of the school's first 50 years, and best wishes and continued success for many, many more.

ADMINISTRATION OF JUSTICE PROGRAM IN GUATEMALA

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HAMILTON. Mr. Speaker, on May 10 I wrote to the Honorable Brian Atwood, administrator of the Agency for International Development, to share my concern about a proposed Administration of Justice Program for Guatemala. My concern centers on aid to the Public Ministry in that country, given its past record on human rights issues.

Administrator Atwood recently responded to my letter. Because there is widespread interest in this program, I insert this correspondence in the RECORD.

WASHINGTON, DC,
July 16, 1993.

Hon. LEE HAMILTON,
Chairman, Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: I write in response to your letter of May 10, 1993, in which you expressed concerns about the Agency for International Development's plans for the new Judicial Sector Reform Support project for Guatemala (Congressional Notification #256, A.I.D. Project No. 520-0407, dated March 31, 1993.) I also want to acknowledge and respond to your request that the Agency withhold project funds for the Guatemalan Public Ministry to this time.

Guatemala's constitutional crisis has been resolved with the election by the Guatemalan Congress of the highly respected former Human Rights Ombudsman, Ramiro De Leon Carpio, as the new president on June 5. That Guatemala's crisis was resolved by peaceful, legal and constitutional means is a testament to the commitment to democracy on the part of many Guatemalans and the strong international support for a rapid return to democratic government on the part of the Organization of American States and other countries.

On June 8, Deputy Secretary Wharton met with President De Leon to underscore the support of the United States for his constitutionally elected government. After his meeting, the Deputy Secretary announced the resumption of all assistance to Guatemala which had been suspended on May 27.

The currently planned assistance for justice sector reform is now more critical than ever. However, I fully understand your reservations about the project and I am prepared to address them. As a result of consultations with your senior staff, we are prepared to proceed with a reconfigured project that responds to the concerns expressed in your letter. The project will initially include only those components for the Supreme Court, the law school of San Carlos University, and private sector advocacy with funding for project management support.

As discussed with members of your staff on June 25, we will not obligate funds for the Public Ministry training program until we are confident that the leadership of the Public Ministry is committed to ensuring the legal protection of Guatemalan citizens. We will closely monitor that the Public Ministry is making progress in the prosecution of human rights cases throughout the project.

In response to the related question subsequently raised by your staff regarding ICITAP activities in Guatemala, I have confirmed that the Bureau of Inter-American Affairs of the Department of State will apply a similar policy in its oversight of ICITAP. Once we have determined that the necessary conditions exist to warrant the provision of assistance for the Public Ministry, we will consult with your staff.

I appreciate having the benefit of your input on this project. Please be assured that I intend to ensure that A.I.D.'s programs are not only sensitive to human rights concerns, but work actively and effectively to promote human rights around the world.

Sincerely,

J. BRIAN ATWOOD.

COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC, May 10, 1993.

Hon. BRIAN ATWOOD,
Administrator, Agency for International Development, Washington, DC.

DEAR BRIAN: I write to share my concern about the Agency for International Development's proposal for a new Judicial Sector Reform Support project for Guatemala. (Notification #256, project number 520-0407, dated March 31, 1993.)

I recognize that judicial assistance programs present difficult policy choices; sometimes the least desirable states are those most in need of judicial reform assistance. It is my view, however, that the United States must be committed to ensuring, to the maximum extent possible, that U.S. assistance does not help inefficient judicial systems become more efficient in brutalizing their own citizens.

I understand that Guatemala has taken steps, such as approving a new Criminal Procedures Code and increasing budget allocations for the judicial sector, that show some political resolve to improve the judicial system. I also understand that A.I.D. has made approval of a new organic law for the Public Ministry of Guatemala a key condition precedent for the Ministry's receipt of any assistance. I am pleased that A.I.D. plans to use rigorous implementation agreement mechanisms that control tightly the use of U.S. funds because the Public Ministry's accounting systems will not satisfy A.I.D. certification requirements.

While I support the positive steps by Guatemala and the specific conditions A.I.D. has placed on Public Ministry receipt of U.S. assistance. I have serious concerns about reinitiating a judicial reform project in Guatemala, particularly with respect to the Public Ministry, given the history of such assistance to Guatemala. My reservations are as follows:

A.I.D.'s prior judicial reform project was suspended in December 1991 because A.I.D. itself had determined that Guatemala failed to demonstrate sufficient political will to make it succeed.

Under its current leadership, the Public Ministry has impeded action on several pivotal human rights cases, including failure to prosecute those military officials who ordered the 1990 murder of anthropologist Myrna Mack, while pursuing specious criminal charges against human rights activists such as Amilcar Mendez, President of the CERJ human rights group.

The Public Ministry has tolerated, if not encouraged, the persistent harassment of human rights organizations in Guatemala, bolstering the widespread perception of legal impunity for military officials who have committed human rights violations.

The records of the current Attorney General and the head of the Criminal Investigations Unit, who have ties to the military and who have taken dubious actions, such as attempting to close further investigations into Mack's murder, are further cause for concern and raise the perception of U.S. support for such actions through the proposed support to the Public Ministry.

Given these reservations, it is my view while the judicial reform project itself may proceed, the Public Ministry must show that it is working to prosecute fully the major outstanding human rights cases before it receives any judicial reform assistance. The Public Ministry deserves U.S. support only if it is making efforts to ensure the legal protection of its own citizens, under the administration of officials in whom we have confidence.

I am therefore placing a "hold" on assistance to the Public Ministry under the A.I.D. judicial reform project until its commitment to prosecuting human rights violators is clarified to the satisfaction of both AID and the Congress.

Sincerely,

LEE H. HAMILTON,
Chairman.

INTRODUCTION OF IMPACT AID REFORM LEGISLATION

HON. HARRIS W. FAWELL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. FAWELL. Mr. Speaker, today, I am introducing legislation to reform section 2 of the Impact Aid Program which serves to reimburse school districts for revenues lost as a result of the Federal Government acquiring at least 10 percent of the school district's taxable property.

As we all know, State and localities provide approximately 95 percent of education funding in the United States. The largest source of this funding is local property taxes. When a school district loses 10 percent of its taxable property, the local schools are severely impacted. In 1950, Congress responded to this problem by creating the Impact Aid Program. The 1950 statute requires that the Federal Government reimburse each section 2 school district for each year in "such amount as * * * is equal to the continuing Federal responsibility for the additional burden with respect to current expenditures placed on such school district by such acquisition of property." The meaning of this language is very clear to me—the Department of Education should reimburse each section 2 school district by the amount which the Federal presence negatively impacts the school district. The only way to accurately measure the impact which the Federal presence has on the tax base is to make the required assessed valuation of the land reflecting the type of land-use which assumes the land's best highest value use.

Unfortunately, a bureaucratic interpretation of the law has resulted in the land being assessed at values based on the use of the land at the time of the Federal acquisition, which in some cases was over 50 years ago. In the case of Lemont High School in my district, the land is assessed at farm values despite the fact that none of the surrounding land has been used for farming in at least 25 years. This is also true of the other 7 school districts in Illinois and many other school districts throughout the country.

My legislation, which enjoys the bipartisan support of Illinois section 2 representatives, would simply require that the assessed valuation be calculated by the local assessor according to the current highest best-use of the land.

This bill does not increase the appropriation or the authorization funding levels which would be determined in the authorization—appropriation process. The bill would merely restructure the program to ensure that the funds appropriated are distributed in an equitable manner, conforming to the original intent of section 2. I hope that all Members will considering cosponsoring my legislation and support correcting this inequity in the upcoming elementary and secondary education reauthorization.

CONGRATULATIONS TO WHIRLPOOL CORP.

HON. FRANK McCLOSKEY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. McCLOSKEY. Mr. Speaker, I would like to take this opportunity to congratulate Whirlpool Corp. for winning a contest sponsored by the Super Efficient Refrigerator Program, Inc. [SERP] to develop a CFC-free, super-efficient refrigerator. This $30 million winner-take-all competitive bid process was formulated to provide incentives for U.S. appliance manufacturers to accelerate the design and production of advanced energy-efficient, ozone-friendly refrigerators.

Whirlpool was chosen the winner of the environmental contest from more than 13 other companies who submitted bids. Whirlpool employees located in Evansville, IN, as well as those in the States of Michigan, Arkansas, and Tennessee, led the company-wide effort to develop a 22-cubic foot side-by-side refrigerator-freezer that exceeds the 1993 Federal energy efficiency requirements by 25 percent to 50 percent and contains no CFC's.

This initiative should serve as a model for the future coordination of government and industry resources in finding innovative solutions to environmental and technological challenges. American consumers will benefit the most since Whirlpool's technological developments will decrease domestic electric bills while providing a refrigerator with all of the design features, style, and conveniences of the latest products in the marketplace. In addition, the cost of this new refrigerator should remain in the current range of similar-sized refrigerators because of the $30 million award.

The $30 million incentive was provided by SERP with expectations that the energy saved will permit them to forego the need to build several new costly power plants, while significantly reducing current emissions of polluting carbon dioxide. The SERP is a non-profit corporation comprised of 24 utilities nationwide, in collaboration with the U.S. Environmental Protection Agency, the Natural Resources Defense Council, the electric Power Research Institute and the American Council for an Energy-Efficient Economy.

Again, I commend Whirlpool and its employees for winning this contest and for taking a leadership role in confronting the environmental and technological challenges before this Nation.

U.N. MEMBERSHIP FOR THE REPUBLIC OF CHINA

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, the rapid democratization and constitutional reforms in the

Republic of China on Taiwan have clearly impressed the world, and the 21 million people living in the Taiwan area have openly expressed the desire of serving the international community as active partners, contributors, and participants.

Due to its lack of membership in the U.N., the Republic of China has limited its international activities to the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, and the Central American Bank for Economic Integration, and economic development projects in different parts of the world.

Clearly, the Republic of China on Taiwan can do a lot more in helping other countries when one takes into consideration its foreign exchange reserves, around $85 billion, and other impressive economic resources, such as its expertise and experiencing in turning an impoverished island country into a modern economic powerhouse.

A vital first step in tapping Taiwan's willingness to be an active international player is to invite the Republic of China on Taiwan back to the United Nations. Once readmitted, the Republic of China on Taiwan will clearly be a model nation, fully supportive of the aims and goals of free nations everywhere.

SMALL BUSINESSES URGE CAUTION ON BUDGET

HON. ROB PORTMAN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. PORTMAN. Mr. Speaker, I rise today to express my grave concerns regarding the budget reconciliation bill this House will consider tomorrow. It is too light on spending cuts and far too heavy on taxes. I believe it will generally harm the economy, but I am particularly worried about the impact that the tax increases will have on small businesses.

I believe all of us in this Chamber share the President's goal of deficit reduction. Where we fundamentally disagree is how to achieve this goal.

But I did not want to espouse my views today. Instead, I want to give some of my constituents a chance to tell their unsolicited stories that have been shared with me in two recent letters. These are all small businesspersons in the Second District of Ohio that I represent who have urged me to oppose the plan because of the dramatic effect its tax increases would have on their businesses.

These are just two of many letters I have received that make it clear that the tax changes in this budget will have the opposite effect of their stated purposes of job creation and economic growth. Instead, as these unsolicited letters from my district point out, these tax increases will result in economic contraction and job reductions. The reason is quite simple: Approximately 800,000 small businesses in America will be hit hard by the retroactive tax increases on individuals. This is because most small businesses, including all subchapter S companies, partnerships, and sole proprietorships, file as individuals.

The first of my letters comes from three individuals at a small subchapter S corporation in Cincinnati who wrote to request a subchapter S corporation exclusion from the proposed income tax increases, particularly the 10-percent surtax on incomes over $250,000. Listen to what these individuals have told me about the actual impact of this legislation:

We co-founded [our company] with several other partners in 1987 and we have built an organization that currently provides 60 full-time and 400 part-time jobs. * * * Like many small business people, [we] risked everything [we] had to get the business started (including cashing in [a] life insurance policy when [we] had run our bank account to zero). * * * Virtually every dime of profit we have made since 1987, we've plowed back into the corporation. Not only did we reinvest in an effort to build equity, which would enable us to receive a line of credit from the bank, we also invested in training, computer systems, and new people.

As a result of our reinvestment, we have been able to continue to grow at a steady clip. However, President Clinton's proposed surtax will limit our ability to reinvest and grow. * * *

So what precisely would the net effect of the proposed 10% surtax be on our small business? Essentially, since profits flow to individuals in subchapter S corporations, the proposed 10% surcharge will have a net effect of taxing our company profits at a 42% rate.

My understanding is that a decision was made by the administration to raise the top C corporation rate to 36% and to leave the current 34% tax rate intact for companies earning less than $10MM. If this is the case, it would seem inconsistent [to] tax the majority of profits on a small business like ours at a rate of 42%. I * * * don't need to tell you what a 42% rate would do to our ability to hire new people and reinvest in our future. * * *

If, in fact, Mr. Clinton believes that small business is the lifeblood of this country, he should realize taxing them to death is probably not the way to make them grow and flourish.

The second letter comes from the president of a small company he founded nearly 13 years ago that manufacturers small food specialty equipment for the food service industry. The letter is signed by all nine of the company's employees. He writes:

During the first three years of my business, I lived at or below poverty level for a period of nearly 18 months without receiving any pay. * * * Since that time, my business has grown into sales of nearly $2,000,000, employing nine people. * * * We have seen tremendous growth in the past eight years—a 25% increase this year—and have anticipated even stronger growth in the future.

Prior to President Clinton's economic proposal, I had considered building an additional 5,000 feet of manufacturing space onto our current facility, acquiring nearly $100,000 in new manufacturing equipment, and adding approximately 3-4 new employees. This is all on hold for now.

I have already been notified by several of my suppliers that in response to a * * * fuel tax, I can expect anywhere from a 5-10% price increase on raw materials and transportation. If I am unable to pass these price increases on to my customers and maintain the same or greater sales volume that [my company] is currently doing, I will be forced to curtail my expansion and reduce employees. * * *

* * * You control the economic future of all small businesses. Small businesses are entrepreneurs who are willing to invest money, borrow money, and take risks. * * * I take great pride in my company and feel compelled to take care of the people that work for me. The program that has been presented [by President Clinton] will drastically affect my ability to provide for my employees."

I agree 100% that we must reduce the deficit and the debt of this country. I highly recommend that you vote to eliminate any further tax increases, but continue the efforts to reduce spending.* * * The upcoming threat of the now-largest tax increase will put the brakes on [small] business in ways never seen before.

Mr. Speaker, these words demonstrate, better than any speech I could give, the negative impact that the tax increases contained in the budget reconciliation bill will have on small businesses, not just in the Second District of Ohio, but all across America. I urge my colleagues to pay heed to these small businesses that are creating the bulk of jobs in America. I urge my colleagues to oppose the budget reconciliation bill.

TRIBUTE TO THE CITY OF HOLLAND, MI

HON. PETER HOEKSTRA

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HOEKSTRA. Mr. Speaker, I rise today to recognize the achievements of the elected leaders and citizens of Holland, MI, a city in my district, in the fight against drunk driving.

The city of Holland received the grand prize for cities with a population less than 100,000 as well as the Community Partnership Award from the National City Challenge to Stop Drunk Driving during the annual meeting of the U.S. Conference of Mayors on June 23.

The National City Challenge commends cities at the forefront of the antidrunk-driving crusade. The challenge encourages cities to develop and implement comprehensive, community-based programs. By applauding and publicizing these programs, the challenge encourages other cities to adopt these model efforts for their own.

The challenge is now in its second year. It is jointly sponsored by the Conference of Mayors and The Century Council, a nonprofit organization dedicated to combating alcohol abuse and misuse. The Century Council is supported by more than 500 distillers, vintners, brewers, and wholesalers from across the Nation.

When the leadership of Holland realized that drunk-driving incidents in their community were reaching near-epidemic proportions, they formed an integrated and aggressive community-wide effort to combat this problem. The Lakeshore Alcohol Council, with the support of Mayor Neal Berghoef, coordinated enforcement among 16 law enforcement agencies and conducted sting operations and educational efforts, virtually eliminating alcohol-related traffic deaths during the prom and graduation season.

A key to the success of the Lakeshore Alcohol Council is the commitment to all parts of

the community—business, schools, churches, treatment facilities, alcohol vendors, citizens, and law enforcement officials.

In addition, the Lakeshore Alcohol Council operated without a penny of grant money or Government funds—Federal, State or local. The council functions solely on membership fees and donations from area businesses and individuals to pay for major projects.

I urge my fellow Members to alert communities in their own districts in the effective community partnership that Holland, MI, has been able to build. I hope that Holland's example will inspire communities throughout the Nation to broaden the attack on drunk driving.

I congratulate the people of Holland and I am very pleased that they were singled out by the Conference of Mayors and the Century Council for this award.

HIGHER TAXES, LOWER REVENUES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. CRANE. Mr. Speaker, it is time that we stop trying to punish the wealthy for our country's economic problems. Although some of my colleagues have proposed raising taxes on the rich to pay for the fiscal irresponsibility of Congress, the reality is that further taxing the rich will not increase Federal revenues by nearly the amount estimated by the Clinton administration. In fact, a decrease in tax revenues is very possible. This scenario coupled with businesses raising prices and cutting back on employees or employee benefits will have a detrimental impact on our Nation's economic and fiscal well-being. It's time that we end the Clinton class war which strives to divide our society, and look to real solutions to solve our economic problems. Simply put, we need a tax code that provides incentives to save and invest. This will in turn create jobs, and increase the number of taxpayers, thus generating more tax revenues. In his article, "Higher Taxes, Lower Revenues," Robert J. Barro cites compelling evidence to bolster this view. I submit Mr. Barro's article, which appeared in the July 8, 1993 edition of the Wall Street Journal to my colleagues' attention.

Although the debate over the administration's tax package has focused on energy levies, the bulk of the projected revenue comes from increases in marginal income-tax rates on the "rich." This revenue underlies the administration's contention that the fiscal package is an equal mix of spending cuts and tax increases, and also forms the basis of alternative estimates that peg the ratio of spending cuts to tax increases at between 1 to 2 and 1 to 5.

A key issue, however, is whether increases in marginal tax rates at the top will raise any revenue at all. The history of responses to tax-rate changes from 1981 to 1991 suggests that the receipts generated by this part of the fiscal package probably will be close to zero and may actually be negative. Upper-income people are very "responsive" to changes in the tax code: that is, they readily move their money around or change their behavior in response to new tax law.

The debate about ratios in the administration's proposals has therefore had a surreal character. If Congress decides to abandon all new levies on energy—levies that would harm the economy, but really would raise the kind of revenue legislators are looking for—then tax receipts would be roughly constant. The magical ratio of spending cuts to tax increases could then be infinite (even though the package contains little in spending cuts).

AN ORPHAN ARGUMENT

Amazingly, neither the Democrats nor the Republicans what to make this argument. The Democrats, of course, do not want to acknowledge that the higher tax rates on the rich will generate little revenue. The Republicans do not want to press the point because, first, they do not want to look like the advocates of the rich, and, second, if tax receipts do not rise, then they could not argue that the Democrats had raised taxes (falling here into the common confusion between tax rates and revenues). One would have thought, however, that an increase in tax rates that produces no revenue is even worse than one that generates lots of revenue.

The chart shows the fraction of total federal income taxes paid by the upper 0.5% of the income distribution in the years 1960 to 1991 (returns with adjusted gross incomes above about $220,000 in 1991). The most relevant experience for evaluating the current fiscal proposals is the period of changing tax policy from 1981 to 1991.

For the top 0.5% of the income distribution, the most important changes are the shifts in the marginal tax rates at high incomes. For most of the years 1960 to 1980, years with relatively high top marginal rates, the high-income group contributed well under 20%—and even 15%—of the revenue pie. But even more relevant is the 1981–91 period. It featured a cut in the top marginal rate on unearned income to 50% from 70% in the 1981 law, a cut in the top rate on all forms of income to 28% in the 1986 law (except that this law raised the top rate on long-term capital gains to 28% from 20%), and an increase in the top rate to 31% (or a couple of percentage points more because of phaseout provisions for deductions) in the 1990 law.

The first observation from the figure is that the increase in reported taxable incomes of the rich after the 1981 law was great. It was so great that the share of taxes paid by this group rose to 18% in 1984–85 from 14% in 1981, despite (or rather because of) the reduction in the top marginal tax rate. The Laffer curve argues that increasing tax rates beyond a certain point means lower revenues—and that cutting rates widens revenues. The much-ridiculed curve turned out to work brilliantly at upper-income levels.

The share the rich paid in taxes for 1986—21%—is inflated by the surge in capital-gain realizations in anticipation of the rise in the capital-gains tax rate in 1987. But the principal observation about the 1986 reforms is that the share paid by this group remained between 20% and 22% from 1986 to 1990, well above the values from before 1986. In 1988, the final year of the Reagan administration—and, in that sense, the pinnacle of the "greedy 1980s"—the share of taxes paid by the rich reached its peak of 22%. (I do not know whether one-fifth is a "fair share" for the top 0.5% of income recipients to pay, but it does mean that the average person in this group pays 40 times as much in federal income taxes as the typical person.)

Additional evidence came when the rise in the top rate in the 1990 law was followed by a decline in the fraction of taxes paid by the rich to 19% in 1991 from 20% in 1990. Thus, the pattern in which changes in the top tax rates cause a dramatic response in the opposite direction of reported taxable incomes works for tax-rate increases as well as for tax-rate decreases. This finding is significant, because the current income-tax proposals are basically more of the same that was contained in the 1990 law.

Treasury officials claim that their estimates of large revenue gains from increased tax rates on the rich already take account of behavioral responses that lower the base of reported taxable income. This claim is misleading, however, because the responses that the Treasury seems to consider are portfolio shifts, such as the increased incentive to hold tax-exempt bonds (an effect that has to be trivial if the total supply of tax-exempt bonds does not change).

Left out of these calculations are the principal shifts in reported incomes that underlie the data in the figure. The details of these shifts are not well understood, but they seem to involve changes in the timing of income, exploitation of tax loopholes, and alterations in work effort. (People work harder after tax cuts.) In any event, the best way to project how tax payments by the rich will react to changes in tax rates is to use the information provided by the history of the responses to the 1981, 1986 and 1990 tax laws, and the Treasury's estimates fail to take account of the clear message from this history.

LIBERAL FRIENDS

Suppose that it is true that the higher tax rates on the rich will not raise revenue. Even so, the rich will suffer from the higher tax rates. The various methods employed to lower taxable income—including creating tax loopholes and working less—are undesirable activities that these people would have preferred to avoid. The income-tax proposals will succeed in burdening the rich even if they fail to generate revenue.

To me it is obvious that a tax-rate boost that makes one group suffer—even the rich—but provides no revenue is bad economic policy. Since I do not trust my instincts, however, I surveyed some liberal friends: What do you think of a policy that makes the rich worse off, but produces no revenue and therefore provides not direct benefits for the nonrich? Remarkably, the results were mixed. Some of the respondents would be willing to give up resources (revenue)—and, in fact, suffer themselves—for the sake of taking away money from the rich, so that some measures of income inequality would narrow. Apparently, the presence of wealthy people is viewed as similar to environmental pollution. One can only hope that this viewpoint is not the main driving force behind the administration's economic policies; otherwise, the economy will be in serious trouble.

IN RECOGNITION OF FEDERAL HUMAN AWARENESS WEEK

HON. ROMANO L. MAZZOLI

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. MAZZOLI. Mr. Speaker, I rise today to applaud the work of the Kentuckiana Federal Equal Employment Opportunity Council [KFEEOC], and to inform my colleagues that September 12 through September 18 is Federal Human Awareness Week.

Formed in 1976, the KFEEOC is an organization composed of Equal Employment Opportunity [EEO] officials representing various Federal agencies in Kentucky and Southern Indiana. And, the Council's number one concern is the promotion of equal opportunity for all our people regardless of race, color, religion, national origin, sex, age, physical or mental handicap.

Mr. Speaker, the KFEEOC is devoted to these goals, and every year it undertakes training seminars for Federal workers and others which are exclusively devoted to advancing an awareness of the mosaic of different kinds of people in our land, and the removal of all obstacles to equal opportunity in our society. Their efforts help point us toward becoming a more tolerant, and egalitarian community.

Mr. Speaker, I commend all those associated with the KFEEOC for their fine work, and again recognize the week of September 12–18 as Federal Human Awareness Week.

NATIONAL WOMEN'S BUSINESS COUNCIL

HON. THOMAS H. ANDREWS

OF MAINE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. ANDREWS of Maine. Mr. Speaker, I have introduced legislation which reauthorizes the National Women's Business Council. Created in 1988, the council has provided much needed support and encouragement for women in business. For too long, women found doors closed when they tried to enter the professional workplace. The National Women's Business Council has been working hard to open the doors that remain closed, and ensure that those that are open, stay open.

The council has established a national network of information and contacts to aid women in business. It has held national hearings and symposia that have served not only as an exchange of ideas, but to actually change policies on the local level that were constraining the ideas and initiatives of women. The council's activities have resulted in three reports submitted to the President and Congress in the past 3 years. These reports contain valuable recommendations for those of us interested in overcoming the problems that keep women from gaining more opportunities in business careers.

The National Women's Business Council has made significant strides in enhancing and expanding the role of women in business. Yet, the fact that only 1.5 percent of Federal procurement dollars are awarded to businesses owned by women, which constitute over one-third of all businesses in the United States, is one indication that there is much more for the National Women's Business Council to accomplish. This legislation will allow the council's fine work to continue. It enables the council to submit further recommendations to Congress and the President, to see that the recommendations it has already made are implemented properly, and to continue to provide guidance and assistance to female entrepreneurs and businesswomen across this country.

INDIAN FISH AND WILDLIFE RESOURCE ENHANCEMENT ACT OF 1993

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. RICHARDSON. Mr. Speaker, I am pleased to be joined by my esteemed colleague from Wyoming, Mr. THOMAS in introducing the Indian Fish and Wildlife Resource Enhancement Act of 1993. This legislation is the culmination of hearings held by the Subcommittee on Native American Affairs on fish and wildlife resources on Indian lands.

Indian fish and wildlife resources are an integral part of the economic and social structure of Indian tribes. Since time immemorial, Indian tribes have relied on fish and wildlife resources for subsistence, economic development, and cultural practices. The Federal Government has a trust responsibility to ensure that all fish and wildlife resources within the boundaries of any Indian reservation are preserved, protected, and properly regulated. In treaties with the Federal Government, many Indian tribes have reserved the right to fish, hunt, and gather in their usual and accustomed places. These rights have been recognized by the U.S. Supreme Court in several decisions. The importance of the fish and wildlife resources to Indian tribes have been and continue to be recognized by the courts.

While the courts have recognized the importance of these resources, the Department of the Interior and the Bureau of Indian Affairs have provided little support or assistance to tribal efforts to manage fish and wildlife resources. Efforts to improve fish and wildlife habitat, to increase resident populations of fish and wildlife, and to undertake conservation measures have been left entirely to Indian tribes. The protection and conservation of these important resources is part of the Federal Government's trust responsibility to Indian tribes. It is vitally important that the Federal Government fulfills its fiduciary responsibilities toward Indian fish and wildlife resources.

Indian tribes from across the country have appeared before our subcommittee and testified about the lack of Federal involvement in and assistance for tribal efforts to improve fish and wildlife habitat on Indian lands. This bill recognizes the Federal Government's trust responsibility to protect and conserve Indian fish and wildlife resources. It will improve tribal capacities to manage Indian fish and wildlife resources through the development of Indian fish and wildlife management programs. It provides for the increased production of fish and wildlife resources to provide for the subsistence, economic, and employment needs of Indian tribes. The bill provides badly needed resources to Indian tribes to develop tribal codes, resource management plans, and fish and wildlife population investigations. It will provide funds to Indian tribes to improve and restore fish and wildlife habitats and to develop tribal conservation programs. Finally, it provides for the management of Indian fish and wildlife resources consistent with integrated resource management plans.

Mr. Speaker, this bill provides the statutory framework to ensure the proper exercise of the Federal Government's trust responsibilities for the management of Indian fish and wildlife resources. This legislation is long overdue. It is time that the Federal Government lived up to its obligations to Indian tribes pursuant to its treaties with Indian tribes. It is my hope that this legislation will be an important first step to fulfilling our trust responsibilities to Native Americans. I urge my colleagues to support this legislation.

HOUSE PAYS TRIBUTE TO HORACE D. HUME, THE WIZARD OF MENDOTA, IL

HON. J. DENNIS HASTERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HASTERT. Mr. Speaker, it is with great pleasure that I rise today to bring to my colleagues' attention the outstanding contribution Horace D. Hume has made to the city of Mendota, IL and to farmers across this great Nation.

Horace Hume is one of a rare breed of geniuses of invention. At the age 15, Horace tried to design a perpetual motion machine. It ran for more than a week before it seized up. From then on it was apparent that he had a knack for invention.

Today, he holds more than 100 patents, including one for a floating cutting bar and another for a crop pickup reel. These inventions are widely credited for the revolution in modern soybean production.

Mr. Hume, 90, has been a vital force in Mendota community affairs for over 50 years. He is a recipient of the Mendota Chamber of Commerce Community Service Award and the key of the city of Mendota. Recently Mr. Hume generously donated and provided for the construction of a new public library for the city of Mendota.

To recognize the contribution Mr. Hume has made to his community the city of Mendota has proclaimed August 15, 1993, Mr. Hume's 95th birthday, as Horace Hume Day. I join all the residents of Mendota in their salute to a true genius and a generous man.

For the RECORD, I am submitting the following Chicago Tribune article detailing Hume's numerous achievements.

[From the Chicago Tribune, Nov. 8, 1992]

THE WIZARD OF MENDOTA

(By Donna Chavez)

At the age of 15, Horace Hume acquainted himself with the art of inventing by designing a perpetual motion machine. He gave the design to the son of a farmhand on his parents's farm who built it. The machine ran for better than a week before it seized up.

"That was when I got the first notion I had an inventor's skill," Hume recalled.

Today he holds more than 100 patents. The explanation for his genius is simple.

"My mother was very encouraging. She always believed in me when I thought I could do something." Hume recently said in the

Mendota office of H.D. Hume Co., the firm he founded to manage his assets, "And nobody ever told me I couldn't."

A mother's faith and ignorance of his own limitations have served Hume and others well. Among his patents is one for a floating cutting bar and another for a crop pickup reel—items credited with revolutionizing soybean production. That's no small contribution to American agriculture since "soybeans are second only to corn in production value in the United States," according to a publication of the Chicago Board of Trade.

The same publication declares that soybean exports account for an average of $6.2 billion per year, with a total estimated farm value of $11.4 billion in 1988–89.

Carl McNair, president of HCC Inc. of Mendota, a manufacturer of components for combines, said: "Horace Hume has made major contributions to soybean production worldwide. There aren't many people who've made as significant a contribution to the grain farmer as Horace. He thinks maybe 50 years ahead of his time."

Born the oldest of four children in Endeavor, Wis., to farmers James and Lydia, Hume took the name of his birth town not so much as a starting point but as a mandate for his life. In addition to his inventions, he is the founder of eight businesses.

Community service made him mayor of Garfield, Wash., by the time he was 40. Among other things, he has been a director of the Mendota Hospital Foundation, a member of Mendota City Planning Commission, La Salle County Regional Planning Commission, La Salle County Zoning Commission, La Salle County Care and Treatment Board and chairman of the Mendota Watershed Commission.

He is the recipient of the Mendota Chamber of Commerce Community Service Award and the Key to the City of Mendota. Hume has been listed in Marquis Who's Who (in the world, in America, in the Midwest, and in Finance-Industry) for 40 years.

Horace Hume is married and the father of one son who died in his early 30s. He has two grandchildren, four great-grandchildren and three great-great-grandchildren. He and wife Dorothy have much in common, including a love of music and dancing, which they do every Saturday evening at the local Elks Club. He is an avid shuffleboard player, so much so that he's built an indoor court with five lanes and has a killer reputation around town.

A true man of the '90s, Hume is devoted to his wife and family. He and Dorothy have two homes, both of which Hume designed, across the street from each other. One Hume calls his bachelor den. The other is Dorothy's to "decorate and enjoy as she likes."

Between Horace and Dorothy—she is his third wife, he her second husband—they have seen more than 120 years of marriage. Hume is 94 years old. His bride of not quite three years is 90.

Dorothy characterized Hume as "intelligent, with good character and high morals He is so generous, too."

She loves the home Horace built, describing it as "the nicest home I've ever lived in."

"Horace has a way of not getting in the way of himself; of letting things, ideas just come to him," said Rosalie McLaughlin, coauthor of Hume's biography. The book, like Hume's life itself, is a work-in-progress. McLaughlin, also from Mendota, spoke from an office in Hume's home where the pair worked on a book recently published about his son James.

Hume's home—his bachelor den—was built in 1988, and it is nearly a perfect reflection of Horace Hume the man, the inventor, the seeker of spiritual truth, and the industrialist. In it he is more than comfortable, he is energized. It's built in a rough pyramid shape topped by a lighted cupola. Hume designed the home to duplicate the shape upon which the ancients based the great pyramids.

The resemblance to a pyramid ends there. Great tall windows and skylights flood the home with light even on a fray day. It has an open floor plan with enough unusual angles to drive any interior decorator up the wall. Hume's touch in decoration includes paintings of the 47th problem of Greek mathematician Euclid and the ancient symbol of a circle with a triangle inside.

As he toured the home, Hume spoke about himself as a "student of life. You might say I've asked myself questions and then sought to find answers. I used to read four or five hours at a time. I enjoy writers like Victor Hugo, Plutarch, H.G. Wells and Petronicus."

The walls in one of his rooms are lined with books by these authors and others.

Hume never went to college—"It wasn't considered necessary back then. But I learned how to read when I was 10 and I never stopped reading."

The stairwell walls bear photographs of serious-looking people, old farm houses and a memento of when the first Hume set foot on Ellis Island from Scotland.

While his parents weren't highly educated people, nor was his father an inventor, Hume does call his father "an innovator." He was a farmer, yet he built a telephone system between Portage (Wis.) and Endeavor. It was only a few miles, but this was back in the days when folks would hold up the [telephone] wire to see if there was a hole in it [for the sound to travel through].

When Hume was 12, the family moved to North Dakota where they added ranching to farming, and Hume saw his father build yet another telephone system. There the elder Hume added a post office/general store to the family home, which was located in the county seat of Slope County. He also sold windmills. After nine years the Humes moved farther west, where the young Horace would seek his own future.

It was in Washington where Hume went to work for an automobile dealership. As an eager, young employee of an agency that sold everything from Ford Model T's, to Chevrolets, Studebakers, Oaklands and Dodges, it was there Hume recalls he started "puttin' things together. I began to get indoctrinated into the process of inventing things to solve problems."

"It was when I was about 25 that Chevy built a car that had a four-cylinder motor that was lubricated with the dip system—which is very different from the lubrication system of cars today. Well, the cranking rods would get loose after a while and begin to wear and would get to knocking. We would have to take the pan off, fix the rods and then put the pan back on.

"It had four gaskets that were so hard to put on that it'd take an hour-and-a-half to do the job, and even then, sometimes it'd leak. The customers paid $1.50 for this job and we had a policy that if the pan leaked, we'd do it over again for nothing. Well I lost patience with it and about 4 o'clock one Sunday morning I got up and by Sunday evening I had invented a way to put the pan on in 10 minutes—no leaking.

"I went to a manufacturer and made arrangements to begin advertising to sell my system * * * actually sold a few. Then Chevy quit making the engine."

With the philosophical advantage of almost 70 years between him and the incident, Hume enjoyed the irony of this story. But even then the fact remained that, though riches eluded him that time, the invention was nonetheless a success in that it solved the problem it set out to vanquish.

A second invention, a device to make driving automobiles in the thick Pacific northwest fogs easier met with similar fate. The item was a success, the timing and the location were wrong—the Washington state legislature outlawed such devices—a version of high-beam headlights—as dangerous to oncoming traffic. Concurrently a man in Michigan, where the legislature was not so pessimistic, filed and received patent rights on a similar device.

The point Hume made with his less-than-success stories is that the experiences did nothing if not encourage him to pursue his visions. Speaking in a tone and cadence that revealed words firmly connected to thought, and with a dry sense of humor, Hume allowed that "some have called me stubborn."

Long-time friend and retired Mendota businessman Richard Phalen expanded on the thought: "You've got to be stubborn to get where Horace has gotten—stubborn but not contrary."

And stubborn he might have been. Working his way up in the car dealership, Hume became a partner. Around 1927 the dealership added farm machinery to its sales line, carrying a new item that would replace the thresher—a combine. But they didn't sell as quickly as Hume had hoped.

While seed peas were a very profitable crop for the Pacific Northwest, according to "The Magnificent Whistle Stop," a historical account of Mendota. "Mr. Hume met a great deal of sales resistance to the combine as this machine did not cut close enough to the ground to harvest the ripe peas."

Indeed Hume recalled that it was not uncommon for farmers trying to use this new implement to lose 40 to 50 percent of their crop.

"I recall one farmer who lost 90 percent because a windstorm had laid the crop even closer to the ground then normal," Hume said. "So a friend of mine and I set out to invent something to adapt the combine to harvest low-lying crops like peas."

Farmer J.E. Love and farmer-cum-salesman-cum-engineer/inventor Hume together invented the floating cutter bar. Love was delighted, Hume said, for as an owner of a combine it increased his yield. Hume was delighted since it meant increased combine sales. They could guarantee the farmer a loss no greater than 2 percent.

However, since only Hume was interested in patenting this new device, he agreed to front all patent costs (no small investment at about $500 at the time), but the men would become partners in the manufacture of their joint venture.

Within three years Hume and Love had worked the bugs out of the system so they could adapt the cutter bar to any brand of combine. The country was in the depths of the Depression when the friends opened the doors of the Hume-Love Co., manufacturer of specialized equipment, in Garfield, Wash.

"How did we do it," Hume asked rhetorically, smiled and answered, "I truly don't know. Except that nobody told us we couldn't do it. You see [the floating cutter bar] had been determined by experts to be impossible. When I took it to the patent office they called it 'new art,' since experts had said it couldn't be done."

Fed by the twin achievements of his cutter bar—it solved problems and made money—

Hume's visions began to tackle a succession of problems. According to biographer McLaughlin, "Mr. Hume spent a lot of time in the field, actually seeing if something wasn't working just right. He'd spend hours thinking of ways to make farming more profitable."

That meant taking equipment designed by big manufacturing companies such as International Harvester and adapting it to the special needs of the man in the field.

Hume confessed that his primary motive was to "aid agriculture by helping the farmer increase his yield—hopin' to get paid for it."

The principle was simple, the results lucrative. Phalen, founder of Phalen Steel Construction Company, credits Hume as the reason for his own success. "He's the reason I got where I was and I could afford to retire at 54," he said.

The move from Washington to Mendota came at the beginning of World War II, but only after Hume-Love had seen the invention of a special windrow harvester for green pea harvesting that also benefited canners in the Northwest. It might be that the '80s philosophy of win-win might not be so new after all since Hume believed that helping the farmer started a trend that advanced a chain of people from equipment manufacturer to canner to consumer.

It was soybeans that drew Hume to the Midwest, since his specialized equipment benefited the soybean farmer as well. Hume claimed it increased harvest by 7 bushels per acre, and soybeans were just beginning to enjoy a 50-year surge in the market.

"But there was a war on and building materials were hard to come by. So I went to Richard Phalen who had Quonset buildings we could use," Hume remembered.

"Here I was, a nobody in this small town, and he begged me to do business with him," Phalen said.

Hume said that the equipment had to be manufactured in the Midwest because to ship it from the Northwest was impractically expensive. "I needed Richard because those Quonset buildings were the only ones we could build at the time," Hume said.

And the plant in Mendota grew. Hume invented several types of harvesting machines, among other items. His inventive genius developed a pattern.

"I would go into the field to see what the problem was. The farmer and I would talk about it. I'd get a mental vision of what the finished device should be like and I'd sketch it for my personal engineers who would carry out the design prototype," Hume said.

Hume's reputation became well-known in the field. According to "The Magnificent Whistle Stop," Del Monte contracted with him to help improve the harvest yield of spinach. He was known at International Harvester as a man who would tackle problems they had neither the time nor the resources for, since his were principally fine-tune adjustments to large farm machinery.

"We confined ourselves to jobs too small for large companies to care about," Hume said. Jobs such as a machine to process cranberries—which, due to their unique cellular structure had been impossible to process—proved to be easy as pie for Hume.

By the early '60s, Hume Products Corp. enjoyed worldwide distribution in 60 foreign countries, had manufacturing plants in Mendota and Garden City, Kan., with sales offices in Wisconsin and Pennsylvania.

In 1964, Hume's son, James, succumbed to a massive coronary at the age of 36. He was a vice president in the company and was following in his father's footsteps in civic activities. James' daughter, Marsha Jones, 42, works for Hume today as "office manager/secretary /receptionist/everything else."

Jones refers to her grandfather, who still comes to the office daily, as "a rock. He's always been there for me. He's a big part of my life."

In 1965, Hume sold the manufacturing business and designed and built a new Mendota home—complete with fallout shelter. He spent the next six years as a member of the board of directors of Hart-Carter, as the firm was called after the sale. Hume's first wife died in Arizona in May 1972 and he remarried, but returned to Mendota upon the death of his second wife in 1987.

In 1988, at the age of 90, Hume designed and built his triangular home, the fifth home he has designed and built.

"He is constantly busy. Either working or dancing—he and Dorothy do a nice waltz—or playing shuffleboard," said Phalen.

As for the future? Hume shrugged his shoulders and insisted he has no plans * * * except for his book and maybe a few other things that nobody dares tell him he can't do.

UNITED STATES-UKRAINIAN-RUSSIAN RELATIONS

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, as you are aware, on July 6 the Russian Parliament voted almost unanimously in favor of a resolution claiming the Ukrainian port of Sevastopol as Russian territory.

Mr. Speaker, this should be of no surprise to any of us. The Russian Parliament is an illegitimate body made up mostly of ex-Communist apparatchiks, elected during the Soviet era and retaining many of the old, tired, and destructive ideas of the Soviet past. Fortunately for the Ukrainians, and us too, Russian foreign policy is still largely in the hands of President Yeltsin and his enlightened Foreign Minister, Mr. Kozyrev, neither of whom want any part of this reactionary imperialism.

But what if President Yeltsin fails? What if he is ousted or marginalized and these reactionary neo-imperialists gain control of Russian foreign policy? Mr. Speaker, it is long overdue that we begin to think about this potentiality. To date, it seems to me that many American leaders have given short shrift to the need to shore up the sovereignty of Ukraine and the other Republics of the former Soviet Union.

Let's face it, there were many in our country who came to see the Soviet Union as a natural and legitimate entity. For reasons that escape me, many of these same people were distressed, rather than elated, when the Soviet Union imploded. They saw it as potentially destabilizing, rather than what it really was: The liberation of more than 300 million people from the prison that was the Soviet Union. Since the U.S.S.R.'s demise, many have taken a brazen attitude toward the sovereignty and independence of the newly independent states.

This has been especially true regarding Ukraine. At times, we have been obsessed with the notion that our highest foreign policy priority should be inducing Ukraine to give up her nuclear weapons to Russia. I do not want to posit that Ukraine should not give up her nukes, but I believe our approach has been inconsiderate of Ukraine's legitimate security concerns.

And her concerns are indeed legitimate. Ukraine is a flat, mostly treeless plain and is one of the most invaded pieces of real estate in history. Ukrainians are a distinct people, with a language very different from Russian, and have been aspiring for independence since before the American revolution. The reactionaries in Russia do not recognize this, but we should. America needs to make clear to Ukraine and to Russia that we view Ukrainian sovereignty as absolutely inviolable. This goes for the other newly independent countries as well. We need to make clear that we appreciate Ukraine's legitimate security concerns, and that we do not view the nuclear question in a vacuum.

I hope that the President, the Secretary of State, our Ambassador in Moscow, and all relevant officials, including Members of Congress, will voice their concern over this imperialistic move in the Russian Parliament at every opportunity. We must stand united and speak with a clear voice, Mr. Speaker, lest there be any doubt about our view in Moscow. And that view should be, Mr. Speaker, that American recognizes, appreciates, and welcomes the fact that the Soviet Union no longer exists.

I thank the Speaker for the time today.

CLEARING THE WAY FOR HEALTH CARE REFORM IN WASHINGTON STATE

HON. MIKE KREIDLER

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. KREIDLER. Mr. Speaker, no one understands better than the people of Washington State the need for health care reform. And no State has done more to meet that need. This year, after more than 2 years of intensive study and review, the Washington State Legislature enacted the Nation's most sweeping comprehensive health care reform law, the Washington Health Services Act, and Gov. Mike Lowry signed it into law. I was proud to have served as a member of the Washington Health Care Commission that developed the blueprint for this major reform.

Washington's new law will guarantee affordable health coverage to every State resident by 1999. It reforms the insurance market to stop the kind of cherry picking and risk selection that has made insurance affordable for small employers. It establishes purchasing cooperatives to enable individuals and small businesses to pool their buying power in the health insurance market. It requires employers to pay at least half the cost of employees' health coverage, and requires everyone in the State to be covered by 1999. It controls costs through managed competition between health plans, with limits on annual premium increases. It includes major improvements in

public health programs and steps toward long term care coverage for the elderly and disabled.

But the Washington State plan cannot be implemented unless Congress amends the Employee Retirement Income Security Act, a law that prohibits States from regulating employee benefits. While pre-empting State initiatives, ERISA does nothing to assure that working Americans have any kind of health coverage. I strongly support national health care reform to break this logjam and bring affordable coverage to all Americans. But the people of Washington have been waiting for years for nationwide reform, and it is time to give them a chance to make the State plan work.

That is why I have joined with my Washington State colleagues AL SWIFT, NORM DICKS, MARIA CANTWELL, and JOLENE UNSOELD to introduce the Washington State Health Services Reform Enabling Act. Senator PATTY MURRAY is introducing a companion bill in the Senate. Our bills would exempt specified provisions of our State's health care plan from ERISA preemption, allowing the State to go forward with its reforms. I urge my colleagues, whatever their own views on national health care reform, to support Washington State's effort to achieve what we have thus far been unable to achieve in Congress—a system of universal, affordable health converage for everyone.

SUMMARY OF PROVISIONS—WASHINGTON STATE HEALTH SERVICES REFORM ENABLING ACT

The bill amends Section 514 of the Employee Retirement Income Security Act of 1974. Currently, Section 514(a) prohibits states from regulating employee benefit plans, and Section 514(b) consists of a series of exemptions from that prohibition (such as an exemption that allows states to continue regulating insurance, and exemptions for specific laws of several other states).

The bill adds a new exemption to Section 514(b), exempting eight of the provisions of Washington State's Health Services Reform Act that may currently be pre-empted by ERISA. These provisions of the state law are as follows:

Section 212, which allows the Washington Basic Health Plan to require the enrollment of a majority of the employees of a firm that chooses to enroll any of its employees in the Plan. The Plan, established in 1989, offers state-subsidized health coverage for income-based premiums. The state's 1993 law expands this Plan and offers its coverage to small businesses as long as they enroll most or all of their employees.

Section 301, which imposes a tax on health insurance plans to help finance coverage for the uninsured and other health programs.

Section 304, which taxes nonprofit hospitals to help pay for covering the uninsured and other health programs.

Sections 406(7) and 454, which permit the establishment of medical risk adjustment mechanisms that would reduce incentives for health plans to enroll healthier people and avoid less healthy people.

Section 427, which requires the largest employers, who are exempt from some requirements of the state law, to offer the same minimum benefits as other employers must offer.

Section 430, which specifies requirements the largest employers must meet to be exempted from other requirements of the state law.

Section 464, which requires all employers to offer employees a choice of qualified health plans and pay at least half the premium of the lowest cost available plan.

The bill does not amend ERISA in any other way or apply to any other state.

H.R. —

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 "Washington State Health Services Reform Enabling Act of 1993".

SEC. 2. EXEMPTION FROM ERISA PREEMPTION OF CERTAIN PROVISIONS OF THE LAW OF THE STATE OF WASHINGTON RELATING TO HEALTH PLANS.

Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)) is amended by adding at the end the following new paragraph:

"(9) Subsection (a) of this section shall not apply to the following provisions of the law of the State of Washington—

"(A) section 212 of Chapter 492, Laws of 1993 (relating to enrollment of certain employees in the Washington basic health plan);

"(B) sections 301 and 304 of Chapter 492, Laws of 1993 (relating to taxation of premiums and hospitals);

"(C) sections 406(7) and 454 of Chapter 492, Laws of 1993 (relating to medical risk adjustment mechanisms);

"(D) section 427 of Chapter 492, Laws of 1993 (relating to benefits required to be offered by registered employer health plans);

"(E) section 430 of Chapter 492, Laws of 1993 (relating to requirements applicable to registered employer health plans); and

"(F) section 464 of Chapter 492, Laws of 1993, as amended by section 3 of Chapter 494, Laws of 1993 (relating to requirements that employers offer and pay a portion of the costs of employee health care coverage).".

ROTARY CLUB REACHES OUT TO PEOPLE LIVING WITH AIDS

HON. GERRY E. STUDDS

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. STUDDS. Mr. Speaker, I rise to pay tribute to the 11 Rotary Clubs of Cape Cod and the Islands, whose members have joined together to sponsor CAPE AID, a concert to benefit people living with HIV and AIDS. The event will take place at Eldredge Park in Orleans, MA on Thursday, August 26. It will feature performances by singer-songwriter Judy Collins, the Smothers Brothers, and comedian Dennis Miller.

The goals of CAPE AID are twofold: to raise funds for housing, transportation, and health services for HIV and AIDS patients in the region; and to increase public awareness of the effects of the epidemic within every community.

I wish to commend CAPE AID cochairs Marcia Galazzi and Lee Sullivan, and the many other Rotary Club volunteers whose hard work and dedication have made this event possible.

CAPE AID is an example of the important work being done by Rotary Clubs throughout America to raise public awareness about AIDS. Much of this work was inspired by the Rotary AIDS project of Los Altos, CA, which has distributed informational materials to 1.1 million Rotarians in over 25,000 Rotary clubs throughout the world. The AIDS Project produced "The Los Altos Story," an award-winning 30-minute videotape documentary that received the 1990 Peabody Award for excellence in broadcasting. The film tells the story of a local community that found the courage and compassion to confront the AIDS epidemic with humanity and common sense.

The Los Altos project was conceived by Dushan "Dude" Angius, who was the incoming president of the Los Altos club at the time his son, Steven, revealed that he had AIDS. Angius developed the project in the hope that "Rotary clubs would become models of support and understanding within their communities, offering information, assistance to AIDS patients, and educational programs for school districts."

Thanks to the work of Rotary clubs from California to the Cape, this compassionate vision is being realized.

SHARE—STUDENT HUMAN RIGHTS EXCHANGE

HON. JOHN EDWARD PORTER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. PORTER. Mr. Speaker, I rise today to call Member's attention to the important work being done by SHARE, Student Human Rights Exchange, which is one of the first human rights organizations to combine human rights education and development.

SHARE was established in June 1991 for the purpose of expanding international human rights advocacy by establishing computer-resource centers and libraries at universities around the world. By working in regions undergoing political and economic transition, SHARE is able to establish programs and provide access to information, technology and training for students, organizations, and institutions who can make direct use of them.

To fulfill its mission, SHARE solicits used textbooks and technology which it distributes to its centers at universities around the world. Where technically possible, centers are linked to an international computer network allowing access to e-mail, educational human rights databases, wire services, and gateways to dozens of computer networks. The aim of SHARE is to empower the first generation of computer literate human rights advocates who can help to usher in a new era of electronic human rights advocacy.

One of SHARE's first projects was to undertake a mission to Mongolia to monitor Presidential elections which took place on June 6, 1993 and provide follow up to promote democracy in Mongolia. The democratic coalition's candidate, current President Punsalmaagiyn Ochirbat, defeated the Mongolian People's Revolutionary Party's [MPRP] candidate, Mr. Lodongiyn Tudev. President Ochirbat won resounding popular support, receiving 58 percent of the vote. This vote of confidence is key to further democratic reform in Mongolia; however, with a Parliament dominated by the

MPRP, a non-independent judiciary, no constitutional right to a free press and an uniformed public, this victory for democratic change in Mongolia could be short-lived.

Although Mongolia has begun to explore non-communist rule, it lacks the necessary technical and educational resources needed to develop and sustain democratic institutions or a market economy. For example, the law school of the Mongolian National University was temporarily shut down due to the scarcity of appropriate western legal texts. The Ministry of Justice's ability to implement democratic changes called for in the new constitution has been stymied by a lack of understanding even among the most elite and educated Mongolians.

To address this dilemma, on June 1, 1993, SHARE established the Marie-France Daillet Human Rights Center at Mongolian National University [MNU]. The Center is dedicated to the humanitarian efforts of French Ambassador Jean-Marie Daillet and his wife, Marie-France Daillet, who supported her husband's efforts to promote human rights and the establishment of democratic institutions around the world.

The Marie-France Daillet Center will provide students, faculty, administration and community members with access to a human rights law library with over 700 volumes, 15 computers, computer and human rights training and links to an international computer network. The Center will act as a hub for expanding the rule of law and civil society education and advocacy throughout Mongolia.

I commend the work being done by SHARE in Mongolia and in other parts of the world. By helping to pave the way toward a new global frontier of freedom by transforming equipment and textbooks into educational and human rights resources, SHARE is performing an invaluable service for the global advancement of human rights, the rule of law and democratic institutions.

BILLINGTON VIEW OF COLD WAR

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, I would like to call attention to a couple of remarkable passages from a book on the Second Russian Revolution by the Librarian of Congress, Dr. James Billington. The book, "Breakthrough to Hope," is a concise, incisive account of those heady days of August 1991, when Boris Yeltsin and the brave Soviet people slayed the Communist dragon.

The passages to which I refer begin on page 104, where Dr. Billington outlines the ideas and forces which impacted on the Russian psyche and enabled them to throw off their Communist shackles. One of those forces, according to Dr. Billington, was the more conservative side of America's political and cultural spectrum. Dr. Billington then states his genuine belief that it was Ronald Reagan's firm demonstration of political and military strength that caused the Soviets to change course in 1985.

But, Mr. Speaker, the most revealing portions of the book are the following passages, and I hope that Members will pay attention closely. Dr. Billington writes, and I quote, "The very qualities that annoyed many of President Reagan's critics at home—the simplicity of his message and use of moralistic language (evil empire)—found a certain resonance among Russians." Further, and this one is for all of the nuclear freezers, peaceniks, and Gorbaphiles: "It was evident in 1986—and supported by my informal poll of taxi drivers in August 1991—that Reagan was more popular than Gorbachev among Russians." Finally, Mr. Speaker, and again I quote, "Reagan seemed to have some of the directness and inner core of values that also made Yeltsin instinctively popular among ordinary Russians."

Now, please forgive me, Mr. Speaker, if I indulge myself a little bit here, but vindication feels pretty darn good. Let us recall that just 10 years ago, in the depths of the cold war, many in this country, including many Members of this body, had serious doubts about the correctness of the American role in the cold war. The doctrine of moral equivalence, which held that United States and Soviet policy were virtually indistinguishable, was in vogue on the left. They said that our policies were provocative. They preferred a nuclear freeze to the euromissile deployment. They found something human and Western in every new Soviet leader. Remember the stories about how Andropov liked jazz and scotch? These people spoke of the need to understand the Soviets, as though the Soviet Government and the Soviet people were one and the same.

All of this sounds just a little bit quaint today, doesn't it? But some leaders, like Ronald Reagan, didn't need the benefit of hindsight to know what a bunch of hogwash all of this was. Ronald Reagan, and others like him are on record as having understood the basic realities of the Soviet system long before moral equivalence became quaint, long before history proved them right. Ronald Reagan understood that evil lay at the core of the Soviet system, and who would deny the veracity of that today? Ronald Reagan knew that the euromissile deployment would bring the Soviets to the table, and we have the INF treaty as vindication of his prescience.

But most of all, Mr. Speaker, and this is where Dr. Billington's work is so enlightening, Ronald Reagan refused to believe that the Soviet people did not, as some on the left posited, want to be liberated from Communism. Ronald Reagan understood the fundamental dictatorial nature of the Soviet regime, and hence was confident that our anti-Soviet policies would not only be understood, but actually supported by the Soviet people.

Today, many on the left are born-again anti-communists. Today, everybody agrees that Communism was a mistake, a tragedy and, yes, evil. But what an irony it is, Mr. Speaker, that at precisely the moment that the newly liberated peoples of Eastern Europe and the former Soviet Union are rushing headlong into capitalism, we are heading in the opposite direction. Today, as young Russians cover Marx's statue in Moscow with flippant slogans such as "Workers of the world, forgive me," America is awash in the Marx-Leninesque rhetoric of class warfare.

And who is leading us into this time warp, Mr. Speaker? None other than many of the same people on the left who got it wrong on the cold war. Back then, they misunderstood the fundamental nature of the Soviet Union; today, they are oblivious to what is happening there, and why.

I would suggest to those on the left who want to change the fundamentalist nature of America that they take some time to ponder the changes that are taking place in the former Communist world, and they can start by reading Dr. Billington's book. They may just find that the fundamental building blocks of America—individual liberty, limited government, private enterprise, family, religion—reflect the fundamental nature of all humankind.

YOUNGSTOWN HISPANIC HERITAGE CELEBRATION

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. TRAFICANT. Mr. Speaker, I rise today to recognize the Organizacion Civica y Cultural Hispana Americana and the Hispanic Heritage Week Committee for their efforts in organizing the 1993 Youngstown Hispanic heritage celebration. This 3-day celebration promoting cultural awareness and pride will help to commemorate the contributions that Hispanics have made both to Youngstown and the the Nation. Further, the celebration will be aimed specifically at the younger audience in an attempt to encourage youths of Hispanic decent to recognize and value their rich cultural heritage.

Recently selected grand marshal Antonia Caraballo will oversee the events and attractions during the celebration. After emigrating to Youngstown from Puerto Rico in 1953, Mrs. Caraballo has risen to become a leader in the Latin-American community in Youngstown. Her many accomplishments on behalf of the Hispanic community include the founding of the Ladies Society of Hijos de Borinquen Club and her new position as president of the OCCHA Senior Citizens group, Youth of the Past. Mrs. Caraballo is the mother of five children and also has five beautiful grandchildren.

The Hispanic heritage queen, chosen on the basis of outstanding academic achievement, will be Ms. Diana Molina. I wish to personally congratulate Ms. Molina for her fine scholarship and wish her continued success as she enrolls at Youngstown State University in the fall.

Some of the festivities these exceptional women will preside over include Hispanic food concessions, Hispanic music, crafts, and folkloric dancers. The centerpiece of the celebration is the parade Saturday, August 7.

The celebration of the Hispanic heritage and tradition in Youngstown is a recognition of the importance of Hispanics to the Youngstown community. They are a vibrant and productive segment of our society which is growing more eminent by the day. This festival should promote pride within the entire Youngstown community for the outstanding achievements of Hispanics in all walks of life.

TEACHERS JUST WANT TO TEACH

HON. BRUCE F. VENTO

OF MINNESOTA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. VENTO. Mr. Speaker, I rise today to share with my colleagues a particularly insightful article about our education system and I ask to insert it into the RECORD.

Mr. Speaker, the particular article of which I speak was written by Jean Jones, a friend and one-time colleague of mine. Jean is an experienced St. Paul teacher, where for over 20 years she has pursued her profession as a labor of love.

Yet, over the years, her job has become increasingly more challenging and difficult. It is not just because the size of the classes she teaches have grown. Nor is it just the result of the increasingly diverse backgrounds of her students. Jean—as with most of her fellow teachers—has simply been overwhelmed by the constantly changing demands that distract her from her labor of love—teaching.

Social work, health training, fund raising, organizational meetings for the site-based management plan, computer programming, and language training. No one would logically suggest a teacher should master all such subjects and details, but that is what has increasingly been expected of teachers. All policy makers and our States and communities must recognize the numerous demands and requests to fulfill new needs run the risk of losing the educational and teaching focus in today's classrooms across the Nation.

Mr. Speaker, this article is especially relevant right now, as Congress is considering legislation to revamp our elementary and secondary education system. In our rush to improve the quality of our education system, let's not forget the two most basic components—the teachers and the children. As a teacher, all Jean Jones really wants is to know what she is realistically expected to do as our childrens' teacher. That seems like a very reasonable request to me.

Mr. Speaker, I urge my colleagues to read Jean's article.

PLEASE MAKE UP YOUR MINDS ABOUT WHAT TEACHERS ARE SUPPOSED TO DO

(By Jean Jones)

Dear Taxpayers: Let me state it clearly from the beginning: I love to teach. I feel blessed to make my livelihood working with our city's children. After 23 years, I still go sleepless on Labor Day night anticipating another new beginning, and I continue to feel a sense of loss as my charges leave me in June.

But I am frustrated. You have labeled me a failure because you are not satisfied with the quality of the "product" I am "producing." City schools have not lived up to your expectations. you have not made up your collective minds about just what it is you expect teachers to accomplish in their classrooms, yet you seem surprised that we are exhausted by your endless demands.

Years ago you made it pretty clear. "These are your 24 students. These are your reading, writing, math, social studies, science, music, physical education and art manuals. Teach the children what is in the manuals. If you encounter difficulty with a child, call her/his parents. Retain those who don't learn the material." It was not a perfect system. It was not as simple as all that. But at least you and I knew the ground rules and I followed them as best I could.

The world has changed. The old ways have been questioned as fewer of them seemed to work. Today I have no idea what the ground rules really are, what they should be, or whether it would be humanly possible for me to abide by them even if I could sort it all out.

I still have manuals, but they are not sensitive to differences in culture and learning style, so I must constantly rework them. I have limited instructions on how to teach about AIDS, drugs, sex and violence prevention, although these are now requirements. I am supposed to make my children computer-literate when they (and I) must share on Apple IIe. I had 32 students last year and when I try to call parents, there is often no phone in the home. I am hampered because I speak a different language from many of my children and their parents. I am directed not to retain children but I am criticized for promoting students who have not mastered all material.

Many of you believe that I have not grown with the times, that I am stuck in old practices that do not match today's kids. Others of you deride me for discarding traditional methods and standards.

I never planned to become a social services case manager. I was not trained in that role and, even though I have a master's degree, I have yet to find a good course on how to assist families as they fight their way through the maze of bureaucracies. Some people want our schools to become the sites for coordinated delivery of all social services to children and others think that schools have already diluted too much their mission to educate.

School fund-raising is now part of my life and my own wallet is a constant source of extra classroom funds. It is hard for me to accept the classification of museum trips and library books as luxurious expenditures of taxpayer money.

Please do not interpret my comments as bitterness and bellyaching. It is just that I am so very tired of running in too many directions to try to please all of you. Some days it feels as though school is about everything except teaching children.

We need to come to some mutual understanding soon, taxpayers. We are, or soon will be, sitting at site-based management team meetings in our schools. These discussions consume many, many hours. If they result in a clear mission, well-defined goals, and specific strategies to improve student achievement in every classroom, then it is time well spent. If they become ad infinitum discussions about insignificant issues (in some cases that already happens), then I will consider it a theft of the time that I should have devoted to my classroom. For now, I am making a leap of faith that local decisionmaking in schools will not be just another time-wasting fad.

As any good teacher, I must end on an upbeat note. I want all of you, especially those who have not been in a city school lately, to know that the youth of 1993 are as bright as those of 1970 when I began my career in St. Paul. They are more diverse in their ethnic background as well as their life experiences and it is unfortunate that some misguided people believe that differences have weakened the intellectual base in our schools. These people are dead wrong. Come to visit me at school and I will show you an old reading book and another that my children read today. You will be impressed.

I, too, am a taxpayer and a lifelong St. Paul resident. I am committed to my city and I believe that our schools, as much as any other factors, determine our economic and social well-being. I am doing my very best to make our children the kind of contributing citizens we all want. If I am to succeed, you must do your part by clarifying in your minds, in my mind, what it is that I can realistically be expected to do as your child's teacher.

CONGRATULATIONS TO MISS TITILAYO RACHAEL ADEDOKUN

HON. DAVID MANN

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. MANN. Mr. Speaker, I want to take this opportunity to recognize the accomplishment of Miss Titilayo Rachael Adedokun who was crowned Miss Ohio on June 19, 1993. Miss Adedokun will be representing Ohio in the Miss America Pageant in September.

Miss Adedokun graduated magna cum laude from Judson College with a Bachelor of Arts in English and Applied Musical/Vocal Performance at the age of 18. She has gone on to obtain a second Bachelor of Music degree from the University of Cincinnati's College Conservatory of Music and is now pursuing a Master of Music degree. Miss Adedokun's ultimate goal is a professional opera career.

Miss Adedokun has also given her time and talent to the community. As a volunteer with the Cincinnati Youth Collaborative, Miss Adedokun serves as a mentor for junior high and high school students.

I extend my congratulations to Miss Adedokun and wish her the best in Atlantic City and all her future endeavors.

TRIBUTE TO THE 47TH FLIGHT TRAINING WING OF LAUGHLIN AIR FORCE BASE

HON. HENRY BONILLA

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. BONILLA. Mr. Speaker, I rise today to recognize the 47th Flight Training Wing of Laughlin Air Force Base in Del Rio, TX, which recently competed in and won the Air Training Command's Top Flight Competition.

The 47th, which is comprised of the 85th and 87th Flight Training Squadrons, earned the award after competing against Air Training Command bases from across the country. The results of the event were based on the performances of the pilots and the maintenance crews which support them.

Through hard work and training, the men and women of Laughlin Air Force Base have become accustomed to awards of this kind. The 47th won the Top Flight Competition held last fall and the maintenance crews at Laughlin were recognized as the best in the Air Force for 1992.

Not surprisingly, the motto of the 47th is "XL," which they certainly do. Laughlin's long

history of superior mission performance in its training of new pilots for the U.S. Air Force deserves our respect and heartfelt thanks. I ask my colleagues to join me in saluting the men and women of the 47th Flight Training Wing for their outstanding work and dedication to our country.

TRIBUTE TO CITY OF FERNDALE, MI

HON. SANDER M. LEVIN

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. LEVIN. Mr. Speaker, I rise today to pay tribute to the city of Ferndale in southeast Michigan, which is celebrating its 75th anniversary this year.

The city of Ferndale was born on April 1, 1918, when a group of village settlers broke away from Royal Oak Township to create their own village government. Village officers oversaw a population of 1,600, a 1-man police department, and a 1-man fire department. Six years later, construction began on the first superhighway within the United States, known as Woodward Avenue. The road brought national attention and increased mobility to Ferndale, encouraging its transformation from a small village into a vibrant city.

Today, the city of Ferndale is home to 25,000 residents, a police department staffed by 28 officers, and a firefighting force of 34. Downtown Ferndale offers office facilities, commercial sources, entertainment, shopping, and dining to all of Metropolitan Detroit.

I have been involved with the city of Ferndale since opening a law office on the corner of Woodward Avenue and Nine Mile in downtown Ferndale. I have watched it continue to grow and prosper over the years, and have had the privilege of representing the city first in the State Senate, and currently in the U.S. House of Representatives. I have had the privilege of working with its dedicated elected officials and staff, as well as its active chamber of commerce and seniors program.

As the city of Ferndale marks its 75th year as a vital part of the Metropolitan Detroit area, I congratulate its residents and all those who contribute to the city. I am proud to represent the good neighbors of Ferndale who will light the way into the 21st century.

CONSUMER GROUPS SUPPORT COMPETITION IN TELECOMMUNICATIONS

HON. JIM SLATTERY

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SLATTERY. Mr. Speaker, as our world becomes more information-driven, the issue of building a communications infrastructure which will enhance America's competitiveness, spur economic growth, and include all Americans in the information age continues to grow in importance.

To achieve its full potential, it is axiomatic that the telecommunications infrastructure must benefit from full and open competition by all providers, including providers of local telephone services, in the provision of information services and telecommunications equipment manufacturing.

A recent letter sent to President Clinton and Vice President GORE by more than 100 of our Nation's key consumer and public interest leaders reflects this procompetition stand. Signed by representatives of such groups as the American Council on Consumer Awareness and the National African-American Consumer Education Organization, the letter states that Americans deserve telecommunications choices from as many competing providers as possible, including the seven Bell telephone companies.

I am especially pleased that four Kansas consumers affiliates—Consumer Education and Protection Association for Kansans; Consumer Relations/Government Office, Kansas State University; Consumer Fraud Division, Sedgwick County District Attorney's Office; and the Economic Opportunity Foundation—have co-signed the letter. These consumer issues are extremely important. I was pleased that earlier this year successful negotiations between the consumer groups and the Bell telephone companies resulted in compromise legislative language which will be a part of any bill dealing with the elimination of the MFJ's telecommunications equipment manufacturing line-of-business restriction—similar to H.R. 1527 in the 102d Congress. Some 138 cosponsors joined me in strongly supporting that legislation.

Finally, Mr. Speaker, I am pleased that the Consumer Federation of America has recently reversed its longstanding opposition to MFJ relief for the Bell companies in the provision of information services and the manufacturing of telecommunications equipment. I am attaching the new CFA policy statement and the consumer letter for our colleagues' review at this point in the RECORD:

CFA BOARD UPDATES TELECOMMUNICATIONS POLICIES

At its June meeting, the CFA Board passed resolutions updating CFA's telecommunications policies and its policy resolutions process.

After divestiture in 1984, CFA members approved a resolution opposing local phone company expansion into such areas as information services, long distance service, and equipment manufacturing under all circumstances.

Although the large majority of consumer groups still favor an absolute prohibition on expanded powers, recent legislative, judiciary, and regulatory decisions to permit this expansion have led consumer advocates to emphasize the importance of Congress's establishing adequate consumer safeguards.

For several years, that has in fact been the position taken by CFA lobbyists in Congressional testimony and in serious negotiations with one Bell company over the nature of the protections. They have expressed a willingness to allow Bell company expansion if Congress fully protects consumers from inflated prices and anticompetitive practices.

At the same time, CFA and many other consumer groups have supported H.R. 5069, the "Brooks bill," which would maintain the Bell restrictions for a number of years, subject to a Justice Department review process. This support reflected not only the continuing preference of many consumer groups for strict controls on the Bells, but also the need to combat a very powerful and expensive campaign by the Bell companies for removal of restrictions.

At CFA's Annual Meeting last March, several labor and consumer groups proposed a policy change, whose implications were somewhat ambiguous, but which could have had the effect of reversing CFA's policy opposing expanded powers. Though rejected by the Policy Resolutions Committee, this resolution was introduced on the floor of the Annual Meeting.

In part because this meeting occurred during a blizzard which prevented many CFA members from attending, members present voted to submit the issue to the CFA Board for consideration at its June meeting.

Between the March Annual Meeting and June Board meeting, CFA staff worked to craft policy resolution revisions that would not dilute CFA's leadership on telecommunications issues, but which were acceptable to all members. In consultation with members who had the strongest opinions on the issue, staff worked out a policy update with three parts:

acceptance of Bell company expanded powers provided Congress approves adequate consumer protections;

support for a presidential commission to consider future telecommunications policy that would consider not only consumer but also worker interests; and

creation of an ad hoc Board committee that would seek to resolve any future conflicts between the consumer and worker interests on telecommunications issues. Although the Communications Workers of America is not a member of CFA, a CWA representative would be invited to attend these meetings.

At the June meeting, CFA Board members passed a motion approving this update of CFA policy. They also approved changes in the CFA policy resolutions process to ensure that, in the future, adopted policies are carefully considered and support the consumer interest. These changes include:

required submission of potentially controversial resolutions at least one month before the Annual Meeting or approval by at least three-quarters of the votes cast at this meeting;

justification of all resolutions in terms of the consumer interest, broadly defined; and

prohibition of organizations not part of CFA, especially business groups, from participating in the policy resolutions process unless that participation is solicited by CFA.

Noted CFA Executive Director Stephen Brobeck: "These changes should transform a policy resolutions process that has bordered on the anarchistic into one that is more orderly and provides all CFA members with the opportunity to have adequate input."

CONSUMER, PUBLIC INTEREST LEADERS URGE WHITE HOUSE TO SUPPORT MORE CHOICES IN TELECOMMUNICATIONS

WASHINGTON, DC, July 29, 1993.—One hundred of the nation's consumer and public interest leaders, in a letter to President Clinton and Vice President Gore, today called for more competition in telecommunications. The letter was presented at a meeting in the White House with President Clinton and Vice President Gore.

While commending the Clinton Administration for developing a technology agenda for economic growth, the signers said that to share the benefits of the Information Age

with all Americans, consumers need telecommunications choices from as many competing providers as possible, including local telephone companies.

"We're not technical experts, but we do understand the benefits of competition," said Florence M. Rice of the National African American Consumer Education Organization, one of the signers of the letter. "We know there will be many more services for everyday people, at affordable prices, if we get more choices."

Rice said she and consumer leaders from across the country wanted the Administration to know that the choices they want to see are those that will help with health care, education and job creation. "If all of the telephone companies and other providers are allowed to develop their best plans, then competition will thrive. That is the way it should be," she said.

In their letter to President Clinton and Vice President Gore, the 100 consumer and public interest leaders expressed their support for the Administration's technology initiatives. "The technology initiatives outlined in your Administration's report, Technology for America's Economic Growth: A New Direction to Build Economic Strength, is an excellent framework for the development of a door-to-door advanced information network that will electronically link the nation's homes, hospitals, businesses, and schools," the letter said.

"Consumers benefit from competition in the marketplace, including more choices and lower prices," Rice said.

JOINT LETTER TO THE PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES FROM CONCERNED AMERICAN CONSUMER LEADERS ON COMMUNICATIONS TECHNOLOGY

July 26, 1993.

Hon. BILL CLINTON,
President of the United States, Executive Office of the President, Washington, DC.

Hon. AL GORE,
Vice President of the United States, Office of the Vice President, Washington, DC.

DEAR PRESIDENT CLINTON AND VICE PRESIDENT GORE: We are writing to support your leadership in bringing the vision and benefits of advanced telecommunications to the top of the public agenda. The technology initiatives outlined in your Administration's report, *Technology for America's Economic Growth: A New Direction to Build Economic Strength*, are an excellent framework for the development of a door-to-door advanced information network that will electronically link the nation's homes, hospitals, business and schools.

As consumer and community leaders working at the state and local level, we support initiatives that will bring the advantages of the Information Age to all Americans through an advanced public telecommunications network. To achieve this goal, consumers need telecommunications choices from as many competing providers as possible, including our own local telephone companies.

We stand ready to support your leadership in that regard.

Thank you very much.

Sincerely,

Florence M. Rice, President, National African American Consumer Education Organization, Harlem, NY.

E. Thomas Garman, Ph.D., Past President, American Council on Consumer Interests,* Blacksburg, VA.

Edythe M. Rickard, State President, Organization for Consumer Justice, Hagerstown, MD.

Kenneth J. Benner, President, American Council on Consumer Awareness, Inc., St. Paul, MN.

Margaret Mc Entire, Chair, Democratic Task Force, National Women's Political Caucus,* Madison, WI.

Louis S. Meyer, Ph.D., Director, Pennsylvania Institute for Community Services, Edinboro, PA.

James Tiernan, Executive Director, American Consumers Association,* Chicago, IL.

Bill Edwards, Executive Director, Community Service Programs of West Alabama, Inc.,* Tuscaloosa, AL.

George M. Gates, Executive Director, New Orleans Council on Aging,* New Orleans, LA.

Michael Keeney, Executive Director, Communities Organized to Improve Life, Inc., Baltimore, MD.

Deborah R. Zemel, Director, Jewish Community Center Senior Center,* Milwaukee, WI.

Patrick M. Flood, Executive Director, Austin Metropolitan Ministries,* Austin, TX.

Bill McGill, Executive Director, Capital Area Community Action Agency, Inc., Tallahassee, FL.

Mary A. Gunn, Executive Director, Poor People Pulling Together, Las Vegas, NV.

Anni Chung, Executive Director, Self-Help for the Elderly, San Francisco, CA.

Kathleen Mirochine, Director, Consumer Protection and Education Services, Inc.,* New Opportunities for Waterbury (NOW), Waterbury, CT.

Judy Braiman, President, Empire State Consumer Association, Rochester, NY.

E.K. Bristow, Director, Legislative Research, Committee of 100,* Mt. Washington, KY.

Benjamin Feldman, Treasurer, Institute for Cooperative Housing,* Philadelphia, PA.

Jimmy D. Harris, Executive Director, Blount County Community Action Agency, Alcoa, TN.

Glennis M. Couchman, Ph.D., Associate Professor, Home Economics, Oklahoma State University, Stillwater, OK.

Alex Sanchez, Assistant Director, Chicano Federation of San Diego County, San Diego, CA.

Richard L.D. Morse, Ph.D., President, Consumer Education & Protection Association for Kansans, Manhattan, KS.

Juanita Joshua, President Alexandria Civic Improvement Council,* Alexandria, LA.

Kathe Reitman, Psychotherapist, Well Being Systems,* Phoenix, AZ.

Dorothy Shavers, Director, Self Help Action of Chicago,* Chicago, IL.

Max Thaxton, Vice President, Community Action Agency, CTE, Inc.,* Stamford, CT.

Arthur Johnson, Past President, NAACP, Detroit Branch, Detroit, MI.

Mary Strickland, Member, Wisconsin Women Entrepreneurs,* Madison, WI.

Manuel Alfonso, Chairman, Hispanic Business Alliance, Detroit, MI.

Don Hancock, Administrator, Southwest Research and Information Center,* Albuquerque, NM.

Jim Slusher, Executive Director, Mid-Columbia Community Action Council,* The Dalles, OR.

Richard L. Schodorf, Chief Attorney, Sedgwick County DA's Office,* Consumer Fraud Division, Wichita, KS.

Dan Richardson, Executive Director, Community Action Agency of Northwest Alabama, Florence, AL.

Josephine Lopez, Director, East Harlem Council for Human Services, New York, NY.

Hunson Greene, Pastor, Baptist Temple Church, New York, NY.

Donald Williams, Former Director, Division of Consumer Affairs, Department of Community Affairs,* Wilmington, DE.

Thomas J. Vandever, Executive Director, Independence Resource Center, Inc., Charlottesville, VA.

Michael Gregg Pritchard, Executive Director, Center For Public Representation, Madison, WI.

Harry C. Tartt, Public Information Officer, Gulf Coast Community Action Agency,* Gulfport, MS.

Sue Schultz, Head Start Director, Polk County Opportunity Council,* Bartow, FL.

Donna Chan, Legislative Liaison, Pacific Asian Women's Alliance, Monona, WI.

Sidney Elkin, Director, Alliance of Consumer Protection,* Beaver, PA.

John C. Thies, Executive Director, Omaha Education Association,* Omaha, NE.

James R. Deal, President, NE Arkansas Citizens Committee, Arkansas Solar Coalition, Blytheville, AR.

Floyd W. Pough, Executive Director, Mobile Community Action, Inc.,* Prichard, AL.

Sylvia Kassalow, Chair, NWCC Jewish Women's Caucus, Alexandria, VA.

E. Marie Watson, Executive Director, Johnston-Lee Community Action, Inc.,* Selma, NC.

Joe Heaphy, Executive Director, Iowa Citizens for Community Improvement,* Des Moines, IA.

T. Willard Fair, President/CEO, Urban League of Greater Miami, Inc., Miami, FL.

Anne Grant, Executive Director, Women's Center of Rhode Island,* Providence, RI.

Pearl Neverson, Education Director, Community Parents Head Start,* Brooklyn, NY.

Abel Amaya, Director, University of Southern California, El Centro Chicano, Los Angeles, CA.

Joanne Smith, President, Network for Professional Women,* Avon, CT.

Sarah Harder, Co-Chair, National Women's Conference Committee, Past President, AAUW, Eau Claire, WI.

Rigoberto Garnica, Executive Director, Escuela De La Raza, Blythe, CA.

Ladora Williams, Acting Director, Economic Opportunity Foundation, Inc., Kansas City, KS.

Michael Lindberg, Executive Director, ARISE, Inc.,* Springfield, MA.

Matthew Little, Immediate Past President, Minneapolis NAACP,* Minneapolis, MN.

Lucy Poulin, President, H.O.M.E.,* Orland, ME.

Eliza L. Dresang, Manager, Media, Information & Communication, Madison Metropolitan School District,* Madison, WI.

David West, Executive Director, Washington Citizen Action,* Seattle, WA.

Solomon Harge, Executive Director, Consumer Protection Association, Cleveland, OH.

Edwin S. Hill, Executive Director, Community Action Agency, Inc., Huntsville, AL.

Cleo Sims, Executive Director, Dallas Co. Community Action Committee, Dallas, TX.

Gene Schroeder, Executive Director, Organized Community Action Program, Troy, AL.

Shirley Middleton, Executive Director, Bridge the Gap Family Day Care Network, New York, NY.

Frankling Yudkin, President, Consumer Association of Kentucky,* Louisville, KY.

Frank E. Werner, President, Crawford County Citizens Advocacy Council, Meadville, PA.

Jean B. Courtney, Director, Consumer Action Center,* Springfield, MA.

Gene Boyer, President, National Women's Conference Center,* Ft. Lauderdale, FL.

C. Patrick Mudd, Executive Director, Arthur S. Kling Center,* Louisville, KY.

Alison L. Eldridge, Ph.D., Research Fellow, University of Minnesota,* Minneapolis, MN.

Tracy Hearson, Director, Consumer Relations Board, Student Government Office,* Manhattan, KS.

Alberta Mariano, Executive Director, Futures for Children,* Albuquerque, NM.

Alice Weary, Data Processing Manager, Montgomery Community Action,* Montgomery, AL.

Beatrice W. Spattsville, Former Director, Cenea Retired Teachers,* Alexandria, LA.

Mary H. Nelson, Center Director, Children's House,* Head Start, Oklahoma City, OK.

George Dillard, President, Urban League of Nebraska,* Omaha, NE.

John Robinson, Director, Lynn Economic Opportunity, Inc.,* Lynn, MA.

Charles Whitehead, Vice President, ACCORD, Inc.,* Syracuse, NY.

Meda Chamberlain, Executive Director, National Council of Negro Women, Southern California Chapter, Los Angeles, CA.

Mary E. Wambach, Executive Director, Boston Center for Independent Living, Inc., Boston, MA.

Benjamin K. Richmond, President/CEO, Louisville Urban League, Louisville, KY.

Louise F. Root-Robbins, Project Director, Wis. Comprehensive School Health Program, Wis. Department of Public Instruction,* Madison, WI.

Sylvia Brooks, President, Urban League of Houston,* Houston, TX.

Keith C. Egan, Executive Director, New Jersey Association for Retarded Citizens,* Vineland, NJ.

Stewart M. Lee, Ph.D., Professor, Emeritus, Geneva College, Former Newsletter Editor, American Council on Consumer Interests, Beaver Falls, PA.

Gwen Jackson, Chairman, Emeritus, Greater Milwaukee Chapter of American Red Cross,* Milwaukee, WI.

Jam Stempel, Member, Women Health Executives Network,* Chicago, IL.

Maureen Booth, President, Greater Duluth Coact,* Duluth, MN.

Roger Lyons, Director, Baltimore Urban League, Baltimore, MD.

Doris Adams, Executive Director, United Communities Against Poverty,* Capitol Heights, MD.

Horace L. Sheffield, Jr., Executive Director, Detroit Association of Black Organizations (DABO),* Detroit, MI.

C. Alicia Georges, Immediate Past President, National Black Nurses Association,* New York, NY.

Mercedes Kaufman, Associate Director, Center for the Independence of the Disabled in New York,* New York, NY.

Nicolas Rivera, Executive Director, Colorado River Community Action Council,* Blythe, CA.

Karen Higgins, Executive Director, Delta Community Action Foundation, Inc.,* Purcell, OK.

Nancy Spears, Director, Alabama Council on Human Relations, Auburn, AL.

Ernest E. Ortega, Executive Director, Home Education Livelihood Program (H.E.L.P.),* Albuquerque, NM.

*For affiliation purposes only

69-059 O—97 Vol. 139 (Pt. 13) 34

TRIBUTE TO MAJOR GENERAL DAVID C. MOREHOUSE

HON. DAVE McCURDY

OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. McCURDY. Mr. Speaker, I would like to bring to your attention today the fine work and outstanding public service of one of our country's top military men, Maj. Gen. David C. Morehouse, The Judge Advocate General of the Air Force. Major General Morehouse retired after an especially distinguished military career on August 1.

General Morehouse was commissioned as a first lieutenant in the Department of the Judge Advocate General, U.S. Air Force Reserve, in August 1960. A 1977 graduate of the National War College, he served, among many assignments, as the staff judge advocate, Headquarters Tactical Air Command, Langley Air Force Base, VA, and later in the same position at Headquarters Strategic Air Command, Offutt Air Force Base, NE.

He attained a bachelor of science degree from the University of Nebraska in 1957, a juris doctor degree from Creighton University in 1960, and a master of law degree from George Washington University in 1972. His military education also includes squadron officers school.

This Viet Nam veteran, who served at Bien Hoa Air Base, Republic of Vietnam, was instrumental in providing necessary legal advice to command at that time and concurrently providing legal assistance to troops of all grades, when that function was more important to those individuals than it ever had been before, or probably since.

Since the spring of 1988, he has been deeply involved in the key issues in both personnel and acquisition arenas in his roles as deputy judge advocate general and then the judge advocate general here in our Nation's Capitol.

General Morehouse's military decorations include the Distinguished Service Medal, the Legion of Merit with one oak leaf cluster, the Bronze Star Medal, the Meritorious Service Medal with one oak leaf cluster, and the Air Force Commendation Medal.

Mr. Speaker, I ask that you join me, our colleagues, and General Morehouse's many friends in saluting this distinguished officer's many years of selfless service to the United States of America. I know our Nation, his wife, Sally and sons, Joe, who is a captain flight surgeon in the Air Force, and Mark, are extremely proud of his accomplishments. It is fitting that the House of Representatives pays tribute to him today.

THE GREAT FLOOD OF 1993

HON. LEE H. HAMILTON

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. HAMILTON. Mr. Speaker, I would like to insert my Washington Report for Wednesday, August 4, 1993 into the CONGRESSIONAL RECORD:

THE GREAT FLOOD OF 1993

The great 1993 Mississippi River flood will rank as one of the worst natural disasters in U.S. history. Not since 1927 has a flood so devastated the Midwest. Nearly 40 lives have been lost and damage estimates exceed $10 billion. A massive effort to contain the flood and assist its victims has prevented what might have been an even greater catastrophe. The heroic efforts of thousands of volunteers and the fine performance of the Federal Emergency Management Agency (FEMA), the Army Corps of Engineers, and the affected States and local governments, have saved lives and reduced damage.

Last week the House of Representatives passed a $3 billion Midwestern flood appropriation. It will provide emergency assistance to victims as well as grants and loans to rebuild roads, schools and other community facilities, to help cover agricultural losses, to help businesses rebuild, and to allow FEMA to complete its work on this flood.

RE-EXAMINING FLOOD POLICIES

Many questions have been raised by this year's flood; complex issues of flood control and flood plain use. The magnitude of this flood has given us a real test of all of our flood policies. Two issues that particularly deserve reexamination are: 1) whether our river engineering strategies work well enough, and 2) whether our policies sufficiently encourage flood insurance and discourage settlement on flood plains.

RIVER ENGINEERING

Historically, engineers have tried to contain rivers with dams, levees and flood walls. This approach works best in protecting a limited number of population centers. For example, the levee that protected downtown St. Louis is hundreds of feet across and high enough to have held the 47 foot flood crest with five feet to spare. But once the river passed that levee it easily broke over the top of smaller ones and flooded parts of South St. Louis. We have spent billions of dollars constructing seven thousand miles of levees along the Mississippi and the rivers that feed it, but we have learned again that it is simply not possible to completely contain these rivers when major floods occur.

Relying solely on levees and flood walls can actually be counter productive over the long run. The natural flow of a flooding river is to spread out and be absorbed in flood plain wetlands and forests, but the Mississippi levees have blocked the natural flow so the river rises higher, flows faster, and breaks out with more explosive force. Levees that protect upstream areas thus raise the flood risk downstream. Flood deposits of top soil that could reinvigorate the flood plain instead are left beneath the river, also raising its height and requiring even higher walls to contain it the next time.

The massive earth moving necessary to construct levees damages or destroys woods, marshes and woodlands, and intensifies the risks of floods. One estimate holds that one third of the 5 million acres of wetlands that have been lost in the lower Mississippi valley have been the result of federal flood control projects. There are gains from growing more corn and soybeans on these acres, but there are environmental costs as well in the loss of the wetlands.

Many now advocate changing our approach and working with the river instead of trying to contain it. This involves removing development adjacent to rivers and restoring or reserving wetlands to serve as natural flood basins. Closer to cities, the flood plain may be reserved for park lands and sports fields.

FLOOD PLAIN HABITATION AND FLOOD INSURANCE

Much of the money that is appropriated for flood victims will be used to restore communities on the flood plain. Eventually, most of these areas will be flooded again. While it is obviously not feasible to relocate Des Moines, in rural flood plain areas it may be feasible to build more incentives into our policies for relocation of homes and businesses farther away from the river, restoring or preserving the flood plain in all areas, and requiring those who choose to build on the flood plain to do so with reinforced structures that are elevated above the level of most floods.

Most federal policies have been moving in this direction since the 1968 passage of the National Flood Insurance Program (NFIP), which empowered FEMA to sell flood insurance directly to people who reside on the flood plain and to provide reinsurance to companies that sell such policies. The amended act now requires the purchase of flood insurance for federal and federally related mortgage financing in flood hazard areas. The NFIP also provides incentives for communities to discourage continued flood plain development, and to prepare for future floods.

Today 2.6 million people have flood policies that meet federal specifications, but this is only bout 20% of those who are required to do so. Pending legislation, which I support, would require lenders to make sure home owners buy flood insurance and keep it current. But even if we improve enforcement, around 75% of those who live in flood hazard areas will not be required to buy such policies under current law, in part because most mortgages are not Federally secured. Further, premiums are set too low to cover claims and as a result the program was about $18 million in the red before this flood.

CONCLUSION

The federal government can and should meet its responsibility to the Midwestern flood victims this year. The costs to taxpayers will be quite high. We now need to begin to plan to reduce our risk, and the risk to the potential victims, before the next flood.

For example, I believe that anyone who chooses to live on a flood plain should be required to accept some of the risk of maintaining the property through realistically priced flood insurance. We need to do a better job of achieving this goal, and also discouraging development on the flood plain.

All flood control projects need closer and sharper evaluation than they have received in the past. Each needs to be reexamined, weighing the flood control benefits against the cost. Obviously, large communities at risk must be fortified, but when huge expenditures are necessary to protect marginal land, other approaches may be better. Some levees that have been washed away should, perhaps, not be rebuilt to allow flood waters to spread out in safe areas. Changing the way we try to manage a river system may be difficult, but our emphasis should be on preserving and restoring the ecosystem so that natural flood control mechanisms can work.

LOWER TAX RATES GENERATE HIGHER REVENUES

HON. PHILIP M. CRANE

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. CRANE. Mr. Speaker, as we search for ways to reduce the budget deficit, one of the proposals that is often advocated is raising taxes on the rich to try to generate enough revenues to solve our economic problems. However, the wealthy do not invest their money when they are confronted with fewer incentives through higher taxes. As a result, this approach has the opposite effect of lowering tax revenues by slowing economic expansion. As President Kennedy and President Reagan have both proved, the best way to increase tax revenue is to create jobs and economic growth. The best way to do that is to lower the tax burden on all Americans, be they rich or poor, and give them the incentive to work hard and take risks. Paul A. Gigot suggests in "Oops! Weren't We Going to Soak the Rich?" that the reason President Clinton ignores this approach and continues to propose taxing the rich is to appear to be the champion to the lower and middle class by perpetuating class-war politics. I submit Mr. Gigot's article, which appeared in the July 9, 1993, issue of the Wall Street Journal, to my colleagues' attention.

OOPS! WEREN'T WE GOING TO SOAK THE RICH?

(By Paul A. Gigot)

On his way out the door in January, a cheeky Bush official scribbled the same tax phrase again and again on a Treasury blackboard for the new Clinton team: "Low rates, broad base."

The incoming Clinton Treasury minions, more rueful than cheeky, erased the phrase each time the new White House requested even higher tax rates.

Mark the rueful down as prophets. The first evidence on income-tax receipts for 1991 is now rolling in from the Internal Revenue Service, and the usual eye-glazing numbers are suddenly eye-popping.

To wit, the rich paid less in taxes even though their tax rates went up. The nonrich paid more even though their tax rates stayed the same. President Clinton, meet the Laffer Curve.

This news is the elephant in the room of this year's tax debate, since we keep hearing that the fate of the world hangs on President Clinton's promise to reduce the deficit by "$500 billion." Most of this windfall, Mr. Clinton assures us, will come from "the rich." But what if those tax revenues from the rich turn out to be a mirage?

Then isn't the Clinton tax program doomed to fail, even as a mere deficit reduction? And shouldn't Democrats think again before they commit tax hari-kari at next week's House-Senate conference? Of course they should, but this year's Democratic theme song seems to be that old "M*A*S*H" movie anthem, "Suicide Is Painless."

The 1991 numbers are so striking because they're the first since the Great 1990 Budget Deal, which was more or less the test drive for Clintonomics. Rates had to be raised on "the rich," we were told then, in order to produce a river of new tax revenue.

Well, this is one river that didn't run through it. For we now know that total income-tax receipts fell in 1991, the first decline since 1983. And they fell in a strange and revealing way, as the chart above shows:

For the rich—defined as the top 850,000 income-earners in each year (making about $200,000 or more)—1991 tax receipts fell by $6.5 billion or 6.1%. But for everyone else, tax receipts actually rose in 1991—by $3.3 billion, or 1%. This odd dichotomy makes it difficult to attribute the revenue decline merely to a slow economy: The rich wouldn't have a bad year if everyone else had a good one. And, in fact, total income rose 3.3% for the year.

So what happened to the rich? It's impossible to know for sure, but the likely answer is that they changed their behavior in response to higher rates. Maybe they sheltered more income. Or stuffed more of it into 1990 to take advantage of that year's lower rates. Or perhaps they worked less. In short, they responded to "incentives," as economists say, and produced less income subject to tax.

This reverse-windfall is underscored by other 1991 numbers. Income from businesses fell 5.5% for the rich, but rose 2.2% for the nonrich. For so-called Subchapter S small business, which would get slammed again by Mr. Clinton, income dove 10.5% for the rich but rose 6.2% for everyone else.

All of which proves what populist, middle-class free-marketeers like me call the paradox of progressivity: To really soak the rich, keep their tax rates low.

Listen to Martin Feldstein, the Harvard economist who has never been mistaken for a wild supply-sider: "The evidence is strong that in 1991 they picked up rates at the top and revenue fell. This should make Democrats think twice about whether the tax rates they're now talking about will raise the revenues they expect." Mr. Feldstein figures they'll get only about a quarter of the $25 billion a year they advertise.

The Clinton administration knows all this, by the way, but wants it kept quiet until the tax bill passes. Treasury economist Alicia Munnell is in denial, even though her staff has calculated that Mr. Feldstein is right. Treasury's Larry Summers knows better, but is preoccupied with Japan and trade. Other Democrats don't even want to hear about it. That's because for them taxing "the rich" is about class-war politics, not revenue. It's about having a foil to run against.

But that's no excuse for Republicans, who've been just as silent about all this. Bob Dole's timid Senate Republicans didn't even offer an amendment to strip the higher rates out of the tax bill. Ohio Rep. John Kasich, supposedly the boy wonder of the budget, has made people wonder by endorsing higher rates. Like George Bush and Nicholas Brady, too many Republicans are still afraid James Carville might accuse them of belonging to a country club.

But now is the time to lay down markers for the next economic debate, educating voters about the con job they are about to experience. An optimist said last year that either the Clinton presidency would be successful, or it would be educational. But that assumes someone does the educating.

EAST EUROPEAN REFORM

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. SOLOMON. Mr. Speaker, please allow me a few moments to report on a couple of

remarkable experiences I have had in the last couple of weeks which display the folly of our foreign aid plans for Russia and Eastern Europe.

For starters, I would like to tell the Congress about an extraordinary little country in the Balkans, Albania. Earlier this month, I had the privilege of being a member of a Congressional delegation to Eastern Europe led by my colleague MARTIN FROST of Texas. Albania is a pitiful land of abject poverty. Rarely in my life have I seen such widespread destitution, dilapidation, and disorder. Albania has been ruined by the same force which has ruined so much of this planet: Communism. The Communist dictator of Albania for 40 years, Enver Hoxha, was probably the cruelest of East European dictators. Aside from ruin and fear, his only legacy to the country is 700,000 ugly concrete bunkers, which ubiquitously dot the countryside.

Yet in this land of destitution, we found reason for hope. Indeed, Albania is one of the most inspiring places I have ever been. Smiles came readily to the faces of the people on the street, despite their dire socio-economic conditions. And the Albanian leaders with whom we met were truly extraordinary. President Berisha, Prime Minister Meksi, and Parliament Speaker Arbnori all possessed an impressive sense of purpose, and are methodically, and unapologetically, going about the business of reform.

From no one in Albania did we hear the banal excuses that are emanating from many other former Communist capitals. There were no roundabout lectures on historical and cultural uniqueness, which necessitates a gradual approach to reform. There was no leftover Socialist thinking or distrust of the market. And, most refreshingly, there were no outstretched hands, begging us for foreign aid. While the Albanians would welcome more foreign aid, and indeed they told us so, they are not waiting for it.

The Albanian Government has launched out boldly on the course which we all know is necessary, that of rapid market reform. Albania has forgotten all about socialism, and it is paying off. Sound and tight money has brought the inflation rate to zero. Pro-business economic policies have facilitated the creation of over 100,000 private sector jobs. Agricultural output has begun to grow. Albania is on her way and she is not looking back.

I have also recently had the pleasure of meeting the Ambassador from Estonia, Toomas Ilves. Ambassador Ilves briefed me on the economic situation in his country, and Estonia, like Albania, is leaving the pack behind. The policies have been virtually the same as in Albania. Estonia has introduced her own currency, passed a balanced budget law, pursued a rigorous tight money policy, drastically slashed subsidies to industry, dramatically expanded trade with Scandinavia and Western Europe, and encouraged foreign investment.

And do you know what, Mr. Speaker? Policies similar to those of Albania have produced results similar to Albania, and those results are utterly predictable: A booming private sector, led by small startups, an export boom, dramatically increased foreign investment, and a stable currency—all in a climate of low inflation. To boot, Estonia is seriously considering a flat tax and yes, abolishing the corporate income tax. No class warfare here, Mr. Speaker.

What is most interesting about Albania and Estonia, Mr. Speaker, is that neither has been the recipient of much foreign aid. In fact, the Estonians have recently rejected two aid offers, one for grain credits from the United States, and the other for currency stabilization funds from the World Bank. This is typical of our foreign aid bureaucracy, Mr. Speaker. Just get the aid out, regardless of whether it is needed or not. Estonia does not need grain credits because Estonia wants to develop her own agricultural sector. Estonia does not need currency stabilization funds because Estonia is pursuing a prudent monetary policy. These basic truths are lost on the foreign aid bureaucrats and their bankroller, the U.S. Congress.

And what has the U.S. Congress just done? We passed an aid package for Russia full of just those things which Russia does not, or should not, need—grain credits, currency stabilization funds, loans for the State-owned oil and gas sector, and a privatization fund that will subsidize former Communist bureaucrats at the expense of the new entrepreneurs who truly represent the future of Russia.

When will this body learn, Mr. Speaker? How much more empirical evidence is needed before we wake up to the fact that it is internal policy, and not foreign aid, that will liberate these countries from the shackles of communism? Mark my words: if Estonia and Albania are allowed a few years of stability by their neighbors, they will race ahead of the pack, with a minimum of foreign aid. Russia, on the other hand, despite the billions in foreign aid she will receive, will remain a backwater unless there are dramatic political changes resulting in more enlightened economic policy.

The only question, Mr. Speaker, is whether we, after wasting billions of taxpayer dollars, will rush to do it again, or whether we will have the foresight and courage to just say no.

THE NATURAL DISASTER PROTECTION ACT

HON. NORMAN Y. MINETA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. MINETA. Mr. Speaker, the Loma Prieta Earthquake, the devastating hurricanes of Andrew, Iniki, and Hugo, and the current floods in the Midwest, demonstrate the vulnerability of our modern society to natural disasters. The human suffering and psychological after-affects on the survivors is difficult to measure.

The recent disasters have also added significant financial costs to the Federal Government's disaster relief programs and to private insurers due to losses that are many times higher than disasters of only a few years ago.

As people try to pick up their lives after a disaster, many are finding it impossible once they rebuild their homes to continue to carry homeowners insurance because such insurance is no longer available. Since Hurricane Iniki, most insurers have abandoned Hawaii. Sometimes lenders are able to find insurance for their borrowers but at costs that are 400 percent or more than previous rates. The high cost of specific peril insurance has left many Californians under-insured. Only 20 percent of Californians carry earthquake coverage; in the Midwest, which also is vulnerable to earthquakes, only 5 percent carry the insurance.

In the Virgin Islands where regular homeowners insurance has not been available since Hurricane Hugo, islanders who try to buy homes find it is impossible to get insurance and hence impossible to get a mortgage. Today hardly any homes are being sold in the Virgin Islands because of this problem. Homeowners live fearfully without insurance.

The major reason for the lack of affordable insurance, is that the reinsurance industry has determined that the risk of a catastrophic disaster makes such investments too risky. They have determined that insuring the monumental losses possible, despite their small likelihood, is not worth bankrupting their companies.

The 1993 Natural Disaster Protection Act which I am introducing today is designed to address the problem of the consequences of future catastrophic disasters. The bill creates a fund, paid for by a small charge on present homeowners policies, to create a Federal reinsurance fund. Such a fund would backstop insurance if the private insurance industry is overwhelmed by a disaster whose financial consequences are higher than Hurricane Andrew. An important part of the bill is the encouragement given local and State governments to strengthen present mitigation efforts.

In the present Flood Insurance Program many homeowners are required to have flood coverage but do not carry the necessary insurance. There is a requirement in the bill for a study to find a solution to the problem.

The proposal consists of three elements: First, incentives to State and local governments to enhance their disaster planning and mitigation efforts; second, federally sponsored primary insurance for earthquake and volcanic eruption; and third; a reinsurance program for losses from hurricanes, earthquakes, volcanic eruptions and tsunamis.

PLANNING AND MITIGATION

The bill would provide financial assistance to State and local governments to improve efforts to plan for disaster avoidance and response, as well as fund mitigation activities. To qualify, States would have to adopt one of several model building and safety codes and comply with the Flood Insurance Program. States must develop mitigation plans for disaster prone areas. It is expected that a large part of the funds will be used to improve inspections and compliance with building codes.

PRIMARY INSURANCE

The bill requires FEMA to develop a primary insurance program to insure losses arising from earthquake and volcanic eruption, and a resulting Tsunami, for residential properties located in earthquake and volcanic-eruption prone states.

The bill establishes a primary insurance program fund consisting of the premiums collected from the policyholders. The fund serves as the source of payment for claims, and the fund has authority to borrow from the treasury if assets are inadequate to pay claims.

REINSURANCE PROGRAM

The bill establishes a Federal Excess Reinsurance Program for losses connected with

hurricane, earthquake, volcanic eruption or Tsunami. This program is funded by participating insurance companies paying actuarially based rates, established by FEMA, into a reinsurance fund established in the treasury.

The reinsurance fund is available to pay losses in two instances: First, losses from hurricane, earthquake, volcanic eruption, and Tsunami events occurring during any 12 month period that exceed 15 percent of property and casualty insurance industry surplus, and second, losses to an individual insurer from such an event which results in losses to that company in excess of 20 percent of surplus. The industry-wide threshold of 15 percent of surplus is currently estimated at about $28 billion, and has never been reached.

FLOOD INSURANCE

The bill includes requirements for FEMA to evaluate the feasibility and benefits of including flooding as a covered peril under the primary insurance program established in the bill. The bill also requires insurance agents and brokers participating in the flood insurance program to notify FEMA of any policyholder who refuses to purchase flood insurance, if the individual is required to purchase such insurance. Once FEMA is notified, it is to take necessary and appropriate steps to assure the purchase of flood insurance by the individual.

Clearly a major step to mitigate the losses from catastrophic and other disasters in the updating and enforcing of appropriate building codes. Insurers have estimated that 30 to 40 percent of the losses from Hurricane Andrew could have been avoided if existing building codes had been properly enforced. We must make sure in any legislation that proper incentives are in place for citizens to keep the loss due to disasters to a minimum.

As the chairman of the Committee on Public Works and Transportation that has legislative authority over the Stafford Disaster Relief and Emergency Assistance Act, I know that in times of disasters Americans willingly sacrifice for their neighbors. And our citizens expect the government to do what it can to ameliorate the suffering. In case of the "big one," or other disasters, the government will be expected to do all it is capable of doing to put peoples' lives back together. This bill could help to lower the financial cost to the government by encouraging mitigation efforts and backstopping the insurance industry so that the private insurers will bear a greater part of the loss.

This is unlikely to be the only bill on this subject introduced during this Congress. This is a problem that is growing and one that the congress must address. No legislation will, of course, be able to prevent acts of nature from inflicting damage to our Nation. But I believe that we can help to limit the damage and speed recovery. That is the intent of this legislation.

H.R. —

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 "Headwaters Forest Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds that:

(1) Redwoods are a significant national symbol and a defining symbol of the State of California.

(2) Old growth redwood trees are a unique and irreplaceable natural resource.

(3) Most of the Nation's old growth forests have been cut. Less than 5 percent of the original 2,000,000 acre Coast redwoods remain standing. The groves that are left are crucial to maintain habitat needed for survival of old-growth dependent species. The Headwaters Forest, for example, is home to one of California's three largest population of marbled murrelets, rare sea birds that nest only in coastal old growth trees; the Northern Spotted Owl; and native salmon stocks that spawn in the Forest's creeks.

(4) The remaining unprotected stands of old growth forests and old growth redwoods are under immediate threat of being harvested without regard to their ecological importance and without following Federal timber harvest guidelines.

(5) Significant amounts of old growth redwoods in the proposed National Forest additions are being cut at a pace that is based on paying high interest rates on poor quality bonds and not at a pace that is based on sound forest management practices.

(b) PURPOSE.—The purpose of this Act is to provide for the sound management and protection of old growth Redwood forest areas in Humboldt County, California, and to preserve and enhance habitat for the marbled murrelet, Northern Spotted owl, native salmon stocks, and other old growth forest dependent species, by adding certain lands and waters to the Six Rivers National Forest and by including a portion of such lands in the national wilderness preservation system.

SEC. 3. ADDITION TO SIX RIVERS NATIONAL FOREST.

(a) EXTENSION OF BOUNDARIES.—The exterior boundaries of the Six Rivers National Forest in the State of California are hereby extended to include the area comprising approximately 44,000 acres, as generally depicted on the map entitled "Six Rivers National Forest Addition proposed", dated June 1993. Such area shall hereinafter in this Act be referred to as the Six Rivers National Forest Addition. The map shall be on file and available for public inspection in the offices of the Forest Supervisor, Six Rivers National Forest, and in the offices of the Chief of the Forest Service, Department of Agriculture.

(b) ACQUISITION OF LAND.—(1) The Secretary shall acquire lands or interests in land within the exterior boundaries of the Six Rivers National Forest Addition by donation, by purchase with donated or appropriated funds, or by exchange for other lands owned by any department, agency, or instrumentality of the United States. When any tract of land is only partly within such boundaries, the Secretary may acquire all or any portion of the land outside of such boundaries in order to minimize the payment of severance costs. Land so acquired outside of the boundaries may be exchanged by the Secretary for non-Federal lands within the boundaries, and any land so acquired and not utilized for exchange shall be reported to the General Services Administration for disposal under the Federal Property and Administrative Services Act of 1949 (63 Stat. 377). Lands, and interests in lands, within the boundaries of the Headwaters Forest which are owned by the State of California or any political subdivision thereof, may be acquired only by donation or exchange.

(2) The Secretary is authorized to accept from the State of California funds to cover the cost of acquiring lands within the Headwaters Forest, and notwithstanding any other provision of law, the Secretary may retain and expend such funds for purposes of such acquisition. Such funds shall be available for such purposes without further appropriation and without fiscal year limitation.

(c) LAND ACQUISITION PLAN.—The Secretary shall develop and implement, within 6 months after the enactment of this Act, a land acquisition plan which contains specific provisions addressing how and when lands will be acquired under subsection (b). The plan shall give priority first to the acquisition of lands within the boundaries of the Headwaters Forest Wilderness identified on the map referred to in section 3(a). The Secretary shall submit copies of such plan to the Committee on Natural Resources, the Committee on Agriculture, and the Committee on Appropriations of the United States House of Representatives and to the Committee on Energy and Commerce, the Committee on Agriculture, Nutrition, and Forestry and the Committee on Appropriations of the United States Senate.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.

SEC. 4. WILDERNESS AREAS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), lands in the State of California acquired under section 3 of this Act which are within the areas generally depicted on the map referred to in section 3 as the "Headwaters Forest Wilderness (Proposed)" shall be designated as wilderness and therefore as a component of the National Wilderness Preservation System, effective upon acquisition under section 3. Such lands shall be known as the Headwaters Forest Wilderness.

(b) MAP AND DESCRIPTION.—As soon as practicable after the inclusion of any lands in the Headwaters Forest Wilderness, the Secretary shall file a map and a boundary description of the area so included with the Committee on Natural Resources of the House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. The Secretary may correct clerical and typographical errors in such boundary description and such map. Each such map and boundary description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, United States Department of Agriculture.

(c) BUFFER ZONES NOT INTENDED.—The Congress does not intend that designation of any area as wilderness under this section lead to the creation of protective perimeters or buffer zones around the wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(d) STATE AUTHORITY OVER FISH AND WILDLIFE.—As provided in section 4(d)(8) of the Wilderness Act, nothing in this Act shall be construed as affecting the jurisdiction or responsibilities of the State of California with respect to wildlife and fish in any areas designated by this Act as wilderness.

SEC. 5. ADMINISTRATION.

(a) MANAGEMENT PLAN.—The Secretary shall develop, within 1 year after the enactment of this Act, a comprehensive management plan detailing measures for the preservation of the existing old growth redwood ecosystems in the Six Rivers National Forest Addition, including but not limited to each of the following:

(1) Prohibition of sale of timber from lands within the old growth redwood groves as depicted generally on the map referred to in

section 3(a). Timber sales in other areas shall be allowed consistent with the purposes of this Act and other applicable Federal laws and regulations.

(2) Measures to restore lands affected by previous timber harvests to mitigate watershed degradation and impairment of habitat for the marbled murrelet, spotted owl, native salmon stocks, and other old-growth forest dependent species ("Restoration Measures"). The Management Plan shall be reviewed and revised every time the Six Rivers National Forest Land and Resource Management plan is revised or more frequently as necessary to meet the purposes of this Act.

(b) APPLICABLE LAWS AND POLICIES.—(1) The Secretary, acting through the Chief of the Forest Service, shall administer the lands acquired under section 3(b) in accordance with the Management Plan, this Act, and with the other laws, rules, and regulations applicable to such national forest. In addition, subject to valid existing rights, any lands acquired and designated as wilderness under section 4(a) shall also be administered in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of acquisition of such lands under section 3 of this Act.

(2) To the maximum extent practicable, all work to implement the management plan's Restoration Measures shall be performed by unemployed forest and timber workers, unemployed commercial fishermen, or other unemployed persons whose livelihood depends on fishery and timber resources.

(3) In order to facilitate management, the Secretary, acting through the Chief of the Forest Service may enter into agreements with the State of California for the management of lands owned by State or purchased with State assistance.

SEC. 6. PAYMENTS TO LOCAL GOVERNMENT.

(a) PILT.—Solely for purposes of payments made pursuant to chapter 69 of title 31 of the United States Code, all lands added to the Six Rivers National Forest by this Act shall be deemed to have been acquired for the purposes specified in section 6904(a) of such title 31.

(b) 10-YEAR PAYMENT.—(1) Subject to annual appropriations and the provisions of subsection (c), for a period of 10 years after acquisition by the United States of lands added to the Six Rivers National Forest by this Act, the Secretary, with respect to such acquired lands, shall make annual payments to Humboldt County in the State of California in an amount equal to the State of California Timber Yield Tax revenues payable under the California Revenue and Taxation Code (sec. 38101 et seq.) in effect as of the date of enactment of this Act that would have been paid with respect to such lands if the lands had not been acquired by the United States, as determined by the Secretary pursuant to this subsection.

(2) The Secretary shall determine the amounts to be paid pursuant to paragraph (1) of this subsection based on an assessment of a variety of factors including, but not limited to—

(A) timber actually sold in the subject year from comparable commercial forest lands of similar soil type, slope and such determination of appropriate timber harvest levels.

(B) comparable timber size class, age, and quality.

(C) market conditions.

(D) all applicable Federal, State, and local laws and regulations, and

(E) the goal of sustainable, even-flow harvest or renewable timber resources.

(c) CALIFORNIA TIMBER YIELD TAX.—The amount of State of California Timber Yield Tax payments paid to Humboldt Count in any year pursuant to the laws of California for timber sold from lands acquired under this Act shall be deducted from the sums to be paid to Humboldt County in that year under subsection (b).

(d) 25-PERCENT FUND.—Amounts paid under subsection (b) with respect to any land in any year shall be reduced by any amounts paid under the Act of May 23, 1908 (16 U.S.C. 500) which are attributable to sales from the same lands in that year.

SEC. 7. FOREST STUDY.

The Secretary shall study the lands within the area comprising approximately 13,620 acres and generally depicted as "Study Area" on the map referred to in section 3(a). The study shall analyze the area's potential to be added to the Headwaters Forest and shall identify the natural resources of the area including the location of old growth forests, old growth redwood stands, threatened and endangered species habitat and populations including the northern spotted owl and marbled murrelet, commercial timber volume, recreational opportunities, wildlife and fish, watershed management, and the cost of acquiring the land. Within one year of the date of enactment of this Act, the Secretary shall submit a report with the findings of the study to the Committees on Natural Resources, and Agriculture of the United States House of Representatives and the committees on Energy and Natural Resources, and Agriculture, Nutrition, and Forestry of the United States Senate.

DEATH OF THE WAR POWERS RESOLUTION IN SOMALIA

HON. BENJAMIN A. GILMAN

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. GILMAN. Mr. Speaker, today, August 4, 1993, may very well be remembered as the day that the War Powers Resolution died. Its death was caused by the election of President Clinton and by the erosion of popular support for his policy in Somalia.

Sixty days ago, on June 5, combat involving United States Forces broke out in Somalia and has continued ever since. Under any reasonable reading of the War Powers Resolution, the President was required to withdraw United States Forces from Somalia by today. He has not, and Congress has decided to look the other way. In so doing, Congress has acquiesced in a legal rationale that will make the War Powers Resolution a dead letter.

The War Powers Resolution provides that whenever U.S. Armed Forces are deployed into a situation of hostilities, or imminent involvement in hostilities in a foreign country, they must be withdrawn in 60 days unless Congress declares war or passes a joint resolution authorizing continuation of the deployment. United States Forces were first sent to Somalia on December 8, 1992. President Bush informed Congress at that time that he did not intend for U.S. Forces there to become involved in hostilities, meaning that the 60-day clock would not apply. While one could debate whether hostilities were imminent after December 8, in fact there was little combat, and therefore it was tenable to contend that the War Powers Resolution did not apply. President Clinton adopted the same position after taking office.

On February 4, 1993, the Senate passed Senate Joint Resolution 45, which would have provided an openended authorization for the Somalia operation. On May 25, the House passed its own version of Senate Joint Resolution 45, which differed from the Senate version principally in that it contained only a 12-month authorization.

I opposed Senate Joint Resolution 45 because I felt that the administration was not moving quickly enough to get United States Forces out of Somalia. This view was shared by many of my colleagues. My amendment to Senate Joint Resolution 45 calling for the withdrawal of all United States Forces from Somalia within 6 months, received 179 votes on the House floor.

In any event, the Senate has taken no further action on Senate Joint Resolution 45—such as appointing conferees or simply bringing the House version to a vote, so Congress has not passed a joint resolution that would satisfy the requirements of the War Powers Resolution with regard to Somalia.

On June 5, serious fighting broke out in Mogadishu. U.S. Forces have engaged in considerable combat since that time, and by all accounts, southern Mogadishu is a war zone. No Americans have yet been killed, but over a dozen have been wounded.

On June 15, I wrote to Secretary of State Christopher to ask whether the United States was now in hostilities in Somalia, such that the 60-day clock applies. The administration responded on July 21. In essence, the administration said that Somalia involves only "intermittent military engagements," each lasting less than 60 days, and therefore, does not involve "sustained hostilities" that might compel the withdrawal of United States Forces after 60 days.

The problem with that logic, of course, is that all wars consist of a series of discrete military engagements. Under this reasoning, it would not be too difficult to argue that a conflict on the scale of World War II falls outside that War Powers Resolution. After all, Pearl Harbor, the Battle of Midway, and the Battle of the Bulge each lasted less than 60 days.

It appears that we are about to see the next application of this logic in Bosnia. The administration's proposal to launch air strikes against Serbian-held positions in Bosnia has been accepted by NATO and may soon be implemented. I understand that the administration does not believe that congressional authorization will be required under the War Powers Resolution if the United States begins bombing in Bosnia. I can only surmise that the administration's logic is the same as in Somalia—the air strikes will be intermittent in the sense that each one will last less than 60 days, and therefore, the 60-day clock will never expire.

This logic on the part of the executive branch is not new, but before today, Congress had never acquiesced in it. In an analogous

situation in Lebanon in 1983, the Reagan administration argued that the deteriorating security situation facing U.S. peacekeepers in Beirut had not risen to the level of hostilities because the fighting was intermittent rather than sustained. Congress rejected this logic.

In the multinational force in Lebanon resolution, signed into law on October 12, 1983, Congress declared that hostilities broke out in Lebanon on August 29, 1993, after 2 days of combat around the Beirut airport, and that 60-day clock therefore had been triggered. The resolution went on to authorize the Lebanon deployment. Because the resolution was signed into law before the 60 days had expired, the question whether the deployment violated the War Powers Resolution was not reached.

This has not happened with regard to Somalia. President Clinton is adopting the same logic as President Reagan, but Congress has chosen not to challenge him the way it challenged President Reagan. Certainly part of the explanation lies in the fact that President Clinton is a Democrat while President Reagan was a Republican.

An additional consideration is that support for the operation in Somalia is eroding. It is likely that one reason the Senate has not taken up the House-passed Somalia resolution is that it might be defeated. Given the choice between preserving the War Powers Resolution and forcing a contentious debate on an unpopular policy in Somalia, Congress has decided to throw the resolution overboard.

By looking the other way while the administration eviscerates the War Powers Resolution, Congress has avoided an embarrassing disagreement with our new President. But the precedent set today will be available to all future Presidents.

History will inevitably show that the War Powers Resolution died in Somalia.

CONGRESS OF THE UNITED STATES,
Washington, DC, June 15, 1993.

Hon. WARREN M. CHRISTOPHER,
Secretary of State, 2201 C Street, NW., Washington, DC.

DEAR MR. SECRETARY: We are writing to request your assessment of the current situation in Somalia. Until now, the Administration has taken the position that the U.S. Armed Forces in Somalia are not in a situation of hostilities or imminent involvement in hostilities within the meaning of the War Powers Resolution. In our opinion, recent events in Mogadishu call for a reexamination of this conclusion.

According to press accounts, 23 Pakistani soldiers were killed and 59 wounded in guerrilla attacks on United Nations peacekeepers on June 5. The U.S. Quick-Reaction Force had to be called out to rescue besieged Pakistanis, and three U.S. soldiers were wounded in the combat. On June 6, the U.N. Security Council adopted a resolution calling for the arrest, prosecution, and trial of those responsible for the attacks.

Between June 5 and June 12, non-essential U.N. officials and foreign aid workers were evacuated from Mogadishu, and those who remained were relocated to a heavily fortified compound in preparation for assaults on arms depots and other facilities belonging to warlord Mohamed Farah Aideed. U.S. AC–130 gunships were sent to Djibouti for use in these assaults, and over 2,000 U.S. Marines were ordered to redeploy from Kuwait to Somalia.

On June 12, the AC–130s attacked facilities in Mogadishu belonging to Aideed. Attacks by U.S. aircraft and helicopters have continued daily since June 12. These attacks have prompted demonstrations by Somali supporters of Aideed, including one in which Pakistani soldiers opened fire and killed at least 14 demonstrators.

In light of these facts, and in accordance with section 4(b) of the War Powers Resolution, we would appreciate your response to the following questions:

1. Were U.S. Armed Forces in Somalia in "hostilities" within the meaning of the War Powers Resolution on June 5?

2. Were U.S. Armed Forces in Somalia in "hostilities" or a situation "where imminent involvement in hostilities [was] clearly indicated by the circumstances" within the meaning of the War Powers Resolution between June 5 and June 12?

3. Have U.S. Armed Forces in Somalia been in "hostilities" within the meaning of the War Powers Resolution between June 12 and the date of this letter?

4. Have U.S. Armed Forces in Somalia been in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution at any time between the date of this letter and the date of your response?

5. Does the Administration anticipate that U.S. Armed Forces in Somalia will be in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution at any time subsequent to the date of your response?

6. If U.S. Armed Forces in Somalia have been, are, or are anticipated to be in "hostilities" or a situation "where imminent involvement in hostilities is clearly indicated by the circumstances" within the meaning of the War Powers Resolution, does the Administration intend to withdraw U.S. Armed Forces from Somalia within 60 days in accordance with section 5(b) of the War Powers Resolution? If not, what will be the legal basis for the U.S. military presence in Somalia after 60 days have elapsed?

Your response to these questions will be of great use to Congress as it proceeds with consideration of S.J. Res. 45, the "Resolution Authorizing the Use of United States Armed Forces in Somalia."

Sincerely,

BENJAMIN A. GILMAN,
Ranking Republican Member, Committee on Foreign Affairs.
JESSE HELMS,
Ranking Republican Member, Committee on Foreign Relations.

U.S. DEPARTMENT OF STATE,
Washington, DC, July 21, 1993.

Hon. BENJAMIN A. GILMAN,
Committee on Foreign Affairs, House of Representatives, Washington, DC.

DEAR MR. GILMAN: Thank you for your letter of June 15 (signed also by Senator Helms) to the Secretary regarding the War Powers Resolution and Somalia. I am pleased to respond on behalf of the Secretary.

You have raised several specific questions regarding whether U.S. Armed Forces in Somalia have been involved in "hostilities" since June for purposes of the War Powers Resolution. These questions all relate to the deployment that was the subject of a June 10 report to Congress by the President, and which was the subject of a supplemental report by the President on July 1. Your questions were raised in the context of section 5(b) of the War Powers Resolution, which provides that, absent Congressional action, the use of U.S. forces is to be terminated within 60 or 90 days after those forces have been introduced into hostilities or into situations where hostilities are clearly indicated by the circumstances.

In our view, no issue is presented of compliance with section 5(b) of the War Powers Resolution (regardless as to whether it is constitutional). We note at the outset that no previous Administration has considered that intermittent military engagements involving U.S. forces overseas, whether or not constituting "hostilities," would necessitate the withdrawal of such forces pursuant to section 5(b) of the Resolution. The War Powers Resolution provision on withdrawal sixty days after forces are introduced into hostilities (with certain exceptions) was intended to apply to sustained hostilities so as to ensure that the collective judgment of both Congress and the President would be applied to decisions about whether to go to war.

This is not the situation we face in Somalia. As summarized in the President's report of July 1, the significant involvement of the U.S. Quick Reaction Force in the United Nations operation against Aideed's forces and compound has not involved sustained military action. These activities have been directed at those responsible for the murder or wounding of peacekeepers, as well as other criminal activity. While significant military force was used, our actions have been in support of the United Nations humanitarian mandate and have not been directed at the forces of a sovereign state, but rather at bandits or warlords. Moreover, as you know from the President's reports, U.S. Armed Forces have made important contributions to the United Nations-led military action in support of U.N. peacekeeping efforts in Somalia.

Finally, both the House and Senate have voted in favor of bills that would provide express statutory authority to participate in peacekeeping efforts in Somalia (including authority for purposes of the War Powers Resolution). As we have stated before, although we do not believe that specific statutory authority is necessary, the Administration welcomes such Congressional support for U.S. activities in Somalia.

I hope this is useful to you. We look forward to further discussions with you on this important issue. Pleased feel free to communicate with me if I can be of further assistance.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

RETROACTIVE TAX INCREASE WOULD BE EGREGIOUS INJUSTICE

HON. CHRISTOPHER COX

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. COX. Mr. Speaker, the retroactive income tax increase that this Congress is about to pass is an egregious injustice. I commend to my colleagues the following article, which explains in detail why this is so. It is written by a distinguished attorney with the law firm of Paul, Hastings, Janofsky, and Walker in

Washington, DC. Mr. Schmitz specializes in constitutional law, separation of powers, and federalism. During the Reagan administration he served as Special Assistant to the Attorney General of the United States.

ARE RETROACTIVE TAX INCREASES CONSTITUTIONAL?

(By Joseph E. Schmitz)

The current "Tax Compromise" includes a substantial increase in the marginal tax rate for individuals earning over $115,000 ($140,000 for married couples filing jointly), and an even larger increase for couples and individuals with taxable income over $250,000—retroactive to January 1, 1993. If Congress can impose taxes retroactively back to January 1, 1993 (before the current Administration took office), why not back to January 1, 1983, or even further? While the "wealthy" are bracing to take substantial cuts in net income over the next few months or to write large checks to Uncle Sam next April (for retroactively assessed taxes that weren't withheld), perhaps it is time to reconsider whether Congress has unfettered discretion under the Constitution to impose a tax increase retroactively—and if so, whether an amendment should be considered to restrain such power.

Article I, Section 9, of the U.S. Constitution states that "No bill of attainder or ex post facto law shall be passed." The foremost problem with *ex post facto* laws, *i.e.* retroactive legislation, is that they are repugnant to the Rule of Law principles upon which our society is based. In *Marbury v. Madison*, Chief Justice John Marshall stressed that "The government of the United States has been emphatically termed a government of laws, and not men." 5 U.S. (1 Cranch) 137, 163 (1803). Chief Justice Marshall later admonished that "the power to tax involves the power to destroy ." *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819).

Two centuries ago, retroactive laws were said to be "contrary to the first principles of the social compact," "against natural rights," "unjust," "highly injurious," "oppressive," and/or "wrong." More recently, Friedrich von Hayek described the Rule of Law, and its inherent restriction on retroactive legislation, as the singlemost distinguishing factor of a free society: "Rule of Law * * * means that the government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in certain circumstances and to plan one's individual affairs on the basis of this knowledge." F. Hayek, The Road to Serfdom 72 (1944).

That a general prohibition against retroactive lawmaking is deeply rooted in Anglo/American jurisprudence cannot be disputed. William Blackstone argued that "All laws should be made to commence *in futuro*." 1 W. Blackstone, *Commentaries* 46. Blackstone's basic argument was that "it is reasonable that [laws] be prescribed or promulgated and that there can be no promulgation where they commence at a time anterior to enactment * * *. As a matter of justice laws should not be enforced before the subjects have an opportunity to become acquainted with them." Smead, *The Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 Minn. L. Rev. 775, 777 (1936).

In The Federalist, James Madison wrote that "ex post facto laws, and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation." The Federalist No. 44, at 279 (Lodge ed. 1888). Even the Congressional Research Service admits the historical legitimacy of arguments that the *ex post facto* clause should apply to all congressional legislation: "At the time the Constitution was adopted, many persons understood the terms *ex post facto* laws to 'embrace all retrospective laws, or laws governing or controlling past transactions, whether * * * of a civil or a criminal nature.'" Congressional Research Service. The Constitution of the United States: Analysis and Interpretation, S. Doc. No. 16, 99th Cong., 1st. Sess. 381-82 (1987) (quoting 3 J. Story, *Commentaries on the Constitution of the United States* (Boston: 1833), §1339).

Though it is still axiomatic in the late Twentieth Century that "[t]he Constitution created a Federal Government of limited powers," *New York* v. *United States*, 112 S. Ct. 2408, 2417 (1992), whether Congress has the power to enact retroactive civil laws today does not lend itself to clean constitutional analysis, due to a number of prior judicial interpretations, stemming from *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386 (1798), that the Constitution's express prohibition against *ex post facto* laws (Art. I. §9) does not apply in the civil context. A number of prominent jurists and scholars, however, have insisted that the *Ex Post Facto* Clause should apply in the civil context. *See, e.g., Lehmann* v. *United States ex rel. Carson*, 353 U.S. 685, 690 (1957) (Black and Douglas, JJ., dissenting); *Marcello* v. *Bonds* 349 U.S. 302, 319 (1955) (Douglas, J., dissenting); *see generally* Crosskey, *The True Meaning of the Constitutional Prohibition of Ex-Post-Facto Laws*, 14 Ch. L. Rev. 539 (1947) (citing original historical sources).

Calder v. *Bull* involved Connecticut legislation that "set aside a decree of the court of Probate for Hartford * * * and granted a new hearing." 3 U.S. (3 Dall.) at 386. Justices Paterson and Iredell, in separate opinions, both expounded on the "indefinite nature" of Connecticut Legislature's powers, which at the time included both legislative and judicial functions (in stark contrast to the federal Legislature's powers then and now). Justice Iredell's dissenting opinion suggests that the Connecticut legislature's exercise of purely judicial power, *i.e.* purely retroactive legislation, was "strange," alluding to the fact that the federal Legislature could not even countenance the idea:

"It may indeed, appear strange to some of us, that in any form, there should exist a power to grant, with respect to suits depending or adjudge, new rights of trial new privileges of proceeding, not previously recognized and regulated by positive institutions; but such is the established usage of Connecticut, and it is obviously consistent with the general superintending authority of her Legislature * * * 3 U.S. (3 Dall.) at 398 (Iredell, J., dissenting)."

Notwithstanding *Calder v. Bull* and its legal progeny, it is clear from the writings of Thomas Jefferson that the framers' abhorrence of *ex post facto* laws applied to all federal laws, whether civil and criminal. In 1813, for example, Jefferson wrote of the retroactive application of a congressional patent law: "The sentiment that *ex post facto* laws are against natural rights, is so strong in the United States, that few, if any, of the state constitutions have failed to proscribe them. The federal constitution indeed interdicts them in criminal cases only, but they are equally unjust in civil as in criminal cases, and the omission of a caution which would have been right, does not justify the doing of what is wrong." T Jefferson, Letter to Isaac M'Pherson, Aug. 13, 1813, in 6 writings 176 (H. Washington ed. 1853-54).

Supporting the then-popular sentiment that retroactive criminal and civil laws were seen in the same light, the New Hampshire Constitution of 1784 warns that "Retroactive laws are highly injurious, oppressive, and unjust. No such law, therefore, should be made, either of the decision of civil causes, or the punishment of offenses." N.H. Const. of 1784, Part 1, §23. Chancellor Kent of New York went so far as to state that "there is no distinction in principle, nor any recognized in practice, between a law punishing a person criminally, for a past innocent act, or punished him civilly by divesting him of a lawfully acquired right. The distinction consists only in the degree of the oppression * * *" 7 John, (N.Y.) 477 (1811)

In a few cases since *Calder v. Bull*, the Supreme Court has stated that certain new civil laws, if applied retroactively, could be *per se* unconstitutional. *Eg., Herrick v. Boquaillas Land & Cattle Co.*, 26 S. Ct. 192 (1906) (affirming Arizona Supreme Court analysis: "if construed as absolutely barring cause of action existing at the time of its passage [a new statute of limitation] was unconstitutional,—citing *Sohn v. Watersohn*, 17 Wall. 596"). Likewise, older cases have held that retroactively-imposed tax laws can be "confiscation of property in violation of due process of law." Smead, *Rule Against Retroactive Legislation: A Basic Principle of Jurisprudence*, 20 Minn. L. Rev. 775, 796 (1936) (citations omitted).

When addressing judicial challenges to retroactive civil legislation, however, the modern Supreme Court resorts to a minimum scrutiny "due process" balancing test: "Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches * * *." *Pension Benefit Guarantee Corp. v. R.A. Gray & Co.*, 104 S. Ct. 2709, 2717-18 (1984). This type of Judicial deference to the Executive and Legislative branches poses little or no constraint on the type of retroactivity contained in the "Tax Compromise."

Perhaps the time is ripe for the Judiciary to reconsider the constitutional constraints against such legislation. Justice Antonin Scalia recently suggested that retroactivity, while appropriate for judicial decisions, is constitutionally problematic for legislation, even in the civil taxation context: "[I]t is said that that which distinguishes a judicial from a legislative act is, that the one is a determination of what the existing law is in relation to some existing thing already done or happened, while the other is a predetermination of what the law shall be for the regulation of all future cases." *Harper v. Virginia Dep't of Taxation*, 61 U.S.L.W. 4664, 4669 (June 18, 1993) (Scalia, J., concurring) (quoting T. Cooley, Constitutional Limitations 91 (1868)).

The Democratic leadership in both the executive and legislative branches apparently feel no constitutional or moral constraints against enacting a retroactive tax increase. Perhaps dispossessed Members of Congress and/or affected individuals can seek judicial review of the "Tax Compromise" as being an unconstitutional *ex post facto* law, or as being "contrary to the first principles of the social compact," "against natural rights," "unjust," "highly injurious," "oppressive," "wrong," or all of the foregoing. If the Judiciary is unwilling to constrain the White House and Congress, then perhaps the "people" need to consider a constitutional

amendment that will constrain the power of the federal government to tax (and therefore to destroy) retroactively.

SALUTING MEMBERS OF THE BOWMAN FAMILY: GROUP CELEBRATES SEVENTH BIANNUAL REUNION

HON. LOUIS STOKES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, August 4, 1993

Mr. STOKES. Mr. Speaker, in just a few weeks, on August 19, 1993, members of the Bowman family will gather in Bethesda, MD, for their seventh biannual convention. The event promises to be an exciting one, as descendants of Oz and Charity Bowman gather from around the country to reflect upon their rich heritage. I am proud to rise today to salute members of the Bowman family on this auspicious occasion.

According to a member of the family, Tina Luckyadoo, the Bowman family reunion was begun in 1972. The first reunion was held at the home of Matilda Kenly Porter of Pleasantville, NJ. It was thought that the reunion offered an opportunity for family to gather together for occasions other than funerals. During the following years, the reunion grew in size and scope.

The Bowman family is particularly proud to note that in 1981, the family reunion ventured home to Irmo, SC. Here family members had an opportunity to meet other relatives, research the family tree more extensively, and envision the town of Irmo through their ancestors' eyes. In addition to New Jersey and South Carolina, Bowman family reunions have been held in Pennsylvania and Michigan.

Mr. Speaker, the Bowman family recognizes the importance of pausing to join together in celebration of their heritage, struggles, and many accomplishments over the years. I am certain that each member in attendance will benefit greatly from this special reunion. I ask that my colleagues join me today in extending our prayers and best wishes to the Bowman family.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, August 5, 1993, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

AUGUST 6

9:30 a.m.
Joint Economic
To hold hearings to examine the employment-unemployment situation for July.
2359 Rayburn Building

SEPTEMBER 8

9:30 a.m.
Commerce, Science, and Transportation
Communications Subcommittee
To resume hearings on S. 1086, to foster the further development of the Nation's telecommunications infrastructure through the enhancement of competition.
SR-253

POSTPONEMENTS

AUGUST 5

3:00 p.m.
Labor and Human Resources
Employment and Productivity Subcommittee
To hold joint hearings with the Committee on Indian Affairs on the implementation of the Job Training Partnership Act (P.L. 102-367). and the Indian Employment Training and Services Demonstration Act (P.L. 102-477).
SR-485

Indian Affairs
To hold joint hearings with the Committee on Labor and Human Resources' Subcommittee on Employment and Productivity on the implementation of the Job Training Partnership Act (P.L. 102-367), and the Indian Employment Training and Services Demonstration Act (P.L. 102-477).
SR-485

AUGUST 6

10:00 a.m.
Governmental Affairs
To hold hearings to examine environmental problems in the Federal government.
SD-342